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Federal Legislation

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FEDERAL LEGISLATION

THE REACH OF THE INTERSTATE COMMERCE POWER

(Lawyer Service Letter, April 19, 1939, New York State Bar Association)

The scope of the power of the central government over commerce has now been defined, under two of the most recent decisions of the Supreme Court, to cover situations which in the opinion of many lawyers were thought to be of exclusive concern to the States. It is therefore of the greatest importance to the bar and to the public that the implications and effects of these two decisions be promptly studied and appraised. One of these decisions involves the National Labor Relations Act and the other the Agricultural Adjustment Act of 1938.

In the former case (*NLRB v. Fainblatt*, U. S. Sup. Ct., April 17, 1939), the federal power under the commerce clause was held to extend to unfair labor practices of a small "contract" clothing manufacturer not engaged in interstate commerce but whose product was regularly shipped in interstate commerce by the company which contracted for such manufacture. In the latter case (*Mulford v. Smith*, U. S. Sup. Ct., April 17, 1939), the federal power was held to extend to the absolute prohibition of interstate commerce, and *a fortiori* to the limitation of the amount of a given commodity which may be transported in such commerce, whenever Congress intended to "foster, protect and conserve" such commerce "or to prevent the flow of commerce from working harm to the people of the nation."

The *Fainblatt* case aforesaid is apparently bottomed on the proposition that a labor dispute in the plant of the intrastate manufacturer might lead to a strike and to a reduced output which in turn would curtail the interstate shipments of the distributor who had contracted for the manufacturing. Such a strike might also result in the curtailment of the shipment of raw materials to the manufacturer from other states. [*Ed.:* The editor has done his best in analyzing thus the basis of jurisdiction as described in the majority opinion; he confesses, however, to unusual difficulty in grasping as thoroughly as he would wish certain of the paragraphs of the opinion.] The vast implications of this theory of jurisdiction ought to be weighed carefully by the bar because of other federal legislation, the validity of which has not yet been passed upon by the Supreme Court, and also because of possible future legislation in the field of commerce. That the minority of the Court (Justices McReynolds and Butler) were greatly concerned with this holding is evidenced by their assertion that Congress may now validly regulate wages, hours, output, prices, etc.; that, as now construed, the power to regulate interstate commerce "brings within the ambit of federal control most if not all activities of the Nation; subjects states to the will of Congress; and permits disruption of our federated system." The concluding paragraph of the minority opinion sounds an ominous note:

> "The present decision and the reasoning offered to support it will inevitably intensify bewilderment. The resulting curtail-

ment of the independence reserved to the States and the tremendous enlargement of federal power denote the serious impairment of the very foundation of our federated system. Perhaps the change of direction, no longer capable of concealment, will give potency to the efforts of those who apparently hope to end a system of government found inhospitable to their ultimate designs."

The *Mulford* case aforesaid, upholding the Agricultural Adjustment Act of 1938 as a valid exercise of the commerce power, is of equal importance with the *Fainblatt* decision; in fact, the two would seem to supplement each other. The same majority held in the *Mulford* case that, when Congress intends at any time to prevent interstate commerce from "working harm to the people of the nation," the shipment across state lines of any product of any nature whatsoever may be entirely prohibited. Hitherto, in cases of prohibition of commerce the nature of the commerce has been a controlling factor. Thus, lottery tickets (*Champion v. Ames,* 188 U. S. 321), adulterated food (*Hipolite Egg Co. v. United States,* 220 U. S. 45), "white slaves" (*Hoke v. United States,* 227 U. S. 308), stolen automobiles (*Brooks v. United States,* 267 U. S. 432), and kidnapped persons (*Gooch v. United States,* 297 U. S. 124) have been held subjects of forbidden commerce. Hitherto, the Supreme Court had stated that the power to prohibit the interstate shipment of lottery tickets did not extend to "pig iron, steel rails, or most of the vast body of commodities" *Wilson v. New,* 243 U. S. 332, 346). This doctrine has now been superseded by the *Mulford* case. To be sure, the *Mulford* case involved the shipment of tobacco, which is considered by some as a harmful commodity, but the Court made no point of this and travelled the whole distance.

TAXATION—DOUBLE TAXATION

Decedent, while a resident of Colorado, created a trust consisting of federal, state, and other bonds. The trustee was a Denver bank. Thereafter the settlor moved to New York, where she died. An inheritance tax upon the trust res in Colorado was imposed by that State. When New York also sought to collect death taxes based upon the trust property, the Court of Appeals held that New York could not tax. Upon certiorari to the Supreme Court of the United States, *reversed.* In a dissenting opinion by Chief Justice Hughes, concurred in by Mr. Justice McReynolds, Mr. Justice Butler, and Mr. Justice Roberts, it was stated that: "I think that the decision in this case pushes the fiction of *mobilia sequuntur personam* to an unwarranted extreme and thus unnecessariily produces an unjust result." (*Graves v. Elliott,* U. S. Sup. Ct., May 29, 1939.) (*Lawyer Service Letter, N. Y. S., Bar Association, June 7,* 1939.)

HUMAN OBSOLESCENCE AND SUPERANNUATION

(Los Angeles Bar Bulletin)

It does not require a great deal of objective thinking to reach the logical conclusion that a very large percentage of our people expect the Government, federal, state and county, to support them permanently regardless of the economic consequences. Nor is it difficult to foresee that concessions to the ever-growing demand for "relief," and pensions will slowly but inevitably eat away the very foundations of our national economic structure. More than that; the steady, glacial erosion of individual independence and initiative is weakening those characteristics that made us a great democracy and now threatens to bring about dire changes of government.

It must be recognized that the problem is not temporary; that it is not due entirely to "depressions" or "recessions," but is definitely a permanent one; that its solution demands the best collective thinking and planning of all who would discard political considerations.

Obviously, we cannot long continue over the paths of least resistance by giving way to pressure groups, but must blaze new and rougher roads to a sane solution. Great fundamental changes in our social and industrial standards are moving with relentless force to increase rather than decrease the number of persons whose demands or necessities must be considered. Among many factors are these: Medical science has prolonged life's expectancy far beyond that of any time in recorded history, and technological advances are displacing an ever-growing army of workers. Thus we have the new problem of human obsolescence, added to the old familiar problems of superannuation, that are little less than appalling.

How long this situation can endure without a serious breakdown in our social and economic structures is the question facing every one of us, and demanding an intelligent answer.

DISCRIMINATORY DISCHARGES

For some time previous to the demand of a union for collective bargaining the employer had been considering on business grounds the abolition of the positions of four employees. Immediately after the demand for bargaining, such positions were eliminated. The National Labor Relations Board held that such discharges were discriminatory and designed to hinder the union in its bargaining efforts. Although the Board conceded that the positions were abolished for business reasons, it was convinced that the employer *timed* the discharges so as to embarrass the union. (*NLRB v. Luckenbach Steamship Co., Inc.*, National Labor Relations Board, 12 N. L. R. B., No. 130, May 27, 1939.) (*Lawyer Service Letter, N. Y. S., Bar Association, June 7*, 1939.)