From the earliest cases on this subject to those recently decided it has been held that legislation by the states of the Union, relating to the regulation of commerce, is not allowable, and that where a uniform system is necessary between the states the congress of the United States has the exclusive power to regulate it. Interstate commerce, being the purchase, exchange, transportation, and sale of commodities in and between the different states, is national in character, and can only be carried on successfully when conducted by and under a uniform system of laws and regulations. The power of the congress over such commerce is as complete as it is over foreign commerce. Where congress has not legislated concerning a particular subject-matter of interstate commerce, or has not authorized the states to do so, it thereby indicates that its intention is that such commerce shall be free, untrammeled by either federal or state laws. This subject was again fully discussed and explained in the case of Leisy v. Hardin, 135 U. S. 100, 10 Sup. Ct. 681, in which the case of Peirce v. New Hampshire, 5 How. 504, theretofore cited to the contrary of the opinion then announced, was expressly overruled. The rule now well established is clearly stated by Mr. Justice Field in Bowman v. Railway Co., 125 U. S. 465, 507, 8 Sup. Ct. 689, 1062, in these words: "Where the subject upon which congress can act under its commercial power is local in its nature or sphere of operation, such as harbor pilotage, the improvement of harbors, the establishment of beacons and buoys to guide vessels in and out of port, the construction of bridges over navigable rivers, the erection of wharves, piers, and docks, and the like, which can be properly regulated only by special provisions adapted to their localities, the state can act until congress interferes and supersedes its authority; but where the subject is national in its character, and admits and requires uniformity of regulation, affecting alike all the states, such as transportation between the states, including the importation of goods from one state into another, congress can alone act upon it and provide the needed regulations." It follows that if congress has not legislated on any special subject relating to commerce, and the enactments of a state regarding the same are questioned, the only matter to be determined by the courts is, does the state legislation complained of amount to a regulation of commerce? If so, it is unconstitutional and void. This result is clearly demonstrated by the following cases: Cooley v. Board, 12 How. 299; State Freight Tax Case, 15 Wall. 232; Welton v. Missouri, 91 U. S. 275; Henderson v. Mayor, 92 U. S. 259; Railroad Co. v. Husen, 95 U. S. 465; Cook v. Pennsylvania, 97 U. S. 566; Robbins v. Taxing Dist., 120 U. S. 489, 7 Sup. Ct. 592; Lyng v. Michigan, 135 U. S. 161, 10 Sup. Ct. 725. That the power of congress over the entire subject of interstate commerce is supreme and exclusive is now without question, and, so far as that matter is concerned, state lines are obliterated and state laws inoperative. The reason for this is evident, and its imperative necessity was shown by the condition of affairs relating to commerce, existing when the convention that framed the constitution of the United States assembled, as all familiar with our history well know.

The argument submitted by counsel for the state, that the legislation by virtue of which petitioner was arrested is but the proper exercise by the state of its police power, is, I think, without merit. That which does not belong to commerce may be regulated by the state under its police power, but that which does belong to commerce falls within the exclusive control of the United States. This act of the West Virginia legislature inhibits the sale by the petitioner (unless he first pays a tax for the privilege so to do) of the original packages of cigarettes imported by him into the state of West Virginia from the state of New York, while they are still articles of commerce, and this demonstrates, by the authorities I have referred to, that it is not a proper use of the police power. The right to purchase in one state carries with it the right to sell the article, so purchased, in another state, regardless of state laws, and independent of local interests and jealousies. Were this not so, the commerce between the states could be, and in many instances would be, entirely destroyed. It is only by the sale of the imported article that it becomes mingled with the other property within the state. The right of the state to enact police laws is not questioned, has always been conceded, and the necessity for the same is apparent. The police power extends to such legislation as is required to protect the comfort, health, and lives of all persons within the jurisdiction of the state, and also to care for the property located within the same. It justifies the adoption of regulations to prevent the commission of crime, and the spreading of disease. It authorizes rules for the suppression of vice and of the various kinds of social evils, for the prohibition of lotteries, gambling, and nuisances. Whatever this power may include, I think it is clear that it does not embrace a subject confided by the constitution exclusively to congress. Railroad Co. v. Husen, 95 U. S. 465; Passenger Cases, 7 How. 283; Henderson v. Mayor, 92 U. S. 259; Crutcher v. Kentucky, 141 U. S. 47, 11 Sup. Ct. 851.

The suggestion that it was the intention of the legislature to restrict the sale of cigarettes within the state of West Virginia is foreign to the case before me. The state makes no effort to prevent the importation or to prohibit the sale of cigarettes; on the contrary, it invites the one and protects the other, claiming from those who accept the privilege tendered the payment of revenue for its own purposes. If the congress should legislate concerning cigarettes as it has about liquors, in connection with the police laws of the states, and the legislature of West Virginia should then, regarding the use of cigarettes as injurious to the health of the citizens of the state, prohibit their sale within its limits, the question then presented would be in the line of the argument of counsel, and very different from the one I now consider. After the decision in Leisy v. Hardin, supra, in which a statute of the state of Iowa prohibiting the sale of intoxicating liquors except as provided therein was, as to a sale of liquors in the original packages by the importer, held to be inoperative, because in effect a regulation of commerce, the congress passed the act of August 8, 1890, by virtue of which all liquors imported into a state come within the provisions of the police laws

enacted by the state. But this legislation by congress applies only to liquors, and as to all other commodities the exclusive right of the United States to legislate concerning them in their relation to commerce is retained. It will be kept in mind that the state, by this legislation, is not taxing the property, imported by the petitioner, as it does other property within its limits, by a general and uniform tax rate, but that this tax is imposed for the privilege of selling the imported articles, and is, as to them, special and additional. A tax imposed on the assessed value of the cigarettes, after they have commingled with and become part of the common property within the state, would not be a regulation of commerce, and would not be subject to the objections alluded to; but a tax on a license to sell goods is simply a special tax on the goods so authorized to be sold. I reach the conclusion that said section 66, as amended in the act of the legislature of the state of West Virginia, passed February 21, 1895, entitled "An act to amend and re-enact sections one, two, sixty-six and eighty-four of chapter thirty-two of the Code," so far as it applies to cigarettes imported from another state into the state of West Virginia, and sold by the importer within said last-named state, in the original packages, is a burden upon commerce among the states, and to that extent in violation of the commercial clause of the constitution of the United States; and also that, so far as it relates to cigarettes manufactured in another state and by the manufacturer sent into West Virginia in the original packages, for sale by the agent of the manufacturer, and so sold in such packages by such agent, it is for the same reason inoperative and void.

It follows that petitioner must be discharged from the custody of the officers now detaining him, and it is so ordered.

In re MYERS et al.

(Circuit Court, N. D. New York. July 1, 1895.)

CUSTOMS DUTIES—ACT OF AUGUST 27, 1894—CEDAR.

Lumber manufactured from the tree botanically known as "thuja gigantea," and commonly called "red cedar," or "canoe cedar," is not within the exception of "cedar * * * and all other cabinet woods," in paragraph 676 of the tariff act of August 27, 1894, but is entitled to free entry under that paragraph.

This is an appeal by the importers from a decision of the board of United States general appraisers overruling a protest against the decision of the collector at Plattsburgh, N. Y., subjecting to duty certain importations of lumber popularly known as "red cedar."

Stephen G. Clarke, for importers.

W. F. Mackey, Asst. U. S. Atty., for collector.

COXE, District Judge. The collector classified the merchandise in question under paragraph 181 of the act of August 27, 1894, which is as follows:

"House or cabinet furniture, of wood, wholly or partly finished, manufactures of wood, or of which wood is the component material of chief value, not specially provided for in this act, twenty-five per centum ad valorem."