Supplementary Material

Chapter 7: The Republican Era—Individual Rights/Property

State v. Briggs, 46 Utah 288 (1915)

Lawrence Briggs was convicted of selling intoxicating liquors in American Fork, Utah. Utah at that time permitted local towns and counties to determine whether to be dry or wet, and the citizens of American Fork had elected the dry option. Briggs appealed his conviction to the Supreme Court of Utah, claiming that the local option unconstitutionally deprived him of his property and unconstitutionally delegated legislative power to popular majorities.

The Supreme Court of Utah unanimously sustained the local option. Justice Frick's opinion held that the local option neither deprived Briggs of property without due process nor unconstitutionally delegated legislative power. Frick considered both questions as decisively settled. When were those questions settled? How were they settled? When and why did State v. Briggs *become an easy case? Under what conditions might the Supreme Court of Utah have declared unconstitutional a local option law?*

FRICK, J.

. . . .

While it is conceded that the courts have repeatedly held that the state, in the exercise of its police power, may prohibit the sale of intoxicating liquors, yet it is vigorously contended that in view of the declaration of rights in article 1, § 1, of our Constitution, in which it is provided that "all men have the inherent and inalienable right . . . to acquire, possess and protect property," therefore the right to possess, and hence sell or otherwise dispose of all property which is not inherently dangerous, cannot be entirely prohibited by any legislative act. We have somewhat hastily examined the constitutional provisions of the several states respecting the right to acquire, possess, and protect property, and we find that the words used in our Constitution, namely, "to acquire, possess and protect property," are also found in the Constitutions of California, Florida, Idaho, Iowa, Maine, Massachusetts, Montana, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, Pennsylvania, and South Carolina; that in the states of Arkansas, Delaware, Kentucky, and West Virginia the provisions are practically the same as ours, while in South Dakota only the three words "acquire and protect" are used. In about all the other states, while the precise words of our Constitution are not used, yet, from the whole Constitution, it is apparent that there is very little difference in the legal effect of the Constitutions of the several states respecting property rights. The contention, therefore, which was made at the hearing, that our constitutional provision respecting property rights is broader than are those of the Constitutions of other states, cannot be maintained. All the constitutional provisions, however, respecting the rights of acquiring, possessing, and protecting property, in whatever terms expressed, must nevertheless be construed and applied in connection with the police power of the state, unless it is in express terms otherwise provided in the Constitution itself. In the face of the very numerous decisions of the courts to the contrary, it is too late now to insist that the state has not the right to absolutely prohibit the sale of intoxicating liquors under its police power. We shall therefore not pause here to review the authorities upon that subject; nor is it necessary to do so. We shall call attention only to a few well-considered cases out of the great number that could be cited in connection with some of the text-writers upon the subject. See . . . *Mugler v. Kansas* (1887).

The next proposition, namely, that chapter 106 is void because it delegates legislative powers to the voters of the so-called voting units, has so often been considered and decided adversely to counsel's contentions that it seems almost needless to refer to the matter again. Counsel have, however, cited . . . cases which hold to the contrary, namely, *Rice v. Foster* (DE 1847). . . . All these cases have, however, so often been overruled by the courts that they are now no longer regarded as authority upon the questions there decided. In the following, among a very large number of cases that could be cited, the question raised by counsel is decided contrary to their contentions: In the cases and text-books referred to the question is so thoroughly discussed and the conclusions there reached by both the text-writers and the courts are so strong against counsel's contentions here that we could add nothing, even if we had a disposition to do so. We remark, however, that there is nothing in chapter 106 which in any way delegates legislative functions to any one. All the voters are permitted to do in a given case is to choose either one of two methods of governing or controlling the liquor traffic. When one or the other of the two methods, namely, sale or no sale, is chosen, the law determines just how the particular method of control which is chosen shall be enforced precisely the same as if no right of choice of methods had been conferred on the voters. How, then, can it be successfully contended that the people either enact or repeal the law? The principle involved here is readily distinguishable from the one involved in a case where the Legislature formulates a certain measure and submits the same to the voters for the purpose of determining whether such measure shall or shall not become the law respecting the matter or subject which it covers. In such a case it is manifest that there is no law until the voters by a majority vote approve the proposed measure. Upon the other hand, if a majority of the voters vote against the proposed measure, it never becomes a law. The voters, therefore, in such a case, to all intents and purposes, create or make the law, since it is not the law until they so declare. Not so here. The law is in full force as a law, regardless of what the voters in the one or the other voting unit may determine by their votes. The first is a pure case of so-called referendum, while the latter is not. Had chapter 106 been submitted to the voters for approval or rejection, the case would be different.

McCARTY, J., concurs.

STRAUP, C. J.

. . . . Prohibiting, regulating, or restricting within the limits of the state the manufacture or sale of intoxicating liquors as a beverage is a lawful exercise of the police power of the state, and for various reasons often stated is not open to the claim that the constitutional provisions referred to by such prohibition, regulation, or restriction are invaded. But to say that all property is acquired and held subject to the police power of the state is a different matter. I do not now yield assent to that.