

Thornton Vs. Duffy

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Court : US Supreme Court

Decided On : Dec-20-1920

Appeal No. : 254 U.S. 361

Appellant : Thornton

Respondent : Duffy

Judgement :

Thornton v. Duffy - 254 U.S. 361 (1920)

U.S. Supreme Court Thornton v. Duffy, 254 U.S. 361 (1920)

Thornton v. Duffy

No. 76

Argued November 8, 1920

Decided December 20, 1920

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ERROR TO THE SUPREME COURT

OF THE STATE OF OHIO

SYLLABUS

1. The construction placed on the constitution and laws of a state by its highest court must be accepted by this Court in determining their consistency with the federal Constitution. P. [254 U. S. 368](#) .

2. The right of a state to enforce a legitimate public policy includes the right to change and improve its regulations for that purpose, even to the making of changes which conflict with the arrangements and contracts made by individuals in reliance on previous regulations. P. [254 U. S. 369](#) .

3. The State of Ohio, in carrying out its policy of workmen's compensation (see *Jeffrey Manufacturing Co. v. Blagg*, [235 U. S. 571](#)), first allowed employers, in certain cases, the privilege of paying directly to their workmen or their dependents the compensation provided by law, instead of contributing to the state fund established to insure such payments; but afterwards, acting under power reserved over the subject, it took away this privilege from employers who indemnified themselves by insurance. *Held* that the change did not impair the constitutional rights of property or of contract of an employer who had elected to take the privilege of direct payment and had insured himself with an insurance company before the change was made. P. [254 U. S. 366](#) .

9 Oh.St. 120 affirmed.

The case is stated in the opinion.

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MR. JUSTICE Mc KENNA delivered the opinion of the Court.

This suit was brought by the plaintiff in error, Thornton, against defendants in error, hereinafter called defendants,

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composing the Industrial Commission of Ohio. The Cleveland Stamping & Tool Company filed an answer and cross-petition. From a judgment sustaining demurrers to the petition of Thornton, and to the answer and cross-petition of the Cleveland Stamping & Tool Company, there was an appeal to the court of appeals, and thence by proceeding in error to the supreme court of the state, by which court the judgment was affirmed. These writs of error are prosecuted by Thornton and the Cleveland Company.

Thornton's petition and the pleadings of the Cleveland Company are substantially the same. We use, for convenience, Thornton's petition, and state its allegations narratively as follows: he is a manufacturer at Cleveland, Ohio, employing more than forty men. The Industrial Commission determined, as required by the act of the General Assembly of the state, passed February 26, 1913, and comprised in 1465-41a to 1465-106, General Code of Ohio, that he was of sufficient financial ability to render certain the payment of compensation to injured employees, the benefits provided by that act. He, on the ___ day of January, 1914, elected to accept the act and proceed under it, has since complied with its provisions, has abided by the rules of the Commission and all that is required of him by the act.

January, 1914, he made a written contract with the Aetna Insurance Company of Hartford, Connecticut, a duly licensed company, wherein that company agreed to pay to his injured employees the compensations required by the act of the assembly for injuries or upon death, and agreed to indemnify him against the liabilities and requirements of the act.

December 1, 1917, the Commission adopted a resolution which recited the act of the Assembly of the state of February 16, 1917, amending 1465-101, General Code of Ohio, and an act of the General Assembly passed

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March 20, 1917, amending 1465-69, General Code of the state, and an act passed March 21, 1917, and resolved and declared that no employers should be permitted to pay or furnish directly to injured employees, or the dependents of killed

employees, the compensation and benefits provided for in 1465-41a to 1465-106, General Code of Ohio, if such employers, by contract or otherwise, shall provide for the insurance of the payment by them of such compensation and benefits, or shall indemnify themselves against loss sustained by the direct payment thereof. The Commission revoked its previous findings and authorizations, the revocation to stand as of January 10, 1918, and directed notices of the revocation and the resolution of the Commission to be given to all employers, including Thornton, and these notices will be sent unless restrained.

The resolution of the Commission, the revocation of its previous action, and the notices which it threatens to send are based upon the sole ground that it is its duty so to do under the laws of the state indicated above.

The contract of Thornton with the Aetna Company is a valid subsisting contract, and he has a right to continue it until it be cancelled, and that the sending of the notices as above stated, and the revocation of the findings of fact that the Commission had made and its refusal to certify to Thornton its findings of fact, as provided for in 1465-69, will cause him irreparable injury and damage for which he has no adequate remedy at law. Further, that there are more than 675 employers situated as Thornton is, and that therefore the questions involved are of common and general interest, and as it is impractical to bring them all into court, he sues for the benefit of all.

The laws invoked by the Commission do not justify its action, and if it be determined that they do, then they, and the acts of the Commission under them, are in contravention of the Fourteenth Amendment of the Constitution

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of the United States, and of Article I, 10, of that Constitution, and also of the Constitution of the state of Ohio.

An injunction, temporary and permanent, against the action of the Commission was prayed and a temporary restraining order granted, but it was subsequently dissolved, and, as we have said, a demurrer was sustained to the petition and

judgment entered dismissing the suit. It, as we have also said, was affirmed by the supreme court of the state.

The various acts of legislation of the state were sustained by the courts of the state, and hence their validity under the Constitution of the state is removed from the controversy, and our inquiry is confined to the effect upon them of the Constitution of the United States.

In support of the contention that the Constitution of the United States makes the legislation and the action under it illegal, it is said that insurance against loss is the right of everybody, and, specifically, it is the right of employers to indemnify themselves against their liability to employees, and that the right is so fixed and inherent as to be an attribute of liberty removed from the interference of the state.

The provisions of the legislation are necessary elements in the consideration of the contention: (1) The Constitution of Ohio authorizes workmen's compensation Laws. Explicitly, it provides for the passage of laws establishing a state fund to be created by compulsory contributions thereto by employers, the fund to be administered by the state. The constitutionality of a law passed under that authorization was sustained by this Court in *Jeffrey Manufacturing Co. v. Blagg*, [235 U. S. 571](#) , against the charge that its classifications were arbitrary and unreasonable. And workmen's compensation Laws of other states have been declared inoffensive to the Fourteenth Amendment of the Constitution of the United States. *New York Central Railroad Co. v. White*, [243 U. S. 188](#) ; *Mountain Timber Co. v. Washington*, [243 U. S. 219](#) . (2)

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The law that was passed provided that every employer (there were exceptions not necessary to mention) in the month of January, 1914, and semiannually thereafter, should pay into the state insurance fund the amount of premium determined and fixed by the state liability board of awards for the particular employment or occupation of the employer. It was, however, also provided (we quote from the opinion of the Supreme Court):

"that certain employers, under certain conditions, might elect to pay individually, or from a benefit fund, department. or association compensation to workmen and their dependents for death or injury received in the course of their employment."

This was an alternative granted, and its conditions were fulfilled, it was contended, and that, upon the faith of the fulfillment of it and in indemnity against contingencies, plaintiff entered into a contract of insurance with the Aetna Company. It was further contended that the alternative and the insurance against its requirements became property, and inviolable; became contracts with immunity from impairment. To the contention, the supreme court replied that the alternative of contribution to the state fund of dealing with the employees directly was a privilege that need not have been granted, and that therefore, to effect the purpose of the Constitution and law, could be withdrawn, that the right to withdraw the privilege depended not merely upon the police power of the state, "but rather directly upon the constitutional grant of power," and that, besides, the right was reserved in that provision of 22 of the original act which gave to the Commission power to

"at any time change or modify its findings of fact . . . if, in its judgment, such action is necessary or desirable to secure or assure a strict compliance with all of the provisions of this act. . . ."

And it was said that the experience of four years demonstrated the necessity or desirability of a change, and that therefore it was made.

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The meaning thus ascribed to 22 we must accept. It expressed a continuing condition upon the concession to employers to deal directly with their employees, and the Industrial Commission, by the power reserved, could terminate the concession at any time.

There was, besides, subsequent and empowering legislation in the amendment of March 20, 1917, as the supreme court pointed out. That act specifically limits the

privilege of electing between directly dealing with employees and contribution to the state fund to those employers "who do not desire to insure the payment thereof or indemnify themselves against loss sustained by direct payment thereof." The court hence decided that it became the duty of the Commission to change or modify its findings. And it was also decided that the act was not only clearly within the power of the state, but was

"in furtherance of the purpose and intention of the Constitution and the law, to create and maintain one insurance fund, to be administered by the state."

We repeat, we must accept the decision of the court as the declaration of the legislation and the requirement of the constitution of the state, as much a part of both as if expressed in them (*Douglass v. County of Pike*, [101 U. S. 677](#)), and we are unable to yield to the contention that the legislation or the requirement transcends the power of the state, or in any way violates the Constitution of the United States. The law expressed the constitutional and legislative policy of the state to be that the compensation to workmen for injuries received in their employment was a matter of public concern, and should not be left to the individual employer or employee, or be dependent upon or influenced by the hazards of controversy or litigation, or inequality of conditions. There was an attempt at the accommodation of the new policy to old conditions in the concession to employers to deal directly with their employees, but there was precaution against failure in the

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provision of 22 giving discretion to the Commission to withdraw the concession. After a few years' experience, that discretion was turned into a duty, and, by the amendment of March 20, 1917, the concession was taken away from those employers who indemnified themselves by insurance. This was considered necessary to execute the policy of the state, and we are unable to yield to the contention that property rights or contract rights had accrued against it. To assert that the first steps of a policy make it immutable is to assert that imperfections and errors in legislation become constitutional rights. This is a narrow conception of

sovereignty. It is, however, not new, and we have heretofore been invoked to pronounce judgment upon it. Complying, we said that an exercise of public policy cannot be resisted because of conduct or contracts done or made upon the faith of former exercises of it upon the ground that its later exercises deprive of property or invalidate those contracts. *Louisville & Nashville Railroad Co. v. Mottley*, [219 U. S. 467](#) .

We are not disposed to extend the discussion. Indeed, we think the case is in narrow compass. We are not called upon to controvert the right to insure against contingent losses or liabilities, or to minimize the value of insurance to business activities and enterprises, or discuss the general power or want of power of the state over it. We are only called upon to consider its relation to, and possible effect upon, the policy of a workmen's compensation law, and we can readily see that it may be, as it is said the experience of Ohio demonstrated, inimical to that policy to permit the erection of an interest or a power that may be exerted against it or its subsidiary provisions. This was the view of the supreme court of the state, and, by it, the court justified the power conferred upon and exercised by the Commission. *See Mountain Timber Co. v. Washington, supra*.

Judgment affirmed.

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THE CHIEF JUSTICE, concurring.

To compel an employer to insure his employee against loss from injury sustained in the course of the employment without reference to the negligence of the employee and, at the same time, to prohibit the employer from insuring himself against the burden thus imposed, it seems to me, if originally considered, would be a typical illustration of the taking of property without due process and a violation of the equal protection of the law.

But, in view of the decision in *Mountain Timber Co. v. Washington*, [243 U. S. 219](#) , sustaining the constitutionality of a law of the State of Washington which

necessarily excluded the possibility of the insurance by the employer of the burden in favor of his employees which the statute in that case imposed, I do not think I am at liberty to consider the subject as an original question, but am constrained to accept and apply the ruling in that case made, and, for that reason, I concur in the judgment now announced.

MR. JUSTICE Mc REYNOLDS dissents.

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