Washington University Law Review

Volume 12 | Issue 3

January 1927

Contempts—Power of Senate to Punish for

employer or principal and prescribes the terms of its contract with its employees and agents, and those statutes in which it attempts to regulate contracts between private individuals. These latter clearly come within the constitutional prohibition, and are well illustrated in *Truax v. Raich,* 239 U. S. 33, 60 L. Ed. 131.

All the cases holding that such a statute is constitutional point out that some public purpose must be served by the restriction and that the legislature is the judge of the wisdom of the restriction. The cases on both sides agree that the restriction cannot be justified under the police power, as public safety, morality, or convenience is not involved.

It would seem that Tennessee had but followed a line of authority, which if not unanimous, is of respectable authority. W. T. '27.

CONTEMPT—POWER OF SENATE TO PUNISH FOR.—This was an appeal by defendant, McGrain, from a judgment of a district court discharging in a habeas corpus proceeding a witness attached by order of the Senate for refusal to attend and give evidence before a Senate investigating committee. The witness, Daugherty, had been subpoenaed by a committee appointed to investigate the department of justice and upon his refusal to appear had been held under process of attachment by defendant, a deputy sergeant-at-arms of the Senate; thence followed the habeas corpus proceeding, its decision, and this appeal. *Held,* that the power of inquiry with its incident powers to subpoena and compel the attendance of witnesses is an essential and appropriate auxiliary to the legislative function and as such is impliedly conferred upon the Senate by the constitution of the United States which expressly confers the power to legislate and hence the lower court's order discharging the witness was reversed, *McGrain v. Daugherty,* (U. S., 1927) 71 L. Ed. 371.

The power of the Senate or any legislative bodies to punish for contempt is one which has been regularly exercised for some time. Such a power was used by the British Parliament and in our colonial legislatures before the American Revolution; also in both Houses and in most of the state legislatures. UNIV. OF PENN. LAW REVIEW, Vol. 74, No. 7, p. 691 and No. 8 p. 780. (This article by Prof. Potts gives a rather extended and very able comment upon the Power of Legislative Bodies to Punish for Contempt, both from a historical and a legal viewpoint.) As to the exercise of this power there is little, if any, doubt, but as to the legality of such exercise we must look further. English authority on this subject is of little value to us since their use of the writ of habeas corpus is a great deal more limited than ours in matters pertaining to action by Parliament. Our state courts, including Missouri, quite generally have held that the power to legislate carries with it by necessary implication ample authority to obtain information needed in the rightful exercise of that power and to employ compulsory power process for that purpose, *Burnham v. Morrisey,* 14 Gray 226, 239, 74 Am. Dec. 676; *Wilckens v. Willet,* 40 N. Y. (1 Keyes) 521, 525; *State ex rel Rosenheim v. Frear,* 138 Wis. 173, 119 N. W. 894; *Lowe v. Summers,* 69 Mo. App. 637, 649, 650. Besides the above state decisions, there are four outstanding findings of the U. S. Sup. Court on the point involved in this case. In the first, a plea of justification by the sergeant-at-arms of the House in an action of trespass against him was held good, the court saying that the House has power to attach and punish a person other than a member for contempt of its authority, namely, an attempt to bribe one of its members, *Anderson v. Dunn* (1827), 6 Wheat. 204, 5 L. Ed. 242. In the second case, and one which has proved somewhat of a thorn in the side of proponents of the power in question, a plea of justification similar to that in the previous case was held not good, the court saying that the House did not have jurisdiction to make the particular inquiry and hence had no authority to imprison one Kilbourn, for refusal to testify at such inquiry; note that the court did not deny the

existence of the power to punish for contempt but rather its proper application in this case, *Kilbourn v. Thompson* (1880), 103 U. S. 168, 26 L. Ed. 377. Next in order was the famous Chapman case, where the court denied a petition for a writ of habeas corpus to relieve the petitioner from restraint under a judgment convicting him under a statute for refusal to answer, saying that the Senate did have power to punish for contempt a recusant witness and that inquiry into the Senate's motives in making the investigation, whether for future legislative action or what, was neither necessary nor proper. *Re Chapman,* (1897) 166 U. S. 661, 41 L. Ed. 1154. The latest case prior to the instant one was decided in 1917 and was an appeal from a decision of a district court to review an order refusing relief by habeas corpus to the appellant who had been taken in custody; the court held that the action of a person in sending an irritating letter to the chairman of one of the committees of the House respecting its action and purposes was not such an act of contempt as to be punishable; again, this is no denial of the power but rather a decision as to its improper application to the circumstances in hand, *Marshall v. Gordon,* 243 U. S. 521, 61 L. Ed. 881. Thus, it can be seen that never has the power been denied but the courts have at very infrequent times seen fit to deny it proper application mainly because of the peculiar facts and situations arising in those particular cases. Judging by the foregoing, one is practically forced to the conclusion, both because of logic and precedent, that legislative bodies should be and are invested with the power to punish contumacious witnesses for contempt and the enforcement of such a power bids fair to raise the now extremely low number of men who have ever been convicted of this misconduct. E. L. W. '28.

COURTS—CONTRACT RIGHTS ACQUIRED UNDER EXISTING STATE OF LAW NOT DISTURBED BY CHANGE OF CONSTRUCTION IN SUBSEQUENT DECISION.—Where land was conveyed by deed which was recorded, but the name of one of the grantors was not properly indexed by the recorder as required by statute, such conveyance was valid, a court decision at the time declaring that under existing law improper indexing did not impair the efficacy of a deed, although this decision was overruled before the action in the present case, by the court holding that indexing was a necessary part of registration. *Wilkinson et al. v. Wallace,* 134 SE. 401.

This case involves one of the points that arose in the much criticised case of *Gelpcke v. Dubuque,* 1 Wall. 175. In that case a city issued some bonds in aid of a railroad, which bonds had been held valid by decisions of the state court at the time the plaintiff acquired his rights. A later decision overruling the prior decisions was held not to invalidate the bonds of the plaintiff in the *Gelpcke* case. The criticism that has been levelled at the doctrine of such cases is that a contract is created by the court decision, from which position the court could never withdraw without violating contract rights. The weight of authority, however, and the sounder rule seems to be that, " . . . if the contract when made was valid by the laws of the state as then expounded by all departments of the government, and administered in its courts of justice, its validity and obligation cannot be impaired by any subsequent action of legislation or decision of its courts altering the construction of the law." *Ohio Life & Trust Co. v. Debolt,* 16 Howard 432.

The defendant in the instant case, contends that the transaction here, occurred prior to the first case, *Davis v. Whitaker,* 114 N. C. 279, construing the statute under which the deed was made, not to mean that improper indexing would invalidate the deed; and having occurred prior, in point of time to *Davis v. Whitaker,* that case would not govern the transaction, but that the latest interpretation of the statute should affect the holding in his case. The latest interpretation of the statute was that improper indexing invalidated the deed.