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Constitutional Law—Severance Tax Upon Skins of Wild Fur-Bearing Animals, Etc.—Equal Protection—Delegation of Legislative Authority

any motor vehicle, except street cars and motor vehicles subject to the Public Service Commission Law, upon any street in a city of the first class, to file with the state tax commission, either a personal bond with sureties, a corporate surety bond, or a policy of insurance in a responsible company in the sum of $2500, conditioned for payment of any judgment recovered against such person, for death or injury caused in the operation or by the defective construction of such motor vehicle.

The lower court dismissed the bill for want of equity and its judgment was affirmed, the court holding that the statute was not unconstitutional, as depriving of equal protection of the laws, because confined to operators in cities of the first class, inasmuch as the use of the streets by great numbers of persons and the density and continuity of traffic thereon in cities of the first class, justify measures to safeguard the public from dangers incident to operation of motor vehicles in them, which do not obtain in the case of smaller communities.

Nor would the fact that the rate for such insurance amount to $18.50 per week, while the net profit of a cab is only $35 per week, make a statute requiring such insurance as a condition of operation of the cab a deprivation of property without due process of law; certainly not where there is a possibility of giving bond protection at less cost.

The court stresses the distinction between regulation of an activity which may be engaged in as a matter of right, and one carried on by government sufferance or permission, as the use of streets and highways by common carriers. In the latter case the power to exclude altogether generally includes the lesser power to condition, and may justify a degree of regulation not admissible in the former.

CONSTITUTIONAL LAW—SEVERANCE TAX UPON SKINS OF WILD FUR-BEARING ANIMALS, ETC.—EQUAL PROTECTION—DELEGATION OF LEGISLATIVE AUTHORITY.

Lacoste v. Louisiana Department of Conservation, U. S. Adv. Ops., page 178:

Bill for an injunction against enforcement of an act declaring the wild fur-bearing animals and alligators within the State to be the property of the State, and the skins thereof to be the property of the State until a so-called severance tax was paid thereon to the Department of Conservation. The act levied an annual license tax on persons engaged in buying such furs and hides, levied a severance tax of two cents on the dollar of the value of such hides and furs, and gave to said department authority to ascertain the price paid for such hides and furs, to determine the value thereof, and determine the time when and manner in which the tax should be paid; and prohibited all persons from shipping such hides or skins out of the State unless such tax was paid thereon.

It was held that a state, in the exercise of its police power, may regulate and control the taking of wild animals within its borders, their subsequent use, and the property rights that may be acquired therein.

The court further held that said act does not violate the commerce clause of the Federal Constitution, although no skins are sold for manufacture within the State; and that the levying a severance tax upon dealers in such skins, in addition to the license and property tax imposed on merchants generally, does not violate the equal protection clause of the Federal Constitution.

It also held that the powers conferred on the State department are not an improper delegation of legislative power, in violation of the due process clause of the Federal Constitution.

INTERSTATE COMMERCE—POWER TO REQUIRE ISSUE OF INTERCHANGEABLE MILEAGE COUPON TICKETS.

U. S. v. New York Central Railroad, et al., U. S. Adv. Ops., page 227:

Bill in equity by the railroads to prevent enforcement of an order of the Interstate Commerce Commission, made in pursuance of Act of Congress of August 18, 1922, amending Sec. 22 of the Interstate Commerce Act by directing the Commission to require railroads subject to the act with such exemptions as the Commission holds justified, to issue interchangeable mileage scrip coupon tickets at just and reasonable rates, etc. After a hearing the Commission ordered Class I railroads to issue at designated offices, a non-transferrable interchangeable scrip coupon ticket in the denomination of $90, to be sold at a reduction of 20 per cent from its face value. In its report upon which the order was based, the Commission pointed out that the net operating income of the roads for seven months ending July 31, 1922, was below the return fixed as reasonable and discarded several theories upon which it was urged the order could be justified. The bill alleged that the amendment of 1922, as construed by the Commission, violated the 5th Amendment and the Commerce Clause of the Constitution; and that the conclusion stated by the Commission that the reduced rates established by it for scrip coupon tickets would be just and reasonable for that class of travel, is contrary to the specific facts found by it.

The district court upheld the latter contention and issued a perpetual injunction. That decree was affirmed on appeal, the court saying:

"It seems to us plain that the Commission was not prepared to make its order on independent grounds apart from the deference naturally paid to the supposed wishes of Congress. But we think that it erred in reading the wishes that originated the statute as an effective term of that statute that was passed, and therefore that the present order cannot stand."