304 U.S. 518

COLLINS et al. v. YOSEMITE PARK & CURRY CO.

No. 870.

Argued April 27, 28, 1938.

Decided May 31, 1938.

1. United States ⇐3

The states and the national government may make mutually satisfactory arrangements as to jurisdiction of territory within their borders.

2. United States ⇐3

As respects mutual arrangements between the states and the national government as to jurisdiction of territory within their borders, jurisdiction obtained by consent or cession may be qualified by agreement or through offer and acceptance or ratification, and such arrangements will be recognized and respected by the courts.

3. United States ⇐3

The United States may exercise exclusive jurisdiction over territory within geographical limits of a state acquired for purposes other than those specified in constitutional provision relating to territory ceded to and purchased by the United States, or jurisdiction less than exclusive may be granted the United States. U.S.C.A.Const. art. 1, § 8, cl. 17.

4. United States ⇐3

The United States could accept exclusive jurisdiction over Yosemite National Park, with reservation of the right to tax by California in act of cession, for purposes other than those specified in constitutional provision relating to territory ceded to and purchased by the United States. St.Cal.1891, p. 262; St.Cal.1905, p. 54; St.Cal.1919, p. 74; 16 U.S.C.A. § 47 et seq.; U.S.C.A.Const. art. 1, § 8, cl. 17.

5. Taxation ⇐20

Under California act ceding exclusive jurisdiction over territory in Yosemite National Park to federal government, with reservation of the right to tax, the state could use means to force collection of taxes saved. St.Cal.1919, p. 74.

6. Intoxicating liquors ⇐6

Under California act ceding exclusive jurisdiction over territory in Yosemite National Park to federal government, with reservations of the right to tax and to license fishing, provisions of the California Alcoholic Beverage Control Act requiring licenses for importation or sale of liquor, with certain regulatory conditions to be satisfied before granting of licenses, were unenforceable in the park. St.Cal.1919, p. 74; St.Cal.1937, p. 2130, § 5.

7. Evidence ⇐83(1)

The determination of state administrative officers that sales of liquor within Yosemite National Park were subject to excise taxes imposed by the California Alcoholic Beverage Control Act was presumptively correct. St.Cal.1937, pp. 2143, 2144, §§ 23, 24.

8. Intoxicating liquors ⇐6

Under California act ceding exclusive jurisdiction over territory in Yosemite National Park to federal government, with reservation of the right to tax, and containing severability clause, the California Alcoholic Beverage Control Act, requiring licenses for importation or sale of liquor and imposing excise tax on liquor sold by importer and excise tax on liquor sold by rectifier or wholesaler, with payment to be evidenced by stamps issued to licensees and others, was enforceable, as respects taxes, against corporation selling liquor imported into the park, notwithstanding that the corporation was not a rectifier or wholesaler, and notwithstanding unenforceability of license provisions. St.Cal.1919, p. 74; St.Cal.1935, p. 1123, as amended, St.1937, pp. 1934, 2126.

9. Intoxicating liquors ⇐6

Provisions of the California Alcoholic Beverage Control Act imposing excise taxes on liquor sold within the state were not unenforceable as respects sales within Yosemite National Park because federal government had interest in profits from sales under contract with seller, where federal government accepted qualified jurisdiction over the park under California act ceding exclusive jurisdiction, with reservation of right to tax. St. Cal.1919, p. 74; St.Cal.1935, p. 1123, as amended, St.1937, pp. 1934, 2126.

10. Intoxicating liquors ⇐6

Where territorial jurisdiction over Yosemite National Park was in the United States under California act of cession, the state could not regulate importation of liquor into the park merely because of the Twenty-First Amendment, since such amendment did not

increase the jurisdiction of the state. St. Cal.1919, p. 74; St.Cal.1935, p. 1123, as amended, St.1937, pp. 1934, 2126; U.S.C.A. Const. Amend. 21, § 2.

11. Intoxicating liquors ⇐6

Where exclusive jurisdiction is in the United States, without power in the state to regulate alcoholic beverages, the Twenty-First Amendment is not applicable. U.S.C. A.Const. Amend. 21.

12. Appeal and error ⇐1178(1)

Where suit to enjoin enforcement of state statute turned on enforceability of statute as a whole before appeal, and the Supreme Court found some provisions enforceable and others unenforceable, decree was reversed and cause remanded for determination of enforceability of such provisions as the state might threaten to enforce. Jud. Code, §§ 238, 266, 28 U.S.C.A. §§ 345, 380.

Appeal from the District Court of the United States for the Northern District of California.

Suit by Yosemite Park & Curry Company to enjoin R. E. Collins and others, as members of the California State Board of Equalization and as the Attorney General of California, from enforcing the California Alcoholic Beverage Control Act within Yosemite National Park. From a decree for plaintiff, 20 F.Supp. 1009, defendants appeal.

Reversed and remanded, with directions.

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Messrs. Seibert L. Sefton and U. S. Webb, both of San Francisco, Cal., for appellants.

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Mr. James S. Moore, Jr., of San Francisco, Cal., for appellee.

Mr. Justice REED delivered the opinion of the Court.

Appellee, the Yosemite Park and Curry Co., brought this suit to enjoin the State Board of Equalization and the State Attorney General from enforcing the "Alcoholic Beverage Control Act" of the State of California,[1] within the limits of Yosemite National Park. Appellee is engaged in operating, within the Park, hotels, camps, and stores, under a contract with the Secretary of the Interior, leasing portions of the Park to appellee for a 20-year term. The contract, expressly intended to implement the Congressional desire to make the Park a resort and playground for the benefit of the public, places upon appellee the duty of furnishing visitors with sundry facilities and accommodations. If it pays dividends in excess of 6% on its investment it must pay to the Secretary of the Interior a sum equal to 25% of the excess during the first ten years, and 22½% of any excess over six per cent. earned during the second ten years. Appellee sells liquors, beer and wine to Park visitors for prices approved by the Secretary of the Interior. In the ordinary course of business, it imports from places outside of California beer, wine, and distilled spirits, which it stores and sells within the Park.

According to the allegations of appellee's bill, appellants (defendants below) assert that the Alcoholic Beverage Control Act applies within the Park and that appellee is obligated to apply for permits for importation and

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sale; that appellee is subject to provisions of the Act prohibiting the issuance of importer's licenses to persons holding on-sale retail licenses, and vice versa; that appellee must pay fees and taxes imposed by the Act or be subject to penalties. Allegation was made that appellants threaten to seize beverages on or being transported to appellee's premises, demand rendition of reports and keeping of accounts, and threaten to institute civil and criminal proceedings against appellee for violation of the Act. On the other hand, appellee's allegations continue, the Secretary of the Interior, under the contract of lease, has approved prices making no allowance for taxes, and has instructed appellee to apply for no license and to pay no tax under the California Act, and that payment of such license fees or taxes will not be allowed as an operating expense under the contract.

Appellee brought this suit to restrain enforcement of the Alcoholic Beverage Control Act within Yosemite Park, on the theory that the Park is within the exclusive jurisdiction of the United States. The suit being one to restrain the enforcement of a State statute as applied to a specific situation, a three-judge court was convened under section 266 of the Judicial Code, 28 U.S.C.A. § 380. The case was heard below upon motion to dismiss the complaint.

[1] Cal.Stat.1935, c. 330, p. 1123, as amended, Cal.Stat.1937, c. 681, 758, pp. 1934, 2126

The District Court denied this motion. It granted a temporary injunction (20 F. Supp. 1009), and later granted the final injunction prayed for by the complaint, restraining appellants (a) from entering upon appellee's premises, examining its records, seizing its beverages, or interfering with its importation and sales of beverage within the Park; (b) from interfering with shipments to appellee from outside the State; (c) from instituting any actions based on alleged violations of the Act with respect to the importation, possession, or sale of liquors; (d) from requiring reports thereon; (e) from enforcing the Act as to transactions within the Park.

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The District Court, after noting that Yosemite National Park consists of Yosemite Valley and considerable surrounding territory, first discussed what it conceived to be the situation in the Valley.[2] It reviewed the history of the land; the United States acquired it in 1848 under the Treaty of Guadalupe Hidalgo,[3] reserved proprietary rights when California became a State in 1850, Act Sept. 9,[4] and on June 30, 1864, gave the Valley to California in trust for public park and recreational purposes.[5]

The District Court held that exclusive jurisdiction over the land was acquired again by the United States by virtue of the joint operation of three statutes: an 1891 California law ceding to the United States exclusive jurisdiction over such land as might be ceded to it;[6] a 1905 California statute receding the Valley to the United States;[7] and the Act of June 11, 1906, 16 U.S.C.A. § 47 et seq.,

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whereby Congress accepted the regrant and constituted the Valley a part of the Yosemite National Park.[8] It further held, over appellants' objection, that there was no constitutional ob-

[2] The discussion applies equally to the Mariposa Big Tree Grove.

[3] 9 Stat. 922.

[4] 9 Stat. 452.

[5] 13 Stat. 325.

[6] "Section 1. The State of California hereby cedes to the United States of America exclusive jurisdiction over such piece or parcel of land as may have been or may be hereafter ceded or conveyed to the United States, during the time the United States shall be or remain the owner thereof, for all purposes except the administration of the criminal laws of this State and the service of civil process therein." Cal.Stat.1891, c. 181, p. 262.

[7] "*An act to re-cede and re-grant unto the United States of America, the 'Yosemite Valley,' and the land embracing the 'Mariposa Big Tree Grove.'*

* * * * * * * * * *

"Section 1. The State of California does hereby re-cede and re-grant unto the United States of America, the 'Cleft' or 'Gorge' in the granite peak of the Sierra Nevada mountains, situated in the county of Mariposa, State of California, and the headwaters of the Merced river, and known as the Yosemite Valley, with its branches or spurs, granted unto the State of California in trust for public use, resort and recreation by the act of congress entitled 'An act authorizing a grant to the State of California of the Yosemite Valley and of the land embracing the 'Mariposa Big Tree Grove,' approved June 30th, 1864; and the State of California does hereby relinquish unto the United States of America and resign the trusts created and granted by the said act of congress.

* * * * * * * * * * *

"Sec. 3. This act shall take effect from and after acceptance by the United States of America of the re-cessions and re-grants herein made, thereby forever releasing the State of California from further cost of maintaining the said premises, the same to be held for all time by the United States of America for public use, resort and recreation, and imposing on the United States of America the cost of maintaining the same as a national park. *Provided, however*, that the re-cession and re-grant hereby made shall not affect vested rights and interests of third persons." Cal.Stat.1905, c. 60, p. 54.

[8] "*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the recession and regranting unto the United States by the State of California of the cleft or gorge in the granite peak of the Sierra Nevada Mountains, situated in the county of Mariposa, State of California, and the headwaters of the Merced River, and known as the Yosemite Valley, with its branches or spurs, granted unto the State of California in trust for public use, resort, and recreation by the Act of Congress entitled 'An Act authorizing a grant to the State of California of the Yosemite Valley and of the land embracing the Mariposa Big Tree Grove,' approved June thirtieth, eighteen hundred and sixty-four (Thirteenth Statutes, page

stacle to the acquisition by the United States of exclusive jurisdiction over land ceded to it for national park purposes. Jurisdiction over the

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rest of the Park, it concluded, was in the State until April 15, 1919, when it was offered to the national government (which had always retained the proprietary interest) in a statute saving to the State, inter alia, "the right to tax persons and corporations, their franchises and property on the lands included in said parks."[9] Ju-

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risdiction of the Park was assumed by the United States by Act of June 2, 1920, which referred to the state act, including its reservation of a power to tax.[10] The District Court held this reservation inapplica-

three hundred and twenty-five), as well as the tracts embracing what is known as the 'Mariposa Big Tree Grove,' likewise granted unto the State of California by the aforesaid Act of Congress, is hereby ratified and accepted, and the tracts of lands embracing the Yosemite Valley and the Mariposa Big Tree Grove, as described in the Act of Congress approved June thirtieth, eighteen hundred and sixty-four, together with that part of fractional sections five and six, township five south, range twenty-two east, Mount Diablo meridian, California, lying south of the South Fork of Merced River and almost wholly between the Mariposa Big Tree Grove and the present south boundary of the Yosemite National Park, be, and the same are hereby, reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States and set apart as reserved forest lands, subject to all the limitations, conditions, and provisions of the Act of Congress approved October first, eighteen hundred and ninety, entitled 'An Act to set apart certain tracts of land in the State of California as forest reservations,' as well as the limitations, conditions, and provisions of the Act of Congress approved February seventh, nineteen hundred and five, entitled 'An Act to exclude from the Yosemite National Park, California, certain lands therein described, and to attach and include the said lands in the Sierra Forest Reserve,' and shall hereafter form a part of the Yosemite National Park." 34 Stat. 831, 16 U.S.C.A. § 48.

[9] "*An act to cede to the United States exclusive jurisdiction over Yosemite national park, Sequoia national park, and General Grant national park in the State of California.*

* * * * * * * * * * *

"Section 1. Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all of the territory which is now or may hereafter be included in those several tracts of land in the State of California set aside and dedicated for park purposes by the United States as 'Yosemite national park,' 'Sequoia national park,' and 'General Grant national park' respectively; saving, however, to the State of California the right to serve civil or criminal process within the limits of the aforesaid parks in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state outside of said parks; and saving further, to the said state the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks; and saving also to the persons residing in any of said parks now or hereafter the right to vote at all elections held within the county or counties in which said parks are situate; *provided, however*, that jurisdiction shall not vest until the United States through the proper officer notifies the State of California that they assume police jurisdiction over said parks." Cal. Stat.1919, c. 51, p. 74.

[10] 41 Stat. 731, 16 U.S.C.A. § 57.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the provisions of the act of the Legislature of the State of California (approved April 15, 1919), ceding to the United States exclusive jurisdiction over the territory embraced and included within the Yosemite National Park, Sequoia National Park, and General Grant National Park, respectively, are hereby accepted and sole and exclusive jurisdiction is hereby assumed by the United States over such territory, saving, however, to the said State of California the right to serve civil or criminal process within the limits of the aforesaid parks or either of them in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said State outside of said parks; and saving further to the said State the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks; and saving also to the persons residing in any of said parks now or hereafter the right to vote at all elections held within the county or counties in which said parks are situated. All the laws applicable to places

ble, on the ground that the Alcoholic Beverage Act is chiefly regulatory in nature rather than a revenue measure. Concluding that the United States had exclusive jurisdiction over the land in question, the District Court enjoined the enforcement of the state Act.

From this final decree of injunction, a direct appeal to this Court was taken under sections 238 and 266 of the Judicial Code, 28 U.S.C.A. §§ 345, 380. Several questions were argued on the appeal. At this point, reference may be confined to appellants' contention that the United States has no
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power under the Constitution to exercise exclusive jurisdiction over land ceded to it by a state for national park purposes. Pursuant to the Act of August 24, 1937, 28 U.S.C.A. § 401, the Court certified to the Attorney General that in this cause was drawn in question the constitutionality of the Acts of June 11, 1906, 34 Stat. 831, 16 U.S.C.A. § 47 et seq., and June 2, 1920, 41 Stat. 731, 16 U.S.C.A. § 57 et seq., accepting exclusive jurisdiction over the areas which embrace the Yosemite National Park. The United States, regarding appellee's argument as adequate, determined that it was not necessary to intervene.

Exclusive jurisdiction. By the Act of March 3, 1905, see note 7, California ceded and granted the United States title to the "Cleft" or "Gorge," known as Yosemite Valley and the Mariposa Big Tree Grove. As the Act of March 31, 1891, was then in force, see note 6, exclusive jurisdiction, with the exception of right to administer criminal laws and serve civil process, passed to the United States, on its acceptance, unless the United States was without constitutional power to exercise it. By the Act of June 11, 1906, see note 8, the Congress accepted the cession and made the lands conveyed a part of the Yosemite National Park. The other lands composing the Park had been in the proprietorship of the national government since cession by Mexico. Exclusive jurisdiction of them passed from the United States to California by the admittance of that State to the Union. Except for certain rights expressly reserved, exclusive jurisdiction of these lands was granted to the United States by the Act of April 15, 1919, see note 9, and accepted by the Congress on June 2, 1920, see note 10. As this Act granted exclusive jurisdiction over all "territory which is now or may hereafter be included in * * * 'Yosemite National Park,'" the language of the cession and acceptance is apt to determine exclusive jurisdiction, with the explicit reservations, of the Gorge also.

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[1,2] Whatever the existing status of jurisdiction at the time of their enactment, the Acts of cession and acceptance of 1919 and 1920 are to be taken as declarations of the agreements, reached by the respective sovereignties, State and Nation, as to the future jurisdiction and rights of each in the entire area of Yosemite National Park. As jurisdiction over the Gorge was created by one set of statutes and that over the rest of the Park by different legislation, this adjustment was desirable. The States of the Union and the National Government may make mutually satisfactory arrangements as to jurisdiction of territory within their borders and thus in a most effective way, cooperatively adjust problems flowing from our dual system of government.[11] Jurisdiction obtained by consent or cession may be qualified by agreement or through offer and acceptance or ratification.[12] It is a matter of arrangement. These arrangements the courts will recognize and respect.

The State urges the constitutional inability of the national government to accept exclusive jurisdiction of any land for purposes other than those specified in clause 17, section 8, Article 1 of the Constitution, U.S.C.A. Const. art. 1, § 8, cl.

under sole and exclusive jurisdiction of the United States shall have force and effect in said parks or either of them. All fugitives from justice taking refuge in said parks, or either of them, shall be subject to the same laws as refugees from justice found in the State of California."

[11] Cf. Fort Leavenworth R. Co. v. Lowe, 114 U.S. 525, 541, 5 S.Ct. 995, 29 L.Ed. 264; Hinderlider v. LaPlata & Cherry Creek Ditch Co., 304 U.S. 92, 58 S.Ct. 803, 82 L.Ed. —.

[12] James v. Dravo Contracting Company, 302 U.S. 134, 146, 58 S.Ct. 208, 214, 82 L.Ed. 155, 114 A.L.R. 318; Silas Mason Co. v. Tax Commission of Washington, 302 U.S. 186, 203, 58 S.Ct. 233, 242, 82 L.Ed. 187; Fort Leavenworth R. Co. v. Lowe, supra; Surplus Trading Company v. Cook, 281 U.S. 647, 651, 50 S.Ct. 455, 456, 74 L.Ed. 1091.

17.[13] This clause has not been strictly construed. This Court at this term has given full consideration to the constitutional power of

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the United States to acquire land under Clause 17 without taking exclusive jurisdiction.[14] In that case, it was said: "Clause 17 contains no express stipulation that the consent of the state must be without reservations. We think that such a stipulation should not be implied. We are unable to reconcile such an implication with the freedom of the state and its admitted authority to refuse or qualify cessions of jurisdiction when purchases have been made without consent, or property has been acquired by condemnation." The clause is not the sole authority for the acquisition of jurisdiction. There is no question about the power of the United States to exercise jurisdiction secured by cession, though this is not provided for by clause 17.[15] And it has been held that such a cession may be qualified.[16] It has never been necessary, heretofore, for this Court to determine whether or not the United States has the constitutional right to exercise jurisdiction over territory, within the geographical limits of a State, acquired for purposes other than those specified in Clause 17. It was raised but not decided in Arlington Hotel Co. v. Fant, 278 U.S. 439, 454, 49 S.Ct. 227, 230, 73 L.Ed. 447. It was assumed without discussion in Yellowstone Park Transportation Co. v. Gallatin County, 9 Cir., 31 F.2d 644.[17]

[3, 4] On account of the regulatory phases of the Alcoholic Beverage Control Act of California, it is necessary to determine that question here. The United States has large bodies of public lands. These properties are used for

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forests, parks, ranges, wild life sanctuaries, flood control, and other purposes which are not covered by Clause 17. In Silas Mason Co. v. Tax Commission of Washington, 302 U.S. 186, 58 S.Ct. 233, 82 L.Ed. 187, we upheld in accordance with the arrangements of the State and National Government the right of the United States to acquire private property for use in "the reclamation of arid and semi-arid lands" (page 243) and to hold its purchases subject to state jurisdiction. In other instances, it may be deemed important or desirable by the national government and the state government in which the particular property is located that exclusive jurisdiction be vested in the United States by cession or consent. No question is raised as to the authority to acquire land or provide for national parks. As the national government may, "by virtue of its sovereignty" acquire lands within the borders of states by eminent domain and without their consent,[18] the respective sovereignties should be in a position to adjust their jurisdictions. There is no constitutional objection to such an adjustment of rights. It follows that jurisdiction less than exclusive may be granted the United States. The jurisdiction over the Yosemite National Park is exclusively in the United States except as reserved to California, e. g., right to tax, by the Act of April 15, 1919, St.Cal.1919, p. 74. As there is no reservation of the right to control the sale or use of alcoholic beverages, such regulatory provisions as are found in the Act

[13] "To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings."

[14] James v. Dravo Contracting Co., 302 U.S. 134, 148, 58 S.Ct. 208, 216, 82 L. Ed. 155, 114 A.L.R. 318.

[15] Fort Leavenworth R. Co. v. Lowe, supra; Chicago, R. I. & P. R. Co. v. McGlinn, 114 U.S. 542, 5 S.Ct. 1005, 29 L.Ed. 270; Benson v. United States, 146 U.S. 325, 13 S.Ct. 60, 36 L.Ed. 991; Arlington Hotel Co. v. Fant, 278 U.S. 439, 49 S.Ct. 227, 73 L.Ed. 447; United States v. Unzeuta, 281 U.S. 138, 50 S.Ct. 284, 74 L.Ed. 761; Surplus Trading Co. v. Cook, 281 U.S. 647, 50 S.Ct. 455, 74 L.Ed. 1091; Standard Oil Co. v. People of State of California, 291 U.S. 242, 54 S.Ct. 381, 78 L.Ed. 775; Yellowstone Park Transportation Co. v. Gallatin County, 9 Cir., 31 F.2d 644.

[16] Fort Leavenworth R. Co. v. Lowe, supra.

[17] Cf. Rainier Nat. Park Co. v. Martin, D.C., 18 F.Supp. 481, 482.

[18] James v. Dravo Contracting Co., supra, 147, 58 S.Ct. 215; Kohl v. United States, 91 U.S. 367, 371, 372, 23 L.Ed. 449.

under consideration are unenforceable in the Park.

Interpretation of Reservations. The lower court, in interpreting the language of the Acts of grant and acceptance was of the opinion that the saving of "the right to tax persons and corporations, their franchises and property" was not sufficiently broad to justify the collec-

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tion of fees for licenses under section 5 and sales under sections 23 and 24 of the Alcoholic Beverage Control Act. [19] The retention of the

[19] "Sec. 5. The following are the types of licenses to be issued under this act and the annual fees to be charged therefor.

" 1. Beer manufacturer's license	$750.00 per year
" 2. Wine manufacturer's license (to be computed only on the gallonage manufactured) five thousand gallons or less	20.00 per year
Over five thousand gallons to twenty thousand gallons per year..	40.00 per year
Over twenty thousand to one hundred thousand gallons per year.....	75.00 per year
Over one hundred thousand to two hundred thousand gallons per year	100.00 per year
Over two hundred thousand gallons to one million gallons a year	150.00 per year
For each million gallons or fraction thereof over a million gallons an additional	100.00 per year
" 3. Distilled spirits manufacturer's license	250.00 per year
" 4. Still license	10.00 per year per still
" 5. Rectifier's license	250.00 per year
" 6. Brandy manufacturer's license	150.00 per year
" 7. Distilled spirits importer's license	no fee
" 8. Wine importer's license	no fee
" 9. Beer importer's license..	no fee
"10. Public warehouse license	10.00 per year
"11. Wine bottling or packaging license	10.00 per year
"12. Beer bottling or packaging license	500.00 per year
"13. Distilled spirits wholesaler's license	250.00 per year
"14. Beer and wine wholesaler's license	50.00 per year
"15. Broker's license	250.00 per year
"16. Retail package off-sale beer and wine license..	10.00 per year
"17. Retail package off-sale distilled spirits license for the first $10,000 retail sales per year.....	100.00 per year
For each $1,000 retail sales or fraction thereof over $10,000 per year	10.00 per year
"18. Industrial alcohol dealer's license	50.00 per year
"19. On-sale beer license	25.00 per year
"20. On-sale beer and wine license	75.00 per year
"21. On-sale beer and wine license for trains (per train)	15.00 per year
"22. On-sale beer and wine license for boats (per boat)	50.00 per year
"23. On-sale distilled spirits license .....As set by the board	
"24. Distilled spirits manufacturer's agents license	250.00 per year."

(Statutes 1937, ch. 758, p. 2130).

"Sec. 23. An excise tax is hereby imposed upon all beer and wine sold in this State by a manufacturer or importer, except as otherwise in this act provided, at the following rates:

"(a) On all beer, sixty-two cents for every barrel containing thirty-one gallons, and at a proportionate rate for any other quantity;

"(b) On all natural dry wines one cent per wine gallon and at a proportionate rate for any other quantity; (c) on all other still wines two cents per wine gallon and at a proportionate rate for any other quantity; (d) on champagne, sparkling wine, except sparkling hard cider, whether naturally or artificially carbonated one and one-half cents per half pint or fraction thereof, three cents per pint or fraction thereof greater than one-half pint, six cents per quart or fraction thereof greater than one pint; (e) on sparkling hard cider two cents per wine gallon and at a proportionate rate for any other quantity." (Statutes 1937, ch. 758, p. 2143, operative July 1, 1937).

"Sec. 24. An excise tax is hereby imposed upon all distilled spirits sold in this State by rectifiers or wholesalers thereof, at the following rates:

"On all distilled spirits of proof strength or less, two cents on each bottle containing two ounces or fraction thereof; five cents on each bottle containing eight ounces or fraction thereof greater than two ounces; ten cents on each bottle containing one pint or fraction thereof greater than a half-pint; sixteen cents on each bottle containing one-fifth gallon or fraction thereof greater than one pint; twenty cents on each bottle containing one quart or fraction thereof greater than one-fifth gallon; forty cents on each bottle containing one-half gallon or fraction thereof, greater than one quart; eighty

right to charge license fees for fishing
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was considered an indication of abandonment of the right to enforce any other license fees and finally, the regulatory character of the California enactment was deemed to mark it as non-enforceable under the reservation of the right to tax.

As the respective acts of State and Nation were in the nature of a mutual declaration of rights, this is not an occasion for strict construction of a grant by a State limiting its taxing power. Without employing that rule, we are of the opinion that this language is sufficiently broad to cover excises on sales,[20] but not the license fees
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provided for by this Act. The fact that the "right to fix and collect license fees for fishing in said parts" was reserved, is not decisive. It may well be that the negotiators of the agreement considered such licenses regulatory in nature and therefore requiring express exception from the agreement for exclusive jurisdiction, in addition to the tax exception.

[5, 6] (a) Licenses. As the State of California has in the area of the Yosemite National Park only the jurisdiction saved under the cession and acceptance acts of 1919 and 1920, itdoes not have the power to regulate the liquor traffic in the Park. Except as to this reserved jurisdiction, California "put that area beyond the field of operation of her laws."[21] While the State has, under its reservation, the right to use means to force collection of the taxes saved,[22] it seems clear that the licenses required by section 5 go beyond aids to the collection of taxes and are truly regulatory in character. This is not a case where provisions requiring a license may be treated as separable from regulations applicable to those licensed.[23] Here the regulatory provisions appear in the form of conditions to be satisfied before a license may be granted.[24] The pro-
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visions requiring licenses for the importation or sale of alcoholic beverages in the Park are invalid.

(b) Excise Taxes. A different conclu sion obtains, however, with respect to the excise tax provisions of the Alcoholic Beverage Control Act, laying a tax, at a specified rate per unit sold, on beer, wine, and distilled spirits sold "in this State." The Park Company, seeking to bring the excise provisions of the Act within the principle

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cents on each bottle containing one gallon or fraction thereof greater than one-half gallon, and at a proportionate rate for any quantity.

"All distilled spirits in excess of proof strength shall be taxed at double the above rate." Statutes 1937, ch. 758, p. 2144, operative July 1, 1937.

[20] Mid-Northern Oil Co. v. Walker, Treas., 268 U.S. 45, 49, 45 S.Ct. 440, 69 L.Ed. 841; Rainier Nat. Park Co. v. Martin, D.C., 18 F.Supp. 481, 486, affirmed, 302 U.S. 661, 58 S.Ct. 478, 82 L.Ed. —, on the authority of the Walker Case.

In this view we need not consider appellants' argument that the Constitution of California forbids the release of the taxing power.

[21] Standard Oil Co. v. People of State of California, 291 U.S. 242, 54 S.Ct. 381, 382, 78 L.Ed. 775.

[22] Rainier National Park v. Martin, D. C., 18 F.Supp. 481, 488.

[23] Cf. Electric Bond & Share Co. v. Securities & Exchange Comm., 303 U.S. 419, 58 S.Ct. 678, 82 L.Ed. 936, decided March 28, 1938.

[24] Art. 20, sec. 22, of the California Constitution provides that the State Board of Equalization "shall have the power, in its discretion, to deny or revoke any specific liquor license if it shall determine for good cause that the granting or continuance of such license would be contrary to public welfare or morals."

The Alcoholic Beverage Control Act, Cal.Stat.1935, c. 330, p. 1123, as amended Stat.1937, c. 681, p. 1934, c. 758, p. 2126, contains, inter alia, provisions that no person may perform acts authorized by a license, unless licensed (sec. 3, St. 1937, p. 2130); that an importer's license may be issued only to the holder of a manufacturer's, rectifier's, or wholesaler's license, sec. 6(d), p. 2133; that application of a required type be filed for a license (sec. 10, p. 2139); that no on-sale distilled spirits license shall be issued to any applicant who is not a citizen of the United States (sec. 12, St. 1935, p. 1130); that no distilled spirits license may be issued to any person or agent of any person who manufactures distilled spirits within or without the State (sec. 20½, St.1937, p. 2141); that retail licenses may not be granted for premises in certain locations (secs. 13–17, St.1935, p. 1130, St. 1937, p. 2140); that no retail on-sale or off-sale licensee shall purchase alcoholic beverages for resale from any person except a person holding a beer, or wine, manufacturer's, a rectifier's or a wholesaler's license issued under this act (sec. 6.6, p. 2136).

stated above with respect to the license fee provisions, contends that, notwithstanding the separability clause,[25] the taxing features cannot be separated from the regulatory features, and that "the Act does not even purport to tax persons not subject to licensing requirements." Thus the argument is made that section 23, St.1937, p. 2143, imposes an excise tax on beer and wine sold by an importer, and applies not to the Company, which sells beverages direct to consumers, but only to importers licensed under the Act, and restricted by their license to sales to retail licensees.

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[7, 8] Neither party cites any pertinent state court decision. There is nothing in the statute itself compelling the conclusion that the excise tax and regulatory provisions are inseparable, or requiring the Court to overturn the presumptively correct determination of the administrative officers that the sales within the Park are subject to the excise tax. Section 23 provides that an excise tax is imposed upon beer and wine sold "in this State by [an] * * * importer." Reference to provisions of the Act defining the terms used in this section[26] makes it plain that although appellee Company does not import beverages into California within the meaning of the Twenty-First Amendment, U.S.C.A.Const. Amend. 21, it is an importer for purposes of the Act, and, as such, is subject to the tax. The Act is restricted to sales "in this State," but that term embraces all territory within the geographical limits of the State.[27] There is nothing in the Act restricting this taxing provision to sales made by or to persons licensed under the Act. Section 23 clearly applies to beer and wine sold by appellee Company in the Park, and it applies to such sales regardless of the applicability vel non of the regulatory or licensing provisions of the Act.

Section 24, St.1937, p. 2144, imposes an excise tax upon all distilled spirits "sold in this State by rectifiers or wholesalers." Appellee Company does not come within the statutory

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definition of either of these groups,[28] but Sec. 24 must be read in conjunction with section 33, St.1937, p. 2153. Section 33 provides that the "tax imposed by section 24 of this act upon the sale of distilled spirits shall be collected from rectifiers and wholesalers of distilled spirits and payment of the tax shall be evidenced by stamps issued by the board to such rectifiers and wholesalers," and continues with the provision that "in exceptional instances the board may sell such stamps to on- and off-sale distilled spirits licensees and *other persons.*" (Italics added.) In view of the atypical circumstances of the present case, we cannot consider erroneous an interpretation by the board that stamps, to be affixed to the liquor containers, might be issued and sold to appellee Company. These provisions, like sec. 23, are independent of any licensing or regulatory provisions of the Act, and may be enforced independently, as a purely tax or revenue measure.

[9] The objection that collection of the taxes may not only interfere with an agency of the United States but may be actually

25 "Sec. 70. If any section, subsection, clause, sentence or phrase of this act which is reasonably separable from the remaining portion of this act is for any reason held to be unconstitutional, such decision shall not affect the remaining portions of this act. The Legislature hereby declares that it would have passed the remaining portions of this act irrespective of the fact that any such section, subsection, clause, sentence or phrase of this act be declared unconstitutional." St.Cal.1935, p. 1153.

26 Sec. 2(k), St.1937, p. 2128: "'Importer' means any consignee of alcoholic beverages brought into this State from without this State when such alcoholic beverages are for delivery or use within this State * * *." Sec. 2(w), p. 2130: "'Within this State' means all territory within the boundaries of this State." Sec. 2(wl), p. 2130: "'Without the State' means all territory without the boundaries of this State."

27 See supra, note 26. See boundary of State of California as defined in Cal. Const. Art. 21, § 1.

Compare Rainier Nat. Park Co. v. Martin, D.C.W.D.Wash., 18 F.Supp. 481, 486, affirmed 302 U.S. 661, 58 S.Ct. 478, 82 L.Ed. —.

28 Sec. 2(j) "'Rectifier' means every person who colors, flavors, or otherwise processes distilled spirits by distillation, blending, percolating or other processes." St.1937, p. 2128.

(s) "'Wholesaler' means and includes every person other than a manufacturer or rectifier who is engaged in business as a jobber or wholesale merchant, dealing in alcoholic beverages." St.1937, p. 2129.

partly collected from the National Government because of its interest in the profits under the contract is fully answered by the fact that the United States, by its acceptance of qualified jurisdiction, has consented to such a tax. [29]

[10, 11] XXI Amendment, U.S.C.A. Const. The State makes the point that section 2 of the XXI Amendment [30] gives it the right to regulate

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the importation of intoxicating liquors. Reliance for enforcement is placed upon sections 49 and 49.2 of the Alcoholic Beverage Control Act. [31] The argument for this claim is bottomed upon our decision in State Board of Equalization v. Young's Market Co., 299 U.S. 59, 57 S.Ct. 77, 81 L.Ed. 38, where we held that a statute imposing a $500 license fee for importing and a $750 license fee for brewing beer did not violate

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the commerce clause or the equal protection clause, because the words of the XXI Amendment "are apt to confer upon the state the power to forbid all importations" and "the State may adopt a lesser degree of regulation than total prohibition" (pages 62, 63, 57 S. Ct. page 78). [32] The lower court was of the opinion that though the Amendment may have increased "the state's power to deal with the problem; * * * it did not increase its jurisdiction." (page 1013 of 20 F.Supp.) With this conclusion, we agree. As territorial jurisdiction over the Park was in the United States, the State could not legislate for the area merely on account of the XXI Amendment. [33] There was no transportation into California "for delivery or use therein." The delivery and use is in the Park, and under a distinct sovereignty. Where exclusive jurisdiction is in the United States, without power in the State to regulate alcoholic beverages, the XXI Amendment is not applicable. [34]

[29] Rainier Nat. Park Co. v. Martin, 302 U.S. 661, 58 S.Ct. 478, 82 L.Ed. —; cf. Baltimore Nat. Bank v. State Tax Commission, 297 U.S. 209, 56 S.Ct. 417, 80 L.Ed. 586.

[30] "Sec. 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

[31] "Sec. 49. Alcoholic beverages shall be brought into this State from without this State for delivery or use within the State only when such alcoholic beverages are consigned to a licensed importer and only when consigned to the premises of such licensed importer or to the premises of a public warehouse licensed under this act. Alcoholic beverages which are consigned to a destination within this State shall be presumed to be for delivery or use within this State. Alcoholic beverages imported into this State contrary to the provisions hereof shall be seized by the board. Every person violating the provisions of this section shall be guilty of a misdemeanor." Statutes 1937, ch. 758, p. 2164, operative July 1, 1937.

"Sec. 49.2. Common or private carriers transporting alcoholic beverages into this State from without the State for delivery or use within this State must obtain the receipt of the licensed importer, distilled spirits manufacturer or distilled spirits manufacturer's agent for the alcoholic beverages so transported and delivered and, if the consignee refuses to give such receipt and show his license to the carrier, the carrier shall be relieved of all responsibility for delivering said alcoholic beverages. Where the consignee is not a licensed importer, distilled spirits manufacturer or distilled spirits manufacturer's agent or where the consignee refuses to give his receipt and show his license the carrier shall immediately notify the board at Sacramento giving full details as to the character of shipment, point of origin, destination and address of the consignor and consignee, and within ten days such alcoholic beverages shall be delivered to the board and shall be forfeited to the State of California. If any alcoholic beverages seized under the preceding section or forfeited under this section are sold by or under the direction of the board the common carrier's unpaid freight and storage charges accruing on the shipments of such alcoholic beverages shall be satisfied out of the proceeds of any sale made by the State after deducting the cost of such sale and any excise taxes accruing thereon. Every person violating the provisions of this section shall be guilty of a misdemeanor." Statutes 1937, ch. 758, p. 2165, operative July 1, 1937.

[32] The conclusions have been reiterated in Mahoney v. Joseph Triner Corporation, 304 U.S. 401, 58 S.Ct. 952, 82 L.Ed. —, decided May 23, 1938.

[33] Standard Oil Co. v. People of State of California, 291 U.S. 242, 54 S.Ct. 381, 78 L.Ed. 775.

[34] Compare Western Union Telegraph Co. v. Chiles, 214 U.S. 274, 29 S.Ct. 613,

Conclusion. The bill of complaint states that the defendants, the State officials, "assert that said Alcoholic Beverage Control Act of the State of California applies to complainant's operations within said Yosemite National Park; * * * that it is obligated to pay the fees and taxes imposed by said Act and is subject to the penalties thereof for the possession and sale of said beverages without compliance with the provisions of said Act." In the prayer of the bill, the complainant prays for an injunction restraining the defendants "from enforcing in any manner within the limits of Yosemite National Park, or in respect of transactions within said Park, the Alcoholic Beverage Control Act of the State of California."

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The final decree forbids entering upon the premises of complainant; seizing, impeding or interfering with any shipments to complainant in Yosemite National Park; from instituting any actions or proceedings in any court of law or equity for violations or alleged violations of said Alcoholic Beverage Control Act in respect of the importation, possession or sale in the Park; from requiring or demanding reports on the importation, possession or sale of said beverages; from enforcing in any manner within the limits of Yosemite National Park, or in respect of transactions within said Park, the Alcoholic Beverage Control Act of the State of California.

[12] From the pleadings and decree it is clear that until now the controversy has turned not upon special provisions of the Act in question but upon its applicability as a whole. As in our judgment, as heretofore pointed out, the tax provisions are enforceable and the regulatory provisions unenforceable, it is necessary to reverse the decree and remand the cause to the District Court for a determination by the Court in accordance with this opinion of the applicability of such sections of the Act as the State may threaten to enforce.

It is so ordered.

Reversed and remanded.

Mr. Justice McREYNOLDS is of opinion that the decree below should be reversed because as stated by counsel for appellants, "The acts of cession and acceptance reserved to the state the right to levy upon and collect from the appellee company the type of tax imposed by the Alcoholic Beverage Control Act." Also, that discussion should be confined to that point.

Mr. Justice CARDOZO took no part in the consideration or decision of this case.

304 U.S. 458

JOHNSON v. ZERBST, Warden, United States Penitentiary, Atlanta, Ga.

No. 699.

Argued April 4, 1938.

Decided May 23, 1938.

1. Criminal law ⇐641(1)

Under the Sixth Amendment, the federal courts have no power or authority to deprive an accused of his life or liberty, unless he has or waives the assistance of counsel. U.S.C.A. Const. Amend. 6.

2. Constitutional law ⇐43(1)

The courts indulge every reasonable presumption against waiver of fundamental constitutional rights, and do not presume acquiescence in the loss of fundamental rights.

3. Estoppel ⇐52

A "waiver" is ordinarily an intentional relinquishment or abandonment of a known right or privilege.

[Ed. Note.—For other definitions of "Waiver," see Words & Phrases.]

4. Criminal law ⇐641(1)

While an accused may waive the right to counsel, whether there is a proper waiver should be clearly determined by the trial court, and it would be fitting and appropriate for that determination to appear on the record.

5. Habeas corpus ⇐4

Habeas corpus cannot be used as a writ of error or as a means of reviewing errors of law and irregularities not involving the question of jurisdiction occurring during course of trial, but these principles must be construed and applied so as to preserve and

53 L.Ed. 994; Yellowstone Park Transportation Co. v. Gallatin County, 9 Cir., 31 F.2d 644.