

Buck Vs. Kuykendall

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Court : US Supreme Court

Decided On : Mar-02-1925

Appeal No. : 267 U.S. 307

Appellant : Buck

Respondent : Kuykendall

Judgement :

Buck v. Kuykendall - 267 U.S. 307 (1925)

U.S. Supreme Court Buck v. Kuykendall, 267 U.S. 307 (1925)

Buck v. Kuykendall

No. 345

Argued November 25, 1924

Decided March 2, 1925

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES

FOR THE WESTERN DISTRICT OF WASHINGTON

SYLLABUS

1. Section 4, of c. 111, Laws of Washington, 1921, which prohibits common carriers for hire from using the highways by auto vehicles between fixed termini or over regular routes without having obtained from the Director of Public Works a certificate declaring that public convenience and necessity require such operation is primarily not a regulation to secure safety on highways or to conserve them, but a prohibition of competition, and, as applied to one desirous of using the highways as a common carrier of passengers and express purely in interstate commerce, is a violation of the Commerce Clause, besides defeating the purpose expressed in acts of Congress giving federal aid for construction of interstate highways. P. [267 U. S. 315](#) .

2. A party who has received no benefit from and who does not rely upon a statute is not estopped from assailing it as unconstitutional merely because he vainly endeavored to comply with it. P. [267 U. S. 316](#) .

295 Fed.197, 203, reversed.

Appeal from a decree of the district court dismissing a bill for an injunction. See 295 Fed.197; *id.* 203. The opinion is printed as amended by order, June 8, 1925.

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MR. JUSTICE BRANDEIS delivered the opinion of the Court.

This is an appeal, under 238 of the Judicial Code, from a final decree of the Federal Court for Western Washington dismissing a bill brought to enjoin the enforcement of 4 of chapter 111 of the Laws of Washington of 1921. That section prohibits common carriers for hire from using the highways by auto vehicles between fixed termini or over regular routes without having first obtained from the director of public works a certificate declaring that

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public convenience and necessity require such operation. The highest court of the state has construed the section as applying to common carriers engaged exclusively in interstate commerce. *Northern Pacific Ry. Co. v. Schoenfeldt*, 123 Wash. 579; *Schmidt v. Department of Public Works*, 123 Wash. 705. The main question for decision is whether the statute, so construed and applied, is consistent with the federal Constitution and the legislation of Congress.

Buck, a citizen of Washington, wished to operate an auto stage line over the Pacific Highway between Seattle, Washington, and Portland, Oregon, as a common carrier for hire exclusively for through interstate passengers and express. He obtained from Oregon the license prescribed by its laws. Having complied with the laws of Washington relating to motor vehicles, their owners and drivers (*Carlsen v. Cooney*, 123 Wash. 441), and alleging willingness to comply with all applicable regulations concerning common carriers, Buck applied there for the prescribed certificate of public convenience and necessity. It was refused. The ground of refusal was that, under the laws of the state, the certificate may not be granted for any territory which is already being adequately served by the holder of a certificate, and that, in addition to frequent steam railroad service, adequate transportation facilities between Seattle and Portland were already being provided by means of four connecting auto stage lines, all of which held such certificates from the State of Washington. * Re Buck, P.U.R.1923E, 737. To enjoin interference by its officials with the operation of the projected

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line, Buck brought this suit against Kuykendall, the director of public works. The case was first heard, under 266 of the Judicial Code, before three judges on an application for a preliminary injunction. They denied the application. 295 F.197. A further application for the injunction made after amending the bill was likewise denied. 295 F. 203. Then the case was heard by the district judge upon a motion to dismiss the amended bill. The final decree dismissing the bill was entered without further opinion. *See also Interstate Motor Transit Co. v. Kuykendall*, 284 F. 882.

That part of the Pacific Highway which lies within the State of Washington was built by it with federal aid pursuant to Act July 11, 1916, c. 241, 39 Stat. 355, as amended by Act Feb. 28, 1919, c. 69, 40 Stat. 1189, 1200, and Federal Highway Act Nov. 9, 1921, c. 119, 42 Stat. 212. Plaintiff claimed that the action taken by the Washington officials, and threatened, violates rights conferred by these federal acts and guaranteed both by the Fourteenth Amendment and the commerce clause. In support of the decree dismissing the bill, this argument is made. The right to travel interstate by auto vehicle upon the public highways may be a privilege or immunity of citizens of the United States. Compare [73 U. S. Nevada](#), 6 Wall. 35. A citizen may have, under the Fourteenth Amendment, the right to travel and transport his property upon them by auto vehicle. But he has no right to make the highways his place of business by using them as a common carrier for hire. Such use is a privilege which may be granted or withheld by the state, in its discretion, without violating either the due process clause or the equal protection clause. *Packard v. Banton*, [264 U. S. 140](#) , [264 U. S. 144](#) . The highways belong to the state. It may make provision appropriate for securing the safety and convenience of the public in the use of them. *Kane v. New Jersey*, [242 U. S. 160](#) . It may impose fees with a

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view both to raising funds to defray the cost of supervision and maintenance and to obtaining compensation for the use of the road facilities provided. *Hendrick v. Maryland*, [235 U. S. 610](#) . See also *Pierce Oil Corp. v. Hopkins*, [264 U. S. 137](#) . With the increase in number and size of the vehicles used upon a highway, both the danger and the wear and tear grow. To exclude unnecessary vehicles, particularly the large ones commonly used by carriers for hire, promotes both safety and economy. State regulation of that character is valid, even as applied to interstate commerce, in the absence of legislation by Congress which deals specifically with the subject. *Vandalia R. Co. v. Public Service Commission*, [242 U. S. 255](#) ; *Missouri Pacific Ry. Co. v. Larabee Flour Mills Co.*, [211 U. S. 612](#) . Neither the recent federal highway acts nor the earlier post road acts (R.S. 3964) do that. The state statute is not objectionable because it is designed primarily to

promote good service by excluding unnecessary competing carriers. That purpose also is within the state's police power.

The argument is not sound. It may be assumed that 4 of the state statute is consistent with the Fourteenth Amendment, and also that appropriate state regulations adopted primarily to promote safety upon the highways and conservation in their use are not obnoxious to the commerce clause, where the indirect burden imposed upon interstate commerce is not unreasonable. *Compare Michigan Public Utilities Commission v. Duke*, [266 U. S. 570](#) . The provision here in question is of a different character. Its primary purpose is not regulation with a view to safety or to conservation of the highways, but the prohibition of competition. It determines not the manner of use, but the persons by whom the highways may be used. It prohibits such use to some persons while

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permitting it to others for the same purpose and in the same manner. Moreover, it determines whether the prohibition shall be applied by resort, through state officials, to a test which is peculiarly within the province of the federal action -- the existence of adequate facilities for conducting interstate commerce. The vice of the legislation is dramatically exposed by the fact that the State of Oregon had issued its certificate which may be deemed equivalent to a legislative declaration that, despite existing facilities, public convenience and necessity required the establishment by Buck of the auto stage line between Seattle and Portland. Thus, the provision of the Washington statute is a regulation not of the use of its own highways, but of interstate commerce. Its effect upon such commerce is not merely to burden, but to obstruct it. Such state action is forbidden by the commerce clause. It also defeats the purpose of Congress, expressed in the legislation giving federal aid for the construction of interstate highways.

By motion to dismiss filed in this Court, the state makes the further contention that Buck is estopped from seeking relief against the provisions of 4. The argument is this: Buck's claim is not that the department's action is unconstitutional because arbitrary or unreasonable. It is that 4 is unconstitutional because use of the

highways for interstate commerce is denied unless the prescribed certificate shall have been secured. Buck applied for a certificate. Thus, he invoked the exercise of the power which he now assails. One who invokes the provisions of law may not thereafter question its constitutionality. The argument is unsound. It is true that one cannot in the same proceeding both assail a statute and rely upon it. *Hurley v. Commissioner of Fisheries*, [257 U. S. 223](#) , [257 U. S. 225](#) ; compare *Wall v. Parrot Silver & Copper Co.*, [244 U. S. 407](#) , [244 U. S. 411](#) . Nor can one who avails himself of the benefits conferred by a statute deny its validity.

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St. Louis Co. v. Prendergast Co., [260 U. S. 469](#) , [260 U. S. 472](#) . But, in the case at bar, Buck does not rely upon any provision of the statute assailed, and he has received no benefit under it. He was willing, if permitted to use the highways, to comply with all laws relating to common carriers. But the permission sought was denied. The case presents no element of estoppel. Compare *Arizona v. Copper Queen Mining Co.*, [233 U. S. 87](#) , [233 U. S. 94](#) et seq..

Reversed.

MR. JUSTICE Mc REYNOLDS dissented and delivered a separate opinion in this case and the one next following. See *post*, p. [267 U. S. 325](#) .

* An additional ground for refusing the certificate was that the applicant did not appear to have financial ability. This ground of rejection does not require separate consideration, among other reasons, because the plaintiff later asserted in his bill that he possessed the requisite financial ability, and the motion to dismiss admitted the allegation.