

Phalen Vs. Virginia

Phalen Vs. Virginia

SooperKanoon Citation : sooperkanoon.com/80097

Court : US Supreme Court

Decided On : 1850

Appeal No. : 49 U.S. 163

Appellant : Phalen

Respondent : Virginia

Judgement :

Phalen v. Virginia - 49 U.S. 163 (1850)

U.S. Supreme Court Phalen v. Virginia, 49 U.S. 8 How. 163 163 (1850)

Phalen v. Virginia

49 U.S. (8 How.) 163

ERROR TO THE GENERAL

COURT OF VIRGINIA

SYLLABUS

In 1829, the Legislature of Virginia passed an act appointing five commissioners to raise by way of lottery or lotteries the sum of \$30,000 for the benefit of the Fauquier & Alexandria Turnpike Road Company. Two of the commissioners

declined to act, and the remaining three took no steps to execute the power for a long time.

On 25 February, 1834, the legislature passed an act for the suppression of lotteries, which prohibited all lotteries and sale of lottery tickets after 1 January, 1837, saving, however, contracts already made which were by their terms to extend beyond 1 January, 1837, or contracts hereafter to be made under any existing law which were to extend beyond that day. These were permitted to go on until 1 January, 1840.

On 11 March, 1834, the legislature passed an act appointing two commissioners in the place of the two who had declined to act.

On 19 December, 1839, these commissioners entered into a contract with certain persons authorizing these persons to draw as many lotteries as they might think proper, without limitation as to time, upon the payment of a certain sum per annum to the commissioners.

The right to draw lotteries under the act of 1829 is not a contract the obligations of which were impaired by the act of 1834.

It may be doubted whether it constitutes a contract at all. But if it was a contract, it was not unlimited as to time, and the act of 1834, allowing the grant to continue

Page 49 U. S. 164

for a certain time, stands upon the same ground as acts of limitation and recording acts, which this Court has said a state has a right to pass.

The privilege granted by the act of 1829 had become obsolete from nonuser, and the act of 1834, appointing two commissioners, did not fully revive it, because the two acts of 1834 must be taken together, and the limitation contained in one must apply to the other.

The courts of Virginia have so construed these statutes, and this Court adopts their construction.

The plaintiff in error had been convicted in the Superior Court for the County of Henrico and City of Richmond on an indictment for selling lottery tickets contrary to the Act of Assembly of Virginia passed on 25 February, 1834. The case was removed by writ of error to the General Court of Virginia, where the judgment was affirmed. That being the highest court of criminal jurisdiction in Virginia, the plaintiff in error brought his case into this Court by a writ of error under the twenty-fifth section of the Judiciary Act; and now alleged that the act of 25 February, 1834, under which he was convicted, is void, being contrary to the tenth section of the first article of the Constitution, which forbids a state to pass any "law impairing the obligation of contracts."

On the trial of the case below, the jury found a special verdict, setting forth at length the several acts of assembly of Virginia, and the contract under which the defendant in the enactment claimed a right to sell lottery tickets and to be exempted from the penalties of the Act of February, 1834, under which he was indicted.

It appears that in December, 1828, the President and Directors of the Fauquier & Alexandria Turnpike Road presented a petition to the Legislature of Virginia, setting forth the importance and value of their road to the public; that by the exertions of the directors and a few of the stockholders, and on their responsibility, money had been raised, and the road put in excellent condition, except three miles, which required much repair; and asked a law authorizing a lottery to raise \$30,000.

On 30 January, 1829, the legislature passed an act appointing five commissioners, "whose duty it shall be to raise, by way of lottery or lotteries, the sum of \$30,000, for the purpose of improving the Fauquier & Alexandria Turnpike Road." After directing the commissioners to contract with fit persons for managing the lotteries, and to take bonds for the faithful performance of their duties, they are ordered to "pay over to the President and Directors of the said Fauquier

& Alexandria Turnpike Road Company," the money raised by said lotteries, "to be by them appropriated in the improvement and repair of said road."

Two of the commissioners appointed by this act declined acting under it, and nothing was done under the license or authority granted therein during the five years which intervened between that time and the passage of the act of 25 February, 1834, for the suppression of lotteries.

This act prohibits, under severe penalties, all lotteries and sale of lottery tickets after the first day of January, 1837, with these provisos: 1st,

"That nothing herein contained shall be construed to extend to or interfere with contracts already made for the drawing of any lotteries, the drawing whereof, by the provisions of such contracts, shall extend to a period beyond said first day of January, 1837,"

and 2d,

"That nothing herein contained shall be construed to extend to or interfere with any contract which may hereafter be made under or by virtue of any existing law authorizing the same, for the drawing of any lottery, the drawing whereof shall not extend beyond 1 January, 1840."

A few days after the passage of this act, on 11 March, 1834, an act was passed appointing two commissioners in place of those who had declined, "to carry into effect the Act of 30 January, 1829."

Nothing was done under these acts till 19 December, 1839, when the commissioners entered into a contract with the plaintiff in error and another, authorizing them to draw as many lotteries as they think proper, paying to the commissioners the sum of \$1,500 a year, with covenants to increase the consideration, provided the Legislature of Virginia should pass an act exempting these lotteries from the penalties of the Act of February, 1834, or if this Court should pronounce the act of 1834 unconstitutional.

It is by virtue of this contract with the commissioners, that the plaintiff in error claims immunity, contending

"that the act of 1829 confers a valuable right or franchise on an existing corporation, without limitation of time; that it is a contract; and that the act of 1834 has attempted to limit and curtail the previous grant, and injuriously to abridge it, and is therefore void, as impairing the obligation of a contract. "

Page 49 U. S. 167

MR. JUSTICE GRIER delivered the opinion of the Court.

It might admit of some doubt whether the act of 1829 grants any franchise, or constitutes any contract, either with the commissioners therein appointed or with the turnpike corporation. It imposes certain duties on each. The commissioners are required to use the license thus given not for their own benefit, but for a public purpose. The money procured by the proposed lotteries is to be paid over to the Fauquier & Alexandria Turnpike Road Company, to be by them expended "in the improvement and repair of the road."

It is true, that the corporation might receive greater benefits from the repair of the road than the other citizens of the state, but the act imposed no duty on them as a previous consideration. They are not required to make any repairs till they receive the money.

But assuming that this would be too narrow a construction of this act, and that it conferred a privilege or benefit on the corporation in the nature of a franchise or irrevocable contract, yet in its very nature it could not be considered illimitable as to time. On the contrary, the object for which the license was granted called for immediate action. "Three miles" of a great public thoroughfare are represented to be out of repair, and the company without immediate means to effect it. The sum to be raised being fixed and finite, and the subject of its application demanding immediate attention, the time within which the license is given cannot claim to be unlimited. And yet the commissioners and corporation have suffered eleven years to pass before any attempt is made to perform the duty imposed on them or avail

themselves of the license or franchise conferred, and now claim a further term of twenty years to raise the money and repair the road.

Page 49 U. S. 168

When the Legislature of Virginia passed this most salutary act for the suppression of lotteries, they, with commendable caution, protected all vested rights. And notwithstanding the neglect to perform the duties imposed by the act of 1829, the act of 1834 does not revoke the grant or annul the license, but limits the time to six years within which the duties must be performed and the privilege exercised.

It has been often decided by this Court that the prohibition of the Constitution now under consideration by which state legislatures are restrained from passing any "law impairing the obligation of contracts" does not extend to all legislation about contracts. They may pass recording acts, by which an elder grantee shall be postponed to a younger if the prior deed be not recorded within a limited time, and this whether the deed be dated before or after the act. Acts of limitation also, giving peace and confidence to the actual possessor of the soil and refusing the aid of courts of justice in the enforcement of contracts after a certain time, have received the sanction of this Court. Such acts may be said to effect a complete divesture, or even transfer, of right, yet, as reasons of sound policy have led to their adoption, their validity cannot be questioned.

What is the act under consideration but a limitation of the time within which a certain privilege or license, limited in its very nature and purpose, may be exercised? If reasons of sound policy justify legislative interference with contracts of individuals, how much more will it justify the limitation of licenses so injurious to public morals.

The suppression of nuisances injurious to public health or morality is among the most important duties of government. Experience has shown that the common forms of gambling are comparatively innocuous when placed in contrast with the widespread pestilence of lotteries. The former are confined to a few persons and places, but the latter infests the whole community; it enters every dwelling; it

reaches every class; it preys upon the hard earnings of the poor; it plunders the ignorant and simple.

It is a principle of the common law that the King cannot sanction a nuisance. But without asserting that a legislative license to raise money by lotteries cannot have the sanctity of a franchise or contract in its nature irrevocable, it cannot be denied that the limitation of such a license as the present is as much demanded by public policy as other acts of limitation which have received the sanction of this Court.

There is also another view of this case which concludes

Page 49 U. S. 169

the plaintiff in error from the benefit of a defense under this clause of the Constitution, even if it were tenable. The act of 1829 had become obsolete by nonuser. Without further legislation, the license granted by it could not be exercised. The plaintiff in error cannot claim a right to sell lottery tickets without invoking the aid of the act of 11 March, 1834, passed a few days after the "act suppressing lotteries." The courts of Virginia have very properly decided that

"this dormant right to draw the lottery which was revived by the Act of March, 1834, must be taken as subordinate to and limited by, the act of the 25th of the previous month; that those statutes must be taken *in pari materia*, and receive the same construction as if embodied in one act; that there is nothing repugnant in the provisions of the one to those of the other, where the first is taken as limiting the time within which the right under the second is to be exercised."

This construction of their statutes by the courts of Virginia is not only just and correct, but is conclusive on this Court and on the case, as it estops the plaintiff in error from averring against the constitutionality of the limitation under which he claims his privilege.

The judgment of the General court of Virginia is therefore

Affirmed with costs.

ORDER

This cause came on to be heard on the transcript of the record from the General Court of Virginia and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this Court that the judgment of the said General Court of Virginia in this cause be and the same is hereby affirmed with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com