

389.

Counsel for Parties.

commerce necessarily imposes a direct burden upon such commerce, and is, therefore, violative of the commerce clause of the Federal Constitution. We may remark that the conclusion at which we have arrived has been reached by the supreme courts of North Dakota and Ohio. *Bartels Northern Oil Co. v. Jackman*, 29 N. Dak. 236; *Castle v. Mason*, 91 Ohio St. 296.

It follows that the judgment of the Supreme Court of Washington must be

Reversed.

McKINLEY ET AL. v. UNITED STATES.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF GEORGIA.

No. 417. Submitted March 3, 1919.—Decided April 14, 1919.

Congress, under the authority to raise and support armies, may make rules and regulations to protect the health and welfare of the men composing them against the evils of prostitution, and may leave the details of such regulations to the Secretary of War.

Conviction sustained, for setting up a house of ill fame within five miles of a military station, the distance designated by the Secretary of War, under the Act of May 18, 1917, c. 15, § 13, 40 Stat. 76. Affirmed.

THE case is stated in the opinion.

Mr. R. Douglas Feagin for plaintiffs in error. *Mr. Oliver C. Hancock* was on the brief.

Mr. Assistant Attorney General Porter and *Mr. W. C. Herron* for the United States.

Memorandum opinion by direction of the court, by
MR. JUSTICE DAY.

Plaintiffs in error were indicted, convicted, and sentenced upon an indictment in the District Court of the United States for the Southern District of Georgia for violation of a regulation of the Secretary of War made under the authority of the Act of Congress of May 18, 1917, c. 15, § 13, 40 Stat. 76, 83. This statute provides:

"The Secretary of War is hereby authorized, empowered, and directed during the present war to do everything by him deemed necessary to suppress and prevent the keeping or setting up of houses of ill fame, brothels, or bawdy houses within such distance as he may deem needful of any military camp, station, fort, post, cantonment, training, or mobilization place, and any person, corporation, partnership, or association receiving or permitting to be received for immoral purposes any person into any place, structure, or building used for the purpose of lewdness, assignation, or prostitution within such distance of said places as may be designated, or shall permit any such person to remain for immoral purposes in any such place, structure, or building as aforesaid, or who shall violate any order, rule, or regulation issued to carry out the object and purpose of this section shall, unless otherwise punishable under the Articles of War, be deemed guilty of a misdemeanor and be punished by a fine of not more than \$1,000, or imprisonment for not more than twelve months, or both."

Plaintiffs in error contend that Congress has no constitutional authority to pass this act. The indictment charged that the plaintiffs in error did unlawfully keep and set up a house of ill fame within the distance designated by the Secretary of War, under the authority of the act of Congress, to-wit, within five miles of a certain military station of the United States.

That Congress has the authority to raise and support armies and to make rules and regulations for the protection of the health and welfare of those composing them, is too well settled to require more than the statement of the proposition. *Selective Draft Law Cases*, 245 U. S. 366.

Congress having adopted restrictions designed to guard and promote the health and efficiency of the men composing the army, in a matter so obvious as that embodied in the statute under consideration, may leave details to the regulation of the head of an executive department, and punish those who violate the restrictions. This is also well settled by the repeated decisions of this court. *Buttfield v. Stranahan*, 192 U. S. 470; *Union Bridge Co. v. United States*, 204 U. S. 364; *United States v. Grimaud*, 220 U. S. 506.

The judgment of the District Court is

Affirmed.

COLUMBUS RAILWAY, POWER & LIGHT COMPANY v. CITY OF COLUMBUS, OHIO, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF OHIO.

No. 715. Argued January 10, 1919.—Decided April 14, 1919.

Constitutional questions not devoid of merit suffice as a basis for jurisdiction in the District Court, however they may be decided. P. 406.

Ordinances passed by the City of Columbus under authority of certain laws of Ohio and accepted by street railway companies, *held* contracts, binding the grantees to furnish street railway service for twenty-five years, at specified rates, in return for the use of the streets, and not permissive franchises which the grantees might surrender when they ceased to be remunerative. P. 407.

If a party charge himself with an obligation possible to be performed, he