

Fenner Vs. Boykin

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Court : US Supreme Court

Decided On : May-24-1926

Appeal No. : 271 U.S. 240

Appellant : Fenner

Respondent : Boykin

Judgement :

Fenner v. Boykin - 271 U.S. 240 (1926)

U.S. Supreme Court Fenner v. Boykin, 271 U.S. 240 (1926)

Fenner v. Boykin

No. 308

Argued May 4, 1926

Decided May 24, 1926

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APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

SYLLABUS

Enforcement of a state penal statute, even of one contrary to the federal Constitution, may be interfered with by injunction orders of a federal court only in extraordinary circumstances where the danger of irreparable loss is both great and immediate. P. [271 U. S. 243](#) .

3 F.2d 674 affirmed.

Appeal from a judgment of the district court refusing a preliminary injunction in a suit by Fenner and others

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to restrain Boykin and Lowry, state officers, from enforcing a criminal law against dealings in agreements for purchase or sale of cotton for future delivery.

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

This appeal is without merit, and the interlocutory decree below must be affirmed.

By an Act approved August 20, 1906, the Legislature of Georgia declared unlawful certain agreements for the purchase or sale, for future delivery, of designated commodities, and made participation therein a misdemeanor. It also prohibited maintenance of an office where such agreements are offered, and specified what should constitute *prima facie* evidence of guilty connection therewith. Laws 1906, p. 95.

Appellees, Boykin and Lowry, are the solicitor general and sheriff of Fulton County, Georgia, charged respectively with the general duty of prosecuting and arresting offenders.

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Subsequent to the passage of the Act of 1906, appellants, citizens of states other than Georgia, established in Fulton County a branch office, with the ordinary quotation board, where they solicited and received orders, accompanied by margins, to purchase or sell cotton for future delivery on the New York and New Orleans Exchanges. They were threatened with arrest and prosecution for violating the Act of 1906. By a bill in the United States District Court for the Northern District of Georgia, they challenged the validity of that statute upon the ground that it interfered with the free flow of commerce between the states. They alleged that the threatened action would deprive them of rights guaranteed by the federal Constitution, and asked that appellees be enjoined from proceeding therewith.

The district court, three judges sitting, having heard the matter, concluded that the statute condemned gambling transactions only, did not affect interstate commerce, and that the proposed proceedings against appellants would not deprive them of any right. The request for preliminary injunction was accordingly refused, and this appeal followed. 3 F.2d 674.

The trial court discovered no necessity for the relief asked. The record discloses no adequate reason for a different conclusion here. There was no abuse of discretion.

Ex parte Young, [209 U. S. 123](#) , and following cases have established the doctrine that, when absolutely necessary for protection of constitutional rights, courts of the United States have power to enjoin state officers from instituting criminal actions. But this may not be done except under extraordinary circumstances where the danger of irreparable loss is both great and immediate. Ordinarily there should be no interference with such officers; primarily, they are charged with the duty of prosecuting offenders against the laws of the state, and

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must decide when and how this is to be done. The accused should first set up and rely upon his defense in the state courts, even though this involves a challenge of

the validity of some statute, unless it plainly appears that this course would not afford adequate protection. The Judicial Code provides ample opportunity for ultimate review here in respect of federal questions. An intolerable condition would arise if, whenever about to be charged with violating a state law, one were permitted freely to contest its validity by an original proceeding in some federal court. *Hygrade Provision Co. v. Sherman*, [266 U. S. 497](#) , [266 U. S. 500](#) .

Affirmed.

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