U.S. Supreme Court

WEBB, et al. v. United States, 249 U.S. 96 (1919)

No. 370.

Argued Jan. 16, 1919.

Decided March 3, 1919.

Messrs. Ralph Davis and Ike W. Crabtree, both of Memphis, Tenn., for Webb and another. [249 U.S. 96, 97] Mr. Assistant Attorney General Porter, for the United States.

Mr. Justice DAY delivered the opinion of the Court.

This case involves the provisions of the Harrison Narcotic Drug Act (Act Dec. 17, 1914, c. 1, 38 Stat. 785; Comp. St. 6287g-6287q), considered in United States v. Doremus (No. 367, just decided: 249 U.S. 86, 39 Sup. Ct. 214. The case comes here upon a certificate from the Circuit Court of Appeals for the Sixth Circuit. From the certificate it appears that Webb and Goldbaum were convicted and sentenced in the District Court of the United States for the Western District of Tennessee on a charge of conspiracy (section 37, Penal Code [Act March 4, 1909, c. 321, 35 Stat. 1096; Comp. St. 10201]) to violate the Harrison Narcotic Law. While the certificate states that the indictment is inartificial, it is certified to be sufficient to support a prosecution upon the theory that Webb and Goldbaum intended to have the latter violate the law by using the order blanks

(section 1 of the act) for a prohibited purpose.

The certificate states:

'If section 2, rightly construed, forbids sales to a non-registrable user, and if such prohibition is constitutional, we next meet the question whether such orders as Webb gave to applicants are 'prescription,' within the meaning of exception (b) in section 2.

'We conclude that the case cannot be disposed of without determining the construction and perhaps the constitutionality of the law in certain particulars, and for the purpose of certification, we state the facts as follows-assuming, as for this purpose we must do, that whatever the evidence tended to show, in aid of the prosecution, must be taken as a fact:

'Webb was a practicing physician and Goldbaum a retail druggist, in Memphis. It was Webb's regular custom [249 U.S. 96, 98] and practice to prescribe morphine for habitual users, upon their application to him therefor. He furnished these 'prescriptions,' not after consideration of the applicant's individual case, and in such quantities and with such direction as, in his judgment, would tend to cure the habit, or as might be necessary or helpful in an attempt to break the habit, but with such consideration and rather in such quantities as the applicant desired for the sake of continuing his accustomed use.

Goldbaum was familiar with such practice and habitually filled such prescriptions. Webb had duly registered and paid the special tax as required by section 1 of the act. Goldbaum had also registered and paid such tax and kept all records required by the law. Goldbaum had been provided with the blank forms contemplated by section 2 of the act for use in ordering morphine, and, by the use of such blank order forms, had obtained from the wholesalers, in Memphis, a stock of morphine. It had been agreed and understood between Webb and Goldbaum that Goldbaum should, by using such order forms, procure a stock of morphine, which morphine he should and would sell to those who desired to purchase and who came provided with Webb's so-called prescriptions. It was the intent of Webb and Goldbaum that morphine should thus be furnished to the habitual users thereof by Goldbaum and without any physician's prescription issued in the course of a good faith attempt to cure the morphine habit.

Upon these facts the Circuit Court of Appeals propounds to this court three questions:

1. 'Does the first sentence of section 2 of the Harrison Act prohibit retail sales of morphine by druggists to persons who have no physician's prescription, who have no order blank therefor and who cannot obtain an order blank because not of the class to which such blanks are allowed to be issued?'

2. 'If the answer to question one is in the affirmative, does this construction make unconstitutional the prohibition of such sale?'

3. 'If a practicing and registered physician issues an order for morphine to an habitual user thereof, the order not being issued by him in the course of professional treatment in the attempted cure of the habit, but being issued for the purpose of providing the user with morphine sufficient to keep him comfortable by maintaining his customary use, is such order a physician's prescription under exception (b) of section 2?'

'If question one is answered in the negative, or question two in the affirmative, no answer to question three will be necessary; and if question three is answered in the affirmative, questions one and two become immaterial.'

What we have said of the construction and purpose of the act in No. 367 plainly requires that question one should be answered in the affirmative. Question two should be answered in the negative for the reasons stated in the opinion in No. 367. As to question three-to call such an order for the use of morphine a physician's prescription would be so plain a perversion of meaning that [249 U.S. 96, 100] no discussion of the subject is required. That question should be answered in the negative.

Answers directed accordingly.

For the reasons which prevented him from assenting in No. 367, the Chief Justice also dissents in this case.

Mr. Justice McKENNA, Mr. Justice VAN DEVANTER, and Mr. Justice McREYNOLDS concur in the dissent.