Supplementary Material

Chapter 5: The Jacksonian Era—Individual Rights/Personal Choice and Public Morality

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State v. Gurney, 37 Me. 156 (1853)

Gurney was found guilty of selling intoxicating liquors and fined $10 by a municipal judge. Maine law permitted a person convicted by a local judge to ask for a jury trial, but if convicted, that person would "suffer double the amount of fines, penalties and imprisonment awarded against him by the justice or Judge." Gurney appealed to the Supreme Court of Maine, claiming that the laws banning the sale of intoxicating liquors and doubling fines for convictions by juries were unconstitutional.

The Supreme Court of Maine in State v. Gurney *sustained the prohibition law, but found the law doubling fines for a trial by jury to be unconstitutional. This result was typical of many state appellate decisions in prohibition cases. State courts generally found that legislatures had the power to pass temperance laws. Nevertheless, most state courts looked carefully to make sure the legislation respected the procedural rights of persons suspected of violating those temperance acts. As you read* Gurney*, consider the connection between the judicial tendency to define broadly both the government power to regulate alcohol and the procedural rights of defendants. Is there a relationship between these tendencies? Was stricter scrutiny of procedural rights a means for judges to express some dislike of bans on intoxicating liquors?*

JUSTICE WELLS

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By the constitution of this State, the Legislature "shall have full power to make and establish all reasonable laws and regulations for the defence and benefit of the people of this State, not repugnant to this constitution, nor to that of the United States." . . . Under this branch of the constitution the Legislature would have a right to regulate by law the sale of any article, the use of which would be detrimental to the morals of the people. One of the incidents of civil society is self protection, and this object cannot be effected without necessary police regulations. . . .

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But it is also contended, that no legal sentence can be imposed upon the respondent. The sixth section of the Act of 1851 provides, "and in the event of a final conviction before a jury, the defendant shall pay and suffer double the amount of fines, penalties and imprisonment awarded against him by the justice or judge from whose judgment the appeal was made."

The respondent had a right secured to him by the constitution of a trial by jury, and to enjoy it, he must appeal. If he desired to be free from restraint or confinement, he must give reasonable security for his appearance at the trial. The language of the constitution is, that "excessive bail shall not be required." Every condition beyond what is necessary to secure the prosecution of the appeal must be regarded as objectionable. The Legislature has no power to impair a right given by the constitution, it belongs to the citizen untrammeled and unfettered. If the Legislature can impose penalties upon the exercise of the right, they may be so severe and heavy as practically to destroy it. The provision under consideration would have the effect, as it was doubtless intended, to check appeals. It is an additional punishment inflicted upon one, who may be found guilty, for appealing. It may be said, that if a man is guilty, he ought not to appeal. But through the imperfection of human tribunals, acting upon evidence, the guilt or innocence of the accused cannot be made absolutely certain. An innocent man may be declared guilty by

a verdict of a jury. And if he is threatened with a double punishment, in case of a final conviction, he might be deterred from appealing by the uncertainty of the result. But the constitution guarantees to the respondent, whether innocent or guilty, a right of trial by jury, without any qualifications or restrictions. . . . The Act inflicts a fine of twenty dollars, if a conviction takes place before a justice of the peace. It must be that the Legislature considered this the appropriate penalty for the offence. Certainly it cannot be said that the offence is aggravated by the accused having claimed a trial by jury. For what then is the additional penalty of eighty dollars, or the additional imprisonment of thirty days, inflicted? If the offence remains the same, and the offender has done nothing but claim an appeal, in order to have his case tried by a jury, must not these additional penalties be founded on the exercise of that right?"

This provision of the statute must be regarded as an unnecessary restraint upon the right of appeal, and therefore in conflict with the constitution, and inoperative and void. . . .