Cook Vs. Marshall County

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Appeal No. : 196 U.S. 261

Appellant : Cook

Respondent : Marshall County

Judgement :

Cook v. Marshall County - 196 U.S. 261 (1905)
U.S. Supreme Court Cook v. Marshall County, 196 U.S. 261 (1905)

Cook v. Marshall County, Iowa

No. 98

Argued December 9, 12, 1904

Decided January 16, 1905

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ERROR TO THE SUPREME COURT

OF THE STATE OF IOWA

SYLLABUS

The term "original package" is not defined by statute, and while it may be impossible to judicially determine its size or shape, under the principle upon which its exemption while an article of interstate commerce is founded, the term does not include packages which cannot be commercially transported from one state to another.

While a perfectly lawful act may not be impugned by the fact that the person doing it was impelled thereto by a bad motive, where the lawfulness or unlawfulness of the act is made an issue, the intent of the actor may be material in characterizing the transaction, and where a party, in transporting goods from one state to another, selects an unusual method for the express purpose of evading or defying the police laws of the latter state, the commerce clause of the federal Constitution cannot be invoked as a cover for fraudulent dealing.

This Court adheres to its decision in *Austin v. Tennessee,* 179 U. S. 343 , that small pasteboard boxes each containing ten cigarettes, and sealed and stamped with the revenue stamp, whether shipped in a basket or loosely, not boxed, baled, or attached together and not separately or otherwise addressed, but for which the express company has given a receipt and agreement to deliver them to a person named therein in another state, are not original packages, and are not protected under the commerce clause of the federal Constitution from regulation by the police power of the state.

A classification in a state taxation statute in which a distinction is made between retail and wholesale dealers is not unreasonable. and 5007, Iowa Code, imposing a tax on cigarette dealers is not invalid as denying equal protection of the laws to retail dealers because it does not apply to jobbers and wholesalers doing an interstate business with customers outside of the state.

This was a petition by the owner and tenant of a certain

room in the City of Marshalltown, Iowa, addressed to the board of supervisors, for the remission of a tax of $300, imposed upon the business of selling cigarettes, which business was carried on by Charles P. Cook, one of the plaintiffs in error. The petition being denied, an appeal was taken to the district court, where a demurrer was interposed which was sustained by that court, and an appeal taken to the supreme court, where the judgment of the district court was affirmed. 119 Ia. 384.

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MR. JUSTICE BROWN delivered the opinion of the Court.

This case involves the constitutionality of section 5007 of the Iowa Code, imposing a tax of $300 per annum upon every person, and also upon the real property and the owner thereof, whereon cigarettes are sold or kept for sale. The section is printed in full in the margin. *

The facts of the case were that the plaintiff, Charles P. Cook, carried on a retail cigar and tobacco store upon premises leased by him from his co-plaintiff. Cook ordered his cigarettes of the American Tobacco Company at St. Louis. They were delivered to an express company, and brought by such company from St. Louis, or other places outside of the State of Iowa, directly to the place of business of the plaintiff in small pasteboard boxes containing ten cigarettes each, each package being sealed and stamped with the revenue stamp. These packages were shipped absolutely loose, and were not boxed, baled, wrapped, or covered, nor were they in any way attached together. Nothing appears in the record to indicate the means used in transporting these cigarettes from the factory of the manufacturer to the place of business of the retail dealer, and we are left to infer that they were shoveled into and out of a car, and delivered to plaintiffs in that condition. The packages

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were not separately or otherwise addressed, but, at the time they were delivered to the express company, the driver gave a receipt showing the number of packages and the name of the person to whom they were to be sent, retaining a duplicate himself.

The constitutionality of the act as applied to the plaintiffs was attacked upon two grounds:

(1) That it was an attempt to interfere with the power of Congress to regulate commerce between the states.

(2) That it denied to the plaintiffs the equal protection of the laws.

The argument of the plaintiffs is the same as that which was pressed upon our attention a few years ago in *Austin v. Tennessee,* 179 U. S. 343 , that the packages of ten cigarettes were each the original packages in which these cigarettes were imported from other states, and that, under the decisions of this Court in *Brown v. Maryland,* 12 Wheat. 419, *Leisy v. Hardin,* 135 U. S. 100 , and *Schoolenberger v. Pennsylvania,* 171 U. S. 1 , they were entitled to the immunities attaching to original packages. We reviewed these and a large number of other cases in our opinion, and came to the conclusion that these boxes were in no just sense original packages within the spirit of the prior cases, and that their shipment in this form was not a *bona fide* transaction, but was merely a convenient subterfuge for evading the law forbidding the sale of cigarettes within the state. This case differs from that only in the fact that, in the *Austin* case, the packages were thrown loosely into baskets, which were shipped on board the train and carried to Austin's place of business. These baskets, it is argued, might have been considered as the original packages.

This difference, however, was not insisted upon as distinguishing the two cases in principle. Indeed, it was admitted to be one not of "great magnitude or seeming legal significance." The main argument of the plaintiffs was frankly addressed to a reconsideration of the principle involved in the *Austin* case and a re-insistence upon the position there taken

that the packages in which the cigarettes were actually shipped must govern, and that we cannot look to the motives which actuated such shipment, or to the fact that ordinary importations of cigarettes were made in boxes containing a large number of these so-called original packages. We have carefully reconsidered the principle of that case, and, without repeating the arguments then used in the opinions, we have seen no reason to reverse or change the views there expressed.

The term "original package" is not defined by any statute, and is simply a convenient form of expression adopted by Chief Justice Marshall in *Brown v. Maryland* to indicate that a license tax could not be exacted of an importer of goods from a foreign country who disposes of such goods in the form in which they were imported. It is not denied that, in the changed and changing conditions of commerce between the states, packages in which shipments may be made from one state to another may be smaller than those "bales, hogsheads, barrels, or tierces," to which the term was originally applied by Chief Justice Marshall, but, whatever the form or size employed, there must be a recognition of the fact that the transaction is *bona fide* one, and that the usual methods of interstate shipment have not been departed from for the purpose of evading the police laws of the states.

In *Leisy v. Hardin,* 135 U. S. 100 , quarter-barrels, and even one-eighth barrels and cases of beer, were recognized as original packages or kegs, though the size of such packages and the usual methods of transporting beer do not seem to have been made the subject of discussion. There is nothing in the opinion to indicate that it was not legitimate to ship beer in kegs of this size. So, too, in *Schollenberger v. Pennsylvania,* oleomargarine transported and sold in packages of ten pounds weight was recognized as *bona fide,* but it was expressly found by the jury in that case that the package was an original package, as required by the act of Congress, and was of such

"form, size, and weight as is used by producers or shippers for the purpose of securing both convenience in handling and security in transportation

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of merchandise between dealers in the ordinary course of actual commerce, and the said form, size, and weight were adopted in good faith, and not for the purpose of evading the laws of the Commonwealth of Pennsylvania, said package being one of a number of similar packages forming one consignment, shipped by the said company to the said defendant."

While it may be impossible to define the size or shape of an original package, the principle upon which the doctrine is founded would not justify us in holding that any package which could not be commercially transported from one state to another as a separate importation could be considered as an original package.

But it is insisted with much earnestness that, in determining the lawfulness of sales in original packages, we are bound to consider that package as original in which the articles were actually shipped, particularly where Congress, for the purpose of taxation, has prescribed a certain size of package to be separately stamped, and that we have no right to look beyond the letter of the term, and inquire into the motives which dictated the size of the packages in each case. This argument was also made in the *Austin* case, was considered at some length, and held to be unsound. In delivering the opinion, we said (p. 179 U. S. 359):

"The real question in this case is whether the size of the package in which the importation is actually made is to govern, or the size of the package in which *bona fide* transactions are carried on between the manufacturer and the wholesale dealer residing in different states. We hold to the latter view. The whole theory of the exemption of the original package from the operation of state laws is based upon the idea that the property is imported in the ordinary form in which, from time immemorial, foreign goods have been brought into the country."

While it is doubtless true that a perfectly lawful act may not be impugned by the fact that the person doing the act was impelled thereto by a bad motive, yet, where

the lawfulness or unlawfulness of the act is made an issue, the intent of the

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actor may have a material bearing in characterizing the transaction. We have had frequent occasions to treat of this subject in passing upon the validity of legislative acts or municipal ordinances. So, where the lawfulness of the method used for transporting goods from one state to another is questioned, it may be shown that the intent of the party concerned was not to select the usual and ordinary method of transportation, but an unusual and more expensive one, for the express purpose of evading or defying the police laws of the state. If the natural result of such method be to render inoperative laws intended for the protection of the people, it is pertinent to inquire whether the act was not done for that purpose, and to hold that the interstate commerce clause of the Constitution is invoked as a cover for fraudulent dealing, and is no defense to a prosecution under the state law.

The power of Congress to regulate commerce among the states is perhaps the most benign gift of the Constitution. Indeed, it may be said that, without it, the Constitution would not have been adopted. One of the chief evils of the confederation was the power exercised by the commercial states of exacting duties upon the importation of goods destined for the interior of the country or for other states. The vast territory to the west of the Alleghanies had not yet been developed or subdivided into states, but the evil had already become so flagrant that it threatened an utter dissolution of the confederacy. The article was adopted that all of states of the Union might have the benefit of the duties collected at the maritime ports, and to relieve them from the embarrassing restrictions imposed upon the internal commerce of the country. But the same policy which authorizes the use of this power as a shield to protect commerce from the vexatious interference of the states forbids its employment as a sword to assail measures designed for the preservation of the public health, morals, and comfort. states may differ among themselves as to the necessity and scope of such measures, but, so long as they are adopted in good faith, with an eye single to the

public welfare, they are as much entitled to the recognition of the general government as if they were uniformly adopted by all the states.

While this Court has been alert to protect the rights of nonresident citizens, and has felt it its duty, not always with the approbation of the state courts, to declare the invalidity of laws throwing obstacles in the way of free intercommunication between the states, it will not lend its sanction to those who deliberately plan to debauch the public conscience and set at naught the laws of a state. The power of Congress to regulate commerce is undoubtedly a beneficent one. The police laws of the state are equally so, and it is our duty to harmonize them. Undoubtedly a law may sometimes be successfully and legally avoided if not evaded; but it behooves one who stakes his case upon the letter of the Constitution not to be wholly oblivious of its spirit. In this case, we cannot hold that plaintiffs are entitled to its immunities without striking a serious blow at the rights of the states to administer their own internal affairs.

2. The argument that section 5007 of the Iowa Code denies to the plaintiffs the equal protection of the laws is based upon an alleged discrimination arising from the final sentence that

"the provisions of this section shall not apply to the sales by jobbers and wholesalers in doing an interstate business with customers outside of the state."

We are referred in this connection to a series of well known cases arising under the antitrust laws of the several states, to the effect that laws against combinations in trade must be uniform in their application as applied to all persons within the same general class. The leading case upon this point is *Connolly v. Union Sewer Pipe Company* 184 U. S. 540 , where a law of Illinois against combinations to regulate prices and productions, and create restrictions, was held to be invalid by reason of the exemption of agricultural productions or livestock while in the hands of the producer or raiser.

A similar case is that of *Cotting v. Kansas City Stock Yards*

Co., 183 U. S. 79 , wherein a statute of Kansas regulating the prices to be paid for the use of public cattle stockyards was held invalid by reason of the fact that it was intended to apply only to the stockyards of Kansas City, and not to other companies or corporations engaged in like business in other portions of the state.

These cases, however, have but limited application to laws imposing taxes, where the right of classification is held to permit of discrimination between different trades and callings when not obviously exercised in a spirit of prejudice or favoritism. *Kentucky Railroad Tax Cases,* 115 U. S. 321 ; *Magoun v. Illinois Trust & Savings Bank,* 170 U. S. 283 ; *American Sugar Refining Company v. Louisiana,* 179 U. S. 89 ; *Bell's Gap Railroad Company v. Pennsylvania,* 134 U. S. 232 .

This distinction was recognized by MR. JUSTICE HARLAN in *Connolly v. Union Sewer Pipe Company,* on page 184 U. S. 562 , wherein it is said:

"A state may, in its wisdom, classify property for purposes of taxation, and the exercise of its discretion is not to be questioned in a court of the United States so long as the classification does not invade rights secured by the Constitution of the United States."

It can scarcely be doubted that, if the *Connolly* case had dealt with the subject of taxation, a discriminative tax upon producers of agricultural products either greater or less than that imposed upon other manufacturers or producers might have been held valid without denying to either party the equal protection of the laws. The holding in that case was simply that, considering that the object of the statute was to prevent combinations of capital or skill for certain purposes, the exemption of farmers was based upon no sound distinction, and rendered the law invalid as to other classes included within it.

There is a clear distinction in principle between persons engaged in selling cigarettes generally or at retail and those engaged in selling by wholesale to customers without the state. They are two entirely distinct occupations. One sells at retail, the other at wholesale; one to the public generally,

and the other to a particular class; one within the state, the other without. From time out of mind, it has been the custom of Congress to impose a special license tax upon wholesale dealers different from that imposed upon retail dealers. A like distinction is observed between brewers and rectifiers, wholesale and retail dealers in leaf tobacco and liquors, manufacturers of tobacco and manufacturers of cigars, as well as peddlers of tobacco. It may be difficult to distinguish these several classes in principle, but the power of Congress to make this discrimination has not, we believe, been questioned.

Why the legislature should have made the distinction found in section 5007 is not entirely clear, but it probably arose from the belief that the imposition of a license tax upon wholesale exporters of cigarettes would be as much an interference with interstate commerce as the imposition of a similar tax upon importers from abroad was held to be in *Brown v. Maryland.* We are satisfied the section is not open to the objection of denying to the dealers in cigarettes the equal protection of the laws.

The judgment of the Supreme Court is therefore

Affirmed.

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"Sec. 5007. Tax on sale. -- There shall be assessed a tax of $300 per annum against every person, partnership, or corporation, and upon the real property and the owner thereof, within or whereon any cigarettes, cigarettes wrapper, or any paper made or prepared for the use in making cigarettes, or for the purpose of being filled with tobacco for smoking are sold or given way or kept with the intent to be sold, bartered, or given away under any pretext whatever. Such tax shall be in addition to all other taxes and penalties, shall be assessed, collected, and distributed in the same manner as the mulct liquor tax, and shall be a perpetual lien upon all property, both personal and real, used in connection with the business, and the payment of such tax shall not be a bar to prosecution under any

law prohibiting the manufacturing of cigarettes or cigarettes paper, or selling, bartering, or giving away the same. But the provisions of this section shall not apply to the sales by jobbers and wholesalers in doing an interstate business with customers outside of the state."

MR. JUSTICE WHITE, concurring:

The only difference between this and the *Austin* case is that, in this, no basket was used to hold the many small packages shipped at one and the same time to the same person. In my opinion, such fact is not sufficient to take the case out of the reach of the reasoning stated by me for concurring in the decree in the *Austin* case. For the reasons given for my concurrence in that case, I concur in the judgment rendered in this.

THE CHIEF JUSTICE, MR. JUSTICE BREWER, and MR. JUSTICE PECKHAM dissented.