Ben Townsend Note: This is a follow-up to the Barnes Case. Interestingly enough it involves an unincorporated Baptist church that Adams was a member of. Yes, the authorities came and got his cow, sold it, and paid his tax. This court said that they could not do that.

LEXSEE 14 MASS 340

Daniel Adams, Plaintiff in Error, versus Jonas Howe and Others.

[NO NUMBER IN ORIGINAL]

SUPREME COURT OF MASSACHUSETTS, WORCESTER

14 Mass. 340; 1817 Mass. LEXIS 95

September, 1817, Decided

PRIOR HISTORY: **[**1]** Error to the Circuit Court of Common Pleas, upon a judgment rendered June, 1816, in an action of trespass for taking and carrying away a heifer, the property of the said Adams, by the defendants in error.

The judgment in the Common Pleas was rendered in favor of the defendants, upon the following special verdict returned by the jury upon the issue of not guilty, joined between the parties: --

"The jury find that the defendants were the assessors of the town of Rutland for the year 1813, duly chosen and sworn; and that, as such, they assessed the plaintiff to the support of the ministry, in the tax bills for that year, the sum of five dollars and fifty five cents; that the plaintiff was an inhabitant of said town, and liable by law to be taxed for the support of the ministry there, and that the said tax was duly and legally assessed, unless, by reason of the facts hereinafter stated, the plaintiff was legally exempted therefrom; that the defendants committed the said tax bills, with the assessment aforesaid, to Francis S. Hooker, collector of taxes for the said town of Rutland for the year aforesaid, with a warrant under their hands and seals, authorizing and requiring him **[**2]** to collect the same; that, upon the refusal of the said Adams to pay said tax, assessed upon him as aforesaid for the support of the ministry for the said town of Rutland, the said Hooker made distress upon the property of the said Adams, by force and virtue of the said assessors' warrant, and took from the said Adams the heifer mentioned in the declaration of the plaintiff's writ; and after advertising and keeping the same, according to the provisions of law in cases of distress for taxes, sold the same at public auction, and from the proceeds satisfied said tax and the incidental charges of the distress and sale.

"And the jury further find, that, before the assessment of said tax, by the assessors of said town of Rutland, for the year 1813, viz., on the 18th of January, 1813, the said Adams filed in the clerk's office, and with the clerk of said town, a certificate of the following tenor: --

"'We certify that Daniel Adams is a member of the religious society of the town of Barre called Baptists. Dated this 12th day of January, A. D. 1813.

Simeon Metcalf, Elias Chase,

Committee.'

that there then was, and long before that time had existed, a voluntary, unincorporated **[**3]** society of Baptists in said Barre, of which the said Daniel Adams became a member, by subscribing the articles of association, conformably to the constitution of the said society; that

the said Simeon Metcalf and Elias Chase had been chosen, and were a committee of said society, to certify the membership of such as belonged to it; and that the said Daniel Adams had in all respects complied with the provisions of the law of this commonwealth, passed the 11th day of June, 1811, entitled 'An Act respecting public worship and religious freedom,' as a member of such unincorporated society of Baptists as aforesaid.

"And the jury further find, that the said society of Baptists had no public place of worship; that they had for some time occupied, by permission, a school-house, and subsequently a hall in a private house; that they had no public teacher ordained to their peculiar charge, but had made an engagement with the Rev. Zenas L. Leonard to preach to them one Lord's day in a month, the said Leonard having been, in the year 1796, ordained as an evangelist, according to the forms of the Baptist church, and having ever after supplied the Baptist church in Sturbridge, distant from Barre **[**4]** about eighteen miles, upon an engagement to continue during the mutual pleasure of himself and said society, and reserving to himself one Lord's day in a month, to supply destitute societies; that the said Daniel Adams usually attended the instructions and preaching of the said Leonard at said Barre, and the meetings of said society of Baptists there, and contributed his proportion towards defraying the expenses thereof.

"And the jury further find, that the said society of Baptists were a different denomination of Christians from the Congregational society in said Rutland.

"If, upon the foregoing facts, the Court are of opinion that the said Daniel Adams was legally exempt from taxation to the support of the ministry in the town of Rutland for the year 1813, the jury find the defendants guilty, and assess damages for the plaintiff, in the sum of fifteen dollars; but if the Court are of a different opinion, the jury find the defendants not guilty."

DISPOSITION: Judgment reversed.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff in error resident sought review of a decision by the Circuit Court of Common Pleas (Massachusetts), which entered judgment for defendant in error town assessors in the resident's action in trespass for the taking away and sale of the resident's cow.

OVERVIEW: The assessors levied a tax for the support of the ministry in the town. Upon the resident's refusal to pay the tax, a distress was made on his property. The resident's cow was taken by virtue of the assessors' warrant and was sold at a public auction. The proceeds from the sale were used to satisfy the tax and the incidental charges of the distress and sale. The resident filed an action in trespass in which he claimed that he was exempt from ministerial taxes by means of his membership in a different religious organization of another town. The trial court entered judgment for the assessors. On appeal, the court held that the legislature was restricted from any exercise of authority that contravened the rights or the choice of forms of worship and from establishing any national or state creed or form of worship to which those who conscientiously disagreed should be obliged to conform. The legislative act under which the tax was assessed was repugnant to the state's constitution. The court concluded that it was not necessary for the society of which the resident was a member to have a regular minister in order for the resident to be exempt from the tax.

OUTCOME: The court reversed the judgment of the trial court.

CORE TERMS: public worship, teacher, religious, religion, worship, declaration of rights, conscience, exemption, regular, legislative act, unincorporated, denomination, repugnant, morality, supposed, ordained, neglect, attend, piety, religious society, mode of worship, judicial power, time to time, money paid, inhabitants, conscientiously, establishment, inconvenience, declaration, requisition

HEADNOTES: The statute of 1811, c. 6, entitled "An Act respecting public worship and religious freedom," is not contrary to the declaration of rights.

COUNSEL: The cause was argued here at the last September term, by Lincoln for the plaintiff, and Bigelow for the defendants.

Lincoln cited and relied on the second and third articles of the declaration of rights, **[**5]** and upon the law referred to in the special verdict, n1 as, in connection with the facts found in the case, exempting the plaintiff from all liability in taxation for the support of the ministry in Rutland; whence it followed that the act of the defendants, in assessing him, and causing his property to be distrained, was tortious, and wholly without justification.

n1 Stat. 1811, c. 6.

Bigelow. The constitution having received a solemn judicial construction on this point, in the cases of Barnes vs. The First Parish in Falmouth, n2 and Turner vs. The Second Precinct in Brookfield, n3 the real question in the present action is, whether the provisions of the act of June, 1811, respecting public worship and religious freedom, are consistent with the constitution of the commonwealth, and so within the legitimate powers of the legislature.

n2 6 Mass. 401.

n3 7 Mass. 60.

The second section of the act militates directly with the third article of the declaration of rights. Any number of citizens, associating and giving themselves the name of any one of the thousand sects into which Christendom has been divided, or the name of any of the numerous classes of the **[**6]** followers of Mahomet, or even of heathen idolaters, -- for in every one of these cases they would be well entitled to the name of a "religious society," -- may forever discharge any number of citizens from their obligation to contribute to the support of any public teachers of piety, religion, and morality, or to attend on the public instructions of such teacher.

Such an association can never be compelled to maintain public worship or public instruction, since, unless incorporated, they are unknown to the law, and not subject to indictment or information.

In the present case, the utmost of the provision made by the society, to which the plaintiff claims to belong, extends only to one Sunday in a month; nor is it made necessary, to the obtaining of the certificate, that the party should attend the meetings, rare as they are.

The cause stood continued nisi for advisement; and at the last March term at Boston, an order passed for reversing the judgment.

JUDGES: Parker, C. J.

OPINION BY: Parker

OPINION:

[*344] Parker, C. J. By the special verdict in this case, it appears that the plaintiff in error was exempted from ministerial taxes, according to the provisions of the *Stat.* 1811, **[**7]** c. 6,

he having regularly obtained and filed with the proper officer of the town a certificate of his membership in a Baptist society in the town of *Barre*, and such a society being found to exist. **It is true that it also appears that the society of which he was a member was not incorporated**; and that their minister or teacher was not settled over that society, but only engaged to preach to them one Sabbath in a month, he being, in fact, a stated minister of another society in another town. But these latter facts are immaterial, provided the statute has legal force and validity; for it expressly puts corporate and unincorporated societies upon the same footing, and makes no distinction between such as have an ordained minister specially settled over them, and such as are occasionally taught by preachers who may be ordained at large, or as ministers of other parishes, devoting a part of their labors and services to them.

The true and only question, then, arising in this case is, whether the statute before cited is contrary or repugnant to the principles of the constitution, and so of no binding force upon the Court. And after a careful examination of the declaration of rights prefixed **[**8]** to the constitution, where alone the subject is treated of, we do no find that the legislature is restricted in the manner contended for by the counsel for the defendants in error.

We are well aware of the great inconveniences, and the injury to public morals and religion, and the tendency to destroy all the decency and regularity of public worship, which may result from a general application of the indulgence granted by the legislature, in that statute, to all persons who may choose to associate, and withdraw themselves from the regular and established religious societies in towns and parishes, which, being by law obliged to support public teachers, may thus have their means and power so much diminished **[*345]** as to render that duty oppressive and burdensome. But our duty is to give effect to such acts of the legislature as they have the constitutional authority to make, without regarding their evil tendency or inexpediency. Subsequent legislatures may correct the proceedings of their predecessors, which may be found to have been improvident or pernicious. And if a law, however complained of, is suffered to remain unrepealed, the only legal presumption is, that it is the will **[**9]** of the community that such should be the law.

We proceed to show why the statute in question may be considered as constitutional; and to show that there is no decided case which in any manner contravenes the opinion which we feel ourselves bound to adopt; that the judgment of the Circuit Court of Common Pleas is erroneous, and must be reversed.

We must premise, that so much respect is due to any legislative act, solemnly passed, and admitted into the statute-book, that a court of law, which may be called upon to decide its validity, will presume it to be constitutional, until the contrary clearly appears; so that in any case of the kind substantially doubtful, the law would have its force. The legislature is, in the first instance, the judge of its own constitutional powers; and it is only when manifest assumption of authority, or misapprehension of it, shall appear, that the judicial power will refuse to execute it. Whenever such a case happens, it is among the most important duties of the judicial power to declare the invalidity of an act so passed.

The act of the legislature now in question is supposed to be unconstitutional, in providing for the exemption of persons from taxation **[**10]** to the support of ministers, or public teachers of piety, religion, and morality, in the towns or parishes within which they may dwell, if they belong to a religious society of a different persuasion, whether that society be incorporated or not. In order to ascertain whether, for this cause, the act is unconstitutional, we must examine the constitution, to **[*346]** see whether there is any restriction upon the legislature in this respect.

The framers of the constitution, and the people who adopted it in the articles of the declaration of rights, which respect religion and public worship, undoubtedly intended to secure and establish the orderly and regular preaching of the gospel in towns and parishes, and public incorporated societies; and the decent and suitable maintenance of persons of learning and piety, to be set apart as public teachers of religion and morality. This is obvious from the frequent use of the word *public*, as applicable to worship, and to ministers and teachers.

Another great object was, to secure and establish the most perfect and entire freedom of opinion, as to tenets of religion, and as to the choice of the mode of worship.

It was difficult to establish **[**11]** any fundamental rules upon the subject, and they did not attempt it; but contented themselves with declaring the public sentiment upon the subject, and enjoining upon the legislature the importance of providing, from time to time, such laws as should carry these great objects into effect. It was believed that the future guardians of the moral and religious character of the state, and of the rights of conscience among the people, would be at all times regardful of these important concerns, and would establish such wholesome regulations as would comport with the solemnity of the subject and the true interests of the people.

It is therefore declared, in the third article of the declaration of rights, "That the people have a right to invest their legislature with power to authorize and require, and the legislature shall from time to time authorize and require, the several towns, parishes, precincts, and other bodies corporate and politic, and religious societies, to make suitable provision, at their own expense, for the institution of the public worship of God, and for the support and maintenance of *public* Protestant teachers of piety, religion, and morality, in all cases where such **[**12]** provision shall not be made voluntarily."

[*347] And it is further declared in the same article, "that the people of this commonwealth have a right to, and do, invest their legislature with authority to enjoin upon all their subjects an attendance upon the instructions of the public teachers aforesaid at stated times and seasons, if there be any on whose instructions they can conscientiously and conveniently attend."

The right of choosing and contracting with their own teachers is, then, declared to belong to the public bodies before mentioned; that the money paid by the subject for the support of public worship shall be applied to the support of a teacher of his own denomination, if there be any one upon whom he attends; and that there shall be no subordination or superiority of one sect or denomination over any other.

Three great objects appear to have been the influential causes of the solemn declaration of the will of the people: 1. To establish, at all events, liberty of conscience and choice of the mode of worship; 2. To assert the right of the state, in its political capacity, to require and enforce the public worship of God; 3. To deny the right of establishing any **[**13]** hierarchy, or any power in the state itself, to require conformity to any creed or formulary of worship.

The restrictions upon the legislature are against any exercise of authority which might contravene the rights of conscience or the choice of forms of worship, and against the establishment of any national or state creed, or form of worship, to which those who conscientiously disagreed should be obliged to conform, or suffer any inconvenience from nonconformity. The mode of securing these essential points is left entirely to the legislature, and confidence was reposed in them to maintain them by equal and wholesome laws.

That part of the declaration which enjoins it upon the legislature to exact the support of religious institutions, and attendance upon public worship, is merely directory. If no law had

been passed pursuant to it, there could be no penalty upon the citizen for not obeying the clear expression of the public will; nor is **[*348]** there any way of coercing a legislature to carry into effect these important requisitions. So the mode, also, of executing the will of the people, in this particular, is left entirely to the legislature; and although laws may be passed **[**14]** which have a contrary tendency, and which, in their consequences, may injure, instead of promoting, the public worship, yet the legislature is to judge; and even their erroneous construction of the design of the people, as expressed in the said declaration, must have legal effect so far as they are not manifestly repugnant to the principles of the constitution.

This being the character of the legislative power on this all-important subject, we are at a loss to conceive how it can be restrained, when it is professedly exercised for the purpose of enlarging, instead of diminishing, the rights of the citizen on the subject of religious worship. Great responsibility rests upon the legislature, and also upon the people, in delegating power to those who have almost unlimited authority. If they, with a view to secure the rights of conscience, pass laws, within the letter of the constitution, which may have a tendency injuriously to affect the regular public worship, it is not for the judiciary power to control their course.

The mischief to be dreaded is the breaking up of the parochial religious establishments, by authorizing any number of individuals to withdraw themselves, in the easy **[**15]** and loose way which is provided in this act. But they have the authority, and they have continually exercised it, to incorporate parts of parishes, and even individuals, as poll parishes; and by this means to diminish the resources of the religious communities from which such corporations are taken. They may incorporate five, ten, or twenty people for this purpose; and there seems to be no more constitutional difficulties in the way of vesting societies unincorporated, and the members of them, with the same privileges.

This may be an abuse of power, for which they are amenable to their constituents; but these acts are not therefore void. It is certainly unjust to leave the standing parishes liable to penalties, if they do not **[*349]** maintain a minister, and not to impose any duty of the kind upon those whom they have exempted from the common burden. But in this they merely neglect their duty; and this neglect does not affect the validity of the acts which they may choose to pass.

Besides, it is known that there is an existing provision for the relief of towns and parishes from the burden of supporting a minister, when they shall become unable to do it, provided no contract is **[**16]** actually in force; for no prosecution can be maintained against a corporation for a neglect of this duty, unless a court has adjudged it to be of sufficient ability.

It has been supposed that, according to the principles stated in the case of *Barnes* vs. *The Inhabitants of the First Parish in Falmouth*, this legislative act is clearly repugnant to the constitution of the state. But no such inference can be drawn from that case The question to be settled there was, whether the minister of an unincorporated society could maintain an action against the parish, for the taxes paid by one of his hearers. The action was founded altogether upon the supposed constitutional right of the minister, in behalf of his hearer; and no legislative act had then been passed tending to vary or affect the natural and obvious meaning of the terms of the articles of the declaration of rights before cited; it being clear by those articles that the privilege of appropriating money paid to another use than that of the town or parish into whose treasury it was paid applied only when the appropriation was to be made to the use of a teacher of a public society, and that by a public society was intended one **[**17]** known and incorporated. The plaintiff in that suit could not prevail.

That decision was correct; and it was probably to avoid the effect of it that the legislature passed the law in question. It nowhere appears in the learned and elaborate opinion delivered in that case, that the power of the legislature over the subject was questioned. On the contrary, the following expressions may be considered as an admission of that power. The chief **[*350]** justice observed, "that it seems a mistake to suppose that the legislature cannot grant any further relief in particular cases, which in its discretion it may consider as deserving relief."

Such relief had been before granted to Quakers, in whose favor no exception had been made by the constitution. The same right exists with respect to Baptists, or those of any other denomination different from that which prevails in the town of which they are inhabitants; and it may be applied in favor of Congregationalists, where they are a minority, and dissent from the established worship of the town, or Episcopalians, or any other seet, who may unite and form themselves into a separate society.

Whether it is expedient to give legislative sanction **[**18]** to a system so destructive to regular and orderly worship, we again say we are not to judge. We are, however, satisfied that there is nothing in the constitution which prohibits this exercise of power.

One of the objections to the effect of the exemption of the plaintiff in error is, that the society, of which he is a member, had no settled minister; but hired one only for one Sabbath in a month. But here, again, the legislature has authorized this; not having required, as essential to an exemption, that there should be any minister at all, but only a society and a committee. In the case of *Kendall* vs. *The Inhabitants of Kingston*, n4 the opinion of the court against the plaintiff's right to recover was founded upon the constitution and the statute of 1799, c. 87, which clearly indicated that the minister who sued must be the minister of the parish, or town, or incorporated religious society, and not have been ordained over the whole religious community to which he belonged.

n4 *5 Mass. 524.*

But the statute **[**19]** of 1811 makes no such requisition; expressly giving the right to the preacher on whom the party taxed shall attend, whether he be ordained at large, or over a particular society; or whether he divide his labors among twenty different societies, or confine them entirely to one. The provision of the act is **[*351]** too broad to exclude the members of any society, large enough to choose a committee, from the enjoyment of its privileges; and it does not appear that even attendants upon public worship any where is necessary to secure the exemption.

Judgment reversed.