SUPREME COURT OF GEORGIA

Warren v. City of Atlanta

179 Ga. 900 (Ga. 1934) · Decided December 14, 1934

SUMMARY

The Georgia Supreme Court considered whether a person vending or peddling chickens and eggs was exempt from state, county, and municipal license taxes for perishable farm products. The court held that chickens and eggs could qualify as perishable farm products and that the exemption was not limited to the actual producer. It reversed the denial of injunctive relief.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Hutcheson, J.
JURISDICTION	Georgia
DECIDED	December 14, 1934
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from the denial of an injunction seeking to prevent the City of Atlanta from prosecuting Warren for operating without a license and collecting a municipal license tax.
STANDARD OF REVIEW	De novo review of the statutory classification and application of the tax exemption
PRECEDENTIAL VALUE	Published Georgia Supreme Court opinion; binding precedent within Georgia subject to subsequent treatment.
PARTIES	R. L. Warren v. City of Atlanta

TOPICS

statutory interpretation · municipal law · tax · equitable relief

PRACTICE AREAS

statutory interpretation · municipal law · tax · equitable relief

QUESTIONS PRESENTED

1. Whether chickens and eggs are products that may fall within the statutory classification of perishable farm products.
2. Whether the statutory exemption for vendors or peddlers of perishable farm products is limited to persons who personally produced the products.

HOLDINGS

1. Chickens and eggs may qualify as perishable farm products within the exemption from state, county, and municipal license fees or taxes.
2. The exemption is not limited to the actual producer of the perishable farm products; a person may be a vendor or peddler of such products without having raised them personally.

KEY QUOTATIONS

> *"It was the purpose of the legislature to permit farmers to vend or peddle their farm products without being required to pay State, county, or municipal license fees or taxes, and likewise to exempt vendors or peddlers of farm products from such taxation, to the end that the farmers of this State might find wider markets for their perishable products."* (902)

> *"But there is nothing either in the statute or in the decision just cited to show or infer that the exemption thus provided was limited to the actual producer of such products."* (901)

FACTUAL BACKGROUND

Warren was engaged in vending or peddling chickens and eggs and had not paid the license tax imposed by the City of Atlanta. The City arrested or prosecuted him for doing business without a license, characterizing him as a wholesale dealer rather than a vendor or peddler of perishable farm products. The trial court denied his request for an injunction.

PROCEDURAL HISTORY

Warren petitioned for an injunction, claiming that the Georgia tax statutes exempted vendors or peddlers of perishable farm products from state, county, and municipal license fees and taxes. The trial court denied the injunction, and Warren excepted. The Supreme Court of Georgia reversed, holding that chickens and eggs could fall within the statutory exemption.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The injunction should be granted consistently with the court's construction of the statutory exemption; the opinion does not provide additional remand instructions.

CASES CITED

- City of Atlanta v. Kirk, 174 Ga. 763, 764, 164 S.E. 64

OPINION

HUTCHESON, J.

Hutcheson, J. R. L. Warren filed a petition for injun'ction against the City of Atlanta, alleging that he is engaged in the vending or peddling of perishable farm products, to wit, chickens and eggs, and that under the provisions of the general tax act of 1928, as amended by the act of 1929, he is exempt from the payment of any State, county, or municipal fee or tax; that defendant -has actually arrested petitioner upon an accusation of doing business without a license, petitioner having failed to pay the tax so levied by the City of Atlanta.

He prays that defendant be enjoined from proceeding with the prosecution of petitioner and from attempting to collect any license tax for the vending or peddling of perishable farm products; and for other relief. The defendant in its answer denies the material portions of the petition, and alleges that the plaintiff is not a vendor or peddler of chickens and eggs in the sense of the statute; that he is a wholesale dealer therein, that he is liable for the payment of a license for conducting said business; and that a case has been made against plaintiff, not as a vendor or peddler of perishable farm products, but for carrying on a business as wholesale dealer in chickens and eggs.

Hpon the hearing an injunction was denied, and the plaintiff excepted. In the general tax act of 1927 (Acts 1927, pp. 56, 82), the legislature imposed “upon every peddler or traveling vendor.. of any kind of merchandise or commodity,” whether “enumerated” therein or not, a license tax of $50 in and for each county where any kind of merchandise or commodity is peddled, sold, or offered for sale.

There was, however, a proviso to this section, and in 1929 (Acts 1929, pp. 58, 62), the proviso was stricken and the following language added in lieu thereof: “Provided, that no vendor or peddler of perishable farm products, including products of grove and orchard, shall be required, under this paragraph or any other of this act, to pay any license fee or tax, State, county, or munic*902ipal.” This matter was exhaustively studied and ably treated by Mr. Justice Elines, in City of Atlanta v. Kirk, 174 Ga. 763, 764 (164 S. E. 64).

He said: “It was the purpose of the legislature to permit farmers to vend or peddle their farm products without being required to pay State, county, or municipal license fees or taxes, and likewise to exempt vendors or peddlers of farm products from such taxation, to the end that the farmers of this State might find wider markets for their perishable products.” But there is nothing either in the statute or in the decision just cited to show or infer that the exemption thus provided was limited to the actual producer of such products.

One could easily be a vendor or peddler of perishable farm products without having himself raised the products offered by him for sale. In view of the order of the trial court, expressing the opinion that chickens and eggs are not within the exemption, it is necessary that it be ascertained whether or not chickens and eggs are such products as can come within the classification “perishable farm products,” or what was the real intention of the lawmaking body relative thereto.

In the Penal Code, § 552, we find the following language: “Any person who shall solicit or in any way procure consignments of fruit, melons, vegetables, butter, eggs, poultry, or other farm, orchard, and dairy products ” etc. (Italics ours.) It will thus be noted that the legislature'of 1895 and 1896 considered eggs and poultry as products of “farm, orchard, or dairy,” and that the meaning of the general tax act of 1928, as amended in 1929, can be reasonably thus construed.

This being true, the court erred in denying the injunction prayed for. The judgment being reversed on this ground, it is not necessary to consider the other assignments of error. Judgment reversed. All the Justices concur.