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REGULATION OF INTERSTATE COMMERCE IN THE PRODUCTS OF CHILD LABOR,

Can Congress, under the power given to it by the Constitution to regulate interstate commerce, prohibit interstate commerce in the products of child labor?

In *Hammer v. Dagenhart*, decided in 1918, the Supreme Court (by a five-to-four decision) held the Act of Sept. 1, 1916, C. 432, 39 Stat. 675, which prohibits transportation in interstate commerce of goods made at a factory in which thirty days prior to their removal therefrom children under fourteen years have been employed, unconstitutional as exceeding the commerce power of Congress and invading the powers reserved to the States.

A bill was filed in the U. S. District Court for the Western District of North Carolina by a father in behalf of himself and his two minor sons, employees in a cotton mill, to enjoin the enforcement of the Act of Congress intended to prevent interstate commerce in the products of child labor. The District Court held the Act unconstitutional and entered a decree enjoining its enforcement. On appeal, the U. S. Supreme Court affirmed the decision.

The attack upon the Act rested upon the proposition that it was not a regulation of interstate and foreign commerce.

In *Gibbons v. Ogden*,¹ Chief Justice Marshall defines the commerce power of Congress, as "power to regulate; that is, to prescribe the rule by which commerce is to be governed." The power is one to control the means by which commerce is carried on, not a power to forbid commerce from moving and thus destroy it as to particular commodities. There is a line of cases (*Champion v. Ames*,² the so-called Lottery case; *Hipolite Egg Co. v. U. S.*,³ which sustained the power of Congress to prohibit interstate commerce

1. 9 Wheat. 1.

2. 188 U. S. 321.

3. 220 U. S. 45.

in impure food; *Clark Distilling Co. v. Western Maryland Ry Co.*,⁴ sustaining the power of Congress to prohibit interstate commerce in intoxicating liquor; *Hoke v. U. S.*⁵ and *Caminetti v. U. S.*,⁶ sustaining the power of Congress to prohibit interstate white slave traffic) which seem to establish the doctrine that the power to regulate interstate commerce incidentally includes the power to prohibit. But in these cases the nature of the subject regulated was such as to bring them peculiarly within the governmental authority of the nation and to render their exclusion but a regulation of interstate commerce necessary to prevent the accomplishment through that means of the evils inherent in them. Although the power of Congress over interstate commerce was to regulate, regulation could only be accomplished by prohibiting the use of the facility of interstate transportation. The goods were harmful *per se*. In the case of the products of child labor, this element is entirely wanting. Such goods are in themselves harmless. The thing intended to be accomplished by this statute is the denial of the facilities of interstate commerce to those manufacturers in the states which employ children within the prohibited ages. The effect of the Act is not to regulate interstate transportation, but to standardize the ages at which children may be employed in manufacturing within the States. When offered for shipment and before transportation begins, the labor of the production of the goods is over, and the mere fact that they were intended for interstate transportation does not make their production subject to Federal control under the commerce power.

In *Delaware, Lackawanna & Western Ry. v. Yurkonis*,⁷ it is said: "The making of goods and the mining of coal are not commerce, nor does the fact that the goods are afterwards to be used in interstate commerce make their production a part thereof."

Over interstate commerce or its incidents the regulating

4. 242 U. S. 311.

5. 227 U. S. 308.

6. 242 U. S. 470.

7. 238 U. S. 439.

power of Congress is ample, but the production of articles intended for interstate transportation is a matter of local regulation. And as this statute aims not to regulate commerce, but to regulate production of any articles by child labor, it is clearly in conflict with the Tenth Amendment to the Constitution. The grant of power to Congress over the subject of interstate commerce was to enable it to regulate such commerce, and not to give it authority to control the States in their exercise of the police power over local trade and manufacture. The grant of authority over a purely Federal matter was not intended to destroy the local power always existing and carefully reserved to the States in the Tenth Amendment to the Constitution.

Police regulations relating to the internal trade and affairs of the States have been uniformly recognized as within the powers reserved to the States. *Keller v. U. S.*,⁸ *Cooley on Constitutional Limitations*,⁹ *U. S. v. Dewitt*.¹⁰

In *Dartmouth College v. Woodward*,¹¹ Chief Justice Marshall says: "The framers of the Constitution did not intend to restrain the States in the regulation of their civil institutions, adopted for internal government, and the instrument they have given us is not to be so construed."

"The maintenance of the authority of the States over matters purely local is as essential to the preservation of our institutions as is the conservation of the supremacy of the Federal power in all matters entrusted to the nation by the Federal Constitution." *Pipe Line Cases*.¹²

The power of the States to regulate their purely internal affairs by such laws as seem wise to the local authority is inherent and has never been surrendered to the general government. *New York v. Milu*.¹³

8. 213 U. S. 138, 145, 146.

9. 7th Ed., p. 11.

10. 9 Wall. 41, 45.

11. 4 Wheat. 518.

12. 234 U. S. 548.

13. 11 Pet. 102, 139.

In concluding his opinion, Justice Day says: "This Act is in a twofold sense repugnant to the Constitution. It not only transcends the authority delegated to Congress over commerce, but also exerts a power as to a purely local matter to which the Federal authority does not extend. The far-reaching result of upholding the Act cannot be more plainly indicated than by pointing out that if Congress can thus regulate matters entrusted to local authority by prohibition of the movement of commodities in interstate commerce, all freedom of commerce will be at an end, and the power of the States over local matters may be eliminated, and thus our system of government be practically destroyed."

LOUISE GRANT.