*ALEXANDRINE MAGER, WIDOW COLLARD, OPPONENT AND PLAINTIFF IN THE MATTER OF THE SUCCESSION OF JOHN MAGER, DECEASED, PLAINTIFF IN ERROR, *v.* FELIX GRIMA, TESTAMENTARY EXECUTOR OF THE LAST WILL AND TESTAMENT OF JOHN MAGER, DECEASED, AND THE TREASURER OF THE STATE OF LOUISIANA.

By a law of the state of Louisiana, every person not being domiciliated in that state, and not being a citizen of any state or territory in the Union, who shall be entitled, whether as heir, legatee, or donee, to the whole or any part of the succession of a person deceased, shall pay a tax to the state of ten per cent. of the value thereof.
This law is not repugnant to the Constitution of the United States.[1]

THIS case was brought up, by a writ of error issued under the twenty-fifth section of the Judiciary Act, from the Supreme Court of Louisiana.

The Widow Collard, who was the plaintiff in error, resided at Metz in the kingdom of France, and was the universal legatee of her brother, Jean Mager, who died in Louisiana. There was a statement of facts in the court below, which explains the whole case.

"*Statement of Facts agreed.*

"Succession of John Mager, on the opposition of Alexandrine Collard, to the tableau filed by the testamentary executor.

Case agreed.

"1st. The tableau filed by the executor is made part of this case, to show that the executor retains from the opponent, the universal legatee of John Mager, the sum of eight thousand dollars and upwards, being the amount of the tax imposed by the fourth section of the act of the Legislature of the state of Louisiana, passed on the 26th of March, 1842, on property or estates inherited by foreigners within the state of Louisiana, and which is in the words and figures following:—

"'SEC. 4th. Be it further enacted, &c., that each and every person, not being domiciliated in this state, and not being a citizen of any state or territory in the Union, who shall be entitled, whether as heir, legatee, or donee, to the whole or any part of the succession of a person deceased, whether such person shall have died in this state or elsewhere, shall pay a

[1] APPLIED. *Frederickson* v. *Louisiana*, 23 How., 447. DISTINGUISHED. *Dallinger* v. *Rapello*, 14 Fed. Rep., 33. FOLLOWED. *Prevost* v. *Greneaux*, 19 How., 7.

tax of ten per cent. on all sums, or on the value of all property, which he may actually receive from said succession, or so much thereof as is situated in this state, after deducting debts due by said successions. When the said inheritance, donation, or legacy consists of specific property, and the same has not *491] been sold, the appraisement thereof in the inventory shall be considered *as the value thereof. Every executor, curator, tutor, or administrator, having the charge or administration of succession property belonging, in whole or in part, to a person residing out of this state, and not being a citizen of any other state or territory, shall be bound to retain in his hands the amount of the tax imposed by this act, and to pay over the same to the state treasurer, if the succession be opened in the parish of Orleans or Jefferson, or to the sheriff, if the succession be opened in any other parish; in default whereof every such executor, curator, tutor, or administrator, and his securities, shall be liable for the amount thereof. It shall be the special duty of the judges of the Courts of Probate to see that the tax imposed by virtue of this section be collected and paid over; and each of said judges shall be bound to furnish to the treasurer, once a year, a statement or list of the successions opened in his parish, whereof persons who are neither residents of this state, nor citizens of any other state or territory in the Union, are heirs, legatees, or donees, in whole or in part, and of the amount accruing to such persons; and any judge failing to furnish such statement shall be subject to a fine not exceeding five hundred dollars for each and every such omission; and that he be responsible to the state for the amount due; and that the sheriffs of the different parishes throughout the state, except those of the parishes of Orleans and Jefferson, shall pay over the taxes thus received from successions in the same manner, and be subject to the same penalties, as in the payment of other taxes; and that the taxes thus received be taken view in the execution of the sheriff's bond.'

"2d. It is agreed that, by the laws of France, a tax or duty of six and a half per cent. would be levied by the French government on an inheritance falling to an American citizen, in the same degree of relationship to a deceased French subject as the opponent and universal legatee in this case bore to the deceased John Mager, the testator.

"3d. The testator, John Mager, was a natural-born Frenchman, who had emigrated to the United States after the cession of Louisiana to France, and died in the city of New Orleans.

"4th. The opponent, Agathe Alexandrine Mager, Widow Collard, is the sister of the testator, and his universal legatee,

according to his last will and testament, duly recorded in this court, and admitted to probate, and is a French subject residing in France.

"5th. The last will of the testator, John Mager, and all the mortuary proceedings in this court, make part of this case, and may be referred to, and used in whole or in part, by either party.

*"If upon this case the law of the state of Louisiana aforesaid, imposing the tax aforesaid, be valid, and not repugnant to the Constitution of the United States, then the opposition of the opponent to be dismissed, and the tableau homologated and approved. If, on the contrary, the said law imposing said tax is repugnant to the Constitution of the United States, then the opposition shall be maintained, and the item of eight thousand dollars and upwards, as aforesaid, retained as the amount of said tax, shall be expunged, and the same merged in the succession of the said John Mager, to be paid over to his universal legatee. [*492

(Signed,) ISAAC T. PRESTON, *Attorney-General.*
H. R. DENIS, *Attorney for Opponent.*"

The Court of Probate dismissed the opposition of the Widow Collard, and ordered the account of the executor (retaining the tax) to be homologated. An appeal was carried to the Supreme Court of Louisiana, which affirmed the judgment of the Court of Probates, and the case was then brought up to this court under the twenty-fifth section of the Judiciary Act.

It was argued by *Mr. Jones*, for the plaintiff in error, and *Mr. Coxe*, for the defendants in error.

The points upon which *Mr. Jones* rested his argument were the following, which were opposed by *Mr. Coxe*.

I. The tax in question is laid on the person and the rights of an alien residing in his own country;—and so is repugnant to the exclusive power of Congress to regulate commerce with foreign nations.

II. Or it is a tax on the property and effects in the hands of the executor, and under the sole destination of being exported to the foreign legatee; and so is a tax on exports, and expressly prohibited by the Constitution.

I. It is repugnant to the power of Congress to regulate commerce with foreign nations.

Under this head two questions arise,—

First, whether it be in the nature of a regulation of commerce, such as the Constitution contemplated in the grant to Congress of the power to regulate commerce.

Second, whether that power be in its terms or in its nature exclusive, and incompatible with state regulations of commerce.

First. To lay a peculiar tax, out of the rule of taxation common to the citizens of the state, on foreigners residing in their own country and holding property, or having vested *rights and interests of any kind in the state, and to lay it for the reason that they are foreigners beyond the jurisdiction of the state, is to exercise a power comprehended in the terms of the general power to regulate commerce with foreign nations.

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II. The tax in question is essentially a tax on *exports*.

The state of Maryland could lay no tax on imported goods, even after the importation was consummated, and the goods removed to the importer's warehouse for sale, but still unsold. *Brown* v. *Maryland*, 12 Wheat., 419. *A fortiori*, not on effects deposited in the hands of an executor, trustee or agent, to be exported or remitted to the owner abroad.

Shifting the tax from the material of the export to the person of the exporter, does not alter its essence. *Brown* v. *Maryland*, 12 Wheat., 449.

Mr. Chief Justice TANEY delivered the opinion of the court.

This is a plain case, and when the facts are stated, the question of law may be disposed of in a few words.

The plaintiff in error was the residuary legatee—or, in the language of Louisiana law, the universal legatee—of a certain John Mager, who was a native of France, and migrated to the United States after the cession of Louisiana. He died at New Orleans possessed of property to a large amount. The widow Collard is his sister. At the time of his death she was a French subject residing in France.

By the law of Louisiana a tax of ten per cent. is imposed on legacies, when the legatee is neither a citizen of the United States, nor domiciled in that state. And the executor of the deceased, or other person charged with the administration of the estate, is directed to pay the tax to the State Treasurer.

Felix Grima, the defendant in error, is the executor of John Mager, and retained the amount of the tax, in order to pay it over as the law directs. And this suit was brought by the legatee to recover it, upon the ground that the act of the Louisiana Legislature is repugnant to the Constitution of the United States.

Now the law in question is nothing more than an exercise of the power which every state and sovereignty possesses, of regulating the manner and term upon which property, real or

personal within its dominion may be transmitted by last will and testament, or by inheritance; and of prescribing who shall and who shall not be capable of taking it. Every state or nation may unquestionably refuse to allow an alien to take either real or personal property, situated within its limits, either as heir or *legatee, and may, if it thinks proper, direct that property so descending or bequeathed shall belong to the state. In many of the states of this Union at this day, real property devised to an alien is liable to escheat. And if a state may deny the privilege altogether, it follows that, when it grants it, it may annex to the grant any conditions which it supposes to be required by its interests or policy. This has been done by Louisiana. The right to take is given to the alien, subject to a deduction of ten per cent. for the use of the state. [*494

In some of the states, laws have been passed at different times imposing a tax similar to the one now in question, upon its own citizens as well as foreigners; and the constitutionality of these laws has never been questioned. And if a state may impose it upon its own citizens, it will hardly be contended that aliens are entitled to exemption; and that their property in our own country is not liable to the same burdens that may lawfully be imposed upon that of our own citizens.

We can see no objection to such a tax, whether imposed on citizens and aliens alike, or upon the latter exclusively. It certainly has no concern with commerce, or with imports or exports. It has been suggested, indeed, in the argument, that, as the legatee resided abroad, it would be necessary to transmit to her the proceeds of the portion of the estate to which she was entitled, and that the law was therefore a tax on exports. But if that argument was sound, no property would be liable to be taxed in a state, when the owner intended to convert it into money and send it abroad.

The judgment of the state court was clearly right, and must be affirmed.

Order.

This cause came on to be heard on the transcript of the record from the Supreme Court of the state of Louisiana, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said Supreme Court in this cause be, and the same is hereby affirmed with costs.