Trusler Vs. Crooks

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Court : US Supreme Court

Decided On : Jan-11-1926

Appeal No. : 269 U.S. 475

Appellant : Trusler

Respondent : Crooks

Judgement :

Trusler v. Crooks - 269 U.S. 475 (1926)
U.S. Supreme Court Trusler v. Crooks, 269 U.S. 475 (1926)

Trusler v. Crooks

No. 188

Argued November 17, 1925

Decided January 11, 1926

269 U.S. 475

ERROR TO THE DISTRICT COURT OF THE UNITED STATES

FOR THE WESTERN DISTRICT OF MISSOURI

SYLLABUS

Section 3 of the "Future Trading Act," purporting to impose a tax of 20 cents per bushel upon all privileges or options for contracts of purchase or sale of grain, known to the trade as "privileges," "bids," "offers," "puts and calls," "indemnities," or "ups and downs," is unconstitutional. Its purpose is not to raise revenue, but to inhibit, by a penalty, the transactions referred to, as part of the plan set up by the Act for regulating grain exchanges under guise of the federal taxing power, which was adjudged unconstitutional in *Hill v. Wallace,* 259 U. S. 44 . P. 269 U. S. 479 .

300 F. 996 reversed.

Error to a judgment of the District Court for the defendant in an action brought to recover money paid under protest as a stamp tax.

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

Plaintiff in error seeks to recover two hundred dollars paid for internal revenue stamps which, after due protest, he affixed to a written "privilege or option for a contract for the sale of grain in the form commonly known as an indemnity," as required by 3 of the "Future Trading Act," approved August 24, 1921. 42 Stat. 187, c. 86. If, as he insists, that section is beyond congressional power and therefore invalid, he must prevail; otherwise, the judgment below must be affirmed.

That statute is entitled:

"An act taxing contracts for the sale of grain for future delivery, and options for such contracts, and providing for the regulation of boards of trade, and for other purposes."

Section 2 declares that the term "contract of sale" shall be held to include sales, agreements of sale, and agreements to sell;" the word "grain" shall . . . mean

wheat, corn, oats, barley, rye, flax, and sorghum;" the words

"'board of trade' shall be held to include and mean any exchange or association, whether incorporated or unincorporated, of persons who shall be engaged in the business of buying or selling grain or receiving the same for sale on consignment."

Section 3:

"That, in addition to the taxes now imposed by law, there is hereby levied a tax amounting to 20 cents per bushel on each bushel involved therein, whether the actual commodity is intended to be delivered or only nominally referred to, upon each and every privilege or

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option for a contract either of purchase or sale of grain, intending hereby to tax only the transactions known to the trade as 'privileges,' 'bids,' 'offers,' 'puts and calls,' 'indemnities,' or 'ups and downs.'"

Sections 4 to 10 impose a charge of 20 cents per bushel upon all grain involved in sale contracts for future delivery, with two exceptions. But, as declared by *Hill v. Wallace,* 259 U. S. 44 , 259 U. S. 66 , their real purpose was to regulate

"the conduct of business of boards of trade through supervision of the Secretary of Agriculture and the use of an administrative tribunal consisting of that Secretary, the Secretary of Commerce, and the Attorney General."

Section 11:

"That, if any provision of this act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby."

Sections 4 to 10 were challenged in *Hill v. Wallace,* decided upon demurrer to the bill, and we held:

"The act is, in essence, and on its face a complete regulation of Boards of Trade, with a penalty of 20 cents a bushel on all 'futures' to coerce Boards of Trade and their members into compliance. When this purpose is declared in the title to the bill, and is so clear from the effect of the provisions of the bill itself, it leaves no ground upon which the provisions we have been considering can be sustained as a valid exercise of the taxing power."

We there said:

"There are sections of the act to which, under 11, the reasons for our conclusion as to 4 and the interwoven regulations do not apply. . . . Section 3, too, would not seem to be affected by our conclusion. . . . This is the imposition of an excise tax upon certain transactions of a unilateral character in grain markets which approximate gambling or offer full opportunity for it, and does not seem to be associated with 4. Such a tax, without more, would seem to be within the

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congressional power. . . . But these are questions which are not before us, and upon which we wish to express no definite opinion."

Of course, the quoted statement concerning 3 was intended to preclude any possible inference that he had passed upon a matter not directly in issue, and to indicate that it remained open for discussion.

The present cause was tried upon a agreed statement of facts and it appears --

That, at Emporia, Kans., October 23, 1923, plaintiff in error, a member of the Chicago Board of Trade, in consideration of one dollar, signed and delivered the following privilege or option, in the form commonly known as an "indemnity," addressed to R. F. Teichgraeber, for a contract for the sale of grain:

"I will sell one thousand bushels of contract grade wheat at $1.11 1/4 per bushel, for delivery during May, 1924, same to be delivered in regular warehouses under the rules of the Board of Trade of the City of Chicago. This offer is made subject to acceptance by you until the closing hour for regular trading on October 24, 1923."

The transaction was one of those described by 3 as "privileges, bids, offers, puts and calls, indemnities, or ups and downs."

After duly advising the collector that he denied validity of the tax, plaintiff in error affixed to this written instrument $200 of internal revenue stamps.

For many years prior to August 24, 1921, members of grain exchanges bought and sold in large quantities agreements for contracts for purchase or sale of grain subject to acceptance within a definite time thereafter, commonly known as "indemnities." When the holder of one of these elected to exercise his rights, the specified amount of grain was bought or sold on the exchange indicated for future delivery, and the agreement was thus finally consummated.

By far the larger percentage of such agreements were subject to acceptance during the following day at a price

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ordinarily within one-fourth to three-fourths of a cent of the price prevailing when the market closed on day of the agreement. During many years, the uniform consideration paid was one dollar per thousand bushels.

When the holder elected to exercise the option, the transaction could be carried out only through and by members of exchanges open to sales for future delivery.

The stipulated facts reveal the cost, terms, and use of "indemnity" contracts, together with their relation to boards of trade, and indicate quite plainly that 3 was not intended to produce revenue, but to prohibit all such contracts as part of the prescribed regulatory plan. The major part of this plan was condemned in *Hill v. Wallace,* and 3, being a mere feature, without separate purpose, must share the invalidity of the whole. *Wolff Packing Co. v. Industrial Court,* 267 U. S. 552 , 267 U. S. 569 .

This conclusion seems inevitable when consideration is given to the title of the Act, the price usually paid for such options, the size of the prescribed tax (20 cents per bushel), the practical inhibition of all transactions within the terms of 3, the

consequent impossibility of raising any revenue thereby, and the intimate relation of that section to the unlawful scheme for regulation under guise of taxation. The imposition is a penalty, and in no proper sense a tax. *Child Labor Tax case,* 259 U. S. 20 ; *Lipke v. Lederer,* 259 U. S. 557 , 259 U. S. 561 ; *Linder v. United States,* 268 U. S. 5 .

The judgment of the court below must be reversed, and the cause remanded for further proceedings in conformity with this opinion.