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Constitutional Law -- Interstate Commerce -- Effect of State Legislation Coincidental with Federal Legislation Enacted Under the Commerce Clause

ably be suggested that the discrimination by Stuyvesant Town is well within the protection of the Fourteenth Amendment.

CONSTITUTIONAL LAW—INTERSTATE COMMERCE—EFFECT OF STATE LEGISLATION COINCIDENTAL WITH FEDERAL LEGISLATION ENACTED UNDER THE COMMERCE CLAUSE

Respondents operated a travel bureau in Los Angeles, and received commissions for arranging "share-expenses" passenger transportation in private automobiles. They were prosecuted under a California statute[1] which prohibits the sale or arrangement of any transportation over the public highways of the state if the transporting carrier has failed to obtain a permit from either the Public Utilities Commission of California or the Interstate Commerce Commission of the United States. Respondents demurred to the criminal complaint on the ground that since the Federal Motor Carrier Act [2] had substantially the same provision as the state statute, the state law entered an exclusive Congressional domain. The appellate court upheld the respondents contention and ordered the complaint dismissed. On writ of certiorari to the United States Supreme Court, *held*, that the statute of California is a lawful exercise of its police power, and since it does not conflict with the Federal Motor Carrier Act, it is constitutional. *People of State of California v. Zook*, 69 Sup. Ct. 841 (1949).

In *Cooley v. Board of Wardens*[3] the question was presented to the Court, whether the constitutional grant of power to Congress to regulate interstate and foreign commerce,[4] of itself, excluded all state regulation. It was held that the mere grant of power to Congress to regulate interstate and foreign commerce did not impliedly prohibit all state action.[5] The Supreme Court recognized that there are matters of local concern which might never be adequately dealt with by Congress, and of necessity must be regulated by the states even though their regulation unavoidably invoked some regulation of interstate commerce.[6] Thus, a state may, in the exercise of its police power, pass laws *incidentally* affecting interstate commerce.[7] They may not, however, regulate local matters in such a way as to burden,[8] or discriminate[9] against interstate commerce. Where the subject matter to be regulated is national in

1. CAL. PEN. CODE § 654.1, 654.3 (Deering's 1947 Supp.)
2. 54 STAT. 919, 49 U. S. C. § 301 (1946).
3. 12 How. 299 (U. S. 1851).
4. U. S. CONST. Art. 1, § 8.
5. *See* Cooley v. Board of Wardens, *supra* at 319.
6. *See* California v. Thompson, 313 U. S. 109, 113 (1941).
7. California v. Thompson, *supra*.
8. South Carolina State Highway Department v. Barnwell Bros. Inc., 303 U. S. 177 (1938).
9. Best v. Maxwell, 311 U. S. 454 (1940); Baldwin v. Seelig, 294 U. S. 511 (1935).

character, or requires a uniform system of regulation, the state may not regulate that subject even if Congress has not, by legislation, entered the field, as Congress by its inaction indicates that such commerce shall be free from regulation.[10] Congress may, however, by legislative act, confer upon the states the power to regulate those subjects which, in the absence of such permission could be regulated only by the federal government.[11] Whenever Congress passes an act by virtue of an enumerated power, any state law in conflict with this act of Congress becomes inoperative,[12] since the Constitution expressly declares all laws made in pursuance of the Constitution to be the supreme law of the land.[13] Under the Constitution, the power granted to Congress to regulate interstate commerce is such that when validly exercised it is exclusive, and ipso facto supersedes existing state legislation on the same subject,[14] whether *consistent*, complementary, coincidental, auxiliary, or otherwise.[15]

The principal case was concerned with a state statute which coincided with a federal act, in that both the federal and state statutes regulated the same local activity. If it was the intent of Congress to supersede the local act, clearly that act could not stand, as unquestionably, Congress may redefine the areas of local and national predominance.[16] The Court, in concluding that Congress did not intend to override the state law, insisted that it must find some conflict between the state and federal laws to justify the presumption of such an intention. The cases cited by the Court in support of this "conflict test" are plainly distinguishable from the principal case. One case does not involve interstate or foreign commerce;[17] another involves an order of the Interstate Commerce Commission expressly made effective at a future date.[18] In still another case Congress expressly saved state laws not

10. Leisy v. Hardin, 135 U. S. 100 (1890).

11. *In re* Rahrer, 140 U. S. 545 (1891) (this is not a delegation of legislative power to the states, since the prior impediment to state action arose from the implied will of Congress rather than a prohibition in the Constitution). *But cf.*, Knickerbocker Ice Co. v. Stewart, 253 U. S. 149 (1920).

12. Gibbons v. Ogden, 9 Wheat. 1 (U. S. 1824).

13. U. S. CONST. Art. VI.

14. Southern Ry. Co. v. Railroad Commission of Indiana, 236 U. S. 439 (1915).

15. *E.g.*, Gilvary v. Cuyahoga Valley Ry. Co., 292 U. S. 57 (1934); International Shoe Co. v. Pinkus, 278 U. S. 261 (1928); Missouri Pacific R. R. Co. v. Porter, 273 U. S. 341 (1927); Chicago & St. P. Ry. Co. v. Railroad Commission, 272 U. S. 605 (1926); Oregon-Washington Ry. & Navigation Co. v. Washington, 270 U. S. 87 (1926); Pennsylvania R. R. Co. v. Public Service Commission, 250 U. S. 566 (1919); Charleston & Western C. R. Co. v. Varnville Furniture Co., 237 U. S. 597 (1915); *accord*, Erie R. R. Co. v. New York, 233 U. S. 671 (1914) (applying the same principle where the federal regulation was not to become effective until a future time).

16. Southern Pacific Co. v. Arizona, 325 U. S. 761 (1945).

17. Hines v. Davidowitz, 312 U. S. 52 (1941) (holding the Pennsylvania Alien Registration Act inoperative in view of the Federal Registration Act covering the same subject matter).

18. H. P. Welch Co. v. New Hampshire, 306 U. S. 79 (1939) (holding a state statute regulating working hours of drivers of vehicles transporting property within the state valid since an order of the Interstate Commerce Commission prescribing regulations over the subject was not to become effective until a future time).

in opposition to the federal act;[19] and in three cases the acts of Congress occupied only a limited field.[20] The "conflict test," adopted by the Court in the instant case, had been invoked [21] in previous cases only when determining whether Congress had *intended* to occupy a particular field, when such was not apparent from a reading of the federal and state regulations. It could hardly be contended that such a problem was presented to the Court in the instant case, since the theory upon which the Court proceeded was that the federal and state regulations were identical.[22]

The effect of the Court's decision appears to be that the states may now enact coincidental legislation, supplementing federal legislation enacted under the commerce clause, though heretofore the jurisdiction of the federal government, in the field of commerce, *when exercised,* was deemed to be exclusive. In subsequent cases arising under the commerce clause, involving state and federal regulations, the Court may rely upon the instant case as authority to increase the regulatory power of the states in the field of interstate commerce. Should Congress desire to thwart this result, its intention to supersede all existing state laws on the same subject will have to be expressly declared.

CORPORATE FINANCE—SECURITIES EXCHANGE ACT OF 1934—GAIN TO CORPORATE OFFICER WHO TOOK INCOME TAX DEDUCTION ON SECURITIES DONATED TO CHARITIES HELD NOT A PROFITABLE SALE

Defendant, a director, received stock warrants under a contract of employment with his corporation. Within six months he contributed the unexercised warrants to bona-fide charitable organizations. Plaintiff, a corporate stockholder, brought an action under Section 16(b) of the Securities Exchange Act of 1934 [1] for an accounting to the corporation of profits realized by reason of defendant's income tax deductions taken pursuant to such contributions. *Held,* on rehearing, that a donation by a

19. Cloverleaf Butter Co. v. Patterson, 315 U. S. 148 (1942) (holding a federal statute providing that the importations of process butter shall be subject to the laws of the state, indicates a Congressional purpose not to hinder the free exercise of state power except as it may be inconsistent with federal legislation).

20. Maurer v. Hamilton, 309 U. S. 598 (1940) (holding valid a state law regulating the weights of trucks since the Interstate Commerce Commission had only investigated the need for such regulation); Kelly v. Washington, 302 U. S. 1 (1937) (holding valid a state law requiring the inspection of hulls and machinery of ships since there was no federal regulation covering the particular subject); Mintz v. Baldwin, 289 U. S. 346 (1933) (holding valid state regulation of cattle shipments from districts not regulated by the Federal Quarantine Act).

21. Townsend v. Yeomans, 301 U. S. 441 (1937); Atcheson, Topeka & Santa Fe Ry. v. Railroad Commission, 283 U. S. 380 (1931); Missouri, Kansas and Texas Ry. v. Harris, 234 U. S. 412 (1914); Savage v. Jones, 225 U. S. 501 (1912).

22. People of State of California v. Zook, 69 Sup. Ct. 841, 845 (1949).

1. 48 STAT. 896 (1934), 15 U. S. C. § 78p(b) (1946).