Barbour Vs. Georgia

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Court : US Supreme Court

Decided On : Apr-14-1919

Appeal No. : 249 U.S. 454

Appellant : Barbour

Respondent : Georgia

Judgement :

Barbour v. Georgia - 249 U.S. 454 (1919)
U.S. Supreme Court Barbour v. Georgia, 249 U.S. 454 (1919)

Barbour v. Georgia

No. 191

Submitted January 24, 1919

Decided April 14, 1919

249 U.S. 454

ERROR TO THE SUPREME COURT

OF THE STATE OF GEORGIA

SYLLABUS

One who acquires liquor after approval and before the effective date of a state law making its possession unlawful is not deprived by the law of his property without due process. P. 249 U. S. 459 .

It must be presumed that the liquor was acquired between those dates when the date of acquisition is not shown. *Id.*

Whether such a law would be constitutional as applied to one who acquired liquor before its enactment -- not decided. P. 249 U. S. 460 .

A federal question which was not decided by the state supreme court because not so raised as to evoke its decision under the local practice will not be decided by this Court. *Id.*

146 Ga. 667 affirmed.

The case is stated in the opinion.

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MR. JUSTICE BRANDEIS delivered the opinion of the Court.

The Georgia prohibitory liquor law was approved November 18, 1915, but, by its terms, did not become effective

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until May 1, 1916. Under it, Barbour was convicted for having in his possession on June 10, 1916, more than one gallon of vinous liquor. Georgia Laws, Extraordinary Session 1915, Part 1, title 2, No. 4, 16 and 30, pp. 90, 99, 105. He asserted that the liquor had been acquired by him before May first, and contended that the statute, if construed to apply to liquor so acquired, was void under the Fourteenth Amendment. The supreme court of the state overruled this contention and affirmed the sentence. 146 Ga. 667. The case comes here on writ of error under 237 of the

Judicial Code.

That a state which has enacted a prohibitory law may forbid the mere possession of liquor within its borders was decided in *Crane v. Campbell,* 245 U. S. 304 , but it did not appear there when the liquor had been acquired. Whether the prohibition of sale may be constitutionally applied to liquor acquired before the enactment of the statute was raised in *Bartemeyer v. Iowa,* 18 Wall. 129, and *Beer Co. v. Massachusetts,* 97 U. S. 25 , 97 U. S. 32 -33, but was not decided. The question presented here, however, is simpler. For the exact date when Barbour acquired the liquor is not shown, and we must assume, as the Supreme Court of Georgia did, that it was acquired during the period of five months and twelve days between the enactment of the law and the date when it became effective. Does the Fourteenth Amendment, by its guaranty to property, prevent a state from protecting its citizens from liquor so acquired?

A state, having the power to forbid the manufacture, sale, and possession of liquor within its borders, may, if it concludes to exercise the power, obviously postpone the date when the prohibition shall become effective in order that those engaged in the business and others may adjust themselves to the new conditions. Whoever acquires, after the enactment of the statute, property thus declared noxious takes it with full notice of its infirmity, and that,

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after a day certain, its possession will, by mere lapse of time, become a crime. It is well settled that the federal Constitution does not enable one to stay the exercise of a state's police power by entering into a contract under such circumstances. *Diamond Glue Co. v. United States Glue Co.,* 187 U. S. 611 , 187 U. S. 615 . *Compare Calder v. Michigan,* 218 U. S. 591 , 218 U. S. 599 . Nor can he do so by acquiring property.

The defendant raised, in his amended motion for a new trial, the further objection that the law was unconstitutional as applied to him, because the liquor had been acquired before the statute was enacted; but the trial judge denied the motion and

declined to approve any of the grounds on which it was based. In accordance with the state practice, its supreme court therefore refused to consider the point. *Dickens v. State,* 137 Ga; *Harris v. State,* 120 Ga.196. Consequently the question is not before us, *Louisville & Nashville Railroad Co. v. Woodford,* 234 U. S. 46 , 234 U. S. 51 , and on it we express no opinion.

The judgment of the Supreme Court of Georgia is

Affirmed.