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Interstate Commerce—Conflict of State and Federal Regulations

INTERSTATE COMMERCE—CONFLICT OF STATE AND FEDERAL REGULATIONS—[Federal].—Plaintiff was engaged in the manufacture of process, or renovated, butter, primarily for interstate commerce. Federal statutes[1] regulate such manufacture, and give the Secretary of Agriculture power to inspect, but not to seize, the materials used in manufacture, and to seize the product whenever unwholesome ingredients are used. Defendant, an official of the state of Alabama, acting under state pure food laws, seized at various times, and condemned as unwholesome, packing stock butter, the raw material belonging to plaintiff awaiting processing. Plaintiff resisted such action on the grounds that it was an interference with the power of Congress over interstate commerce. The lower court denied an injunction.[2] Held, reversed. Federal power to regulate interstate commerce is supreme whenever a conflict arises between federal and state authority. The state power exercised was impliedly excluded by the federal statute. *Cloverleaf Butter Co. v. Patterson.*[3]

The earliest cases under the commerce clause said, by way of *dictum,* that the federal power over commerce was constitutionally exclusive.[4] However, indirect impingement on the field by the state police power was held valid.[5] Taney advanced the theory of concurrent power, with the states free to act until precluded by Congressional action.[6] The present rule is a compromise,[7] to the effect that when the subject matter of the regulation is national in scope, demanding uniformity of treatment, the federal power is exclusive, but that the states may act, without discrimination,[8] to regulate subjects of local importance (in the absence of Congressional action). In some instances, the Court has substituted a "direct v. indirect burden" (on interstate commerce) test for the "national v. local" distinction.[9]

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1. (1902) 32 Stat. 193, c. 784; Internal Revenue Code (1939) 53 Stat. 254, 26 U. S. C. A. §2325.

2. Closerleaf Butter Co. v. Patterson (C. C. A. 5, 1940) 116 F. (2d) 227.

3. (1942) 62 S. Ct. 491. Chief Justice Stone, Justices Frankfurter, Murphy, and Byrnes dissented.

4. Gibbons v. Ogden (U. S. 1824) 9 Wheat. 1; Brown v. Maryland (U. S. 1827) 12 Wheat. 419; This doctrine is also set forth in Justice Story's dissent in New York v. Miln (U. S. 1837) 11 Pet. 102, 153, and in Justice McLean's opinion in the Passenger Cases (U. S. 1849) 7 How. 283, 399-400.

5. Wilson v. Blackbird Creek Marsh Co. (U. S. 1829) 2 Pet. 245; New York v. Miln (U. S. 1837) 11 Pet. 102.

6. License Cases (U. S. 1847) 5 How. 504. Chief Justice Taney in a dissent in the Passenger Cases reiterated [(U. S. 1849) 7 How. 283, 470-471] the concurrent theory. The concurrent theory finds support on the present court from Justice Black. See note 18.

7. Cooley v. Board of Wardens (U. S. 1852) 12 How. 299. Bowman v. Chicago and Northwestern R. R. (1887) 125 U. S. 465. Rottschaefer, *Constitutional Law* (1939) 277; 2 Willoughby, *Constitutional Law* (2d Ed. 1929) 768.

8. Welton v. Missouri (1875) 91 U. S. 275; Minnesota v. Barber (1890) 136 U. S. 313; see also Woodruff v. Parham (U. S. 1869) 8 Wall. 123.

9. Sherlock v. Alling (1876) 93 U. S. 99; Minnesota Rate Cases (1913) 230 U. S. 352; Lempke v. Farmer's Grain Co. (1922) 258 U. S. 50; Kansas City R. R. v. Kaw Valley Drainage District (1914) 233 U. S. 75; Rottschaefer, *Constitutional Law* (1939) 277-284.

By stipulation the issue in the present case was limited to the alleged conflict between the state and federal statutes.[10] The problem left to the court was to decide whether Congress had by its action excluded the state regulation in question. It is to be noted that the power was not given to the federal agents to enforce regulations by the method in question, nor was it expressly forbidden to the state officials. When Congress has made regulations concerning a subject of interstate commerce, but has left certain phases unregulated, two inferences are possible. It may be inferred that Congress intended to "occupy the field," leaving the subject free of any restrictions other than those set forth.[11] This influence may be likened to the early "exclusive power" point of view, with the important exception that it is based on Congressional action rather than on Constitutional grounds. On the other hand, Congress may have rules, leaving to the states the power to make further regulations not in express conflict with those rules.[12] The latter is closer to Taney's "concurrent" philosophy in that it extends rather than limits state power.[13]

When the statute does not expressly state what is intended, the Court must adopt one or the other of these inferences. It may base its choice on the tenor of the act, or on the preferable policy, or on a number of factors.[14] In the principal case, as a basis for adopting the former inference, that Congress intended to exclude the state action, the majority decision finds that the state act conflicts with the "scope and purpose of the Federal legislation."[15] The dissenting opinions gather from the words and

10. (1942) 62 S. Ct. 491, 493.

11. Southern R. R. v. Reid (1912) 222 U. S. 424; Northern Pac. Ry. Co. v. Washington ex rel. Atkinson (1912) 222 U. S. 370; McDermott v. Wisconsin (1913) 228 U. S. 115; Erie Ry. Co. v. New York (1914) 233 U. S. 671; Southern Ry. v. Indiana (1915) 236 U. S. 439; New York Cent. Ry. v. Winfield (1917) 244 U. S. 147; Oregon-Washington Ry. & Navigation Co. v. Washington (1926) 270 U. S. 87; International Shoe Co. v. Pinkus (1929) 278 U. S. 261; Lindgren v. U. S. (1930) 281 U. S. 38; Hines v. Davidowitz (1941) 312 U. S. 52; Note (1938) 86 U. Pa. L. Rev. 582.

12. Kelly v. State of Washington ex rel. Foss (1937) 302 U. S. 1; Savage v. Jones (1912) 225 U. S. 501. A comparison of the latter case with McDermott v. Wisconsin (1913) 228 U. S. 115 shows how narrow the line between the two situations may be.

13. Justice Black has urged in a number of dissenting opinions that the presumption of validity be given to *all* non-discriminatory state laws in the absence of conflicting congressional action. Adams Mfg. Co. v. Storen (1938) 304 U. S. 307, 316; Gwin, White, & Prince v. Henneford (1939) 305 U. S. 434, 442. McCarroll v. Dixie Greyhound Lines (1940) 309 U. S. 176, 183; Barnett, The Supreme Court, the Commerce Clause, and State Legislation (1941) 40 Mich. L. Rev. 49.

But when Congress has taken action in the field in controversy, Justice Black seems to adopt the inference of an intent to exclude the states altogether. Hines v. Davidowitz (1941) 312 U. S. 52, noted in (1941) 29 Georgetown L. Rev. 755. Also the present case, in which Justice Black was with the majority.

14. Crawford, *The Construction of Statutes* (1940) chapters 18, 20-22.

15. Cloverleaf Butter Co. v. Patterson (1942) 62 S. Ct. 491, 496. For a discussion of the tendencies of the Court in interpreting the intent of Congress to "occupy the field" see Note, (1938) 86 U. Pa. L. Rev. 532.

history of the statute, and the practical application of it, the opposite implication.

Unless Congress, in each regulation issued, expressly states its intent to exclude the power of the state or to allow it in the interstices of the federal law, the courts will continue to be faced with this problem of interpretation. It has been urged that the Court adopt either one of these presumptions in order to have a uniform rule.[16] In any case there is the possibility of Congress "overruling" the Supreme Court by subsequent legislation. Upon several occasions decisions have been followed by statutes which laid down a rule different from that expressed by the Court.[17] It is interesting to note that in most of these cases, Congress has acted to return to the states powers which the Court had taken away in construing the statute. We may speculate as to what action Congress may take in connection with the instant case.[18]

J. D. H.

MECHANICS' LIENS—JUDGMENTS—STATUTE OF LIMITATIONS—[Missouri]. —A sheriff, in execution of a mechanic's lien judgment, sold two lots, the titles to which had previously been acquired by the appellants through a sale under a deed of trust. The sheriff's sales were on July 21, 1938, in pursuance of the executions issued upon judgments and decrees establishing a mechanic's lien. The decrees on the lots were entered in January and April, 1934. The appellants sought to cancel the sheriff's sale, contending that under Missouri statutes[1] the liens created by the judgments and decrees

16. Dowling, Interstate Commerce and State Power (1940) 27 Va. L. Rev. 1.

17. In Pennsylvania v. The Wheeling and Belmont Bridge Co. (U. S. 1851) 13 How. 518, a bridge authorized by the state of Virginia was declared illegal as an obstruction to interstate commerce. (1852) 10 Stat. 112, c. 112, declared it to be a valid structure, and in Pennsylvania v. Wheeling and Belmont Bridge Co. (U. S. 1856) 18 How. 421, the Court recognized the effect of the statute, and reversed the former opinion. Liesy v. Hardin (1890) 135 U. S. 100 held that a state could not prevent the interstate sale of liquor within its boundaries in the original package. The Wilson Act (1890) 26 Stat. 313, c. 728, 27 U. S. C. A. §121, gave this power to the states, and in In re Rahrer (1891) 140 U. S. 545 the reversing effect of the statute was recognized. In both of these cases, the silence of Congress was interpreted as an intent that the field be free of state regulation. Congress acted after the interpretation by the court, to express a different intent. See also Clark Distilling Co. v. Western Maryland Ry. Co. (1917) 242 U. S. 311 in connection with the Webb-Kenyon Act (1913) 37 Stat. 699, c. 90, 27 U. S. C. A. §122.

In Oregon-Washington Ry. & Navigation Co. v. Washington (1926) 270 U. S. 87 the Court inferred from an act of Congress (1912) 37 Stat. 315, c. 308, 7 U. S. C. A. §161, an intent to exclude state quarantine regulations. Within three months, Congress amended the act to refute this implication, and allow the action. 44 Stat. 250, c. 135, 7 U. S. C. A. §161.

18. To date there seems to have been no effort to effect a change in the rule set forth by the court.

1. R. S. Mo. (1939) §§1269, 1270.