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**Kidd, Dater and Price Co. Vs. Musselman Grocer Co.**

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**Court :** US Supreme Court

**Decided On :** May-16-1910

**Appeal No. :** 217 U.S. 461

**Appellant :** Kidd, Dater and Price Co.

**Respondent :** Musselman Grocer Co.

**Judgement :**

Kidd, Dater & Price Co. v. Musselman Grocer Co. - 217 U.S. 461 (1910)

U.S. Supreme Court Kidd, Dater & Price Co. v. Musselman Grocer Co., 217 U.S. 461 (1910)

**Kidd, Dater and Price Company v.**

**Musselman Grocer Company**

**No. 149**

**Argued April 13, 14, 1910**

**Decided May 16, 1910**

**217 U.S. 461**

*ERROR TO THE SUPREME COURT*

## SYLLABUS

Where this Court has held a state statute constitutional, it will follow that decision in a case involving the constitutionality of a statute of another state which fundamentally is similar and which is attacked on the same ground by persons similarly situated, and so *held* that the Michigan Sales-in-Bulk Act of 1905, which is fundamentally similar to the Sales-in-Bulk Act of Connecticut, sustained in *Lemieu v. Young*, [211 U. S. 489](#) , is not unconstitutional under the due process or equal protection clauses of the Fourteenth Amendment.

It is within the police power of the state to require tradesmen making sales in bulk of their stock in trade to give notice to their creditors and also to prescribe how such notice shall be given, and unless the provisions as to such notice are unreasonable and arbitrary, a statute to that effect does not amount to deprivation of property, abridge liberty of contract, or deny equal protection of the law within the meaning of the Fourteenth Amendment, nor is the requirement in the Michigan Sales-in-Bulk Act of 1905 that such notice be either personal or by registered mail unreasonable or arbitrary.

151 Mich. 478 affirmed.

The facts, which involve the constitutionality of the Sales-in-Bulk Act of 1905 of Michigan, are stated in the opinion.

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MR. JUSTICE WHITE delivered the opinion of the Court.

This case involves the inquiry whether Act No. 223 of the Public Acts of the State of Michigan of the year 1905, commonly known as the "Sales-in-Bulk Act," is repugnant to the Fourteenth Amendment. The act is copied in the margin. [[Footnote 1](#) ]

The controversy thus arose: early in the year 1906, Frank B. Ford operated a store in the village of Berrien Springs, Michigan, consisting of various departments -- hardware, grocery, meat market, and furniture department, and buggies and machinery department. Prior to May 23, 1906, Ford made sale of the stock included in the buggies and machinery department. On the day mentioned, plaintiff in error, after taking an inventory of the stock in the grocery department, valuing it at cost, less ten percent, purchased the same for \$2,100, deducting an indebtedness due from Ford of \$415.45, and paying the balance in cash. In making purchase, the requirements of the Sales-in-Bulk Act referred to were not complied with in any particular. After the sale, Ford still owned the meat market, worth between eight hundred and a thousand dollars, and the stock of hardware, worth between five and six thousand dollars. He afterwards sold the stock of hardware for about forty-one hundred dollars, and on such

sale the requirements of the Sales-in-Bulk Act were complied with. The meat market was also disposed of, and in February, 1907, bankruptcy proceedings were commenced against Ford, with what result the record does not disclose.

After the sale of the stock of the grocery department to Kidd, Dater & Price Company, plaintiff in error, the Musselman Grocer Company, defendant in error, sued Ford upon an account, and joined as garnishee the Kidd, Dater & Price Company, upon the theory that the latter company incurred a liability to respond as garnishees for the property acquired from Ford, because of noncompliance with the requirements of the act in question. Upon the trial, it was contended by counsel for Kidd, Dater & Price Company that, if valid, the statute did not authorize garnishment proceedings for its enforcement, and that the act was invalid because repugnant both to the Constitution of the state and to the Constitution of the United States. The last contention, with which alone we are concerned, was thus expressed:

"The act violates section 1 of the Fourteenth Amendment to the federal Constitution, which provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

The trial court held the contentions as to the proper construction of the statute and its constitutionality to be without merit, and, by direction, a verdict was returned for the plaintiff, upon which judgment was duly entered. Upon appeal, the Supreme Court of Michigan affirmed the judgment. 151 Mich. 478. It held the Sales-in-Bulk Act to be constitutional, without discussion, upon the authority of a previous decision ( *Spurr v. Travis*, 145 Mich. 721), and further decided that the failure to comply with the act made the sale by Ford to Kidd, Dater & Price Company void as to creditors, and that the plaintiff in garnishment was entitled to avail of the garnishment

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provisions of the compiled laws of the state. This writ of error was then prosecuted.

The errors assigned embody the proposition that the Sales-in-Bulk Act in question was not a valid exercise of the police powers of the state, and is hence repugnant to the Fourteenth Amendment, because wanting in due process of law and denying the equal protection of the laws. Substantially the same arguments are urged as were presented in *Lemieux v. Young*, [211 U. S. 489](#) , decided after this writ of error was sued out. In the *Lemieux* case, the validity of legislation of the general character of that embodied in the Michigan statute was passed on. The Connecticut law, the constitutionality of which was particularly involved, was held to be a valid exercise of the police power of the state, and not to be repugnant to the due process or equal protection clauses of the Fourteenth Amendment, although it avoided, as against creditors, sales by retail dealers in commodities of their entire stock at a single transaction, and not in the regular course of business, unless notice of intention to make such sale was recorded seven days before its

consummation. The opinion in that case thus concluded:

"As the subject to which the statute relates was clearly within the police powers of the state, the statute cannot be held to be repugnant to the due process clause of the Fourteenth Amendment, because of the nature or character of the regulations which the statute embodies, unless it clearly appears that those regulations are so beyond all reasonable relation to the subject to which they are applied as to amount to mere arbitrary usurpation of power. *Booth v. Illinois*, [184 U. S. 425](#) . This, we think, is clearly not the case. So also, as the statute makes a classification based upon a reasonable distinction, and one which, as we have seen, has been generally applied in the exertion of the police power over the subject, there is no foundation for the proposition that the result of the enforcement of the statute will be to deny the equal protection of the laws."

These principles are decisive against the contentions made

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in this case, as we do not find in the provisions of the Michigan statute, when compared with the Connecticut statute, such differences as would warrant us in holding that the regulations of the Michigan statute are so beyond all reasonable relation to the subject to which they are applied as to amount to mere arbitrary usurpation of power. The purpose of both statutes is the same, *viz.*, to prevent the defrauding of creditors by the secret sale of substantially all of a merchant's stock of goods in bulk, and both require notice of such sale, and make void as to creditors a sale without notice. The differences between the two statutes are pointed out by counsel in a summary which we excerpt in the margin. [ [Footnote 2](#) ]

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It is apparent, we think, from this summary that the statutes are alike fundamentally, and differ only in minor and incidental provisions. In some respects the Michigan law is more comprehensive than the Connecticut law, as the latter

law was limited to retail merchants, while the Michigan law affects wholesalers as well as retailers. The requirement of the Michigan law that a full and detailed inventory shall be made does not seem to us to be oppressive and arbitrary, as, in *bona fide* purchases of stocks of goods in bulk, a careful purchaser is solicitous to demand such an inventory, and in the purchase in question an inventory was in fact made. Nor can we say, in view of the ruling in the *Lemieux* case to the effect that a state may, without violating the Constitution of the United States, require that creditors be constructively notified of the proposed sale of a stock of goods in bulk, that a requirement for what is in effect actual notice to each creditor is so unreasonable as to be a mere arbitrary exertion of power, beyond the authority of the legislature to exert. We do not deem it necessary to further pursue the subject, as we think it clearly results, from the ruling in *Lemieux v. Young*, that the Michigan statute in no way offends against the Constitution of the United States, and therefore that the court below was right in so deciding.

*Affirmed.*

[ [Footnote 1](#) ]

"SEC. 1. The sale, transfer, or assignment, in bulk, of any part or the whole of a stock of merchandise, or merchandise and the fixtures pertaining to the conducting of said business, otherwise than in the ordinary course of trade and in the regular prosecution of the business of the seller, transferor, or assignor, shall be void as against the creditors of the seller, transferor, assignor, unless the seller, transferor, assignor, and purchaser, transferee, and assignee, shall at least five days before the sale, make a full, detailed inventory, showing the quantity, and, so far as possible, with the exercise of reasonable diligence, the cost price to the seller, transferor, and assignor, of each article to be included in the sale, and unless the purchaser, transferee, and assignee demand and receive from the seller, transferor, and assignor a written list of names and addresses of the creditors of the seller, transferor, and assignor, with the amount of the indebtedness due or owing to each, and certified by the seller, transferor, and assignor, under oath, to be a full, accurate, and complete list of his creditors, and of his indebtedness, and unless the purchaser, transferee, and assignee shall at least five days before

taking possession of such merchandise, or merchandise and fixtures, or paying therefor, notify personally or by registered mail, every creditor whose name and address are stated in said list, or of which he has knowledge, of the proposed sale, and of the price, terms, and conditions thereof."

"SEC. 2. Sellers, transferors, and assignors, purchasers, transferees, and assignees, under this act, shall include corporations, associations, copartnerships, and individuals. But nothing contained in this act shall apply to sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process."

"SEC. 3. Any purchaser, transferee, or assignee who shall not conform to the provisions of this act shall, upon application of any of the creditors of the seller, transferor, or assignor, become a receiver, and be held accountable to such creditors for all the goods, wares, merchandise, and fixtures that have come into his possession by virtue of such sale, transfer, or assignment: Provided, however, that any purchaser, transferee, or assignee, who shall conform to the provisions of this act, shall not be held in any way accountable to any creditor of the seller, transferor, or assignor, or to the seller, transferor, or assignor, for any of the goods, wares, merchandise, or fixtures that have come into the possession of said purchaser, transferee, or assignee by virtue of such sale, transfer, or assignment."

[ [Footnote 2](#) ]

"1. The Connecticut law relates only to retail merchants; the Michigan law relates to wholesale and retail merchants."

"2. The Connecticut law requires notice to be filed in the town clerk's office; the Michigan law requires notice, either personally or by registered mail, to the creditors, and to this end requires that the seller, transferor, or assignor shall, under oath, certify to a full, accurate, and complete list of his creditors and of his indebtedness, and that the purchaser shall notify, personally or by registered mail, every creditor so certified, of the proposed sale and the conditions thereof."

"3. The Connecticut law requires notice to be filed seven days prior to the sale, and the Michigan law requires five days before completion of sale, the purchaser shall notify, personally or by registered mail, every creditor, etc."

"4. The Connecticut law requires a description in general terms of the property to be sold; the Michigan law requires a full and detailed inventory, showing the quantity, and, so far as possible with the exercise of reasonable diligence, the cost price to the seller, transferor, and assignor, of each article to be included in the sale."

"5. The Michigan law provides that any purchaser not conforming to the provisions of the act shall, on application of any creditor of the seller, become a receiver, and be held accountable to such creditors for all goods, etc.; the Connecticut law simply states that failure to comply with the act shall make the sale void as against the creditors."

"6. The Michigan law provides that, upon compliance with the provisions of the act, a purchaser shall not in any way be held accountable to any creditor of the seller or to the seller for any of the goods so purchased; the Connecticut law is without any such provision."