Quong Wing Vs. Kirkendall

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Appeal No. : 223 U.S. 59

Appellant : Quong Wing

Respondent : Kirkendall

Judgement :

Quong Wing v. Kirkendall - 223 U.S. 59 (1912)
U.S. Supreme Court Quong Wing v. Kirkendall, 223 U.S. 59 (1912)

Quong Wing v. Kirkendall

No. 119

Argued December 18, 1911

Decided January 22, 1912

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ERROR TO THE SUPREME COURT

OF THE STATE OF MONTANA

SYLLABUS

A state does not deny equal protection of the laws by adjusting its revenue laws to favor certain industries.

A state, like the United States, although with more restrictions and to a less degree, may carry out a policy even if the courts may disagree as to the wisdom thereof. In carrying out its policy, a state may make discriminations so long as they are not unreasonable or purely arbitrary.

On the record as presented in this case, and without prejudice to determining the question, if raised in a different way, the statute of

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Montana imposing a license fee on hand laundries doe not appear to be an unconstitutional denial of equal protection of the law because it does not apply to steam laundries and because it exempts from its operation laundries not employing more than two women.

The Fourteenth Amendment doe not interfere with state legislation by creating a fictitious equality where there is a real difference.

Quaere whether this statute is aimed directly at the Chinese, in which case it might be a discrimination denying equal protection.

When counsel do not bring the facts before it, the court is not bound to make inquiries.

Courts sometimes enforce laws which would be declared invalid if attacked in a different manner.

39 Mont. 6 affirmed.

The facts, which involve the constitutionality of a laundry license act of Montana, are stated in the opinion.

MR. JUSTICE HOLMES delivered the opinion of the Court.

This is an action to recover $10 paid under duress and protest for a license to do hand laundry work. The plaintiff got judgment in the court of first instance, but this judgment was reversed by the supreme court of the state. 39 Mont. 64. The law under which the fee was exacted imposed the payment upon all persons engaged in laundry business other than the steam laundry business, with a proviso that it should not apply to women so engaged where not more than two women were employed. Rev.Codes, 2776. The only question is whether this is an unconstitutional discrimination depriving the plaintiff of the equal protection of the laws. U.S.Const., Am. XIV.

The case was argued upon the discrimination between the instrumentalities employed in the same business and that between men and women. One like the former was held bad in *In re Yot Sang,* 75 F. 983, and while the latter was spoken of by the supreme court of the state as an exemption of one or two women, it is to be observed that, in 1900, the census showed more women than men engaged in hand laundry work in that state. Nevertheless we agree with the supreme court of the state so far as these grounds are concerned. A state does not deny the equal protection of the laws merely by adjusting its revenue laws and taxing system in such a way as to favor certain industries or forms of industry. Like the United States, although with more restriction and in less degree, a state may carry out a policy, even a policy with which we might disagree. *McLean v. Arkansas,* 211 U. S. 539 , 211 U. S. 547 ; *Armour Packing Co. v. Lacy,* 200 U. S. 226 , 200 U. S. 235 ; *Connolly v. Union Sewer Pipe Co.,* 184 U. S. 540 , 184 U. S. 562 . It may make discriminations, if founded on distinctions that we cannot pronounce unreasonable and purely arbitrary, as was illustrated in *American Sugar Refining*

Co. v. Louisiana, 179 U. S. 89 , 179 U. S. 92 , 179 U. S. 95 ; *Williams v. Fears,* 179 U. S. 270 , 179 U. S. 276 ; *W. W. Cargill Co. v. Minnesota,* 180 U. S. 452 , 180 U. S. 469 . It may favor or discourage the liquor traffic or trusts. The criminal law is a whole body of policy on which states may and do differ. If the state sees fit to encourage steam laundries and discourage hand laundries, that is its own affair. And if, again, it finds a ground of distinction in sex, that is not without precedent. It has been recognized with regard to hours of work. *Muller v. Oregon,* 208 U. S. 412 . It is recognized in the respective rights of husband and wife in land during life, in the inheritance after the death of the spouse. Often it is expressed in the time fixed for coming of age. If Montana deems it advisable to put a lighter burden upon women than upon men with regard to an employment that our people commonly regard as more appropriate for the former, the Fourteenth Amendment does not interfere by creating a fictitious equality where there is a real difference. The particular points at which that difference shall be emphasized by legislation are largely in the power of the state.

Another difficulty suggested by the statute is that it is impossible not to ask whether it is not aimed at the Chinese, which would be a discrimination that the Constitution does not allow. *Yick Wo v. Hopkins,* 118 U. S. 356 . It is a matter of common observation that hand laundry work is a widespread occupation of Chinamen in this country, while, on the other hand, it is so rare to see men of our race engaged in it that many of us would be unable to say that they ever had observed a case. But this ground of objection was not urged, and rather was disclaimed when it was mentioned from the bench at the argument. It may or may not be that, if the facts were called to our attention in a proper way the objection would prove to be real. But even if, when called to our attention, the facts should be taken notice of judicially,

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whether because they are only the premise for a general proposition of law, *Prentis v. Atlantic Coast Line Co.,* 211 U. S. 210 , 211 U. S. 227 ; *South Ottawa v. Perkins,* 94 U. S. 260 ; *Telfair v. Stead,* 2 Cranch 407, 6 U. S. 418 , or for any other reason, still there are many things that courts would notice if brought

before them that beforehand they do not know. It rests with counsel to take the proper steps, and if they deliberately omit them, we do not feel called upon to institute inquiries on our own account. Laws frequently are enforced which the court recognizes as possibly or probably invalid if attacked by a different interest or in a different way. Therefore, without prejudice to the question that we have suggested, when it shall be raised, we must conclude that so far as the present case is concerned, the judgment must be affirmed.

Judgment affirmed.

MR. JUSTICE LAMAR, dissenting:

I dissent from the conclusions reached in the first branch of the opinion because, in my judgment, the statute, which is not a police but a revenue measure, makes an arbitrary discrimination. It taxes some and exempts others engaged in identically the same business. It does not graduate the license, so that those doing a large volume of business pay more than those doing less. On the contrary, it exempts the large business and taxes the small. It exempts the business that is so large as to require the use of steam, and taxes that which is so small that it can be run by hand. Among these small operators there is a further discrimination, based on sex. It would be just as competent to tax the property of men and exempt that of women. The individual characteristics of the owner do not furnish a basis on which to make a classification for

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purposes of taxation. It is the property or the business which is to be taxed, regardless of the qualities of the owner. A discrimination founded on the personal attributes of those engaged in the same occupation, and not on the value or the amount of the business, is arbitrary.

"A classification must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed."

Connolly v. Union Sewer Pipe Co., 184 U. S. 560 .