U.S. Supreme Court

HOKE v. U S, 227 U.S. 308 (1913)

227 U.S. 308

EFFIE HOKE and Basile Economides, Plffs. in Err.,
v.
UNITED STATES.
No. 381.

Argued January 7 and 8, 1913.
Decided February 24, 1913.

[227 U.S. 308, 310] Messrs. C. W. Howth, Hal W. Greer, T. H. Bowers, and Charles C. Luzenberg for plaintiffs in error.

[227 U.S. 308, 313] Assistant Attorney General Harr for defendant in error.

[227 U.S. 308, 316]

Mr. Justice McKenna delivered the opinion of the court:

Error to review a judgment of conviction under the act of Congress of June 25, 1910, entitled, 'An Act to [227 U.S. 308, 317] Further Regulate Interstate and Foreign Commerce by Prohibiting the Transportation Therein for Immoral Purposes of Women and Girls, and for Other Purposes.' 36 Stat. at L. 825, chap. 395, U. S. Comp. Stat. Supp. 1911, p. 1343. It is commonly known as the white slave act.

The constitutionality of the act was assailed by demurrer, and as its sufficiency otherwise was not questioned, a brief summary of its allegations is all that is necessary.

The charge against Effie Hoke is that she 'did, on the 14th day of November, A. D. 1910, in the city of New Orleans and state of Louisiana, unlawfully, feloniously, and knowingly persuade, induce, and entice one Annette Baden, alias Annette Hays, a woman, to go from New Orleans, a city in the state of Louisiana, to Beaumont, a city in the state of Texas, in interstate commerce, for the purpose of prostitution,' etc.

The charge against Basile Economides is that he 'did unlawfully, feloniously, and knowingly aid and assist the said Effie Hoke to persuade, induce, and entice the said Annette Baden . . . to go in interstate commerce . . . for the purpose of prostitution,' with the intent and purpose that the said woman 'should engage in the practice of prostitution in the said city of Beaumont, Texas.'

The second and third counts make the same charge against the defendants as to another woman, the one named in the third count being under eighteen years.

The demurrers were overruled, and after trial the defendants were convicted and sentenced, each to two years' imprisonment on each count. 187 Fed. 992.

The indictment was drawn under 2, 3, and 4 of the act, which sections are as follows:

> 'Sec. 2. That any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any territory or in the District of Columbia, any woman or girl for the purpose of prosti- [227 U.S. 308, 318] tution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or who shall knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining, any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in any territory or the District of Columbia, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court.'

The 3d section is directed against the persuasion, inducement, and enticement of any woman or girl to go from one place to another in interstate or foreign commerce, whether with or without her consent, to engage in the practices and for the purposes stated in the 1st section, and provides that anyone 'who shall thereby knowingly cause, or aid or assist in causing, such woman or girl to go or to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or any territory or the District of Columbia,' shall be punished as prescribed in the 1st section.

Section 4 makes criminal persuasion, inducement, and enticement of a woman or girl under the age of eight- [227 U.S. 308, 319] een years from any state or territory or the District of Columbia to any other state or territory or the District of Columbia to engage in the immoral practices enumerated. The person guilty thereof, and who shall, in furtherance thereof, knowingly induce or cause such woman or girl to be carried or transported as a passenger in interstate commerce, shall be deemed guilty of a felony, and on conviction the offender's punishment may be a fine of $10,000 or imprisonment for ten years, or by both fine and imprisonment, in the discretion of the court.

The grounds of attack upon the constitutionality of the statute are expressed by counsel as follows:

'1. Because it is contrary to and contravenes art. 4, 2, of the Constitution of the United States, which reads: 'The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states.'
'2. Because it is contrary to and contravenes the following two amendments to the Constitution:
'Art. 9. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.
'Art. 10. The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.
'3. Because that clause of the Constitution which reserves to Congress the power (art. 1, 8, subdiv. 2) 'to regulate commerce with foreign nations, and among the several states,' etc., is not broad enough to include the power to regulate prostitution or any other immorality of citizens of the several states as a condition precedent (or subsequent) to their right to travel interstate, or to aid or assist another to so travel.
'4. Because the right and power to regulate and control prostitution, or any other immoralities of citizens, comes within the reserved police power of the several states, [227 U.S. 308, 320] and under the Constitution Congress cannot interfere therewith, either directly or indirectly, under the grant of power 'to regulate commerce between the states."

We shall discuss at length but one of these grounds; the others will be referred to incidentally. The power of Congress under the commerce clause of the Constitution is the ultimate determining question. If the statute be a valid exercise of that power, how it may affect persons or states is not material to be considered. It is the supreme law of the land, and persons and states are subject to it.

Congress is given power 'to regulate commerce with foreign nations and among the several states.' The power is direct; there is no word of limitation in it, and its broad and universal scope has been so often declared as to make repetition unnecessary. And, besides, it has had so much illustration by cases that it would seem as if there could be no instance of its exercise that does not find an admitted example in some one of them. Experience, however, is the other way, and in almost every instance of the exercise of the power differences are asserted from previous exercises of it and made a ground of attack. The present case is an example.

Commerce among the states, we have said, consists of intercourse and traffic between their citizens, and includes the transportation of persons and property. There may be, therefore, a movement of persons as well as of property; that is, a person may move or be moved in interstate commerce. And the act under consideration was drawn in view of that possibility. What the act condemns is transportation obtained or aided, or transportation induced, in interstate commerce, for the immoral purposes mentioned. But an objection is made and urged with earnestness. It is said that it is the right and privilege of a person to move between states, and that such being the right, another cannot be made guilty of the crime of inducing or assisting or aiding in the exercise of it, and 'that the [227 U.S. 308, 321]

motive or intention of the passenger, either before beginning the journey, or during or after completing it, is not a matter of interstate commerce.' The contentions confound things important to be distinguished. It urges a right exercised in morality to sustain a right to be exercised in immorality. It is the same right which attacked the law of Congress which prohibits the carrying of obscene literature and articles designed for indecent and immoral use from one state to another. 29 Stat. at L. 512, chap. 172, U. S. Comp. Stat. 1901, p. 3180; United States v. Popper, 98 Fed. 423. It is the same right which was excluded as an element as affecting the constitutionality of the act for the suppression of lottery traffic through national and interstate commerce. Lottery Case (Champion v. Ames) 188 U.S. 321, 357 , 47 S. L. ed. 492, 501, 23 Sup. Ct. Rep. 321, 13 Am. Crim. Rep. 561. It is the right given for beneficial exercise which is attempted to be perverted to and justify baneful exercise, as in the instances stated, and which finds further illustration in Reid v. Colorado, 187 U.S. 137 , 47 L. ed. 108, 23 Sup. Ct. Rep. 92, 12 Am. Crim. Rep. 506. This constitutes the supreme fallacy of plaintiffs' error. It pervades and vitiates their contentions.

Plaintiffs in error admit that the states may control the immoralities of its citizens. Indeed, this is their chief insistence; and they especially condemn the act under review as a subterfuge and an attempt to interfere with the police power of the states to regulate the morals of their citizens, and assert that it is in consequence an invasion of the reserved powers of the states. There is unquestionably a control in the states over the morals of their citizens, and, it may be admitted, it extends to making prostitution a crime. It is a control, however, which can be exercised only within the jurisdiction of the states, but there is a domain which the states cannot reach and over which Congress alone has power; and if such power be exerted to control what the states cannot, it is an argument for-not against-its legality. Its exertion does not encroach upon the jurisdiction of the states. We have [227 U.S. 308, 322] examples; others may be adduced. The pure food and drugs act is a conspicuous instance. In all of the instances a clash of national legislation with the power of the states was urged, and in all rejected.

Our dual form of government has its perplexities, state and nation having different spheres of jurisdiction, as we have said; but it must be kept in mind that we are one people; and the powers reserved to the states and those conferred on the nation are adapted to be exercised, whether independently or concurrently, to promote the general welfare, material and moral. This is the effect of the decisions; and surely, if the facility of interstate transportation can be taken away from the demoralization of lotteries, the debasement of obscene literature, the contagion of diseased cattle or persons, the impurity of food and drugs, the like facility can be taken away from the systematic enticement to and the enslavement in prostitution and debauchery of women, and, more insistently, of girls.

This is the aim of the law, expressed in broad generalization; and motives are made of determining consequence. Motives executed by actions may make it the concern of government to exert its powers. Right purpose and fair trading need no restrictive regulation, but let them be transgressed, and penalties and prohibitions must be applied. We may illustrate again by the pure food and drugs act. Let an article be debased by

adulteration, let it be misrepresented by false branding, and Congress may exercise its prohibitive power. It may be that Congress could not prohibit the manufacture of the article in a state. It may be that Congress could not prohibit in all of its conditions its sale within a state. But Congress may prohibit its transportation between the states, and by that means defeat the motive and evils of its manufacture. How far- reaching are the power and the [227 U.S. 308, 323] means which may be used to secure its complete exercise we have expressed in Hipolite Egg Co. v. United States, 220 U.S. 45 , 55 L. ed. 364, 31 Sup. Ct. Rep. 364. There, in emphasis of the purpose of the law, are denominated adulterated articles as 'outlaws of commerce,' and said that the confiscation of them enjoined by the law was appropriate to the right to bar them from interstate transportation, and completed the purpose of the law by not merely preventing their physical movement, but preventing trade in them between the states. It was urged in that case, as it is urged here, that the law was an invasion of the power of the states.

Of course it will be said that womem are not articles of merchandise, but this does not affect the analogy of the cases; the substance of the congressional power is the same, only the manner of its exercise must be accommodated to the difference in its objects. It is misleading to say that men and women have rights. Their rights cannot fortify or sanction their wrongs; and if they employ interstate transportation as a facility of their wrongs, it may be forbidden to them to the extent of the act of July 25, 1910, and we need go no farther in the present case.

The principle established by the cases is the simple one, when rid of confusing and distracting considerations, that Congress has power over transportation 'among the several states;' that the power is complete in itself, and that Congress, as an incident to it, may adopt not only means necessary but convenient to its exercise, and the means may have the quality of police regulations. Gloucester Ferry Co. v. Pennsylvania, 114 U.S. 196, 215 , 29 S. L. ed. 158, 166, 1 Inters. Com. Rep. 382, 5 Sup. Ct. Rep. 826; Cooley, Const. Lim. 7th ed. 856. We have no hesitation, therefore, in pronouncing the act of June 25, 1910, a legal exercise of the power of Congress.

There are assignments of error based upon rulings on the admission and rejection of evidence and upon the instructions to the jury and the refusing of instructions. [227 U.S. 308, 324] The asserted errors are set forth in twenty-five bills of exceptions, and the special assignment of errors in this court occupy twenty-eight pages of the record, and present the constitutional objections to the law in all the aspects that counsel's ingenuity can devise. A like ingenuity has been exercised to represent the many ways in which the conduct of the accused can be viewed and shown to be inconsistent with guilty purpose. To discuss them all is unnecessary. We shall pass more or less rapidly over those we consider to be worthy of attention.

1. It is contended that there is variance between the indictment and the proof, in that the indictment charges that the women were transported over the Texas & New Orleans Railroad Company's road, and that the government failed to prove that such road was a line extending from New Orleans to Beaumont, Texas, these places marking the beginning and end of the transportation of the women. Further, that the proof showed that

their tickets were purchased over the Southern Pacific Road. The indictment alleges that the Texas & New Orleans Railroad was a part of the Southern Pacific System, and was commonly known as the 'Sunset Route,' and there was through transportation. The variance is not much more than verbal, and that it prejudiced their defense in any way is not shown. If it is error at all, it does not appear to have caused even embarrassment to the defense. But was it error? See Westmoreland v. United States, 155 U.S. 545, 549 , 39 S. L. ed. 255, 256, 15 Sup. Ct. Rep. 243. Also 1025, Rev. Stat ., U. S. Comp. Stat. 1901, p. 720.

2. The evidence does not show that the defendants or either of them induced, etc., the women to become passengers in interstate commerce. The particulars are recited wherein it is contended that the evidence is deficient. It is not necessary to review them. It was for the jury to consider and determine the sufficiency of the evidence, and we cannot say they were not justified by it in the judgment they pronounced. [227 U.S. 308, 325] 3. It is contended that Florence Baden persuaded her sister Gertrude to go to Beaumont, and an instruction of the court is attacked on the ground that it declared the charge of the indictment was satisfied against the defendants if Florence acted for them. There was no error in the instruction under the circumstances shown by the record.

4. Error is assigned on the refusal of the court to give certain instructions requested by defendants. To consider them in detail would require a lengthy review of the evidence, for they present arguments on certain phases of it as to the degree of persuasion used or its sufficiency to induce or entice the women. There was no error in refusing the instructions.

5. The court permitted the women to testify as to the acts of Effie Hoke at her house at Beaumont, restraining the liberty of the women, and coercing their stay with her. Such testimony was relevant. The acts illustrated and constituted a completion of what was done at New Orleans. They were part of the same scheme and made clear its purpose.

There were other instructions asked by which the jury was charged that they could not convict Effie Hoke for the character of the house she kept or Economides for the business he conducted. The charge of the court sufficiently excluded both views. It explained the act of Congress and the offenses it condemned and directed the attention of the jury to them.

6. Defendants complain that they were not permitted to show that the women named in the indictment were public prostitutes in New Orleans. Such proof, they contend, was relevant upon the charge of persuasion or enticement. This may be admitted, but there was sufficient evidence, as the court said, of the fact of the immorality of their lives, and explicitly ruled that they could be shown to be public prostitutes. The court, however, excluded [227 U.S. 308, 326] certain details sought to be proved. Under the circumstances there was no error in the ruling.

In conclusion we say, after consideration of all errors assigned, that there was no ruling made which was prejudicial to defendants.

Judgment affirmed.