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State Regulation of Interstate Commerce H. P. Hood & (and) Sons v. Du Mond

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stage. The Supreme Court has clarified the law; the problem now rests, in each case, with the triers of the facts.

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STATE REGULATION OF INTERSTATE COMMERCE
H. P. HOOD & SONS V. DU MOND

A RECENT case on the question of state regulation of or concerning interstate commerce is that of *H. P. Hood & Sons v. Du Mond, Commissioner of Agriculture and Markets of the State of New York* decided by the Supreme Court of the United States April 4, 1949.[1] The issue in this case concerned the constitutionality of a New York statute which authorized the State Commissioner of Agriculture and Markets to refuse the issuance of a license for the operation of receiving stations to receive milk upon findings that the issuance of such a license would not be in the public interest and would tend to create destructive competition in a market already served. The statute further provided "... that the applicant be qualified by character, experience, financial responsibility and equipment to properly conduct the proposed business."[2] It was conceded that the applicant for a license, Hood and Sons, had met the latter requirements. The commissioner refused to grant the license on the sole ground that its issuance would be adverse to the public interest and create destructive competition. Interstate commerce was clearly involved in the case in that all milk collected in applicant's three existing receiving stations in the state was exported to a sister state, Massachusetts, and it was applicant's intention to so export milk collected at the proposed receiving station. Other facts established that the State of New York had long been part of the milkshed

[1] 336 U. S. 525 (1949).

[2] New York Laws 1934, Art. 21, § 258c.

of Boston and that during the last ten years the consumption of Boston had not varied 8% in relation to the New York milkshed. There was also evidence of a previous shortage of milk in Troy, New York, which was in close proximity to the proposed receiving station. In denying the application for a license the commissioner was of the opinion that the producers in the area were already adequately served, and that there was no indication that such producers would receive a higher price for their milk from the applicant than they already were receiving. Moreover, the commissioner believed the proposed receiving station would reduce the quantity of milk going to the other receivers in the area, increase their handling costs, and tend to divert milk from Troy. From the above facts the commissioner concluded that the issuance of the license would not be in the public interest and would tend to lead toward destructive competition. This denial was held unconstitutional by the Supreme Court of the United States under the above related facts on the ground that a state may not regulate to further its own local economic advantage and well-being at the expense of curtailing the volume of interstate commerce. Some question is raised as to whether this case fits into the scheme of cases that have been decided in the past. Mr. Justice Black, in a dissenting opinion clearly did not think so.

State regulation statutes involving interstate commerce will normally be controlled by two general propositions. The first is that the state may not regulate when the thing sought to be regulated is national in scope requiring uniformity of regulation.[3] In such an instance the subject matter lends itself only to national regulation. The regulation sought to be enforced in this case does not come under this heading by reason of the fact that the milk industry does not lend itself to national uniformity of regulation because of local geographical conditions in each state, and even in different counties of the state.[4] The second proposition is that the state may regulate, in the absence of conflicting federal regu-

[3] Leisy v. Hardin, 135 U. S. 100 (1890).

[4] Hood v. DuMond, 336 U. S. 525 at 529 (1949).

lation, if the interstate activity sought to be regulated requires diversity of regulation among the various states and the regulation does not place an undue burden on interstate commerce.[5] The milk industry falls within this classification by reason of its local diversity and the extensive climatic and geographical conditions under which it operates and is affected so substantially.[6] Therefore, the State of New York would be permitted to regulate in this instance if its regulation did not unduly interfere with or burden interstate commerce. The founders of the Constitution in conferring the power over interstate commerce to the Congress of the United States intended purposely to protect and promote interstate commerce by precluding the states from interfering with the freedom of such commerce through the creation of economic barriers at their borders or the enacting of other discriminatory or burdensome regulations in pursuance of their reserved powers. The courts, in upholding the intention of the founding fathers, have used the words undue burden,[7] economic barrier,[8] direct burden,[9] and discrimination[10] to strike down state statutes that have been devised for the states own economic advantage or placed such a restriction on interstate commerce that it could not effectively continue. However, if the state exercises its reserved power in a legitimate manner to protect a local interest that would be considered of greater importance than the complete free flow of interstate commerce and the benefits to be derived therefrom, then such a reasonable state regulation would be upheld.[11] In such a case the court, after weighing all the facts in

[5] Cooley v. Port Wardens of Philadelphia, 12 How. 299 (1851).

[6] This second proposition was established first in Cooley v. Port Wardens of Philadelphia, *ibid.* There was some conflict in the early cases prior to this decision as to whether the regulation of interstate commerce was exclusively in the federal government. Mr. Chief Justice Marshall in Gibbons v. Ogden, 9 Wheat 1 (1824) had indicated that it was exclusive.

[7] Milk Control Board of Penn. v. Eisenberg, 306 U. S. 346 (1939).

[8] Baldwin v. Seelig, 294 U. S. 511 (1935).

[9] Seaboard Airline R. Co. v. Blackwell, 244 U. S. 310 (1917).

[10] South Carolina State Highway Dept. v. Barnwell Bros., 303 U. S. 177 (1938).

[11] Southern Pac. Co. v. Arizona, 325 U. S. 761, 768, 769 (1940). Dowling, *Interstate Commerce and State Power*, 27 VA. L. REV. 1 (1940).

the case, determines that the public interest of the state viewed through the state statute is greater than the complete free flow of interstate commerce, and holds such a statute constitutional. The state in the exercise of its police power may then impose restraints upon interstate commerce to protect certain of its interests. For example, state quarantine laws have been held constitutional even though such laws often preclude commerce by prohibiting the introduction into the state of diseased stock or plants.[12] Also, state laws regulating the speed of trains and auto carriers and regulations in the latter case as to maximum loads, width and height for vehicles on public highways have been sustained in the interest of safety to the state citizens.[13] The sale of colored oleomargarine in the original package has been prevented by the state to protect its citizens from fraud.[14] Nevertheless a state may not promote its own economic interest by limiting interstate trade. For example, in the motor vehicle cases requiring interstate truck and bus lines to obtain a public certificate of convenience and necessity before operating on the state's highways the court has repeatedly held that such statutes violate the commerce clause when the purpose behind the statute has been to limit competition within the state.[15] The court said that the purpose of such a statute is not to regulate the manner of the use of the highway, which is constitutional, but rather to designate who will use them, thus preventing competition for the state's own local economic advantage.

In the milk control cases the same principle is applied. While price fixing statutes setting maximum and minimum prices have been much litigated they have generally been upheld as not violating the due process clause of the constitution.[16] If the due process

[12] Smith v. St. Louis & S. W. R. Co., 181 U. S. 248 (1901). Ashell v. State of Kansas, 209 U. S. 251 (1908).

[13] Seaboard Airline R. Co. v. Blackwell, 244 U. S. 310 (1917); Michigan Pub. Utilities Comm. v. Duke, 266 U. S. 570 (1925).

[14] Plumly v. Massachusetts, 155 U. S. 461 (1894); Sage Stoves Co. v. Kansas, 323 U. S. 32 (1944).

[15] Buck v. Kuykendall, 267 U. S. 307 (1925).

[16] Nebbia v. New York, 291 U. S. 502 (1934).

clause has not been violated then the question may be presented as to whether the state regulation abridges the commerc clause. *Baldwin v. G. A. Seelig* involved a New York statute that required the payment of minimum prices to the producers of milk destined for sale in the state.[17] Plaintiff in the case had been importing milk from Vermont and sold the substantial part of it in the original case in which he received milk and bottled the remainder for sale to consumers. The court held in this case that the statute was unconstitutional, stating that the original package was only a convenient test and not conclusive, and further that when a statute in effect or in fact raised an economic barrier at the state border then such a statute was unconstitutional. According to the court no health or safety consideration entered into the purpose for which the statute was passed. The court went on to say that an economic barrier cannot be raised through the states' taxing or police power when there are no health or safety considerations present. The statute in the case was to exclude milk from without the state and in practical effect would permit the producers in the State of New York to expand at the expense of foreign producers. This was exactly what our forefathers intended to prevent through the composition of the interstate commerce clause.

Mr. Justice Jackson points out that *Hood v. Du Mond*[18] is the converse of the *Baldwin* case. In one, the state statute was designed to prevent the shipment of milk from being exported out of the state, while in the other the aim was to prevent the shipment of milk from being imported. Essentially the purpose of the statutes in both cases was to prevent destructive competition within the state. However, the Supreme Court has not as yet held in any case that destructive competition alone is enough without other safety or health considerations present to bring such statutes in conformity with the commerce clause.[19]

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[17] 294 U. S. 511 (1935).

[18] 336 U. S. 525 (1949).

[19] Justice Black's dissenting opinion gives the impression that he considers the probability of destructive competition enough to sustain the New York Statute.

Another case in point on the same question was *Milk Control Board of Pennsylvania v. Eisenberg Farm Products.*[20] Here the statute required a minimum price to be paid to all producers, but unlike the *Baldwin* case the statute purported to cover only the producers in the State of Pennsylvania and not outlying states. It was also required that the producers keep certain records and to be licensed. The petitioner in the case sold milk in interstate commerce and the Supreme Court held that the statute was constitutional. An important fact in this case was that less than 10% of the milk produced was destined for shipment in interstate commerce. The statute was held constitutional in that the effect on interstate commerce was incidental, and that the purpose behind such legislation was to assure the public a competent and sanitary handler of milk and the producer a fair price. As brought out by the majority opinion, the *Hood* case went beyond the *Eisenberg* case, and actually the question involved started where the *Eisenberg* case left off. The Pennsylvania act did not purport to curtail the volume of interstate commerce to aid state interests. In the *Hood* case the receiver had met all the sanitary requirements and had posted bond to assure that the producer would get prompt payment. That portion of the statute had been met and was not involved in the case. With respect to compliance with the remainder of the statute which required a showing of public interest and no creation of destructive competition in order to permit a granting of the license Mr. Justice Jackson said:

> "It is only additional restrictions, imposed for the avowed purpose and with the practical effect of curtailing the volume of interstate commerce to aid local economic interests, that are in question here, and no such measures were attempted or such ends sought to be served in the Act before the Court in the *Eisenberg* case."[21]

From the above cases it appears that the *Hood* case is consistent with the previous cases decided by the Supreme Court and that the law today is that a state may not regulate for its own economic

[20] 306 U. S. 346 (1939).
[21] 336 U. S. 525 at 530-31.