

This license tax is exacted without reference to the question as to where the beer was manufactured, whether within or without the State, and hence there is no discrimination in the case.

It is unnecessary to continue the discussion. As we have said, the cases above cited are conclusive in favor of the correctness of the judgment of the Supreme Court of Alabama.

*Judgment affirmed.*

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### RICHARD *v.* CITY OF MOBILE.

#### APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

No. 112. Argued January 17, 1908.—Decided February 24, 1908.

Decided on the authority of *Phillips v. City of Mobile*, *ante*, p. 472.

THE facts are stated in the opinion.

*Mr. Richard William Stoutz*, with whom *Mr. Walter A. White* was on the brief, for plaintiff in error.

*Mr. Burwell Boykin Boone* for defendant in error.<sup>1</sup>

MR. JUSTICE PECKHAM delivered the opinion of the court.

This is an appeal from a judgment of the Circuit Court of the United States for the Southern District of Alabama, sustaining the demurrer of the City of Mobile to a bill filed by the appellants, and dismissing the same. It appears that the appellants sought to obtain an injunction to restrain the city from collecting the amount of the license tax imposed under the ordinance of the city upon those who were engaged in selling beer in the city by the barrel, half barrel or quarter barrel.

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<sup>1</sup> For abstracts of arguments see *ante*, p. 475.

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## Syllabus.

The question involved is, as counsel for appellants admits, identical with that which has just been decided in the foregoing case, No. 113, and for the reasons therein stated the judgment of the Circuit Court is

*Affirmed.*

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UGHBANKS *v.* ARMSTRONG, WARDEN OF THE MICHIGAN STATE PRISON.

ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

No. 435. Submitted January 20, 1908.—Decided February 24, 1908.

The indeterminate sentence law of Michigan of 1903, as construed and sustained according to its own constitution, by the highest court of that State, does not violate any provision of the Federal Constitution. It is of a character similar to the Illinois act, sustained by this court in *Dreyer v. Illinois*, 187 U. S. 71.

When a subsequently enacted criminal law is more drastic than the existing law which in terms is repealed thereby, the claim that it is *ex post facto* as to one imprisoned under the former law and therefore void, and that the earlier law being repealed he cannot be held thereunder, has no force in this court where the state court has held that the later law does not repeal the earlier law as to those sentenced thereunder. In such a case this court follows the construction of the state court.

The Sixth and Eighth Amendments to the Federal Constitution do not limit the power of the State.

The Fourteenth Amendment to the Federal Constitution does not limit the power of the State in dealing with crime committed within its own borders or with the punishment thereof. But a State must not deprive particular persons or classes of persons of equal and impartial justice.

This court follows the construction of an indeterminate sentence law by the highest court of the State, to the effect that where the maximum term of imprisonment for a crime has been fixed by statute a maximum term fixed by the court of a shorter period is simply void.

The granting of favors by a State to criminals in its prisons is entirely a matter of policy to be determined by the legislature, which may attach thereto such conditions as it sees fit, and where it places the granting of such favors in the discretion of an executive officer it is not bound to give the convict applying therefor a hearing.

The provision in the indeterminate law of Michigan of 1903, excepting prisoners twice sentenced before from the privilege of parole, extended in the discretion of the Executive to prisoners after the expiration of