United States Vs. Grimaud

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Appellant : United States

Respondent : Grimaud

Judgement :

United States v. Grimaud - 220 U.S. 506 (1911)
U.S. Supreme Court United States v. Grimaud, 220 U.S. 506 (1911)

United States v. Grimaud

Nos. 241, 242

Argued February 28, 1910

Affirmed by divided Court March 14, 1910

Restored to docket for reargument April 18, 1910

Reargued March 3, 1911

Decided May 3, 1911

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ERROR TO THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

SYLLABUS

Under the acts establishing forest reservations, their use for grazing or other lawful purposes is subject to rules and regulations established by the Secretary of Agriculture, and, it being impracticable for Congress to provide general regulations, that body acted within its constitutional power in conferring power on the Secretary to establish such rules; the power so conferred being administrative and not legislative, is not an unconstitutional delegation.

While it is difficult to define the line which separates legislative power to make laws and administrative authority to make regulations, Congress may delegate power to fill up details where it has indicated its will in the statute, and it may make violations of such regulations punishable as indicated in the statute, and so *held* that regulations made by the Secretary of Agriculture as to grazing sheep on forest reserves have the force of law, and that violations thereof are punishable, under Act of June 4, 1897, c. 2, 30 Stat. 35, as prescribed in 5388, Rev.Stat.

Congress cannot delegate legislative power, Field v. Clark, 143 U. S. 692 , but the authority to make administrative rules is not a delegation of legislative power, and such rules do not become legislation because violations thereof are punished as public offenses.

Even if there is no express act of Congress making it unlawful to graze sheep or cattle on a forest reserve, when Congress expressly provides that such reserves can only be used for lawful purposes subject to regulations and makes a violation of such regulations an offense, any existing implied license to graze is curtailed and qualified by Congress, and one violating the regulations when promulgated makes an unlawful use of the government's property, and becomes subject to the penalty imposed.

A provision in an act of Congress as to the use made of moneys received from government property clearly indicates an authority to the executive officer authorized by statute to make regulations regarding the property to impose a charge for its use.

Where the penalty for violations of regulations to be made by an executive officer is prescribed by statute, the violation is not made a crime by such officer, but by Congress, and Congress, and not such officer, fixes the penalty, nor is the offense against such, officer but against the United States. 170 F. 205 reversed.

By the Act of March 3, 1891, 26 Stat. 1103, c. 561, the President was authorized from time to time to set apart and reserve, in any state or territory, public lands, wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public forest reservations. And by the Act of June 4, 1897, 30 Stat. 35, c. 2, the purposes of these reservations were declared to be

"to improve and protect the forest within the reservation, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States. . . . All waters on such reservations may be used for domestic, mining, milling, or irrigation purposes under the laws of the state wherein such forest reservations are situated or under the laws of the United States, and the rules and regulations established thereunder."

30 Stat. 36.

It is also provided that nothing in the act should

"be construed as prohibiting the egress or ingress of actual settlers residing within the boundaries of such reservations, . . . nor shall anything herein prohibit any person from entering upon such forest reservations for all proper and lawful purposes, . . . provided that such persons comply with the rules and regulations covering such forest reservations."

There were special provisions as to the sale of timber from any reserve (except those in the State of California, 30 Stat. 35, c. 2; 31 Stat. 661, c. 804), and a requirement

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that the proceeds thereof and from any other forest source should be covered into the Treasury, the Act of February 1, 1905, 33 Stat. 628, c. 288, 5, providing that

"all money received from the sale of any products or the use of any land or resources of said forest reserves shall be covered into the Treasury of the United States, and for a period of five years from the passage of this act shall constitute a special fund available, until expended, as the Secretary of Agriculture may direct, for the protection, administration, improvement, and extension of federal forest reserves."

The act of 1905, as to receipts arising from the sale of any products or the use of any land, was, in some respects, modified by the Act of March 4, 1907. It provided that all moneys received after July 1, 1907, by or on account of forest service timber, or from any other source of forest reservation revenue, shall be covered into the Treasury, provided

"that ten percentum of all money received from each forest reserve during any fiscal year, including the year ending June 30th, 1906, shall be paid at the end thereof by the Secretary of the Treasury to the state or territory in which said reserve is situated, to be expended, as the state or territorial legislature may prescribe, for the benefit of the public schools and public roads of the county or counties in which the forest reserve is situated."

34 Stat. 1270, c. 2907.

The jurisdiction, both civil and criminal, over persons within such reservation, was not to be affected by the establishment thereof

"except so far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision being that the state . . . shall

not, by reason of the establishment . . . [of the reserve] lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of the state."

30 Stat. 36, c. 2.

The original act provided that the management and regulation of these reserves should be by the Secretary

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of the Interior, but, in 1905, that power was conferred upon the Secretary of Agriculture (33 Stat. 628), and, by virtue of those various statutes, he was authorized to

"make provisions for the protection against destruction by fire and depredations upon the public forests and forest reservations . . . , and he may make such rules and regulations and establish such service as will insure the objects of such reservations; namely, to regulate their occupancy and use, and to preserve the forests thereon from destruction, and any violation of the provisions of this act or such rules and regulations shall be punished,"

as prescribed in Rev.Stat. 5388, which, as amended, provides for a fine of not more than $500 and imprisonment for not more than twelve months, or both at the discretion of the court. 26 Stat. 1103, c. 561; 30 Stat. 34, 35, c. 2; 31 Stat. 661, c. 804; 33 Stat. 36, c. 160; 7 Fed.Stat.Anno. 310-317, 296, Supp. 1909, p. 634.

Under these acts, the Secretary of Agriculture, on June 12, 1906, promulgated and established certain rules for the purpose of regulating the use and occupancy of the public forest reservations and preserving the forests thereon from destruction, and among those established was the following:

"Regulation 45. All persons must secure permits before grazing any stock in a forest reserve, except the few head in actual use by prospectors, campers, and travelers, and milch or work animals, not exceeding a total of six head, owned by *bona fide* settlers residing in or near a forest reserve, which are excepted and

require no permit."

The defendants were charged with driving and grazing sheep on a reserve without a permit. The grand jury in the District Court for the Southern District of California, at the November term, 1907, indicted Pierre Grimaud and J. P. Carajous, charging that, on April 26, 1907, after the Sierra Forest Reserve had been established,

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and after regulation 45 had been promulgated,

"they did knowingly, willfully, and unlawfully pasture and graze, and cause and procure to be pastured and grazed, certain sheep (the exact number being to the grand jurors unknown) upon certain land within the limits of and a part of said Sierra Forest Reserve, without having theretofore or at any time secured or obtained a permit or any permission for said pasturing or grazing of said sheep or any part of them, as required by the said rules and regulations of the Secretary of Agriculture,"

the said sheep not being within any of the excepted classes. The indictment concluded,

"contrary to the form of the statutes of the United States in such case made and provided, and against the peace and dignity of the said United States."

The defendants demurred, upon the ground

"(1) that the facts stated did not constitute a public offense, or a public offense against the United States, and (2) that the Acts of Congress making it an offense to violate rules and regulations made and promulgated by the Secretary of Agriculture are unconstitutional, in that they are an attempt by Congress to delegate its legislative power to an administrative officer."

The court sustained the demurrers (170 F. 205), and made a like ruling on the similar indictment in *United States v. Inda,* 216 U. S. 614 . Both judgments were affirmed by a divided court. Afterwards, petitions for rehearing were granted.

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

The defendants were indicted for grazing sheep on the Sierra Forest Reserve without having obtained the permission required by the regulations adopted by the Secretary of Agriculture. They demurred on the ground that the Forest Reserve Act of 1897 was unconstitutional insofar as it delegated to the Secretary of Agriculture power to make rules and regulations, and made a violation thereof a penal offense. Their several demurrers were sustained. The government brought the case here under the clause of the Criminal Appeals Act (March 2, 1907, 34 Stat. 1246, c. 2564) which allows a writ of error where the "decision complained of was based upon the invalidity of the statute."

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The federal courts have been divided on the question as to whether violations of those regulations of the Secretary of Agriculture constitute a crime. The rules were held to be valid for civil purposes in *Dastervignes v. United States,* 122 F. 30; *United States v. Dastervignes,* 118 Fed.199; *United States v. Shannon,* 151 F. 863; *ibid.,* 160 F. 870. They were also sustained in criminal prosecutions in *United States v. Deguirro,* 152 F. 568; *United States v. Domingo,* 152 F. 566; *United States v. Bale,* 156 F. 687; *United States v. Rizzinelli,* 182 F. 675. But the regulations were held to be invalid in *United States v. Blasingame,* 116 F. 654; *United States v. Matthews,* 146 F. 306; *Dent v. United States,* 8 Ariz. 138.

From the various acts relating to the establishment and management of forest reservations, it appears that they were intended "to improve and protect the forest and to secure favorable conditions of water flows." It was declared that the act should not be "construed to prohibit the egress and ingress of actual settlers" residing therein, nor to

"prohibit any person from entering upon such forest reservations for all proper and lawful purposes, including that of prosecuting, locating, and developing mineral resources thereof: provided that such persons comply with the rules and regulations covering such forest reservations."

(Act of 1897, 30 Stat. 36, c. 2.) It was also declared that the Secretary

"may make such rules and regulations and establish such service as will insure the objects of such reservations; namely, to regulate their occupancy and use, and to preserve the forests thereon from destruction, *and any violation of the provisions of this act or such rules and regulations shall be punished,* as is provided in 5388 of the Revised Statutes, as amended."

Under these acts, therefore, any use of the reservation for grazing or other lawful purpose was required to be

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subject to the rules and regulations established by the Secretary of Agriculture. To pasture sheep and cattle on the reservation at will and without restraint might interfere seriously with the accomplishment of the purposes for which they were established. But a limited and regulated use for pasturage might not be inconsistent with the object sought to be attained by the statute. The determination of such questions, however, was a matter of administrative detail. What might be harmless in one forest might be harmful to another. What might be injurious at one stage of timber growth, or at one season of the year, might not be so at another.

In the nature of things, it was impracticable for Congress to provide general regulations for these various and varying details of management. Each reservation had its peculiar and special features, and, in authorizing the Secretary of Agriculture to meet these local conditions, Congress was merely conferring administrative functions upon an agent, and not delegating to him legislative power. The authority actually given was much less than what has been granted to municipalities by virtue of which they make bylaws, ordinances, and regulations for the government of towns and cities. Such ordinances do not declare general rules

with reference to rights of persons and property, nor do they create or regulate obligations and liabilities, nor declare what shall be crimes, nor fix penalties therefor.

By whatever name they are called, they refer to matters of local management and local police. *Brodbine v. Revere,* 182 Mass. 599. They are

"not of a legislative character in the highest sense of the term, and as an owner may delegate to his principal agent the right to employ subordinates, giving to them a limited discretion, so it would seem that Congress might rightfully entrust to the local legislature [authorities] the determination of minor matters."

Butte City Water Co. v. Baker, 196 U. S. 126 .

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It must be admitted that it is difficult to define the line which separates legislative power to make laws from administrative authority to make regulations. This difficulty has often been recognized, and was referred to by Chief Justice Marshall in *Wayman v. Southard,* 10 Wheat. 42, where he was considering the authority of courts to make rules. He there said:

"It will not be contended that Congress can delegate to the courts, or to any other tribunals, powers which are strictly and exclusively legislative. But Congress may certainly delegate to others powers which the legislature may rightfully exercise itself."

What were these nonlegislative powers which Congress could exercise, but which might also be delegated to others was not determined, for he said:

"The line has not been exactly drawn which separates those important subjects which must be entirely regulated by the legislature itself from those of less interest in which a general provision may be made and power given to those who are to act under such general provisions to fill up the details."

From the beginning of the government, various acts have been passed conferring upon executive officers power to make rules and regulations -- not for the government of their departments, but for administering the laws which did govern. None of these statutes could confer legislative power. But when Congress had legislated and indicated its will, it could give to those who were to act under such general provisions "power to fill up the details" by the establishment of administrative rules and regulations, the violation of which could be punished by fine or imprisonment fixed by Congress, or by penalties fixed by Congress, or measured by the injury done.

Thus, it is unlawful to charge unreasonable rates or to discriminate between shippers, and the Interstate Commerce Commission has been given authority to make reasonable rates and to administer the law against discrimination. *Int. Com. Comm. v. Illinois Cent. R. Co.,* 215 U. S. 452 ;

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Int. Com. Comm. v. Chicago, Rock Island &c.; R. Co., 218 U. S. 88 . Congress provided that, after a given date, only cars with drawbars of uniform height should be used in interstate commerce, and then constitutionally left to the Commission the administrative duty of fixing a uniform standard. *St. Louis & Iron Mountain R. Co. v. Taylor,* 210 U. S. 287 . In *Union Bridge Co. v. United States,* 204 U. S. 364 ; *In re Kollock,* 165 U. S. 526 ; *Buttfield v. Stranahan,* 192 U. S. 470 , it appeared from the statutes involved that Congress had either expressly or by necessary implication made it unlawful, if not criminal, to obstruct navigable streams, to sell unbranded oleomargarine, or to import unwholesome teas. With this unlawfulness as a predicate, the executive officers were authorized to make rules and regulations appropriate to the several matters covered by the various acts. A violation of these rules was then made an offense punishable as prescribed by Congress. But, in making these regulations, the officers did not legislate. They did not go outside of the circle of that which the act itself had affirmatively required to be done or treated as unlawful if done. But, confining themselves within the field covered by the statute, they could adopt regulations of the nature they had thus been generally authorized to make in order to administer

the law and carry the statute into effect.

The defendants rely on *United States v. Eaton,* 144 U. S. 677 , where the act authorized the Commissioner to make rules for carrying the statute into effect, but imposed no penalty for failing to observe his regulations. Another section (5) required that the dealer should keep books showing certain facts, and providing that he should conduct his business under such surveillance of officers as the commissioner might by regulation require. Another section declared that, if any dealer should knowingly omit to do any of the things "required by law," he should pay a penalty of a thousand dollars. Eaton failed to keep the

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books required by the regulations. But there was no charge that he omitted "anything required by law," unless it could be held that the books called for by the regulations were "required by law." The court construed the act as a whole, and proceeded on the theory that, while a violation of the regulations might have been punished as an offense if Congress had so enacted, it had, in fact made no such provision so far as concerned the particular charge then under consideration. Congress required the dealer to keep books rendering return of materials and products, but imposed no penalty for failing so to do. The commissioner went much further, and required the dealer to keep books showing oleomargarine received, from whom received, and to whom the same was sold. It was sought to punish the defendant for failing to keep the books required by the regulations. Manifestly this was putting the regulations above the statute. The Court showed that, when Congress enacted that a certain sort of book should be kept, the commissioner could not go further and require additional books; or, if he did make such regulation, there was no provision in the statute by which a failure to comply therewith could be punished. It said that

"if Congress intended to make it an offense for wholesale dealers to omit to keep books and render returns required by regulations of the commissioner, it would have done so distinctly"

-- implying that, if it had done so distinctly, the violation of the regulations would have been an offense.

But the very thing which was omitted in the Oleomargarine Act has been distinctly done in the Forest Reserve Act, which, in terms, provides that "any violation of the provisions of this act or such rules and regulations [of the Secretary] shall be punished" as prescribed in 5388 of the Revised Statutes as amended.

In *Union Bridge Co. v. United States,* 204 U. S. 386 , JUSTICE HARLAN, speaking for the Court, said:

"By the statute in question, Congress declared in effect

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that navigation should be freed from unreasonable obstructions arising from bridges of insufficient height, width of span, or other defects. It stopped, however, with this declaration of a general rule, and imposed upon the Secretary of War the duty of ascertaining what particular cases came within the rule prescribed by Congress, as well as the duty of enforcing the rule in such cases. In performing that duty, the Secretary of War will only execute the clearly expressed will of Congress, and will not, in any true sense, exert legislative or judicial power."

And again, he said in *Marshall Field & Co. v. Clark,* 143 U. S. 694 :

"The legislature cannot delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes or intends to make its own action depend. To deny this would be to stop the wheels of government. There are many things upon which wise and useful legislation must depend which cannot be known to the lawmaking power, and must therefore be a subject of inquiry and determination outside of the halls of legislation."

See also Caha v. United States, 152 U. S. 211 ; *United States v. Bailey,* 9 Pet. 238; *Cosmos Exploration Co. v. Gray Eagle Oil Co.,* 190 U. S. 309 ; *Oceanic Steam Nav. Co. v. Stranahan,* 214 U. S. 333 ; *Roughton v. Knight,* 219 U. S.

537 ; *Smith v. Whitney,* 116 U. S. 167 ; *Ex Parte Reed,* 100 U. S. 22 ; *Gratiot v. United States,* 4 How. 81.

In *Brodbine v. Revere,* 182 Mass. 599, a boulevard and park board was given authority to make rules and regulations for the control and government of the roadways under its care. It was there held that the provision in the act that breaches of the rules thus made should be breaches of the peace, punishable in any court having jurisdiction, was not a delegation of legislative power which was unconstitutional. The court called attention to the fact that the punishment was not fixed by the board, saying that the making of the rules was administrative, while

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the substantive legislation was in the statute, which provided that they should be punished as breaches of the peace.

That

"Congress cannot delegate legislative power is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution."

Marshall Field & Co. v. Clark, 143 U. S. 692 . But the authority to make administrative rules is not a delegation of legislative power, nor are such rules raised from an administrative to a legislative character because the violation thereof is punished as a public offense.

It is true that there is no act of Congress which, in express terms, declares that it shall be unlawful to graze sheep on a forest reserve. But the statutes from which we have quoted declare that the privilege of using reserves for "all proper and lawful purposes" is subject to the proviso that the person so using them shall comply "with the rules and regulations covering said forest reservation." The same act makes it an offense to violate those regulations -- that is, to use them otherwise than in accordance with the rules established by the Secretary. Thus, the implied license under which the United States had suffered its public domain to

be used as a pasture for sheep and cattle, mentioned in *Buford v. Houtz,* 133 U. S. 326 , was curtailed and qualified by Congress to the extent that such privilege should not be exercised in contravention of the rules and regulations. *Wilcox v. Jackson,* 13 Pet. 513.

If, after the passage of the act and the promulgation of the rule, the defendants drove and grazed their sheep upon the reserve in violation of the regulations, they were making an unlawful use of the government's property. In doing so, they thereby made themselves liable to the penalty imposed by Congress.

It was argued that, even if the Secretary could establish regulations under which a permit was required, there was

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nothing in the act to indicate that Congress had intended or authorized him to charge for the privilege of grazing sheep on the reserve. These fees were fixed to prevent excessive grazing, and thereby protect the young growth and native grasses from destruction, and to make a slight income with which to meet the expenses of management. In addition to the general power in the Act of 1897, already quoted, the Act of February first, 1905, 33 Stat. 628, c. 288, 5, clearly indicates that the Secretary was authorized to make charges out of which a revenue from forest resources was expected to arise. For it declares that "all money received from the sale of any products or the use of any land or resources of said forest reserves" shall be covered into the Treasury, and be applied toward the payment of forest expenses. This act was passed before the promulgation of regulation 45, set out in the indictment.

Subsequent acts also provide that money received from "any source of forest reservation revenue" should be covered into the Treasury, and a part thereof was to be turned over to the Treasurers of the respective states, to be expended for the benefit of the public schools and public roads in the counties in which the forest reserves are situated. 34 Stat. 684, c. 3913, 1270, c. 2907.

The Secretary of Agriculture could not make rules and regulations for any and every purpose. *Williamson v. United States,* 207 U. S. 462 . As to those here involved, they all relate to matters clearly indicated and authorized by Congress. The subjects as to which the Secretary can regulate are defined. The lands are set apart as a forest reserve. He is required to make provision to protect them from depredations and from harmful uses. He is authorized "to regulate the occupancy and use and to preserve the forests from destruction." A violation of reasonable rules regulating the use and occupancy of the property is made a crime not by the Secretary, but by Congress. The statute, not the Secretary, fixes the penalty.

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The indictment charges, and the demurrer admits, that Rule 45 was promulgated for the purpose of regulating the occupancy and use of the public forest reservation and preserving the forest. The Secretary did not exercise the legislative power of declaring the penalty or fixing the punishment for grazing sheep without a permit, but the punishment is imposed by the act itself. The offense is not against the Secretary, but, as the indictment properly concludes, "contrary to the laws of the United States and the peace and dignity thereof." The demurrers should have been overruled. The affirmances by a divided court heretofore entered are set aside, and the judgments in both cases

Reversed.