C
132 Md. 256, 103 A. 441

Court of Appeals of Maryland.
SWANN et al.
v.
MAYOR AND **CITY COUNCIL** OF **BALTIMORE** et al.
No. 107.

Jan. 29, 1918.

Appeal from Circuit Court of Baltimore City; H. Arthur Stump, Judge.

"To be officially reported."

Injunction by Elmer Swann and others against the Mayor and City Council of Baltimore and the Board of Police Commissioners for such city. Demurrers to the bill were sustained, and the bill dismissed, and plaintiffs appeal. Affirmed.

West Headnotes

Constitutional Law 92 ⚿48(1)
92k48(1) Most Cited Cases
The courts will presume in favor of the constitutionality of a statute and will incline to a construction favoring its validity unless its invalidity plainly appears.

Constitutional Law 92 ⚿63(2)
92k63(2) Most Cited Cases
The Legislature may delegate its police power to subordinate boards and commissions, as is done by Laws 1910, c. 109, § 286, designating and regulating use and occupation of hack and cab stands in the city of Baltimore.

Constitutional Law 92 ⚿275(1)
92k275(1) Most Cited Cases
Laws 1910, c. 109, § 286, designating and regulating the use and occupation of hack stands in the city of Baltimore, held not to deprive persons of their business or property without due process of law.

Municipal Corporations 268 ⚿592(1)
268k592(1) Most Cited Cases
In so far as Laws 1910, c. 109, § 286, designates and regulates use and occupation of hack or cab stands in Baltimore, regulation by ordinance is taken out of its power.

Municipal Corporations 268 ⚿680(3)
268k680(3) Most Cited Cases
Designation of hack stands and regulation of use and occupation of city streets therefor, as is done by Laws 1910, c. 109, § 286, in Baltimore, is a proper exercise of the police power, and the Legislature is sole judge of reasonableness of method adopted.

Municipal Corporations 268 ⚿703(1)
268k703(1) Most Cited Cases
Owners and operators of hacks and cabs have no property rights in the streets superior to regulations adopted under the police power, and provided by statute for the good and welfare of a city.

Statutes 361 ⚿170
361k170 Most Cited Cases
Laws 1910, c. 109, intended to repeal and re-enact with amendments certain sections, including section 286, art. 4, Code Pub.Loc.Laws, as amended and re-enacted by Laws 1898, c. 123, held legally enacted.

Argued before BOYD, C. J., and BRISCOE, BURKE, THOMAS, URNER, STOCKBRIDGE, and CONSTABLE, JJ.

Issac Lobe Straus, of Baltimore, for appellants.
William Pinkney Whyte, Jr., Asst. Atty. Gen., and Albert C. Ritchie, Atty. Gen. (S. S. Field, City, Sol., and Alexander Preston, Deputy City Sol., both of Baltimore, on the brief), for appellees.

BRISCOE, J.
The questions that arise upon the record in this

case are presented by a demurrer to a bill in equity seeking to enjoin the mayor and city council of Baltimore and the board of police commissioners thereof from enforcing an ordinance No. 139, approved June 4, 1908, and also section 286 of article 4 of the Code of Public Local Laws of the state, as amended and re-enacted by chapter 109 of the Acts of 1910. The object and purpose of the legislation here in question, both under the ordinance and the act, it will be seen, was to set aside and designate certain places in the city of Baltimore as standing places for hackney carriages, and to make regulations for the occupation and use of such stands in the streets of the city.

The appellants are licensed owners and chauffeurs, operating automobile hacks or motor cars for hire in the city, and a number of them, it is alleged in the bill, have been arrested upon the charge of violating the ordinance, and the prosecutions are now pending for trial before a police justice of the city. The amended bill is quite a lengthy one, covering over 18 pages of the record, and in substance charges that both the ordinance and the act of 1910 are invalid, null, and void for certain reasons set out and stated in the bill; that the arrests under the ordinance are unlawful and unjust; and that the appellees should be restrained from enforcing both the provisions of the ordinance and the statute. To the amended bill the appellees demurred, and the demurrers were sustained, and the bill dismissed.

[1] It is not material for us in this case to consider the validity of the ordinance here in question, because it is quite clear that the power of the board of police commissioners to designate the hack or cab stands and to regulate the use and occupation of them in the city is not now derived from the ordinance, but is conferred by statute. By section 286 of chapter 109 of the Acts of 1910 it is provided that:

"The *** board of police commissioners are authorized and empowered to set aside and designate certain places in the city of Baltimore to be occupied and used as public or private stands for hackney carriages, and to ***442** stipulate the number of such carriages which may occupy or use each of such stands, and to make regulations for the occupation and use of such stands. Any person violating any of the provisions of this section or any regulation made by the *** board of police commissioners under the authority in this section conferred shall be guilty of a misdemeanor, and shall, upon conviction, forfeit and pay a fine of not exceeding twenty dollars."

The statute, it appears, covers the whole subject of the designation and regulation of hack or cab stands in the city, which was formerly dealt with by section 6 of the ordinance of 1908, and the act further repeals all laws and parts of laws inconsistent with the act. State v. Gambrill, 115 Md. 506, 81 Atl. 10; Montel v. Consolidation Coal Co., 39 Md. 164. In A. & E. Ency. of Law, 246, the general rule upon this subject is stated, as supported by authority, to be that where a municipal corporation has been empowered to make ordinances in regard to certain subjects, and the Legislature subsequently enacts a law regulating the same matter, which had been before permitted to be regulated by such ordinance, it shows most satisfactorily that the Legislature intended to take the regulation of the matter out of the hands of the corporation to the extent to which such general law regulated it.

[2] In this case it is admitted that the appellants have not complied with the requirements of the statute in regard to the use and occupation of the streets of the city for stands for hackney carriages, and it is quite clear that if the statute is a valid law they would be liable upon conviction for the penalty imposed by the act for its violation. But it is urged upon the part of the appellants that the act of 1910 (chapter 109) is invalid, null, and void:

(1) Because it was never legally and validly enacted by the General Assembly; (2) it confers unlawful and arbitrary power, and invests in the board of police commissioners an illegal and uncontrolled discretion; (3) that it is not a valid or constitutional exercise by the General Assembly of the police power of the state; and (4) that it deprives the appellants of their business and property without due process of law, and contrary to the federal and state Constitutions.

The question involved in the first objection that the statute was not legally enacted is free from difficulty, and cannot be sustained under the recent decisions of this court in Levin v. Hewes, 118 Md. 624, 86 Atl. 233, and in Baltimore v. Williams, 124 Md. 502, 92 Atl. 1066. The title of the act here in question is:

> "An act to repeal sections 281 , 282 , 283 , 284 , 285 , 286 , 288 and 289 of article 4 of the Code of Public Local Laws of Maryland, entitled 'City of Baltimore,' subtitle 'Carriages and Horses,' as amended and re-enacted by chapter 123 of the Acts of 1898, and to re-enact sections 281 , 282 , 283 , 284 , 285 , 286, with amendments."

The enacting clause is as follows:

> "Section 1. Be it enacted by the General Assembly of Maryland, that sections 281 , 282 , 283 , 284 , 285 , 286 , 288 and 289 of article 4 of the Code of Public Local Laws of Maryland, entitled 'City of Baltimore,' subtitle 'Carriages and Horses,' as amended and re-enacted by chapter 123 of the Acts of 1898, and to re-enact sections 281 , 282 , 283 , 284 , 285 and 286 with amendments, so as to read as follows."

Then follow the sections 281 , 282 , 283 , 284 , 285 , and 286, under their numbers and with the amendments intended to be made to them, and then section 2:

> "And be it further enacted, that all laws and parts of laws inconsistent with this act are hereby repealed, otherwise to remain in full force and effect."

While the act of 1910 fails to provide in express words after the enacting clause for the repeal and re-enactment of the several sections of article 4 of the Code of Public Local Laws, it will, however, be seen that the title of the act sufficiently states that it was the intention of the Legislature to repeal and re-enact certain sections of the article, including section 286, with amendments, so as to read as stated in the amended sections. The body of the act contains the usual enacting clause, and the amendments desired and intended are incorporated in the body of the act after the enacting clause under their respective numbers. Besides this, it appears that section 286 of the act of 1910 is entirely inconsistent with the old section 286 of the act of 1898, and the old section is directly repealed by section 2 of the act of 1910, which expressly repeals all laws and parts of laws inconsistent with the act.

[3] The rule is well settled that in construing a statute such a construction should be adopted, if fairly possible, as will avoid a conclusion that will make it unconstitutional; the presumption being that the Legislature does not intend to violate the Constitution. Painter v. Mattfeldt, 119 Md. 472, 87 Atl. 413; Levin v. Hewes, 118 Md. 624, 86 Atl. 233; Ruehl v. State, 130 Md. 188, 100 Atl. 75. We find nothing in the objection here presented that would justify the court in holding the act in question to be invalid, or null and void, as urged by the appellants. The remaining objections to the validity of the act will now be considered and disposed of by us.

[4] There can be no question that the designation of hack stands and the regulation of the use and occupation of the streets of the city therefor is a proper exercise of the police power, and the Legislature is the sole judge of the reasonableness of the method adopted. In State v. Hyman, 98 Md. 596, 57 Atl. 6, 64 L. R. A. 637, 1 Ann. Cas. 742, it is said:

> "The Legislature being the sole depository of the lawmaking power, it is not for courts of justice to say that a given enactment passed in virtue of the police power, and having a direct ***443** relation to it, is void for unreasonableness, because if courts undertook to exercise such an authority they would in effect exert a veto on legislation. *** If the act has a real and substantial relation to the police power no inquiry as to its unreasonableness can arise, because it is the judgment of the lawmakers and not of the courts which must control; and if in the judgment of the former the thing be reasonable, all inquiry on that ground by the latter is foreclosed." Hiller v. State, 124 Md. 385, 92 Atl. 842; Brown v. Stubbs, 128 Md. 129, 97 Atl. 227; Benesch v. State, 129 Md. 505, 99 Atl. 702.

In City Cab Co. v. Hayden, 73 Wash. 24, 131 Pac. 472, L. R. A. 1915F, 726, Ann. Cas. 1914B, 731, it is said:

> "The general power of municipalities to regulate and control the conduct of hackmen and others soliciting the privilege of carrying travelers from railroad depots to their place of destination cannot, we think, be successfully questioned. This the city must do in the interest of good order, public peace and safety. It is a matter of common knowledge that not only are passengers themselves subjected to unnecessary and disagreeable annoyances at such places if hackmen are left to pursue their calling unrestrained, but that disorderly brawling and breaches of the peace often occur among the hackmen themselves, and sometimes between a hackman and a traveler who declines to submit quietly to some particularly vicious insult. The power, therefore arises from the necessities of the case, and the only debatable question is whether the particular regulation is reasonable." McFall et al. v. City of St. Louis, 232 Mo. 716, 135 S. W. 51, 33 L. R. A. (N. S.) 471.

[5] It is well settled by a long line of adjudicated cases in this court that the Legislature may delegate the police power to subordinate boards and commissions, as it has done in this case. Clark v. Harford Agri. Association, 118 Md. 612, 85 Atl. 503; C. & P. Telephone Co. v. Board of Forestry, 125 Md. 675, 94 Atl. 322; Gregg v. Public Service Com., 121 Md. 1, 87 Atl. 111; Lee v. Leitch, 131 Md. 30, 101 Atl. 716.

[6] In the case at bar the bill discloses no property rights which the appellant would be unlawfully deprived of by the enforcement of the statute. Obviously, they have no property rights in the streets of the city that would be superior to the regulations adopted under the police power and provided by the statute for the good and welfare of the city.

[7] In view of the authorities cited and after an examination of the act itself, we are of opinion that the act of 1910 (chapter 109) is a valid exercise of the police power of the state, and is free from the constitutional objections urged against it. Treating the charge as stated in Plaintiffs' Exhibit No. 3, as a violation of the act of 1910, and as this act superseded the ordinance, and the offense being against the statute, there can be no question, for the reasons stated, that the court below was right in sustaining the demurrers and in dismissing the bill.

Decree affirmed, with costs.

Md. 1918.
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