

DECISIONS OF STATE COURTS ON POINTS OF PUBLIC LAW

Constitutional Construction and Operation. Gherna vs. State. (Arizona, Feb. 13, 1915. 146 Pac. 494.) A constitutional amendment forbidding, under specified penalty, the manufacture and sale of intoxicating liquor, is self-executing, although the amendment also contains a section to the effect that the legislature shall by appropriate legislation provide for the carrying into effect of the amendment.

The amendment forbids introduction of liquor into the State, but does not prohibit the possession or consumption of liquor. If under these circumstances the absolute prohibition of introduction into the State is not within the terms of the Webb-Kenyon act, that part of the amendment is separable and one prosecuted for selling cannot raise the point.

Equal Protection of the Laws. State vs. W. W. Robinson Co. (Washington, March 1, 1915. 146 Pac. 628.) Where an act regulating the sale of certain commodities makes an exception in favor of certain producers, which exception constitutes an invalid discrimination, the exception will not be read out of the act, but the act is invalid.

Police Power—Race Legislation. Carey vs. Atlanta. (Georgia, Feb. 12, 1915. 84 S.E. 456.) A municipal ordinance attempting to forbid colored persons to move into "white blocks," or white persons to move into "colored blocks," is unlawful and violates the due process clause of the constitution, since it destroys the right of the individual to acquire, enjoy or dispose of his property. The court points out that under the terms of the ordinance a situation might arise in which the objection of neighbors might render a lot unavailable for either white or colored occupation. The court cites State vs. Gurry, 121 Md. 534 and State vs. Darnell, 166 N.E. 300.

Vested Rights. Gherna vs. State. (Arizona, Feb. 13, 1915. 146 Pac. 494.) It is no objection to the validity of a prohibition amendment, that unexpired liquor licenses are thereby cancelled without compensation.

Internal Improvements—Afforestation. State ex. rel. Owen vs. Donald. (Wisconsin, Feb. 12, 1915. 151 N.W. 331.) The proposed amendment to the Wisconsin constitution (Art. 8, sec. 10) authorizing expenditures for acquiring, preserving and developing the water power and forests of the State, did not become part of the constitution, owing to fatal defects and irregularities in the course of the joint resolution through the legislature.

A contract for the purchase of land with deferred payments creates an indebtedness within the meaning of the constitutional prohibition.

The forest reserve scheme provided for by the laws of 1911 constitutes a work of internal improvement to which the State may not be a party, although the State, as the owner of lands, may spend money in managing forests on such lands and may perhaps even add to such lands for the purpose of better utilizing those which it has.

Marshall, J., who writes the extremely verbose opinion of the court, covering forty pages of the *Northwestern Reporter*, puts a narrow construction upon the taxing power of the State under its constitution from which Winslow, C. J., dissents.

Justice Marshall also takes occasion to justify the position that defects in the passage of a resolution through the legislature may invalidate a proposed constitutional amendment, by the following observations on "technicalities."

"We think proper to remark as of public interest, that it is a mistake to suppose the judicial disapproval of a legislative effort to propose a constitutional amendment to the people, as in *State, etc., vs. Marcus, supra*, and here, is based on what is commonly termed in legal matters "technicalities." It is very far therefrom. Those who assume to teach on this subject should be very careful not to inculcate false notions in respect to such an important matter. To characterize the point that there has been a failure to do a thing which the people made a condition precedent to efficiency of the particular activity of amending the constitution, a technicality, shows want of appreciation of the very basic features of a constitutional system and, unwittingly, breeds disrespect for such a system, if not for law in general. The court does not accord any dignity to mere technical accuracy in respect to non-essentials, and none in any situation unless required by mandate of written law. But the court is in duty bound to decide upon what is technical or directory, and what is substantial and mandatory. What the people in creating our form of government made material, no one has a right to say is not or is technical, in the common acceptation of that term as being mere matter of form. The court cannot so invade the sovereign command unless its trusted instrumentalities violate are solemn obligations to which they are pledged by their oaths of office."

Municipal Powers. Jones vs. Portland. (Maine, Feb. 27, 1915. 93 Atlantic, 41.) A city may be authorized to establish and main-

tain within its limits a wood, coal and fuel yard for selling at cost wood, coal and fuel to its inhabitants.

A similar decision had been rendered in 111 Maine 486; 90 Atl. 318.

Administrative Appeal. State vs. District Court. (Montana, Feb. 16, 1915. 146 Pac. 743.) An act requires that persons desiring to practice as registered nurses shall be examined by a state board of examiners, and allows an appeal from the decision of that board to the State Association of Graduated Nurses. This provision is sustained, although the State Association is a voluntary organization. If the rejection by the board is arbitrary, the applicant may, instead of appealing, resort to mandamus; but cannot by mandamus obtain a correction of the decision from which he has appealed; the courts can then only correct the action of the appellate body.

Claims against the State. Westinghouse r.c. Co. vs. Chambers. (California, Jan. 8, 1915. 145 Pac. 1025.) The provision of Sec. 366g Political Code, that where judgment is rendered against the state treasurer in an action brought against him for taxes illegally collected, the comptroller shall draw his warrant for the payment of such judgment, violates the Article 4, Sec. 34, of the constitution according to which appropriation bills shall not contain more than one item of appropriation for a single and certain purpose. This latter provision operates notwithstanding the constitution expressly permits actions to recover taxes illegally collected.