Thomas v Sorrel [1558-1774] All ER Rep 107

Also reported Vaugh 330; 1 Lev 217; 1 FreemKB 85, 137; 3 Keb 264; **124 ER 1098**

COURT OF EXCHEQUER CHAMBER

SIR MATTHEW HALE CJ, TWISDEN, WILDE AND RAINSFORD JJ, VAUGHAN CJ, ATKYNS, WYNDHAM AND ELLIS JJ, TURNOUR CB, THURLAND, TURNER AND LITTLETON BB

TRINITY TERM, 1673

Crown — Grant — Exemption to sell wine without licence — Effect of death of Sovereign.

King James I granted by patent to the Vintners of London liberty to sell wines without licence.

Held: the patent did not determine by the King's death.

Notes

The statute 12 Car 2, c 25 (Wine) (1660) was repealed by SLR 1863, and the statute 7 Edw 6, c 5 (Wines) (1553) was repealed by 19 & 20 Vict, c 64 (Repeal of Obsolete Statutes) (1856) The Vintners of the City of London are now exempted by s 199(b) of the Licensing Act, 1964 (44 HALSBURY' STATUTES (2nd Edn) 642).

This case was decided before the passing of the Bill of Rights (1688) (4 HALSBURY'S STATUTES (2nd Edn) 151) which declared "That the pretended power of suspending of laws or the execution of laws by regal authority without the consent of Parliament is illegal."

As to limitations of royal prerogative, see 7 HALSBURY'S LAWS (3rd Edn) 229 et seq; and for cases see 11 DIGEST (Repl) 567 et seq As to special rights of Vintners' Company, see 9 HALSBURY's LAWS (3rd Edn) 106 As to exemption of the Vintners' Company to sell wine without licence, see 22 HALSBURY's LAWS (3rd Edn) 521; and for cases see 30 DIGEST (Repl) 10.

Claim for Debt for 450 pounds arising under the statute 12 Car 2, c 25 (Wine) (1660) for selling wines without licence. The plaintiff claimed that the defendant at fifty several times had sold wine in his house, being a tavern, without being licensed according to the statute 12 Car 2, c 25, for which he forfeited 5 pounds for each time. The defendant pleaded nil debet.

On a special verdict the jury found the following: That under the statute 7 Edw 6, c 5 (Wines) (1553) touching the selling of wines, that none should sell without licence according to that Act. Proof of the patent of 9 Jac 1 (1611) whereby the King incorporated the Vintners of London and granted for himself, his heirs and successors, that it should be lawful to the master, wardens and freemen of the Commonalty of Vintners (that being the name of the corporation) and successors and all who should be free of the said company, to sell wine. First, within London and three miles thereof; secondly, in all cities and port-towns in England; thirdly, in all other cities and thoroughfare-towns on the road, between London and Dover and London and Berwick, where any of the company Should inhabit, and to keep taverns and sell wines by retail, notwithstanding the statute

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7 Edw 6, c 5, or any other statute made or to be made. That the statute 12 Car 2, c 25, enacted that "no person shall sell wines by retail, except he be enabled according to that statute"; and that it directed how

the King should nominate commissioners for granting the licences and thereupon reserved a revenue to the King:

> "Provided that this Act shall not be prejudicial to the master, wardens, free men and commonalty of the Vintners of London, but that they may use and enjoy such liberties, as they have hithertofore lawfully used."

The defendant was a freeman of the Vintners Company, and kept a tavern at Stepney, within three miles of London, and sold wine by retail at the said times. If he were indebted for the said times, the jury found for the plaintiff 50 pounds; if not, then for the defendant.

This case after many arguments in the King's Bench was because of its weight and difficulty adjourned into the Exchequer Chamber where it was twice argued at the Bar. The points which arose for consideration were: (i) whether or not the patent of 9 Jac 1, was void in its creation; (ii) admitting it was not void in creation, whether it became void by the death of King James I; (iii) if a good patent and not void by the death of King James I, whether the proviso to 12 Car 2, c 25, preserved the rights which the Vintners Company had under the patent against the Act of 12 Car 2, c 25, so as to enable the defendant to sell wine without licence.

North, the King's Solicitor and (after his appointment as a judge) Finch, the King's Attorney, for the plaintiff.

Levinz for the defendant.

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Per Curiam:

As to the first point, SIR MATTHEW HALE, CJ, VAUGHAN, CJ, TWISDEN, WILDE, RAINSFORD and ATKYNS, JJ, TURNER [TURNOR] and LITTLETON, BB (THURLAND, B, WYNDHAM and ELLIS, JJ, and TURNER [TURNOUR], CB, dissenting) held that the patent was good in its creation.

As to the second point, WYNDHAM and ELLIS, JJ (SIR MATTHEW HALE, CJ, VAUGHAN, CJ, TWISDEN, WILDE, RAINSFORD and ATKYNS, JJ, TURNER [TURNOR] and LITTLETON, BB, concurring) held that, if the patent was ever good, it did not determine by King James's death. But TURNER [TURNOUR], CB, and THURLAND, B, held that, though the patent had been good in its creation, it was notwithstandingly determined by the King's death.

As to the third point, all the judges (THURLAND, B, alone dissenting) agreed that the proviso in the statute 12 Car 2, c 25, exempted the vintners of London out of the statute, because it was a privilege lawfully used by them before the statute.

Thereupon the record was sent back to the King's Bench and on a motion of counsel for the defendant, judgment was entered accordingly.

Judgment for defendant.

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