

Michaelson Vs. United States

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Appeal No. : 266 U.S. 42

Appellant : Michaelson

Respondent : United States

Judgement :

Michaelson v. United States - 266 U.S. 42 (1924)

U.S. Supreme Court Michaelson v. United States, 266 U.S. 42 (1924)

Michaelson v. United States ex Rel. Chicago, St. Paul,

Minneapolis & Omaha Railway Company

Nos. 246 and 232

Argued April 9, 10, 1924

Decided October 20, 1924

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CERTIORARI TO THE CIRCUIT COURT OF APPEALS

SYLLABUS

1. The Clayton Act, October 15, 1914, 21, 22, c. 323, 38 Stat. 738, provides that any person who shall willfully disobey any writ, etc., of any district court of the United States or court of the District of Columbia, by doing any act or thing therein or thereby forbidden, if of such character as to constitute also a criminal offense under any statute of the United States or law of the state in which committed, shall be proceeded against as in the statute

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provided; that, in all such cases, the trial may be by the court, or, upon demand of the accused, by a jury, and shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information, the accused, upon conviction, to be punished by fine or imprisonment, or both, the fine to be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or, where several are so damaged, be apportioned among them as the court may direct. Concerning this,

HELD

(a) That the proceeding contemplated is for the prosecution of criminal contempts exclusively, the discretion given the court regarding the payment of fine to private complainants being incidental and subordinate to the dominating purpose of the proceeding, which is to vindicate the authority of the court and punish the act of disobedience as a public wrong. P. [266 U. S. 64](#) .

(b) A proceeding for criminal contempt, committed by disobedience of an injunction, unlike the proceeding for civil contempt, is between the public and the defendant, is an independent proceeding at law, and no part of the original cause. *Gompers v. Bucks Stove & Range Co.*, [221 U. S. 418](#) . *Id.*

(c) The courts of the United States, when called into existence and vested with jurisdiction over any subject, at once become possessed of the power to punish for contempt, which is inherent in all courts and essential to the administration of justice. P. [266 U. S. 65](#) .

(d) Insofar as concerns the lower federal courts, although the attributes which inhere in this power and are inseparable from it can neither be abrogated nor rendered practically inoperative, the power, within limits not precisely defined, may be regulated by Congress. P. [266 U. S. 66](#) .

(e) The above statutory provision for a jury trial, applicable only where the act or thing complained of is also a crime in the ordinary sense, and not interfering with the power to deal summarily with contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor purporting to extend to cases of failure or refusal to comply with decrees requiring affirmative action, does not invade the powers of the courts as intended by the Constitution, and is within the regulatory power of Congress. *Id.*

2. Section 20 of the Clayton Act, concerning the granting of injunctions "in any case between an employer and employees" involving or growing out of a dispute concerning terms or conditions of employment, includes such cases in which the employers are railroad companies. P. [266 U. S. 68](#) .

3. Railroad employees who, in a dispute over wages, go out on strike in defiance of a decision of the Railroad Labor Board, and, in furtherance of the strike, conspire together and commit unlawful acts in restraint of the railroad's interstate commerce, remain "employees" of the railroad in the sense of 20 of the Clayton Act. P. [266 U. S. 67](#) .

4. In such a case, existence of the status of employment at the time when acts constituting a contempt are committed is not necessary in order to bring into operation the provision for jury trial made by 22. P. [266 U. S. 69](#) .

5. Abusive language, assembling in numbers, picketing, and other acts by strikers, for the purpose of intimidating and preventing men desirous of securing

employment with a railway company, *held prima facie* violation of a penal statute of Wisconsin (R.S. 1921, 4466c). *Id.*

6. Section 22 of the Clayton Act, although reading that the trial "may" be by the court, or, upon demand of the accused, by jury, is to be construed, in the light of its history and purpose, as giving the accused the absolute right of trial by jury. P. [266 U. S. 70](#) .

291 F. 940 (No. 246) reversed.

The first case was a certiorari to review a judgment of the circuit court of appeals affirming a judgment of the district court which adjudged the petitioners guilty of contempt after a trial in which their request for a jury was denied.

The second case presents a question certified by the circuit court of appeals, which is set forth in the opinion, *post*, p. [266 U. S. 70](#) .

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MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

These cases were argued together, and will be disposed of in one opinion. The principal question presented in the *Michaelson* case, and the sole question in the *Sandefur* case, is whether the provision of the Clayton Act of October 15, 1914, c. 323, 38 Stat. 738, 21, 22, requiring a jury trial in certain specified kinds of contempt

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is constitutional. Subordinate questions presented in the *Michaelson* case are: (a) whether petitioners were, or whether it is necessary that they should be, "employees" within the meaning of 20 of the act; (b) whether the acts alleged to constitute the contempt were also criminal offenses under the statutes of the United States or of the state where committed; (c) whether the provision for a jury is mandatory or permissive.

The petitioners in the *Michaelson* case were striking employees of the Chicago, St. Paul, Minneapolis & Omaha Railway Company, and, with others, were proceeded against by bill in equity for combining and conspiring to interfere with interstate commerce by picketing and the use of force and violence, etc. After a hearing, a preliminary injunction was granted. Subsequently, proceedings in contempt were instituted in the district court charging petitioners with sundry violations of the injunction, and a rule to show cause was issued. Upon the answer and return to the rule, petitioners applied for a jury trial under 22 of the Clayton Act, but the district court denied the application and proceeded without a jury. At the conclusion of the hearing, the petitioners were adjudged guilty and sentenced to pay fines in various sums, and in default of payment to stand committed to jail until such fines were paid. Thereupon the case was taken to the circuit court of appeals by writ of error, and by that court the judgments were affirmed. 291 F. 940.

First. Is the provision of the Clayton Act, granting a right of trial by jury constitutional? The court below held in the negative, on the ground that the power of a court to vindicate or enforce its decree in equity is inherent, is derived from the Constitution as a part of its judicial power, and that Congress is without constitutional authority to deprive the parties in an equity court of the right of trial by the chancellor.

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If the statute now under review encroaches upon the equity jurisdiction intended by the Constitution, a grave constitutional question in respect of its validity would be presented, and it therefore becomes our duty, as this Court has frequently said, to construe it, "if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts upon that score." *Panama Railroad Co. v. Johnson*, [264 U. S. 375](#) .

Shortly stated, the statute provides that willful disobedience of any lawful writ, process, order, rule, decree, or command of any district court of the United States

or any court of the District of Columbia by doing any act or thing forbidden, if such act or thing be of such character as to constitute also a criminal offense under any statute of the United States or law of any state in which the act is committed, shall be proceeded against as in the statute provided. In all such cases, the "trial may be by the court, or, upon demand of the accused, by a jury," and "such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information." Upon conviction, the accused is to be punished "by fine or imprisonment, or both," the fine to be

"paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct."

The provision for trial by jury upon demand, as we shall presently show, is mandatory, and the question to be answered is whether it infringes any power of the courts vested by the Constitution and unalterable by congressional legislation. We first inquire whether the proceeding contemplated by the statute is for a civil or a criminal contempt. If it be the latter -- since the proceeding for criminal contempt, unlike that for civil contempt, is between the public and the defendant, is an independent proceeding at law, and no part of the original cause

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(*Gompers v. Buck's Stove & Range Co.*, [221 U. S. 418](#) , [221 U. S. 444](#) -446, [221 U. S. 451](#)) -- we are at once relieved of the doubt which might otherwise arise in respect of the authority of Congress to set aside the settled rule that a suit in equity is to be tried by the chancellor without a jury unless he choose to call one as purely advisory. We think the statute, reasonably construed, relates exclusively to criminal contempts. The act or thing charged must be of such character as also to constitute a crime. Prosecution must be in conformity with the practice in criminal cases. Upon conviction, the accused is to be punished by fine or imprisonment, or both. True, the fine may be paid to the United States or to the complainant or divided among the parties injured by the act, as the court may direct; but that does not alter the essential nature of the proceeding contemplated

by the statute. The discretion given the court in this respect is incidental and subordinate to the dominating purpose of the proceeding, which is punitive, to vindicate the authority of the court and punish the act of disobedience as a public wrong. See *Re Merchants Stock Co., Petitioner*, [223 U. S. 639](#) , [223 U. S. 641](#) ; *Matter of Christenson Engineering Co.*, [194 U. S. 458](#) , [194 U. S. 461](#) ; *Merchants' Stock & Grain Co. v. Board of Trade*, 187 F. 398, 401, *Kreplik v. Couch Patents Co.*, 190 F. 565, 572. "If the contempt savors of criminality, and the sentence is penal, that, according to the books appears to be enough." *Long Wellesley's Case*, 2 Russ. & M. 639, 667.

But it is contended that the statute materially interferes with the inherent power of the courts, and is therefore invalid. That the power to punish for contempts is inherent in all courts has been many times decided, and may be regarded as settled law. It is essential to the administration of justice. The courts of the United States, when called into existence and vested with jurisdiction

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over any subject, at once become possessed of the power. So far as the inferior federal courts are concerned, however, it is not beyond the authority of Congress (*Ex parte Robinson*, 19 Wall. 505, [86 U. S. 510](#) -511; *Bessette v. W. B. Conkey Co.*, [194 U. S. 324](#) , [194 U. S. 326](#)); but the attributes which inhere in that power and are inseparable from it can neither be abrogated nor rendered practically inoperative. That it may be regulated within limits not precisely defined may not be doubted. The statute now under review is of the latter character. It is of narrow scope, dealing with the single class where the act or thing constituting the contempt is also a crime in the ordinary sense. It does not interfere with the power to deal summarily with contempts committed in the presence of the court or so near thereto as to obstruct the administration of justice, and is in express terms carefully limited to the cases of contempt specifically defined. Neither do we think it purports to reach cases of failure or refusal to comply affirmatively with a decree -- that is, to do something which a decree commands -- which may be enforced by coercive means or remedied by purely compensatory relief. If the reach of the statute had extended to the cases which are excluded, a different and more

serious question would arise. But the simple question presented is whether Congress may require a trial by jury upon the demand of the accused in an independent proceeding at law for a criminal contempt which is also a crime. In criminal contempts, as in criminal cases, the presumption of innocence obtains. Proof of guilt must be beyond reasonable doubt, and the defendant may not be compelled to be a witness against himself, *Gompers v. Buck's Stove & Range Co.*, *supra*, p. [221 U. S. 444](#) . The fundamental characteristics of both are the same. Contempts of the kind within the terms of the statute partake of the nature of crimes in all essential particulars.

"So truly are they crimes that it seems to be proved that, in the early law, they were

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punished only by the usual criminal procedure, 3 Transactions of the Royal Historical Society, N.S. p. 147 (1885), and that, at least in England, it seems that they still may be and preferably are tried in that way."

Gompers v. United States, [233 U. S. 604](#) , [233 U. S. 610](#) -611. This is also pointed out by counsel in the case of *O'Shea v. O'Shea and Parnell*, L.R. 15 Prob.Div. 50, 61, and, in the course of one of the opinions in that case, it is said (p. 64):

"The offense of appellant [criminal contempt] is certainly a criminal offense. I do not say that it is an indictable offense, but, whether indictable or not, it is a criminal offense, and it is an offense, and the only offense that I know of, which is punishable at common law by summary process."

The proceeding is not between the parties to the original suit, but between the public and the defendant. The only substantial difference between such a proceeding as we have here, and a criminal prosecution by indictment or information is that, in the latter, the act complained of is the violation of a law, and in the former, the violation of a decree. In the case of the latter, the accused has a constitutional right of trial by jury, while in the former he has not. The statutory

extension of this constitutional right to a class of contempts which are properly described as "criminal offenses" does not, in our opinion, invade the powers of the courts as intended by the Constitution, or violate that instrument in any other way.

Second. We come, then, to consider the reasons which, assuming the validity of the statute, are nevertheless urged to preclude the right to a jury trial. The first contention is that petitioners were not "employees" within the meaning of the act, because, having gone out on strike, the relationship of employer and employee had come to an end. The dispute out of which arose the unlawful acts alleged in the bill was one between the employer, on the one hand, and its employees, on the other, respecting terms

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or conditions of employment -- namely, the scale of wages to be paid employees of the class to which defendants belonged. This dispute had been submitted to the Railroad Labor Board, which, after a hearing, had fixed the scale to be paid; but the defendants declined to abide by the action of the board, and went out on strike, and, in furtherance thereof, conspired together and committed various unlawful acts in restraint of respondent's interstate commerce. The purpose of the strike was to bring about an increase of wages. The case was obviously within the provisions of 20, in respect of injunctions. The court below held that, while ordinarily this would be so, it was not so in this instance because (1) the employer was a railroad company bound to continue its operations in the public interest, and therefore not on an equal footing with its employees, and (2) that, since the scale of wages had been fixed by the Railroad Labor Board, the strike, in effect, was against the board, a governmental instrumentality, "to be classed with the insurrection of the Boston policemen." To say that railroad employees are outside the provisions of the statute is not to construe the statute, but to ingraft upon it an exception not warranted by its terms. If Congress had intended such an exception, it is fair to suppose that it would have said so affirmatively. The words of the act are plain, and in terms inclusive of all classes of employment, and we find nothing in them which requires a resort to judicial construction. The reasoning of the court below really does not present a question of statutory construction, but rather an

argument justifying the suppositious exception on the ground of necessity or of policy -- a matter addressed to the legislative, and not the judicial, authority. Neither was the strike one against the Labor Board. It was a strike notwithstanding the action of the board, but against the respondent. The policemen's strike was against a governmental employer. The Labor Board was not an employer, but an arbitrator, whose determination, moreover, had only the force of

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moral suasion. *Pennsylvania Railroad Co. v. Labor Board*, [261 U. S. 72](#) , [261 U. S. 84](#) . Moreover, it is to be observed that 21 and 22, which deal with the subject of contempts, do not contain the limitation in respect of employment contained in 20. Section 21 provides: "That *any person* who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court," etc., "shall be proceeded against for his said contempt as hereinafter provided." Section 22 provides for a trial by jury upon demand of the accused in all cases within the purview of the act. Whether the general language of 21 should be limited by construction because it forms a part of an act dealing with unlawful restraints and monopolies, or for any other reason, we need not now stop to inquire. It is enough to say that, in a controversy such as we have here at least, it does not require the existence of the status of employment at the time the acts constituting the contempt are committed in order to bring into operation the provision for a trial by jury.

We take no time to discuss the contention that the acts alleged as constituting contempt do not also constitute criminal offenses. According to the petition for the rule and affidavits in support of it, these consisted of abusive language, assembling in numbers, picketing and other acts, for the purpose of intimidating and preventing men desirous of securing employment with the railway company from entering such employment. *Prima facie*, at least, this violated the statute of Wisconsin, where the acts were committed (R.S.1921, 4466c), [*](#) and this is enough.

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Neither is it necessary to consider at length the final contention that the jury provision of the statute is not mandatory, but permissive. It is mandatory. The argument to the contrary is based on the use of the permissive word "may" -- "such trial may be by the court, or, upon demand of the accused, by a jury." Strictly and grammatically considered, the word "may" limits both phrases, "by the court" and "by a jury," but to construe it as contended in practical effect would be to subvert the plain intent and good sense of the statute. And this is made clear by the history leading up to and accompanying the enactment, as well as the reports of the committees having the bill in charge. The Judiciary Committee of the House, in reporting the bill, said:

"The trial is by the court (1) *in case no jury be demanded by the accused*; (2) if the contempt be in the presence of the court or so near thereto as to obstruct the administration of justice; or (3) if the contempt be charged to be in disobedience of any lawful writ, process, order, rule, decree or command entered in any suit or action brought or prosecuted in the name or on behalf of the United States. *In other cases the trial is to be by jury.* "

House Report No. 613, 62d Cong., 2d Sess.

The intent of Congress in adopting the provision was to give to the accused a right of trial by jury, not merely to vest authority in the judge to call a jury at his discretion. See [Supervisors v. United States](#), 4 Wall. 435, [71 U. S. 446](#) -447.

The *Sandefur* case is here on certificate requesting the instruction of this Court upon the following question of law:

"Do those provisions of 22 of the Clayton Act which require a conviction upon a jury trial as a condition precedent to punishment for contempt, upon demand for a jury trial in the case specified, impose a valid restriction upon the inherent judicial power of the United States district courts? "

The facts stated in the certificate bring the case within the principle of what has already been said, and the question must be answered in the affirmative.

No. 246 reversed and remanded to the district court for further proceedings in conformity with this opinion.

No. 232, answer: Yes.

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"Section 4466c. Any person who by threats, intimidation, force or coercion of any kind shall hinder or prevent any other person from engaging in or continuing in any lawful work or employment, either for himself or as a wage worker, or who shall attempt to so hinder or prevent, shall be punished by fine not exceeding one hundred dollars or by imprisonment in the county jail not more than six months, or by both fine and imprisonment in the discretion of the court."

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