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In Re Rapier

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SooperKanoon Citation : sooperkanoon.com/87127

Court : US Supreme Court

Decided On : Feb-01-1892

Appeal No. : 143 U.S. 110

Appellant : In Re Rapier

Judgement :

In re Rapier - 143 U.S. 110 (1892)
U.S. Supreme Court In re Rapier, 143 U.S. 110 (1892)

In re Rapier

Nos. 7-9, Original

Argued November 16-17, 1891

Decided February 1, 1892

143 U.S. 110

ORIGINAL

SYLLABUS

Section 3894 of the Revised Statutes, as amended by the Act of September 19, 1890, 26 Stat. 465, c. 908, which provides that

"No letter, postal card or circular concerning any lottery . . . and no list of the drawings at any lottery . . . and no lottery ticket or part thereof . . . shall be carried in the mail, or delivered at or through any post office, or branch thereof, or by any letter carrier,"

and that no newspaper "containing any advertisement of any lottery . . . shall be carried in the mail, or delivered by any postmaster or letter carrier," and that

"any person who shall knowingly deposit or cause to be deposited . . . anything to he conveyed or delivered by mail in violation of this section . . . shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year"

is a constitutional exercise of the power conferred upon Congress by Art. I, Sec. 8 of the Constitution, to establish post offices and post roads, and does not abridge "the freedom of speech or of the press," within the meaning of Amendment I to the Constitution.

Ex Parte Jackson, 96 U. S. 727 , affirmed to the points

(1) That the power vested in Congress to establish post offices and post roads embraces the regulation of the entire postal system of the country, and that under it Congress may designate what may be carried in the mail and what excluded.

Page 143 U. S. 111

(2) That in excluding various articles from the mails, the object of Congress is not to interfere with the freedom of the press or with any other rights of the people, but to refuse the facilities for the distribution of matter deemed injurious by Congress to the public morals.

(3) That the transportation in any other way of matter excluded from the mails is not forbidden.

These were three applications to this Court for leave to file petitions for writs of habeas corpus. Leave was granted, March 9, 1891, and the petitions were made returnable on the third Monday of the next April. They were duly returned, and were on the 27th of April assigned for argument at the present term. The prayer in each case was for a discharge from arrest for an alleged violation of the provisions of section 3894 of the Revised Statutes, as amended by the Act of September 19, 1890, 26 Stat. 465, c. 908, generally known as the Anti-lottery Act, which is printed in the margin. *

Page 143 U. S. 112

Rapier was arrested under an information in the District for the Southern District of Alabama.

Dupre was arrested under two indictments in the Circuit Court for the Eastern District of Louisiana.

The charge against Rapier, and against Dupre in one indictment, was the mailing of a newspaper containing an advertisement of the Louisiana Lottery, and in the other indictment against Dupre was for the mailing of a letter concerning it.

As a cause for the issue of the writ, Rapier said in his application:

"Your petitioner avers that he is now in the custody of said marshal under or by color of the authority of the United States and in violation of the Constitution of the United States. Your petitioner is advised that the pretended statute under which he is being prosecuted and held is in violation of the Constitution of the United States, and that the said district court is without jurisdiction in the premises."

Dupre, in No. 8, averred that he was

"deprived of his liberty under and by color of the authority of the United States and of said court and in violation of the Constitution of the United States and of his rights as a citizen thereof, because he says that he is advised and therefore avers that the statute of the United States under which he is held and being prosecuted upon said indictment is unconstitutional, null, and void, and particularly obnoxious to and in violation of the First Amendment to said Constitution which forbids Congress' passing any law abridging the freedom of the press, and that therefore said circuit court is and was without jurisdiction in the premises, and he is deprived of his liberty without authority of law."

His petition in No. 9 contained the same averment.

Page 143 U. S. 132

MR. CHIEF JUSTICE FULLER delivered the opinion of the Court.

We are constrained by the circumstances in which we find ourselves placed by the illness and death of Mr. Justice Bradley,

Page 143 U. S. 133

to whom the preparation of the opinion in these cases was committed, to waive any elaboration of our views, and confine ourselves to the expression of the general grounds on which our decision proceeds.

These are applications for discharge by with of habeas corpus from arrest for alleged violations of an Act of Congress approved September 19, 1890, entitled "An act to amend certain sections of the Revised Statutes relating to lotteries, and for other purposes." 26 Stat. 465, c. 908.

The question for determination relates to the constitutionality of section 3894 of the Revised Statutes as amended by that act. In *Ex Parte Jackson,* 96 U. S. 727 , it was held that the power vested in Congress to establish post offices and post roads embraced the regulation of the entire postal system of the country, and that under it Congress may designate what may be carried in the mail and what

excluded; that in excluding various articles from the mails, the object of Congress is not to interfere with the freedom of the press or with any other rights of the people, but to refuse the facilities for the distribution of matter deemed injurious by Congress to the public morals, and that the transportation in any other way of matters excluded from the mails would not be forbidden. Unless we are prepared to overrule that decision, it is decisive of the question before us.

It is argued that in Jackson's case, it was not urged that Congress had no power to exclude lottery matter from the mails; but it is conceded that the point of want of power was passed upon in the opinion. This was necessarily so, for the real question was the existence of the power, and not the defective exercise of it. And it is a mistake to suppose that the conclusion there expressed was arrived at without deliberate consideration. It is insisted that the express powers of Congress are limited in their exercise to the objects for which they were entrusted, and that in order to justify Congress in exercising any incidental or implied powers to carry into effect its express authority, it must appear that there is some relation between the means employed and the legitimate end. This is true, but while the legitimate end of the exercise of the

Page 143 U. S. 134

power in question is to furnish mail facilities for the people of the United States, it is also true that mail facilities are not required to be furnished for every purpose.

The states, before the union was formed, could establish post offices and post roads, and in doing so could bring into play the police power in the protection of their citizens from the use of the means so provided for purposes supposed to exert a demoralizing influence upon the people. When the power to establish post offices and post roads was surrendered to the Congress, it was as a complete power, and the grant carried with it the right to exercise all the powers which made that power effective. It is not necessary that Congress should have the power to deal with crime or immorality within the states in order to maintain that it possesses the power to forbid the use of the mails in aid of the perpetration of crime or immorality.

The argument that there is a distinction between *mala prohibita* and *mala in se,* and that Congress might forbid the use of the mails in promotion of such acts as are universally regarded as *mala in se,* including all such crimes as murder, arson, burglars, etc., and the offense of circulating obscene books and papers, but cannot do so in respect of other matters which it might regard as criminal or immoral, but which it has no power itself to prohibit, involves a concession which is fatal to the contention of petitioners, since it would be for Congress to determine what are within and what without the rule; but we think there is no room for such a distinction here, and that it must be left to Congress, in the exercise of a sound discretion, to determine in what manner it will exercise the power it undoubtedly possesses.

We cannot regard the right to operate a lottery as a fundamental right infringed by the legislation in question; nor are we able to see that Congress can be held, in its enactment, to have abridged the freedom of the press. The circulation of newspapers is not prohibited, but the government declines itself to become an agent in the circulation of printed matter which it regards as injurious to the people. The freedom of communication is not abridged within the intent and meaning

Page 143 U. S. 135

of the constitutional provision unless Congress is absolutely destitute of any discretion as to what shall or shall not be carried in the mails, and compelled arbitrarily to assist in the dissemination of matters condemned by its judgment through the governmental agencies which it controls. That power may be abused furnishes no ground for a denial of its existence, if government is to be maintained at all.

In short, we do not find sufficient grounds in the arguments of counsel, able and exhaustive as they have been, to induce us to change the views already expressed in the case to which we have referred. We adhere to the conclusion therein announced.

The writs of habeas corpus prayed for will therefore be denied, and the rules herein before entered discharged.

*

"Chap. 908. An act to amend certain sections of the Revised Statutes relating to lotteries, and for other purposes."

" *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* that section thirty-eight hundred and ninety-four of the Revised Statutes be, and the same is hereby, amended to read as follows:"

"SEC. 3894. No letter, postal-card or circular concerning any lottery, so-called gift concert, or other similar enterprise offering prizes dependent upon lot or chance, or concerning schemes devised for the purpose of obtaining money or property under false pretences, and no list of the drawings at any lottery or similar scheme, and no lottery ticket or part thereof, and no check, draft, bill, money, postal note or money order for the purchase of any ticket, tickets or part thereof, or of any share or any chance in any such lottery or gift enterprise, shall be carried in the mail or delivered at or through any post office or branch thereof, or by any letter carrier; nor shall any newspaper, circular, pamphlet or publication of any kind containing any advertisement of any lottery or gift enterprise of any kind offering prizes dependent upon lot or chance, or containing any list of prizes awarded at the drawings of any such lottery or gift enterprise, whether said list is of any part or of all of the drawing, be carried in the mail or delivered by any postmaster or letter carrier. Any person who shall knowingly deposit or cause to be deposited, or who shall knowingly send or cause to be sent anything to be conveyed or delivered by mail in violation of this section, or who shall knowingly cause to he delivered by mail anything herein forbidden to be carried by mail, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine for not more than five hundred dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment for each offense. Any person violating any of the provisions of this section may be proceeded against by information or indictment and tried

and punished either in the district at which the unlawful publication was mailed or to which it is carried by mail for delivery according to the direction thereon or at which it is caused to be delivered by mail to the person to whom it is addressed."

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