

**Roschen Vs. Ward**

**Roschen Vs. Ward**

**SooperKanoon Citation :** [sooperkanoon.com/95108](http://sooperkanoon.com/95108)

**Court :** US Supreme Court

**Decided On :** Apr-22-1929

**Appeal No. :** 279 U.S. 337

**Appellant :** Roschen

**Respondent :** Ward

**Judgement :**

Roschen v. Ward - 279 U.S. 337 (1929)

U.S. Supreme Court Roschen v. Ward, 279 U.S. 337 (1929)

**Roschen v. Ward**

**Nos. 667 and 668**

**Argued April 10, 1929**

**Decided April 22, 1929**

**279 U.S. 337**

*APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES*

*FOR THE SOUTHERN DISTRICT OF NEW YORK*

# SYLLABUS

1. A state statute making it unlawful to sell at retail in any store or established place of business any spectacles, eyeglasses, or lenses for correction of vision unless a physician or optometrist is in charge of the place of sale and in personal attendance at it, though not providing specifically for an examination by the specialist, is valid. P. [279 U. S. 339](#) .

2. A statute is not invalid under the Constitution because it might have gone farther than it did, or because it may not succeed in bringing about the result that it tends to produce. P. [279 U. S. 339](#) .

3. It being obvious that much good will be accomplished by a statute requiring the attendance of a physician or optometrist at any place

Page 279 U. S. 338

where spectacles or eyeglasses are sold at retail, the question of the expediency of such legislation is not for the courts, and no presumption will be indulged that the benefits are a pretence and a cloak for establishing a monopoly. P. [279 U. S. 339](#) .

29 F.2d 762 affirmed.

Appeals from decrees of the district court, three judges sitting, denying preliminary injunctions and dismissing the bills in suits to restrain state officers from enforcing a statute requiring the attendance of a physician or optometrist at places where spectacles, eyeglasses, or lenses for the correction of vision are sold at retail. The opinion below was reported *sub nom. S.S. Kresge Co. v. Ottinger*.

MR. JUSTICE HOLMES delivered the opinion of the Court.

These are suits brought by dealers in eyeglasses for an injunction prohibiting the enforcement of Chapter 379 of the New York Laws of 1928, which amends the Education Law by inserting two sections, of which the material portion makes it unlawful to sell at retail in any store or established place of business

"any spectacles, eyeglasses, or lenses for the correction of vision unless a duly licensed physician or duly qualified optometrist, certified under this article, be in charge of and [in] personal attendance at the booth, counter or place where such articles are sold in such store or established place of business."

The complainants moved for a preliminary injunction, a statutory court of three judges was convened, and after a hearing, the injunction was refused and the bills were dismissed on

Page 279 U. S. 339

the ground that no cause of action was shown. 29 F.2d 762.

The complainants sell only ordinary spectacles with convex spherical lens, which merely magnify and which, it is said, can do no harm. The customers select for themselves without being examined, and buy glasses for a relatively small sum. It is said that the cost of employing an optometrist would make the complainants' business impossible, and that, in the common case of eyes only grown weaker by age, the requirement is unreasonable. But the argument most pressed is that the statute does not provide for an examination by the optometrist in charge of the counter. This, as it is presented, seems to us a perversion of the Act. When the statute requires a physician or optometrist to be in charge of the place of sale in personal attendance at it, obviously it means in charge of it by reason of and in the exercise of his professional capacity. If we assume that an examination of the eye is not required in every case, it plainly is the duty of the specialist to make up his mind whether one is necessary, and, if he thinks it necessary, to make it. We agree to all the generalities about not supplying criminal laws with what they omit, but there is no canon against using common sense in construing laws as saying what they obviously mean. Moreover, as pointed out below, wherever the requirements of the Act stop, there can be no doubt that the presence and superintendence of the specialist tend to diminish an evil. A statute is not invalid under the Constitution because it might have gone farther than it did, or because it may not succeed in bringing about the result that it tends to produce.

Of course, we cannot suppose the Act to have been passed for sinister motives. We will assume that there are strong reasons against interference with the business as now done -- but it is obvious that much good would be accomplished

Page 279 U. S. 340

if eyes were examined in a great many cases where hitherto they have not been, and the balancing of the considerations of advantage and disadvantage is for the legislature, not for the courts. We cannot say, as the complainants would have us say, that the supposed benefits are a cloak for establishing a monopoly and a pretense.

*Decree affirmed.*

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**