Mccloskey Vs. Tobin

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Court : US Supreme Court

Decided On : Mar-01-1920

Appeal No. : 252 U.S. 107

Appellant : Mccloskey

Respondent : Tobin

Judgement :

McCloskey v. Tobin - 252 U.S. 107 (1920)
U.S. Supreme Court McCloskey v. Tobin, 252 U.S. 107 (1920)

McCloskey v. Tobin

No. 79

Submitted November 12, 1919

Decided March 1, 1920

252 U.S. 107

ERROR TO THE COURT OF CRIMINAL APPEALS

OF THE STATE OF TEXAS

SYLLABUS

The rights under the Fourteenth Amendment of a layman engaged in the business of collecting and adjusting claims are not infringed by a state law prohibiting the solicitation of such employment. P. 252 U. S. 108 .

Affirmed.

The case is stated in the opinion.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

Article 421 of the Penal Code of Texas defined, with much detail, the offense of barratry. In *McCloskey v. San Antonio Traction Co.,* 192 S.W. 1116, a decree for an injunction restraining the plaintiff in error from pursuing the practice of fomenting and adjusting claims was reversed on the ground that this section had superseded the common law offense of barratry and that, by the Code, "only an attorney at law is forbidden to solicit employment in any suit himself or by an agent." Article 421 was then amended (Act March 29, 1917, c. 133) so as to apply to any person who "shall seek to obtain

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employment in any claim to prosecute, defend, present or collect the same by means of personal solicitation of such employment. . . ." Thereafter, McCloskey was arrested on an information which charged him with soliciting employment to collect two claims, one for personal injuries, the other for painting a buggy. He applied for a writ of habeas corpus, which was denied both by the county court and the court of criminal appeals. The case comes here under 237 of the Judicial Code, McCloskey having claimed below, as here, that the act under which he was arrested violates rights guaranteed him by the Fourteenth Amendment.

The contention is that, since the state had made causes of action in tort as well as in contract assignable, *Galveston &c.; Ry. Co. v. Ginther,* 96 Tex. 295, they had become an article of commerce, that the business of obtaining adjustment of

claims is not inherently evil, and that therefore, while regulation was permissible, prohibition of the business violates rights of liberty and property and denies equal protection of the laws. The contention may be answered briefly. To prohibit solicitation is to regulate the business, not to prohibit it. *Compare Brazee v. Michigan,* 241 U. S. 340 . The evil against which the regulation is directed is one from which the English law has long sought to protect the community through proceedings for barratry and champerty. Co.Litt. p. 368 (Day's Edition, 1812, vol. 2, 701 [368, b.]); 1 Hawkins, Pleas of the Crown, 6th ed., 524; *Peck v. Heurich,* 167 U. S. 624 , 167 U. S. 630 . Regulation which aims to bring the conduct of the business into harmony with ethical practice of the legal profession, to which it is necessarily related, is obviously reasonable. *Ford v. Munroe,* 144 S.W. 349. The statute is not open to the objections urged against it.

Affirmed.