

U.S. Supreme Court

R. A. WILLIAMS

v.

EDGAR FEARS, Sheriff, and R. B. Aycock, Jailer. No. 287.

December 10, 1900.

Mr. Chief Justice Fuller delivered the opinion of the court:

Persons following the occupations named in some twenty-nine paragraphs of 2 of the tax act of 1898, if they failed to register their names before the ordinary, or, having registered, failed to pay their taxes, as required by 4, were liable to indictment for misdemeanor.

The supreme court of Georgia pointed out that it did not distinctly appear whether Williams was charged with having done business without registering, or without paying the tax, but considered that to be immaterial, since he could not be punished for a failure to do either, if the provision imposing the tax were unconstitutional.

As preliminary to considering the validity of the provision the court, as matter of original definition, and in view of prior legislation (Acts 1876, p. 17; Acts 1877, p. 120; Code, 1882, 4598, a, b, c), held that the term 'emigrant agent,' as used in the general tax act of 1898, meant a person engaged in hiring laborers in Georgia to be employed beyond the limits of that state.

The court called attention to the fact that, while previous acts had required a license, this act provided for a specific tax on the occupation of emigrant agents in common with very many other occupations, the declared purpose of the levy being for the support of the government, and ruled that the question of whether the tax was so excessive as to amount to a prohibition on the transaction of that business did not arise, and, indeed, was not raised. [179 U.S. 270, 274] The inquiry is, then, whether a state law taxing occupations is invalid so far as applicable to the pursuit of the business of hiring persons to labor outside the state limits, because in conflict with the Federal Constitution.

On behalf of plaintiff in error it is insisted that paragraph 10 is in conflict with the 14th Amendment because it restricts the right of the citizen to move from one state to another, and so abridges his privileges and immunities; impairs the natural right to labor; and is class legislation, discriminating arbitrarily and without reasonable basis.

Undoubtedly the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty, and the right, ordinarily, of free transit from or through the territory of any state is a right secured by the 14th Amendment and by other provisions of the Constitution.

And so as to the right to contract. The liberty, of which the deprivation without due process of law is forbidden, 'means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying

out to a successful conclusion the purposes above mentioned; . . . although it may be conceded that this right to contract in relation to persons or property or to do business within the jurisdiction of the state may be regulated and sometimes prohibited when the contracts or business conflict with the policy of the state as contained in its statutes.' *Allgeyer v. Louisiana*, [165 U.S. 589, 591](#), 41 S. L. ed. 835, 836, 17 Sup. Ct. Rep. 427; *Holden v. Hardy*, [169 U.S. 366](#), 42 L. ed. 780, 18 Sup. Ct. Rep. 383.

But this act is a taxing act, by the 2d section of which taxes are levied on occupations, including, by paragraph 10, the occupation of hiring persons to labor elsewhere. If it can be said to affect the freedom of egress from the state, or the freedom of contract, it is only incidentally and remotely. The [\[179 U.S. 270, 275\]](#) individual laborer is left free to come and go at pleasure, and to make such contracts as he chooses, while those whose business it is to induce persons to enter into labor contracts and to change their location, though left free to contract, are subjected to taxation in respect of their business as other citizens are.

The amount of the tax imposed on occupations varies with the character of the occupation. Dealers in futures are compelled to pay \$1, 000 annually for each county in which the business is carried on; circus companies exhibiting in cities or towns of 20,000 inhabitants or more, \$1, 000 each day of exhibition; peddlers of cooking stoves or ranges, \$200 in every county in which such peddler may do business; peddlers of clocks, \$ 100; and so on.

The general legislative purpose is plain, and the intention to prohibit this particular business cannot properly be imputed from the amount of the tax payable by those embarked in it, even if we were at liberty on this record to go into that subject.

It would seem, moreover, that the business itself is of such nature and importance as to justify the exercise of the police power in its regulation. We are not dealing with single instances, but with a general business, and it is easy to see that, if that business is not subject to regulation, the citizen may be exposed to misfortunes from which he might otherwise be legitimately protected.

Nor does it appear to us that the objection of unlawful discrimination is tenable.

The point is chiefly rested on the ground that, inasmuch as the business of hiring persons to labor within the state is not subjected to a like tax, the equal protection of the laws secured by the 14th Amendment is thereby denied.

In *Shepperd v. Sumter County Comrs.* 59 Ga. 535, 27 Am. Rep. 394, approved and followed in this case, the supreme court of Georgia decided that the act of 1876, which required a license as preliminary to carrying on this business, was not unconstitutional on this ground, for the reason that it did not appear that hiring for internal employment had become a business in Georgia, or was [\[179 U.S. 270, 276\]](#) pursued as such by any person or persons. And for the further reason that the state could properly discriminate in its police and fiscal legislation between occupations of similar nature but of dissimilar tendency; between those which tended to induce the laboring population to leave, and those which tended to induce that population to remain.

We are unable to say that such a discrimination, if it existed, did not rest on reasonable grounds, and was not within the discretion of the state legislature. *American Sugar Ref. Co. v. Louisiana*, [179 U.S. 89](#), ante, p. 43, 21 Sup. Ct. Rep. 43, and cases cited.

In fine, we hold that the act does not conflict with the 14th amendment in the particulars named.

Counsel for plaintiff in error further contends that the imposition of the tax cannot be sustained because in contravention of clause 3 of 8, and clause 5 of 9, of article 1 of the Constitution.

Clause 5 of 9 provides that 'no tax or duty shall be laid on articles exported from any state.' The facts of this case do not bring it within the purview of this prohibition upon the power of Congress, and it need not be considered as a substantive ground of objection.

The real question is, Does this law amount to a regulation of commerce among the states? To answer that question in the affirmative is to hold that the emigrant agent is engaged in such commerce, and that this tax is a restriction thereon.

In *Mobile County v. Kimball*, [102 U.S. 702](#), 26 L. ed. 241, Mr. Justice Field, delivering the opinion of the court, said: 'Commerce with foreign nations and among the states, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities.' Broad as is the import of the word 'commerce' as used in the Constitution, this definition is quite comprehensive enough for our purposes here.

These agents were engaged in hiring laborers in Georgia to be employed beyond the limits of the state. Of course, transportation must eventually take place as the result of such contracts, but it does not follow that the emigrant agent was en- [\[179 U.S. 270, 277\]](#) gaged in transportation, or that the tax on his occupation was levied on transportation.

In *McCall v. California*, [136 U.S. 104](#), 34 L. ed. 391, 3 Inters. Com. Rep. 181, 10 Sup. Ct. Rep. 881, we held that the agency of a line of railroad between Chicago and New York, established in San Francisco for the purpose of inducing passengers going from San Francisco to New York to take that line at Chicago, but not engaged in selling tickets for the route, or receiving or paying out money on account of it, was an agency engaged in interstate commerce. But there the business was directly connected with interstate commerce, and consisted wholly in carrying it on. The agent was the agent of the transportation company, and he was acting solely in its interests.

So in *Norfolk & W. R. Co. v. Pennsylvania*, [136 U.S. 114](#), 34 L. ed. 394, 3 Inters. Com. Rep. 178, 10 Sup. Ct. Rep. 958, it was ruled that a tax imposed by a state on a corporation engaged in the business of interstate commerce, as described, for the privilege of keeping an office in the state, was a tax on commerce among the states.

On the other hand, it was held in *Nathan v. Louisiana*, 8 How. 73, 12 L. ed 992, that a broker dealing in foreign bills of exchange was not engaged in commerce, but in supplying an instrument of commerce, and that a state tax on all money or exchange brokers was not void as to him as a regulation of commerce.

In *Paul v. Virginia*, 8 Wall. 168, 183, 19 L. ed. 357, 361, it was decided that issuing a policy of insurance was not a transaction of commerce, and it was said: 'The policies are simple contracts of indemnity against loss by fire, entered into between the corporations and the assured for a consideration paid by the latter. These contracts are not articles of commerce in any proper meaning of the word. They are not subjects of trade and barter offered in the market as something having an existence in value independent of the parties to them. They are not commodities to be shipped or forwarded from one state to another and then put up for sale.'

Again, in *Hooper v. California*, [155 U.S. 648, 655](#), 39 S. L. ed. 297, 300, 5 Inters. Com. Rep. 610,

15 Sup. Ct. Rep. 207, it was held that a section of the Penal Code of California making it a misdemeanor for a person in that state to procure insurance for a resident in the state from an insurance company not in- [179 U.S. 270, 278] incorporated under its laws, and which had not complied with its laws relative to insurance, was not a regulation of commerce. Mr. Justice White there adverts to the real distinction on which the general rule and its exceptions are based, 'and which consists in the difference between interstate commerce or an instrumentality thereof on the one side, and the mere incidents which may attend the carrying on of such commerce on the other. This distinction has always been carefully observed, and is clearly defined by the authorities cited. If the power to regulate interstate commerce applied to all the incidents to which said commerce might give rise and to all contracts which might be made in the course of its transaction, that power would embrace the entire sphere of mercantile activity in any way connected with trade between the states, and would exclude state control over many contracts purely domestic in their nature.'

The imposition of this tax falls within the distinction stated. These labor contracts were not in themselves subjects of traffic between the states, nor was the business of hiring laborers so immediately connected with interstate transportation or interstate traffic that it could be correctly said that those who followed it were engaged in interstate commerce, or that the tax on that occupation constituted a burden on such commerce.

Nor was the imposition in violation of 2 of article 4, as there was no discrimination between the citizens of other states and the citizens of Georgia.

Judgment affirmed.

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