

Fox Vs. Gulf Refining Co.

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Court : US Supreme Court

Decided On : Apr-08-1935

Appeal No. : 295 U.S. 75

Appellant : Fox

Respondent : Gulf Refining Co.

Judgement :

Fox v. Gulf Refining Co. - 295 U.S. 75 (1935)

U.S. Supreme Court Fox v. Gulf Refining Co., 295 U.S. 75 (1935)

Fox v. Gulf Refining Co.

No. 70

Argued April 2, 1935

Decided April 8, 1935

295 U.S. 75

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

SYLLABUS

Where all question relied on to sustain a judgment appealed from the District Court were disposed of adversely to appellee while the appeal was pending by a decision of this Court in another case, except a question of state law which the District Court had not decided, the judgment was reversed and the cause remanded to the District Court for decision of that question.

Reversed.

Appeal from a decree of the District Court, of three judges, permanently enjoining enforcement of the West Virginia Chain Store Taxing Act.

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PER CURIAM:

The appellee brought this suit to restrain the enforcement of the West Virginia Chain Store Act (c. 36, West Virginia Acts, 1933), upon the grounds (1) that gasoline filling stations were not "stores" within the meaning of the Act; (2) that, if the Act were interpreted to include such filling stations, it violated the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States, and (3) that, if the foregoing questions were resolved against appellee,

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there were certain filling stations, particularly described, which were not stores "belonging to, operated or controlled" by appellee.

The District Court of three judges (28 U.S.C. 380) entered a final decree permanently enjoining the enforcement of the Act, and the case comes here on appeal. In so deciding, the District Court sustained the first of the above-mentioned contentions of appellee, and also the second contention with respect to the denial of the equal protection of the laws, following its decision to the same

effect in *Standard Oil Co. v. Fox*, 6 F.Supp. 494. That decision was reversed by this Court. *Fox v. Standard Oil Co.*, [294 U. S. 87](#) . The District Court did not determine the third contention of appellee, as to its relation to certain gasoline stations, and that is the only question now sought to be presented to this Court. The judgment is reversed, and the cause is remanded to the District Court, composed as above stated, in order that it may consider and decide that issue.

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