Phillips Vs. Mobile

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Court : US Supreme Court

Decided On : Feb-24-1908

Appeal No. : 208 U.S. 472

Appellant : Phillips

Respondent : Mobile

Judgement :

Phillips v. Mobile - 208 U.S. 472 (1908)
U.S. Supreme Court Phillips v. Mobile, 208 U.S. 472 (1908)

Phillips v. Mobile

No. 113

Argued January 17, 1908

Decided February 24, 1908

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ERROR TO THE SUPREME COURT

OF THE STATE OF ALABAMA

SYLLABUS

An ordinance imposing a license on persons selling beer by the barrel is an exercise of the police power of the state, and as such is authorized by the Wilson Act, 26 Stat. 313, notwithstanding such liquors were introduced into the state in original packages.

The police power of the state is very extensive, and is frequently exercised where it also results in raising revenue, and in this case, an ordinance imposing a license tax on a class of dealers in intoxicating liquor was held to be a police regulation notwithstanding it also produced a revenue. Where a license tax on dealers in a particular article is exacted without reference as to whether the article was manufactured within or without the state, the ordinance imposing it creates no discrimination against manufacturers outside of the state within the meaning of the equal protection clause of the Fourteenth Amendment.

146 Ala. 158 affirmed.

The plaintiff in error herein seeks to reverse a judgment of the Supreme Court of Alabama which reversed a judgment in his favor given by the City Court of Mobile.

The action was brought in the city court by the City of Mobile by a written complaint wherein the city sought to recover from the plaintiff in error (defendant in that court) the sum of $15, the amount of the fine imposed upon him by the recorder for the violation of what is termed the license ordinance of the city, approved March 14, 1904, by failing to obtain and pay for a license under the 28th subdivision of the second section of that ordinance, relating to the selling of beer in that city. The defendant filed a plea, setting up what he alleged was a defense.

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Upon the trial in the city court, the parties agreed upon a statement of facts.

From such statement it appears that the city council, as authorized by the state legislature, had, prior to the complaint in question, adopted an ordinance, 2 of

which imposed a license tax for the fiscal year beginning March 15, 1904,

"on each person, firm, corporation, or association doing business or trading or carrying on any business, trade, or profession, by agent or otherwise, within the limits of the City of Mobile, . . . and such licenses are hereby fixed for such business, trade, or profession . . . as follows."

Subsection 28 of 2 fixes the amount, upon the payment of which the license may be granted in such a case as this, as follows:

"28. *Breweries,* each person, firm, corporation, dealer, brewer, brewery, agent or handler for a brewery, selling beer by the barrel, half barrel, or quarter barrel (this clause is not to include license for wholesale or retail vinous or spirituous liquors), $200."

The statement of facts as agreed upon then continues as follows:

"That the defendant herein is an individual who resides in Mobile, Alabama, and that he is engaged in the business of being a retail beer dealer, for which, under the exhibit hereto, he has paid the amount of his license, as required by said ordinance for and during the fiscal year, beginning March 15, 1904, and ending March 14, 1905, and that said payment having been made, a license therefor was duly issued by the proper authorities of the City of Mobile, authorizing the defendant to carry on the business of retail beer dealer during said time; that the defendant, in addition to his other liquor business, carried on under the authority of said paid license under said ordinance, has likewise, but at the same place, and with the same employees, before the institution of this prosecution in the recorder's court, and since March 15, 1904, been engaged in the business of buying and selling beer in kegs, but only

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under the following circumstances: that the defendant would, by letter or telegram sent from Mobile, Alabama, order from a brewery or breweries owned and conducted by residents and citizens of states other than Alabama, certain

quantities of lager beer, which, pursuant to said orders, would be shipped by continuous interstate transportation by said nonresidents to the defendant at Mobile, Alabama, in kegs, which kegs were, without other packing, loaded into railroad freight box cars and transported by the railroad companies from said breweries in other states to the defendant at Mobile, Alabama. The said purchases by the defendant were outright, and that the defendant by and through said purchases became the owner of said lager beer, to do with as he pleased; that he paid for it usually after its arrival, but never until a bill of lading for each such shipment so paid for had been received by the defendant at Mobile; that the packages in which said beer came were invariably kegs of the ordinary, usual, and customary commercial sizes in which the same is packed for sale and shipment, and that in such usual commercial original packages the same was taken from the car upon arrival at Mobile, and stored in the storehouse or warehouse of the defendant in the City of Mobile until sold by the defendant; that the defendant made sales of said kegs in quantities of one or more to his various customers in and about the City of Mobile and the vicinity thereof, and that such sales were made in contemplation by defendant of deliveries by the defendant in said kegs as original packages, and that the deliveries were thereafter made by delivery wagons owned and operated by the defendant in the City of Mobile to such customers in such original packages. That from the time of the packing and shipment of said beer at the breweries in other states than Alabama until after sale and delivery thereof by the defendant to his various customers in the City of Mobile and the vicinity thereof, none of said kegs as original packages ever became broken or open, but the deliveries by the defendant to his respective customers of said beer was always in the same, original, usual, commercial packages

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in which the same was packed and shipped from the breweries in said foreign states. That each and all of the kegs herein mentioned contained more than one quart of beer. That this mode of business has been conducted by the defendant since March 15, 1904, and still continues, and that, except as is herein above

stipulated, the defendant, neither as a brewery, person, firm, corporation, dealer, brewer, brewery agent, or handler has ever sold beer by the barrel, half barrel, or quarter barrel in the City of Mobile, Alabama, since March 15, 1904. That nearly fifty percent of all the offenses against the ordinances of the City of Mobile ordained to secure peace and order is brought about by the use of intoxicating liquors. Neither the license sued for nor the fine assessed by the recorder has been paid."

The case was submitted to the jury upon this agreed statement.

The plaintiff, the City of Mobile, asked the court to charge the jury that, if they believed the evidence, they must find for the plaintiff. The defendant also asked the court to charge the jury that, if they believed the evidence in this case, they ought to find for the defendant.

The court charged the jury in accordance with the request of the defendants, and a verdict was thereupon rendered in his favor.

On appeal from the judgment to the supreme court, it was reversed, the court holding that the trial court should have refused the request of the defendant, and directed the jury to find a verdict for the plaintiff. The case was therefore remanded with such directions.

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MR. JUSTICE PECKHAM: after making the foregoing statement, delivered the opinion of the Court.

The plaintiff in error asserts that a license tax, such as is provided in this ordinance, is a tax upon the seller of the goods under the license, and therefore a tax upon the goods themselves (*Kehrer v. Stewart,* 197 U. S. 60), and, as they were brought into the state from another state, they cannot be taxed in their original packages, even under the Wilson Act. 26 Stat. 313, c. 728. The ordinance, it is said, is in the nature of a revenue act, and was not enacted in the exercise of the police powers of the state through the city. The Wilson Act provides that the

liquors, upon arrival in a state or territory to which the liquor may be sent, shall be subject to the operation and effect of the laws of the state or territory, enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such state or territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

It is insisted that Congress, by the passage of the Wilson Act, merely removed the impediment to the states reaching the interstate liquor through the police power, and that it intended to, and did, keep in existence any other impediment to state interference with interstate commerce in original packages.

But we are of opinion that this section of the ordinance was clearly an exercise of the police power of the state, and, as such, authorized by the act of Congress. The fact that the city derives more or less revenue from the ordinance in question does not tend to prove that this section was not adopted in

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the exercise of the police power, even though it might also be an exercise of the power to tax. The police power is a very extensive one, and is frequently exercised where it also results in raising a revenue. The police powers of a state form a portion of that immense mass of legislation which embraces everything within the territory of a state not surrendered to the general government; all which may be most advantageously exercised by the states themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for the regulating the internal commerce of a state, and those which respect turnpike roads, ferries, etc., are component parts of this mass. *Gibbons v. Ogden,* 9 Wheat. 1, 22 U. S. 203 ; *New York v. Miln,* 11 Pet. 102, 36 U. S. 139 -141; *Barbier v. Connolly,* 113 U. S. 27 , 113 U. S. 31 .

The sale of liquors is confessedly a subject of police regulation. Such sale may be absolutely prohibited, or the business may be controlled and regulated by the imposition of license taxes, by which those only who obtain licenses are permitted

to engage in it. Taxation is frequently the very best and most practical means of regulating this kind of business. The higher the license, it is sometimes said, the better the regulation, as the effect of a high license is to keep out from the business those who are undesirable, and to keep within reasonable limits the number of those who may engage in it. We regard the question in this case as covered in substance by prior decisions of this Court. *See Vance v. Vandercook Co.,* 170 U. S. 438 , 170 U. S. 446 ; *Reymann Brewing Co. v. Brister,* 179 U. S. 445 ; *Pabst Brewing Co. v. Crenshaw,* 198 U. S. 17 , 198 U. S. 25 ; *Delamater v. South Dakota,* 205 U. S. 93 . Even where the subject of transportation is not intoxicating liquor, this Court has held that goods brought in the original packages from another state, having arrived at their destination, and being at rest there, may be taxed, without discrimination, like other property within the state, even while in the original packages in which they were brought from another state. *American Steel & Wire Co. v. Speed,* 192 U. S. 500 .

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This license tax is exacted without reference to the question as to where the beer was manufactured, whether within or without the state, and hence there is no discrimination in the case.

It is unnecessary to continue the discussion. As we have said, the cases above cited are conclusive in favor of the correctness of the judgment of the Supreme Court of Alabama.

Judgment affirmed.