THE DECISIONS

OF THE

SUPREME COURT OF THE UNITED STATES,

AT

DECEMBER TERM, 1856.

JEAN LOUIS PREVOST, PLAINTIFF IN ERROR, *v.* CHARLES E. GRENEAUX, TREASURER OF THE STATE OF LOUISIANA.

The laws of Louisiana impose a tax of ten per cent. on the value of all property inherited in that State by any person not domiciliated there, and not being a citizen of any State or Territory of the United States.

In 1853, a treaty was made between the United States and France, by which Frenchmen were placed, as regards property, upon the same footing as citizens of the United States, in all the States of the Union whose laws permit it.

This treaty has no effect upon the succession of a person who died in 1848.

THIS case was brought up from the Supreme Court of the State of Louisiana by a writ of error issued under the 25th section of the judiciary act.

The facts in the case were very few, and are stated in the opinion of the court. See also 8 Howard, 490, and 18 Howard, 182.

It was argued by *Mr. Janin* for the plaintiff in error, and by *Mr. Benjamin* for the defendant.

Mr. Janin made the following point:

The plaintiff in error submits—and that is the only point in the case—that his heirship was only recognised in 1854; and that when the law imposing a tax or penalty is repealed before that tax is collected, the right to recover it is lost.

This principle was recognised by the former Supreme Court of Louisiana.

In the case of the city of New Orleans *v.* Mrs. Grailhe, decided December 4, 1854, it was contended that the right to

collect the tax levied by the ordinance of 1852 was lost by the repeal of that ordinance under the 5th condition of the 2d section of the acts of the Legislature of March 15, 1854, page 73, authorizing the city of New Orleans to subscribe to the Opelousas and Jackson railroads. This position was taken under the authority of the principles recognised in three decisions: one in the case of Cooper *v.* Hodge, 17 L., 476, and two others referred to in that decision. Judge Martin was the organ of the court in these three cases. In that of Cooper *v.* Hodge, the principle is expressed in this form:

"We have held, that if a judgment be correctly given under a law which is repealed pending the appeal, this court is bound to reverse it."

The Supreme Court of the United States have acted on this principle in cases of much more difficulty than that now before the court.

The Legislature of Virginia, by an act passed in 1779, during the war, had authorized Virginia debtors of British subjects to discharge the debt by payment into an office existing under the State Government. The defendants in error, under this act, had paid into this office a portion of their indebtedness to the plaintiffs, and pleaded their discharge *pro tanto* under the act. The plaintiffs replied the 4th article of the definitive treaty of peace between Great Britain and the United States, of September 3, 1783, in which it was stipulated that creditors on either side should meet with no lawful impediment to the recovery of the full value in sterling money of all *bona fide* debts heretofore contracted.

The State was held to have had full power to make the law, but it had been annulled by the treaty, and the defendants in error were liable to the full amount, notwithstanding partial payment to the State.

1 Cranch, 103. The United States *v.* The Schooner Peggy. The schooner Peggy was captured by a United States armed vessel, and libelled as prize, ordered to be restored by the District Court, condemned by the Circuit Court on appeal as lawful prize, when the owners of the Peggy prosecuted a writ of error to the Supreme Court. She had been captured as sailing under the authority of the French Republic. On the 30th of September, 1801, pending the writ of error, a convention was signed between the United States and the French Republic, and was ratified on the 21st of December, 1801, which provided for the restoration of property captured, but not yet definitively condemned.

It was urged that the court could take no notice of the stipulation for the restoration of property not yet definitively

condemned; that the judge could only inquire if the sentence was correct or erroneous when delivered; and that if it was then correct, it could not be rendered otherwise by anything subsequent to its rendition. It was held by the court, in the opinion delivered by Chief Justice Marshall, that if, subsequent to the judgment and before the decision of the appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligation denied; that, where a treaty is the law of the land, and, as such, binds the rights of parties litigating in court, to condemn a vessel, the restoration of which was directed by it, would be a direct infraction of that law, and of consequence improper; that if the law was constitutional, and no doubt of it had been expressed in this case, no court could contest its obligation. The effect upon civil rights acquired under a statute, of the repeal of the statute, was most fully considered in the case of Butler *v.* Palmer, (1 Hill's Rep., 324,) in an elaborate opinion of Judge Cowen. In speaking of the effect of a repeal upon inchoate rights, he says: "I understand the rule of the writers on the civil law perfectly to agree with that acted on by our courts in all their decisions, ancient and modern. Those writers speak of rights which have arisen under the statute not being affected by the repeal, but the context shows at once what kind of rights they mean. The amount of the whole comes to this: that a repealing clause is such an express enactment as necessarily divests all inchoate rights which had arisen under the statute it destroys. These rights are but incidents to the statute, and fall with it unless saved by the express words of the repealing clause." He reviews the case of Miller, (1 W. Blackstone's Rep., 451,) and gives a much fuller statement of it from some other reporter. See, also, Smith's Commentaries on Statutory Construction, pp. 888, 889, for the same case, and the English decisions in affirmance of it. The result of these decisions is, that not only in penal and jurisdictional matters, but in civil matters, where rights that are inchoate and set up under a repealed statute, they are divested as fully as if the statute had never existed.

But can it with any propriety be said in any case that the State acquires a vested civil right to a tax? To impose, levy, and collect a tax is an exercise of the sovereign power, as much as the levying and collecting a fine for a misdemeanor. The repeal of the statute imposing one or the other at once stops all action under it. A sovereign never pleads a vested civil right to a tax; he simply takes it by virtue of his inherent power. A statute is simply an exertion of that power; its repeal, the withdrawal of the application of the power. The

machinery for its collection provided by the statute is paralyzed by the repeal.

We are entitled to the benefit of a strict construction of the statute, as being not only partial and odious, even as it regards citizens of the State, but, as was held by the Supreme Court of the State of Louisiana in the case of the widow and heirs of Benjamin Poydras de la Lande against the Treasurer of the State, even penal in its character.

So far as statutes for the regulation of trade impose fines or create forfeitures, they are doubtless to be construed strictly as penal, and not liberally as remedial laws. Mayor *v.* Davis, 6 Watts and Serg., 269.

Statutes levying duties or taxes upon subjects or citizens are to be construed most strongly against the Government, and in favor of the subjects and citizens, and their provisions are not to be extended by implication beyond the clear import of the language used. U. S. *v.* Wigglesworth, 2 Story, 369.

No judgment can be rendered for a penalty given by a statute after the statute is repealed, although the action was commenced before the repeal. Pope *v.* Lewis, 4 Ala., 487.

From these principles and authorities it follows, that the right of the State to claim or recover the foreign succession tax of 1842 is lost from the moment of the promulgation of the consular convention of 1853, although the tax might have been claimed and recovered, if proceedings had been instituted, perfected, and executed, before that convention.

Mr. Benjamin stated the points as follows:

The case is clearly within the jurisdiction of this court; and the only question is, whether the court of Louisiana has rightfully construed the treaty. Its decisions under it have been—

First. That wherever the rights of the heir vested *after* the consular convention went into effect, the tax could not be recovered. Succession Dufour, Annual, 392.

Secondly. That wherever the right of the heir vested anterior to the date of the treaty, the right of the State vested *at the same time.*

The latter proposition is the one now in dispute.

I. At what time, under the laws of Louisiana, did the rights of the State to the tax of ten per cent. vest?

Fortunately, the response to this question is entirely free from difficulty, as the point had been settled by a series of adjudications long prior to the controversy in this cause.

The Supreme Court of that State has held, ever since the year 1831, that, under the State statute, the rights of the heir

and of the State both vested at the instant of the testator's death. Armand's Heirs *v.* His Executors, 3 L. R., 337; Quessart's Heirs *v.* Canonge, 3 L. R., 561; Succession of Oyon, 6 Rob. R., 504; Succession of Blanchard, 17 Annual, 392; Succession of Dufour, 18 Annual, 392; Succession of Deyraud, 9 Rob. R., 358.

The question had arisen in Louisiana under every aspect.

In the first two cases cited, the law imposing the tax had been repealed *before* the collection of the tax, but *subsequent* to the death of the party under whom the heirs claimed. The court held, that the title of the State had *vested* at the death, and that the tax could be collected, notwithstanding the repeal of the statute.

In the two cases next cited, the law imposing the tax was passed *after* the testator's death, but *before* the heirs had received the succession. The court held, that the right of the heirs had vested in the whole of the estate at the death of the testator, and that the tax could *not* be collected.

In the fifth case cited, the convention with France was passed *before* the testator's death; and the court held, that the tax could *not* be collected, because the heir's right vested at the death.

In the sixth case, the death occurred *before* the passage of the convention; and the court held, that the right of the State had accrued at the death, and the tax *could* be collected.

And the whole series of adjudications on the construction of a State statute, during a period of twenty-five years, is unbroken by a single contradicting case, or even by the dissent of a single judge.

Under the rules, then, which this court has established for itself, it will take it for granted, without further inquiry or examination, that a right to one-tenth of Prevost's succession had *vested in the State of Louisiana* anterior to the date of the treaty in question.

II. The only remaining question is, whether the treaty was intended to divest any title acquired prior to its passage.

The terms of the treaty are entirely prospective, and its language appears too plain to require any reference to canons of construction.

Frenchmen, after its date, are to be considered, for all the purposes of the treaty, as citizens of Louisiana. But the claim of the State would be good against its own citizens after the repeal of the taxing law, because vested prior to the repeal, as already shown by the authorities cited. *Ergo*, that claim is good against the Frenchman.

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

This is a writ of error to the Supreme Court of the State of Louisiana. It appears that a certain François Marie Prevost, an inhabitant of that State, died in the year 1848 intestate and without issue, and possessed of property to a considerable amount. He left a widow; and, as no person appeared claiming as heir of the deceased, the widow, according to the laws of the State, was put in possession of the whole of the property by the proper authorities, in December, 1851. She died in March, 1853.

In January, 1854, Jean Louis Prevost, a French subject residing in France, presented himself by his agent in Louisiana as the brother and sole heir of François Marie Prevost, and established his claim by a regular judicial proceeding in court.

The laws of Louisiana impose a tax of ten per cent. on the value of all property inherited in that State by any person not domiciliated there, and not being a citizen of any State or Territory of the United States.

This tax is disputed by the plaintiff in error, upon the ground that the law of Louisiana is inconsistent with the treaty or consular convention with France. This treaty was signed on the 23d of February, 1853, ratified by the United States on the 1st of April, 1853, exchanged on the 11th of August, 1853, and proclaimed by the President on the 12th of August, 1853.

The 7th article of this treaty, so far as concerns this case, is in the following words:

"In all the States of the Union whose laws permit it, so long and to the same extent as the said laws shall remain in force, Frenchmen shall enjoy the right of possessing personal and real property by the same title and in the same manner as the citizens of the United States. They shall be free to dispose of it as they may please, either gratuitously or for value received, by donation, testament, or otherwise, just as those citizens themselves; and in no case shall they be subjected to taxes on transfers, inheritance, or any others, different from those paid by the latter, or to taxes which shall not be equally imposed."

Proceedings were instituted in the State courts by the plaintiff in error to try this question, which were ultimately brought before the Supreme Court of the State. And that court decided that the right to the tax was complete, and vested in the State upon the death of François Marie Prevost, and was not affected by the treaty with France subsequently made.

We can see no valid objection to this judgment. The plaintiff in error, in his petition to be recognised as heir, claimed title to all the separate property of François M. Prevost and his widow, then in the hands of the curator, and of all his portion of the community property, and of all the fruits and revenues of his succession from the day of the death of his brother. And, in adjudicating upon this claim, the court recognised the rights of the appellant, as set forth in his petition, and decided that he became entitled to the property, as heir, immediately upon the death of Fr. M. Prevost.

Now, if the property vested in him at that time, it could vest only in the manner, upon the conditions authorized by the laws of the State. And, by the laws of the State, as they then stood, it vested in him, subject to a tax of ten per cent., payable to the State. And certainly a treaty, subsequently made by the United States with France, could not divest rights of property already vested in the State, even if the words of the treaty had imported such an intention. But the words of the article, which we have already set forth, clearly apply to cases happening afterwards—not to cases where the party appeared, after the treaty, to assert his rights, but to cases where the right afterwards accrued. And so it was decided by the Supreme Court of the State, and, we think, rightly. The constitutionality of the law is not disputed, that point having been settled in this court in the case of Mayer *v.* Grima, 8 How., 490.

In affirming this judgment, it is proper to say that the obligation of the treaty and its operation in the State, after it was made, depend upon the laws of Louisiana. The treaty does not claim for the United States the right of controlling the succession of real or personal property in a State. And its operation is expressly limited "to the States of the Union whose laws permit it, so long and to the same extent as those laws shall remain in force." And, as there is no act of the Legislature of Louisiana repealing this law and accepting the provisions of the treaty, so as to secure to her citizens similar rights in France, this court might feel some difficulty in saying that it was repealed by this treaty, if the State court had not so expounded its own law, and held that Louisiana was one of the States in which the proposed arrangements of the treaty were to be carried into effect.

Upon the whole, we think there is no error in the judgment of the State court, and it must therefore be affirmed.