IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

R. J. REYNOLDS, ET ALS.

vs.

MILK COMMISSION OF VIRGINIA

Memorandum of the Attorney General upon the question of the compliance of the General Assembly with the constitutional requirements in passing the Milk Control Act.

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Memorandum of the Attorney General upon the question of the compliance of the General Assembly with the constitutional requirements in passing the Milk Control Act.

Statement

Counsel for the appellants, in the oral argument at the rehearing of this case, raises for the first time the specific contention that the said act is unconstitutional because the Senate Journal does not show that the Senate properly dispensed with the printing of the bill. It is true that the appellants' answer to the bill of complaint,

as its second reason for not complying with the law, uses this language:

> "Because said act was not passed and adopted in conformity with the provisions of Section 50 of the Constitution of the State of Virginia."

No mention of this question is contained in the petition for appeal, however, nor was the question argued orally upon the original hearing of this case at Staunton, nor did opposing counsel ever point out in what respect there was a failure to comply with the said constitutional requirements of Section fifty. In the oral argument at the rehearing he stated that in the lower court he had expressly waived this point, because of his desire for a decision of the case upon its merits. It would appear that appellants' counsel has experienced a change of heart as to the desirability of such a decision.

While it is very doubtful whether this question can be considered upon the record in this case, the Attorney General agrees it is important that, if possible, it be now disposed of.

The printed House Journal of the General Assembly of 1934, pp. 808-9, shows the bill was introduced in the House, and that its patron, Mr. Hall, "moved to dispense with the printing and several readings of the bill required by Section 50 of the Constitution; which was agreed to—yeas 72; nays 0." The journal also records the names of those voting, and shows that the bill was properly passed by the House.

In the Senate, the journal shows (p. 715), a motion "to dispense with the reading of the title of the bill as

required by Section 50 of the Constitution," which was lost, but on reconsideration was passed, the names of those voting being recorded, (p. 716), and that the bill was finally passed by the vote—yeas 28; nays 1.

Section 50 of the Constitution provides:

> "No bill shall become a law unless, prior to its passage, it has been:
> * * * * * * * * *
> "(b) Printed by the house *in which it originated prior to its passage therein;*
> "(c) Read by title on three different calendar days in each house; * * *
> * * * * * * * * *
> "* * * The printing and reading, or either, required in subdivisions (b) and (c) of this section, may be dispensed with * * * in any case of emergency by a vote of four-fifths of the members voting in each house taken by the yeas and nays," etc. (Italics supplied).

The Point Under Consideration

Counsel for appellants makes the point that the Constitution requires that the Senate Journal show that the Senate, by a four-fifths vote, voted to dispense with the requirement that the bill be printed by the House before its passage therein.

Argument

The point is not well taken for the following reasons:

1. THE COURT WILL NOT TAKE JUDICIAL NOTICE OF THE JOURNALS OF THE GENERAL ASSEMBLY. THE FACTS SOUGHT TO BE ESTABLISHED THEREBY MUST BE PLEADED, AND PROVED IN THE SAME MANNER AS OTHER EVIDENCE. THE JOURNALS WERE NOT INTRODUCED IN EVIDENCE NOR THE CONTENTS THEREOF EMBRACED IN APPELLANTS' ANSWER. THEREFORE THEY CANNOT BE CONSIDERED BY THE COURT ON APPEAL.

2. IN THE ABSENCE OF EVIDENCE TO THE CONTRARY, ALL CONSTITUTIONAL REQUIREMENTS FOR THE PASSAGE OF A STATUTE PUBLISHED AS PROVIDED BY LAW, ARE PRESUMED TO HAVE BEEN COMPLIED WITH.

3. THE CONSTITUTION DOES NOT PROVIDE THAT THE SENATE MUST DISPENSE WITH THE DOING BY THE HOUSE OF DELEGATES OF THINGS WHICH THE HOUSE ALONE IS REQUIRED TO DO. THE MILK CONTROL BILL WAS A HOUSE BILL AND THE CONSTITUTION REQUIRED ITS PRINTING ONLY BY THE "HOUSE IN WHICH IT ORIGINATED, PRIOR TO ITS PASSAGE

THEREIN." THIS REQUIREMENT WAS PROPERLY DISPENSED WITH BY THE HOUSE AND IT WAS UNNECESSARY FOR THE SENATE TO DO LIKEWISE.

4. EVEN IF IT HAD BEEN NECESSARY FOR THE SENATE TO REQUIRE THE PRINTING OF THE BILL, OR ELSE DISPENSE WITH SAME, BEFORE IT COULD BE PASSED, THERE IS NOTHING IN THE JOURNAL TO SHOW THAT SAME WAS NOT PRINTED. THE PRESUMPTION IS THAT ALL CONSTITUTIONAL REQUIREMENTS WERE MET. IT IS NOT NECESSARY FOR THE JOURNAL TO SHOW AFFIRMATIVELY THAT THE BILL WAS PRINTED.

5. THE CONSTITUTION DOES NOT REQUIRE THAT THERE BE A SPECIAL MOTION TO DISPENSE WITH THE PRINTING. THE PASSAGE OF THE BILL BY THE NECESSARY FOUR-FIFTHS VOTE, WHERE SAME HAS NOT BEEN PRINTED, OPERATES TO DISPENSE WITH SUCH REQUIREMENT.

6. AN ACT OF THE GENERAL ASSEMBLY, SIGNED BY THE PRESIDING OFFICERS OF THE SENATE AND HOUSE OF DELEGATES, AND ENROLLED AND PUBLISHED IN THE "ACTS OF ASSEMBLY," IS CONCLUSIVELY PRESUMED TO HAVE BEEN PASSED IN CON-

FORMITY WITH ALL REQUIREMENTS OF THE CONSTITUTION, AND THE COURTS MAY NOT RESORT TO THE LEGISLATIVE JOURNALS TO IMPEACH SAME.

1. THE COURT WILL NOT TAKE JUDICIAL NOTICE OF THE JOURNALS OF THE GENERAL ASSEMBLY. THE FACTS SOUGHT TO BE ESTABLISHED THEREBY MUST BE PLEADED AND PROVED IN THE SAME MANNER AS OTHER EVIDENCE. THE JOURNALS WERE NOT INTRODUCED IN EVIDENCE NOR THE CONTENTS THEREOF EMBRACED IN APPELLANTS' ANSWER. THEREFORE THEY CANNOT BE CONSIDERED BY THE COURT ON APPEAL.

While it is highly desirable that this point should be disposed of on its merits and finally settled now, this cannot be done unless the Court overrule its former decision in the case of *Wayt* v. *Glasgow,* 106 Va. 110, in which it appears that the learned and able counsel representing the appellants in the case at bar, and who represented the appellee in that case, succeeded in convincing this Court that legislative journals are not within the range of judicial notice and that in order to be considered by the Court in an attack upon an act as not having been lawfully passed, such journals must be introduced in evidence. Said this Court, in *Wayt* v. *Glasgow, supra,* p. 120:

"In this case, whether the act in question received on its passage the requisite constitutional vote—a question not suggested in the record—is a question of fact, which could only be determined upon evidence *aliunde*. True, the question might have been determined in the lower court, had it been raised, upon record evidence, but like any other fact relied on, it had to be proved, and might have been proved or disproved by the introduction in evidence of copies of the journal of each house of the General Assembly, printed as required by law. Section 3229, Virginia Code, 1904. This question not having been raised and therefore not considered by the lower court, it is not in the record, and we can only consider the case, as to questions of fact, upon the record certified to us from the trial court as provided by law."

2. IN THE ABSENCE OF EVIDENCE TO THE CONTRARY, ALL CONSTITUTIONAL REQUIREMENTS FOR THE PASSAGE OF A STATUTE PUBLISHED AS PROVIDED BY LAW, ARE PRESUMED TO HAVE BEEN COMPLIED WITH.

This rule is so necessarily true and so well settled that it is sufficient to call the Court's attention to *Town of Narrows* v. *Giles County,* 128 Va. at p. 586, and 25 Ruling Case Law p. 898.

3. THE CONSTITUTION DOES NOT PROVIDE THAT THE SENATE MUST DISPENSE WITH THE DOING BY THE HOUSE OF DELE-

GATES OF THINGS WHICH THE HOUSE ALONE IS REQUIRED TO DO. THE MILK CONTROL BILL WAS A HOUSE BILL AND THE CONSTITUTION REQUIRED ITS PRINTING ONLY BY THE "HOUSE IN WHICH IT ORIGINATED, PRIOR TO ITS PASSAGE THEREIN." THIS REQUIREMENT WAS PROPERLY DISPENSED WITH BY THE HOUSE, AND IT WAS UNNECESSARY FOR THE SENATE TO DO LIKEWISE.

Section 50 of the Virginia Constitution does not require that a bill, originating in the House of Delegates, be printed by the Senate, nor that a bill, originating in the Senate, be printed by the House. The question here is, —where the House has properly dispensed with the requirement that it print the bill before the House passes it, does the Constitution also require that the Senate dispense with this action by the House? The Constitution requires a House Bill to be printed by the House before passage therein, but it does not require the House to furnish the Senate with printed copies thereof, though this is the custom. If the Senate must dispense with House printing then obviously it must also dispense with the House readings of the bill, and vice versa. Section 50 of the Constitution provides that the printing and reading may be dispensed with "by a vote of four-fifths of the members voting in *each* house." It does not say *both houses.* Nor has the language ever been so construed in legislative procedure. Not infrequently a bill

which has passed the House of Delegates in the regular course is passed in the other branch without the three constitutional readings, these being dispensed with in the required manner. No one has ever contended that it was necessary in such a case for the bill to be returned to the House and that it must also dispense with the readings by the Senate. To so hold would very greatly embarrass, encumber and confuse legislative procedure, and defeat much legislation. Therefore, it is clear that the provision that these requirements of printing and reading must be dispensed with by a four-fifths vote "in *each* house" means that each house must thus dispense with the requirement imposed on it, but need not dispense with the doing of a thing by the other house.

Since there is no constitutional requirement that the Senate print House Bills, or even that printed House Bills be supplied to the Senate, there was no Senate action to be taken and, therefore, none to be dispensed with. The House of Delegates properly dispensed with the printing of the bill, and this ended the matter, so far as printing was concerned.

4. and 5. It is not deemed necessary to discuss these propositions.

6. AN ACT OF THE GENERAL ASSEMBLY, SIGNED BY THE GOVERNOR AND PRESIDING OFFICERS OF THE SENATE AND HOUSE OF DELEGATES, AND ENROLLED AND PUBLISHED IN THE "ACTS OF ASSEMBLY," IS CONCLUSIVELY PRESUMED TO HAVE BEEN

PASSED IN CONFORMITY WITH ALL REQUIREMENTS OF THE CONSTITUTION, AND THE COURTS MAY NOT RESORT TO THE LEGISLATIVE JOURNALS TO IMPEACH SAME.

In *Town of Narrows* v. *Giles County,* 128 Va. at pp. 586, 587, Judge Burks said:

> "When an act has been duly published by authority of the State as a valid law, there is at least a *prima facie* presumption that all requirements as to the validity of its enactment, constitutional or otherwise, have been complied with. Whether or not the validity of an act can be called in question after it has been duly enrolled, approved by the signature of the presiding officers of the two houses of legislature and of the Governor, and published by authority of the State, is a question upon which there is serious conflict of authority, with the weight of authority probably holding the negative. The line of cases holds that an act so enrolled, authenticated and approved imports absolute verity and is conclusive that all constitutional requirements have been complied with, and the other that while there is a strong *prima facie* presumption that the act was regularly and duly passed, the presumption may be overcome by resort to the legislative journals. In *Wayt* v. *Glasgow,* 106 Va. 110, 120, 55 S. E. 536, there are expressions in the opinion of this court indicating that the journals might be consulted to show that such an act had not been passed by the vote required by the Constitution, but such holding was not necessary to the decision of the case, and the journals were excluded on other

> grounds, and as the question is not here involved, we express no opinion on the subject. The subject is discussed and the cases cited in 51 Am. Dec. 617-619; 25 R. C. L., secs. 146-155; 1 Greenleaf Ev. (16th ed.), sec. 482; Wigmore Ev., 1350, and notes.
>
> "The Supreme Court of the United States applies the rule of conclusiveness of the act as applied to acts of Congress and territorial statutes, but as to State statutes applies the rule prevailing in the State from which the case comes."

The opinion states the question was left open as not being necessarily involved in the case.

The attention of the Court is called, however, to the cases of *Wise* v. *Bigger,* 79 Va. 269, in which Judge Fauntleroy examined the journals of the legislature and held the statute properly enacted. Also *Cook* v. *Skeen,* 109 Va. 6, in which the same practice was followed.

The reasons for the rule are thus stated in 25 Ruling Case Law, p. 896:

> "It has been declared that the rule against going behind the enrolled bill is required by the respect due to a coequal and independent department of the government, and it would be an inquisition into the conduct of the members of the legislature, a very delicate power, the frequent exercise of which must lead to endless confusion in the administration of the law. The rule is also one of convenience, because courts could not rely on the published session laws, but would be required to look beyond these to the journals of the house and senate and often to any printed bills or amendments which might be found after the adjournment of the general assembly.

Otherwise, after relying on the prima facie evidence of the enrolled bills, authenticated as exacted by the constitution, for years, it might be ascertained from the journals that an act theretofore enforced had never become a law."

Respectfully submitted,

ABRAM P. STAPLES,
Attorney General.