

## THE LAUNDRY LICENSE CASE.

*In re* WAN YIN.*(District Court, D. Oregon. January 29, 1885.)*

## 1. CITY OF PORTLAND—POWER TO REGULATE.

The power granted to the city of Portland "to regulate" wash-houses includes the power "to license" as a means to that end; but it does not include the power to tax the business.

## 2. SAME—LICENSE FEE.

The power "to license" as a means of regulating a business implies the power to charge a fee therefor sufficient to defray the expense of issuing the license, and to compensate the city for any expense incurred in maintaining such regulation.

## 3. SAME—WHEN DEEMED A TAX.

Whenever it is manifest that the fee for the license is substantially in excess of what it should be, it will be considered a tax, and the ordinance imposing it held void.

## 4. SAME—CASE IN JUDGMENT.

The council of Portland was authorized "to regulate" wash-houses, and thereupon ordained that the proprietor of such a house should take out a license quarterly, and pay therefor the sum of five dollars, or twenty dollars a year, and in default thereof should be liable to fine and imprisonment. *Held*, that, while the council had power to require the license as a means of regulating the business, the sum charged therefor was manifestly so far in excess of what was necessary or proper for that purpose that it must be considered a tax, and the ordinance imposing it is therefore so far void.

## 5. JURISDICTION OF NATIONAL COURTS IN CASE OF IMPRISONMENT BY A STATE WITHOUT DUE PROCESS OF LAW.

Grounds of it stated, and reflections thereon.

*On Habeas Corpus.*

*W. Scott Beebe*, for petitioner.

*A. H. Tanner*, for respondent.

DEADY, J. The act incorporating the city of Portland, approved October 24, 1882, provides that the council has power and authority "to control and regulate slaughter-houses, wash-houses, and public laundries, and provide for their exclusion from the city limits or from any part thereof." On December 4, 1884, the council passed an ordinance, No. 4,448, "to license and regulate wash-houses and public laundries." This ordinance declares every "house, building, or place which is open to the public as a laundry or wash-house," to be "a public laundry or wash-house;" and requires the "proprietor or manager" thereof, (1) to keep a written register of the receipt and return of clothes washed therein; (2) to keep the premises in a good sanitary condition, and connected with a sewer or cess-pool for the purpose of drainage; and (3) to pay "a quarterly license of \$5." Any person convicted of a violation of the ordinance shall be punished by a fine of from \$5 to \$50, or be imprisoned from 2 to 25 days; and the chief of police is required "to supervise and control the due and proper administration and enforcement" of the ordinance. On January 16th,

the petitioner, Wan Yin, who is the proprietor of a wash-house in Portland, refused to pay the quarterly license of five dollars when demanded by the police, and on January 20th was on that account convicted of a violation of the ordinance in the police court, and sentenced to pay a fine of \$15 therefor, and in default of payment thereof was committed to the city jail for seven days. The petitioner sued out a writ of *habeas corpus* to be delivered from the imprisonment. The return of the chief of police, S. B. Parrish, contains the facts above stated, to which there was a demurrer by the petitioner.

On the argument counsel for the petitioner contended that the power "to regulate" laundries did not include the power "to license" the same; and if this were otherwise, that the power "to license" does not include the power "to tax," but only the right to charge a reasonable fee for issuing the same, and insisted that a fee of five dollars a quarter for a license to keep a wash-house is manifestly a mere pretense for imposing an onerous tax on the business. On the contrary, counsel for the respondent contends that the power "to regulate" includes the power "to license," and while he admits that it does not include the power "to tax," he insists that the sum required of the petitioner is not a tax but only a license fee, and that the judgment or action of the council in fixing the amount of such fee is not open to inquiry or question in the courts. Counsel also contends that if the power "to regulate" a wash-house, contained in subdivision 23 aforesaid, does not include the power "to license" the same, then such power is given by subdivision 37 of the same section, which authorizes the council "to license and regulate all such callings, trades, and employments" not prohibited by law, "as the public good may require;" and that even the power "to tax" the business of keeping a wash-house is contained in the last clause of subdivision 3 of said section which authorizes the council "to license, tax, regulate, and restrain all offensive trades and occupations."

In support of the proposition that the power to regulate a wash-house does not include the power "to license," counsel for the petitioner cites *Burlington v. Bumgardner*, 42 Iowa, 673; *Com. v. Stodder*, 2 Cush. 562; *St. Paul v. Traeger*, 25 Minn. 248; *Corvallis v. Carlike*, 10 Or. 139; *Dunham v. Rochester*, 5 Cow. 464; *Barling v. West*, 29 Wis. 314; *Dill. Mun. Corp.* § 361. While counsel for the respondents cites to the contrary *Burlington v. Lawrence*, 42 Iowa, 681; *Chicago P. & P. Co. v. Chicago*, 88 Ill. 221; *State v. Clarke*, 54 Mo. 17; *Welch v. Hotchkiss*, 39 Conn. 140; *Cincinnati v. Buckingham*, 10 Ohio, 527; *Dill. Mun. Corp.* § 91. Some of these authorities are flatly contradictory of others on this point, but the difference in the conclusion reached in the most of the cases is largely attributable to a difference in the circumstances.

The words "to control" and "to regulate," *ex vi termini*, imply to restrain, to check, to rule and direct. And, in my judgment, the