

**“CAN A PERSON NOT REQUIRED TO REGISTER
UNDER THE HARRISON ANTI-NARCOTIC
LAW BE GUILTY OF AN OFFENSE
UNDER THE LAW?”**

The Harrison Anti-Narcotic Law passed by Congress December 17th, 1914, and which went into effect on the 1st of March, 1915, provided in Section 1:

“That on and after the 1st day of March, 1915, every person who produces, imports, manufactures, compounds, deals in, dispenses, sells, distributes, or gives away opium or coca leaves or any compound, manufacture, salt, derivative, or preparation thereof, shall register with the collector of internal revenue of the district his name or style, place of business, and place or places where such business is to be carried on: Provided, That the office, or if none, then the residence of any person shall be considered for the purposes of this Act to be his place of business, at the time of such registry, and on or before the 1st day of July, annually thereafter, every person who produces, imports, manufactures, compounds, deals in, dispenses, sells, distributes, or gives away any of the aforesaid drugs shall pay the collector a special tax at the rate of one dollar per annum: Provided, That no employee of any person who produces, imports, etc., any of the aforesaid drugs, acting within the scope of his employment, shall be required to register or to pay the special tax provided by this section——” and,

“That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all needful rules and regulations for the carrying of the provisions of this Act into effect.”

Section 8 provides:

“That it shall be unlawful for any person not registered under the provisions of this Act, and who has not paid the special tax provided for by this Act, to have in his possession or control any of the aforesaid drugs; and such possession or control shall be presumptive evidence of a violation of this section and also of a violation of the provisions of section one of this Act: Provided, That this section shall not apply to any employee of a registered person, or to a nurse under the supervision of a physician, dentist, or veterinary surgeon registered under this Act, having such possession or control by virtue of his employment or occupation and not on his own account;” etc.

Article 1, Section 8, Clause 1, of the Constitution of the United States provides that, “Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and general welfare of the United States; but

all duties, imposts, and excises shall be uniform throughout the United States."

That the validity of the Harrison Anti-Narcotic Law depends on whether or not it was enacted under this clause of the Constitution, will admit of no doubt. The word "taxes," in its most enlarged sense, embraces all the regular impositions made by governments upon the person, property, privileges, occupations, and enjoyments of the people for raising public revenue. In so far as this Act is justified under the power of Congress to raise revenue it is lawful. That it does impose a tax is shown by the fact that it is unlawful to "produce, import, manufacture, compound, sell, dispense, or give away * * * unless the person so producing, etc., shall have paid the special tax of one dollar per annum," and further by the fact "that the Commissioner of Internal Revenue" shall have supervision of the enforcement of this Act.

We must therefore conclude that Congress has the power which it has here sought to exercise.

However, the question to be dealt with in this note is whether in construing the first section of the Act with the eighth section, those persons come within the terms of the Act, who are not mentioned in the first section, but who, nevertheless, have opium or coca leaves in their possession, and who do not produce, import, manufacture, compound, deal in, dispense, sell, distribute or give it away; or, whether only those persons dealt with in section one are referred to; or, both.

To date only two cases have been decided which directly bear on the question. The first, is that of *U. S. v. Wilson*, reported in the 224 Federal, and the Judge in deciding the case, said:

"Madge Wilson was indicted under the Harrison Anti-Narcotic Law. The evidence shows that she had for several years been addicted to opium smoking, and that at the time of her arrest there was found in her possession an opium pipe, a small quantity of opium, and an opium smoking outfit. That she had obtained the opium from a Chinaman and that she had it for her own personal use and consumption; that she never sold, gave away, nor dealt in it in any form, except to buy and smoke it.

"This evidence presents the question, whether it is an offense under the Act, for a person to have in his or her possession any of the drugs named in the Act for *personal use*. If it is an offense Congress has not in terms so declared, and it must be worked out by a construction of the language of the Act. It is a criminal statute and must be strictly construed.

"The first clause declares who shall register and pay the special tax. They are those who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away the drugs mentioned. The second clause declares it to be unlawful for any person required to register by the first clause of section one to do any of those things named therein without having registered and paid the special tax provided in the section.

"The question now arises, to whom does the clause 'any person not registered under the provisions of this Act and who has not paid the special tax' in the eighth section refer? Clearly it refers to those doing things specifically named in the first section. Does it include those having in their possession and control the drugs named for their personal consumption? To so hold would be to enlarge the list of those whom Congress required to register and pay the special tax. This would be an amendment of the Act and this the court cannot do. If Congress had intended to require persons to register who had in their possession or under their control drugs for any other purpose than that stated in the Act, it would seem that it would have been a simple matter to have said so. It is clear that when the eighth section is read in connection with the first, it refers only to those mentioned in the last named section."

The second case above referred to was decided by Lacombe, C. J., sitting in the Second Circuit of the U. S. Court of Appeals, and was that of *Tom Wilson v. United States*, as yet unreported. The facts are substantially as those in the first case. The court held: "The contention of the defendant is that he is not covered by the provisions of Sec. 8, because of the words 'any person,' as used therein, are to be construed as referring only to persons of the classes referred to in section one as being obliged to register and pay a tax. We do not find this contention persuasive; the words 'any person' are comprehensive; they are broad enough not only to cover the producers, dealers, distributors, givers away,' etc., who by Sec. 1 are allowed to register, but also all other persons. That Congress used the words with this comprehensive meaning seems to us manifest from the exceptions which it includes in the proviso that immediately follows. A nurse may have some opium in her possession, and yet not be herself 'a dealer, distributor,' etc., nor entitled to take out a license. So too a person subject to sharp spasms of pain may have some in his possession, and yet not be himself 'a dealer, distributor,' etc., nor entitled to take out a license. Both these persons would be covered by the first clause of Sec. 8 and their possession would be unlawful. Therefore, Congress saved them in the proviso by relieving from the application of the first clause—the nurse, if her possession was by virtue of her employment—and the

invalid, if the drug had been prescribed for him by a physician. Grammatically, there is nothing in the section which would so restrict the comprehensive meaning of the words 'any person' as to make them include only those who might take out license but have neglected to do so."

A literal construction of each of the clauses in Sec. 8, taken separately and together, seems to support the view taken in the first case. The first clause, "That it shall be unlawful for any person not registered under the provisions of this Act," evidently refers to some provisions wherein certain persons are required to register. The provisions referred to are only found in section 1. And, "Who has not paid the special tax provided for by this Act," necessarily refers to some section which imposes a tax, which again is section 1. "To have in his possession or under his control any of the aforesaid drugs," means the possession of those mentioned in the first and second clauses, and which in turn apply only to those persons comprehended by section 1. Further, we find "such possession shall be presumptive evidence of a violation of this section" which we see refers to the "possession" mentioned in the clause preceding which only applies to those named in the first section of the Act. The next clause, "And also a violation of the provisions of section 1 of this Act," says directly what has been said indirectly by the preceding four clauses.

In conclusion it would seem that the eighth section of the Act applies only to persons coming within section 1, namely, those who produce, import, etc., opium or coca leaves or any of their compounds.

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