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Appellant : Red "c" Oil Manufacturing Co.

Respondent : North Carolina

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U.S. Supreme Court Red "C" Oil Manufacturing Co. v. North Carolina, 222 U.S. 380 (1912)

Red "C" Oil Manufacturing Company v.

Board of Agriculture of North Carolina

No. 141

Argued December 21, 22, 1911

Decided January 9, 1912

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

SYLLABUS

This Court will not lightly attribute improper motives to the lawmaking power, and will not, on a mere charge, regard a statute imposing inspection fees as an act to raise revenue. *Ellis v. United States,* 206 U. S. 246 . *Prima facie,* the charge for inspection in an act otherwise constitutional is reasonable. *Western Union Tel. Co. v. New Hope,* 187 U. S. 417 . The fact that oil inspection laws have been passed in a majority of the states shows that oil is a proper subject for police regulation.

In this case, this Court cannot conclude that the charge for inspecting oil, provided by the North Carolina oil inspection law of 1909, is

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so seriously in excess of what is necessary for the object designed to be effected as to justify the imputation of bad faith and the conclusion that the law is one for revenue and not merely for inspection. *Patpsco Guano Co. v. South Carolina,* 171 U. S. 354 .

This Court cannot determine what the actual operation of a statute will be after its enactment by going outside the record and taking judicial knowledge of what has happened since the filing of the transcript here.

If the inspection fees exacted under a state statute average largely more than enough to pay expenses, the presumption is that the state will reduce them to conform to the constitutional authority to impose fees solely to reimburse for expense of inspection.

What relief shall be accorded to one who may sustain injury by the failure of a state to protect his rights under the Constitution cannot be determined before there has been such failure.

A requirement by the legislature that illuminating oils must be safe, pure, and afford a satisfactory light establishes a sufficient primary standard, and remitting to the proper state board the establishment of rules and regulations to determine what oils measure up to those standards does not amount to a delegation of legislative power.

Where one complains that regulations promulgated under legislative authority by a state board are unreasonable and oppressive, he should seek relief by applying to that board to modify them.

A state police statute cannot be declared invalid because in the opinion of this Court it does not accord with sound policy. The appeal for redress must be to the lawmaking power.

In the year 1909, North Carolina passed an act for the inspection, under the control of the Board of Agriculture, of all kerosene or other illuminating oils sold or offered for sale in the state. The object of such inspection was declared to be in order to determine the safety and value of such oils for illuminating purposes. A charge of one-half cent per gallon was fixed, which law declared should be paid to the Commissioner of Agriculture for the purpose of defraying expenses connected with the inspection, testing, and analyzing of oils in this state. It was provided that the act should go into effect on July 1, 1909.

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Two days after, *viz.,* on July 3, 1909, this suit was commenced by the appellant, the Red "C" Oil Manufacturing Company, a corporation of the State of Maryland. The defendants named were the Board of Agriculture of North Carolina and the members of the Board, and the object of the bill was to restrain the enforcement of the act referred to because it was charged to be not a proper exertion of the police power of the state, and besides was asserted to be repugnant to the Constitution of the United States.

The bill averred that the complainant was a large shipper of illuminating oils from the State of Maryland into the State of North Carolina, and that it did an extensive

business in North Carolina in dealing in such oil. The provisions of the assailed act were set out *in extenso,* as also the terms of an act of the general assembly approved on March 9, 1909, which forbade the collection of a tax upon dealers in oils, authorized by 58 of the Revenue Act, passed at the same session,

"from any persons, dealers, or corporations paying the taxes imposed under the inspection law enacted at the present session of the General Assembly, entitled, 'An Act to Provide for the Inspection of Illuminating Oils and Fluids;' Provided, however, if the said oil inspection act should be held invalid, 58, Revenue Act, shall remain in full effect."

In the preamble of this latter act, it was recited that the "inspection tax" was much greater than the "tax" imposed under 58 of the Revenue Act, and that "it is not the purpose of the General Assembly that the said tax shall be cumulative." In addition to averring the appointment of inspectors by the Board of Agriculture, and the purpose of the Board to enforce the collection of the inspection taxes, there were set forth the regulations adopted by the Board under the authority of the statute.

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The particulars by which it was asserted the statutory charge was shown to be unlawful may be thus summarized: the charge or "tax" was not for the purpose of defraying the cost of the inspection of oil, but was imposed for revenue upon the goods of complainant shipped into the State of North Carolina from the State of Maryland, and was hence in conflict with the commerce clause and the Fourteenth Amendment. The law, it was charged, was not a police regulation, since an inspection of oil "for value and luminosity" was not within the competency of legislative action, and the public safety was not concerned, since illuminating oils, as the result of modern methods of manufacture, were no longer explosive. The charge or tax, it was averred, was more than double the amount necessary for the inspection proposed, and would realize annually a surplus for the state treasury of more than $20,000. It was further charged that the act fixed no standard for the guidance of the Board of Agriculture, but in effect arbitrary powers were conferred

upon the Board, and, indeed, legislative authority had been delegated to it. The power thus conferred, it was also alleged, had been exerted in an arbitrary manner, and tests prescribed which were not necessary "in order to procure the safety of oil, to protect the people from the sale of oils which are dangerous." Certain of the regulations promulgated by the Board were also assailed as being uncertain, unreasonable, illegal, and oppressive.

On the filing of the bill, an order was entered temporarily restraining the defendants from enforcing, as against the complainant, the statute and the rules and regulations of the Board thereunder. The restraining order was subsequently amended by requiring the complainant, "pending the final determination of this cause," to "pay the one-half cent per gallon upon all illuminating oils sold by it in the state, as prescribed in said act." The defendants jointly and severally answered the bill, and took

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issue upon all the matters alleged in the complaint. As regards the allegation that the inspection fee was unnecessarily high and would yield a large surplus over the expenses, the defendants said:

"Defendants say that they have made no estimate that any excess may be left after paying all the proper and necessary expenses of inspection, and these defendants say that they have no means of actually approximating the amount that the tax of one-half cent per gallon will yield, or the expenses of equipping and maintaining a competent inspection force and department. That the legislature thought that one-half cent a gallon would be necessary to pay the expenses of inspection, and these defendants are informed and believe, and therefore aver, that this is as low an inspection tax as there is to be found in any state having oil inspection laws, and lower than the taxes in a great many of the states. In some states, there is a graduated scale of taxation of more than one-half cent for small quantities and less than one-half cent for large quantities. The said act expressly provides, in 6, that the Commissioner of Agriculture shall include in his report to the General Assembly an account of the expenses under this act. The said act

also provides that all money paid for inspection taxes shall be kept by the State Treasurer as a distinct fund, to be styled, 'The Oil Inspection Fund.' At the end of one year, it can be seen exactly what the inspection costs and how much is paid for it by dealers in oil, and until it shall appear that said tax is excessive, a charge to that effect by complaint is premature and ill considered."

Both parties filed affidavits in support of their respective claims. The matter was heard upon a motion for an injunction upon the bill, answer, and affidavits just referred to. Elaborately examining all the contentions, the court (172 F. 695) concluded that the complainant was not entitled to relief by injunction, and that,

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as respects the other relief asked, the bill should be dismissed. A final decree was thereupon entered, and this appeal was then taken.

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

In view of the full reference to and the review of decided cases made by the district judge in the opinion by

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him delivered, we content ourselves with a comparatively brief discussion of the questions pressed at bar.

These all come to two propositions, which are thus stated by counsel:

"1. That the North Carolina oil inspection act is unconstitutional and void in that, under the guise of exercising a police power, the General Assembly of North Carolina is really attempting to impose a revenue tax upon interstate commerce."

"2. That the said inspection act is unconstitutional in that the General Assembly of North Carolina has attempted to delegate to the Board of Agriculture legislative powers."

As to the first proposition, we append in the margin a clear and adequate summary of the act, made by the judge below. *

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The bill, as we have stated, was filed when the statute had been in force but two days, and when, of necessity, the result of its operations was conjectural. We are asked now to hold that, although the General Assembly declared in the statute that the charge or tax authorized to be imposed was made "for the purpose of defraying the expenses connected with the inspection, testing, and analyzing of oils in this state," the real purpose of the legislature was to levy a tax for revenue in violation of the commerce clause of the Constitution. Reading the statute as an entirety or in connection with the supplemental legislation of March 9, 1909, we find no adequate reason for imputing to the General Assembly of North Carolina an attempt to do one thing under the guise or pretense of doing another. The mere designation of the exaction as a tax is not sufficient to warrant the deduction

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that the charge authorized for the inspection was not one really for such purpose. We cannot lightly attribute improper motives to the lawmaking power. *Florida &c.; Ry. Co. v. Reynolds,* 183 U. S. 471 ; *Ellis v. United States,* 206 U. S. 246 . Putting out of view, therefore, questions of motive, two subsidiary contentions remain; *viz:* (a) that oil is not a proper subject of inspection, and (b) that the tax in question is so excessive on its face as to be unconstitutional. The conceded fact that in thirty-five states of the Union oil inspection laws are in force is sufficient to adversely dispose of the first of these contentions. As stated by the court below:

"While there is much diversity of opinion in respect to the danger of explosion from the use of kerosene oil, and of the power to ascertain its illuminating capacity, it is

evident that the question has not so far passed beyond the domain of debate that the legislature may not subject it

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to reasonable inspection before permitting its sale in the state. The court cannot say that such a law has no reasonable relation to the public safety or welfare."

The contention that the tax is so excessive on its face as to conclusively evidence the unconstitutionality of the burden, if imposed as a mere inspection charge, is, we think, also without merit. *Prima facie* the charge must be deemed to be reasonable. *Western Union Telegraph Co. v. New Hope,* 187 U. S. 419 . Again, as said by the court below:

"It appears from an examination of the various oil inspection laws in force in the United States that the charges for inspection vary from one-half to one and one-half cents per gallon, and that, in states wherein population and other conditions are similar to those in this state, the charge is about the same as that fixed by the act."

Looking at the elements which may have possibly entered into the calculation of the General Assembly as to what would be a reasonable inspection charge, we cannot, to quote from the opinion in the *Patapsco Guano* case, *Patapsco Guano Co. v. North Carolina,* 171 U. S. 354 ,

"conclude that the charge is so seriously in excess of what is necessary for the objects designed to be effected as to justify the imputation of bad faith, and change the character of the act."

In disposing of the contention just stated, we are not at liberty to travel outside of the record and take judicial notice of the operation of the act since the transcript of record was filed in this Court. We here reiterate what was said in the case last cited (p. 171 U. S. 354):

"If the receipts are found to average largely more than enough to pay the expenses, the presumption would be that the legislature would moderate the

charge."

If the trial made of the act establishes the fact to be as asserted, that the exaction in question is excessive, the presumption is that, in the

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orderly conduct of the public business of the state, the necessary correction will be made to cause the act to conform to the authority possessed, which is to impose a fee solely to recompense the state for the expenses properly incurred in enforcing the authorized inspection. What relief should be awarded in the event the Legislature of North Carolina failed in its positive duty in this particular is not a question open for consideration upon this record, as no such failure of duty on the part of the legislature had occurred or could possibly have happened when this suit was commenced, a few days after the passage of the act.

The remaining contention is that the act is repugnant to the state constitution because it attempts to delegate to the Board of Agriculture the exercise of legislative powers. The legislative requirement was that the illuminating oils furnished in North Carolina should be safe, pure, and afford a satisfactory light, and it was left to the Board of Agriculture to determine what oils would measure up to these standards. We think a sufficient primary standard was established, and that the claim that legislative powers were delegated is untenable. *Buttfield v. Stranahan,* 192 U. S. 492 ; *Union Bridge Co. v. United States,* 204 U. S. 364 ; *St. Louis Iron Mountain & S. Ry. Co. v. Taylor,* 210 U. S. 281 ; *United States v. Grimaud,* 220 U. S. 506 .

We have not attempted to enumerate the objections urged against the rules and regulations adopted by the Board of Agriculture. The court below was clearly right when it observed that if, as the complainant alleged, the standard of safety fixed by the Board was unreasonably high, or the method of testing oil unsatisfactory, and not such as was in general use, or the regulations in other respects were unjust or oppressive, it should seek relief by applying to the Board of Agriculture to modify them. A law cannot be declared invalid because, in the opinion

of the court, it does not accord with sound policy. The appeal for redress in such case must be to the lawmaking power.

Decree affirmed without prejudice.

* The act provides:

SEC. 1. "That all kerosene or other illuminating oils sold or offered for sale in this state shall be subject to inspection and test to determine the safety and value for illuminating purposes." All manufacturers, wholesalers, and jobbers, before selling or offering for sale, in this state, any kerosene or other oil for illuminating purposes are required to file with the Commissioner of Agriculture a statement showing that they desire to do business in the state, and to furnish the name or brand of the oil or oils which they desire to sell, with the names and address of the manufacturer, and that such oil will comply with the requirements of the law.

SEC. 2. Power is conferred upon the Commissioner of Agriculture to collect samples of any illuminating oil offered for sale in this state, and have the same analyzed. The inspection of oil, as authorized by the act, is to be made under the direction of the Board of Agriculture, which is authorized

"to make all necessary rules and regulations for the inspection of such oil, and to adopt standards of safety, purity, or absence from objectionable substances, and luminosity, when not in conflict with this act, and which they may deem necessary to provide the people of the state with satisfactory illuminating oil."

The Board of Agriculture is required to appoint oil inspectors not exceeding in number one from each congressional district, whose compensation shall not exceed $1,000 a year and expenses. They are given power to examine all barrels, tanks, or other vessels containing kerosene or other illuminating oils, to see that they are properly tagged, and shall, as directed, collect and test samples of oil offered for sale in different sections of the state, and when instructed, collect and send samples to the Department of Agriculture for examination.

SEC. 3.

"For the purpose of defraying the expenses connected with the inspection, testing, and analyzing oils in this state, there shall be paid to the commissioner a charge of one-half cent per gallon, which payment shall be made before delivery to agents, dealers, or consumers in this state."

Provision is made for attaching to each barrel, tank car, and other containers, a tag or stamp to be furnished by the Commissioner of Agriculture, showing that the tax has been paid. When oil is shipped in tank cars or other large containers, the manufacturer or jobber shall give notice to the Commissioner of Agriculture of every shipment, with the name and address of the person, company, or corporation to whom it is sent, and the number of gallons, on the day the shipment is made.

SEC. 4.

"All moneys received under the provisions of this act shall be paid into the state treasury and kept as a distinct fund to be styled 'The Oil Inspection Fund.' All checks or orders in payment for tags or stamps shall be made payable to the State Treasurer. The Commissioner of Agriculture is authorized to draw out of said fund, upon his warrant, such sums as may be necessary to pay all expenses incurred in connection with this act, including salary to oil chemist, or chemists, cost of inspection, blanks,"

etc.

SEC. 5.

"The State Treasurer shall, on the first day of June and December of each year, turn into the general fund of the state all moneys of the oil fund in his hands in excess of the amount drawn out by the Commissioner of Agriculture for expenses."

SEC. 6. The Commissioner of Agriculture is required to include in his report to the General Assembly an account of the operations and expenses under the act.

SEC. 7. Provides that, whenever complaint is made to the Department of Agriculture in regard to the illuminating qualities of any oil sold in this state, the commissioner shall cause a sample of said oil or oils complained of to be procured, and have the same thoroughly analyzed and tested as to safety and illuminating qualities. If such analysis or other tests shall show that the oil is either unsafe or of inferior illuminating quality, its sale shall be forbidden, and report of the result or results shall be sent to the party making the complaint and to the manufacturer of such oil.

The remaining sections prescribe penalties for violation of the provisions of the law. The act went into effect July 1, 1909.