Louisiana Law Review

Volume 8 | Number 1
November 1947

Constitutional Law - Federal-State Relations Under the United States Warehouse Act

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The court's reference to statutes against indecent exposure might well apply also to those against disturbing the peace, disorderly conduct, indecent behavior with juveniles, and others. Offenses of this kind may be committed through a wide variety of conduct, and it is not to be expected that the legislature will undertake the cumbersome and probably impossible task of providing for all detailed violations in advance. Furthermore, an incomplete enumeration would provide a technical loophole through which a guilty defendant might evade the law. The avowed intention of the reporters and of the legislature in enacting Article 104 of the Criminal Code was to draft a general definition which would "include all types of disorderly houses and places known as such, or which might become known as such in the future."[23]

While the decision in the *Truby* case might be justified by the admittedly broad scope of Article 104, it would be unfortunate if some of the court's generalizations should be extended further. If the court should extend the reasoning of the *Truby* case and adopt a policy of undue technicality, the very foundation on which the Criminal Code is based will be dealt a crippling blow.

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CONSTITUTIONAL LAW—FEDERAL-STATE RELATIONS UNDER THE UNITED STATES WAREHOUSE ACT—Defendant was charged with numerous violations of a state statute regulating grain warehouses. Included were the exaction of unjust discriminatory rates, conflict of interest as warehouseman and dealer in grain, failure to provide reasonable and adequate facilities, improper mixing of public and private grades of grain, failure to publish rates, and failure to obtain a state license. Defendant, licensee under the United States Warehouse Act,[1] set up the exclusive coverage of that act. *Held,* where a matter over which a state asserts the right to control is in any way regulated by a federal act, "the federal scheme prevails though it is a more modest, less pervasive regulatory plan than that of the state." *Rice v. Santa Elevator Corporation,* 67 S. Ct. 1146 (U. S. 1947).[2]

Truby case, said: "The decisions cited supra, therefore, are not to be regarded as a departure from the doctrine, now well settled, that a statute which defines and denounces certain conduct as a crime is not rendered invalid by investing the trial judge with some discretion in determining whether the facts of a given case shall bring it within the purview of the law."

23. Reporters' Comment, Arts. 104, 105, La. Crim. Code of 1942.

1. 39 Stat. 486 (1916) as amended, 7 U. S. C. A. § 241 (1931).

2. See also the companion case of First Iowa Hydro-Electric Co-op. v. Federal Power Commission, 328 U. S. 152, 66 S. Ct. 906, 90 L. Ed. 1143 (1945). This

This decision represents a departure from the pattern of federal-state relations which seemingly had been carefully nurtured since the decision in *Erie v. Tompkins*,[3] and more particularly from the highly developed idea of these relations best expressed by the term "coordinate action."[4] The federal and state legislative history indicates that the purposes of the two political entities are entirely different with regard to the regulation of warehouses engaged in the storage of grain for interstate commerce. Federal regulation has as its primary objective enhancement of the value of warehouse receipts for purposes of collateral in financial transactions. The states have had as their principal objective the protection of producers and of the public generally from abuses by warehouse interests seeking to exploit a strategic position in the flow of grain from producer to consumer. To attain this objective the states have enacted comprehensive regulation, guided by experience accumulated since *Munn v. Illinois*.[5]

The federal act in question did touch each of the subjects embraced in the complaints enumerated heretofore, but in most instances did not create irreconcilable problems. For example, in the field of warehouse rates the state statute empowers the Commerce Commission to fix rates;[6] the Secretary of Agriculture, the administrator of the federal act, on the other hand, cannot fix rates although he may suspend, revoke, or refuse to issue a license if the rates are unreasonable or exorbitant.[7] With respect to the assumption of a dual position by warehousemen—a practice forbidden by state regulation,[8] the federal act merely requires disclosure of such dual position.[9] Similar comparison could, as the Court points out, "be applied to each of the nine charges which we have summarized."

The Court recognized that if the federal act be construed as supreme only where there is a conflict, the federal system could be

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case can perhaps be differentiated on its facts but certainly is a much stronger case than the one here discussed.

3. 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1937). For an illuminating discussion of this problem prior to 1928 see the comment by Felix Frankfurter, Distribution of Judicial Power Between United States and State Courts (1928) 13 Corn. L. Q. 499.

4. Conceived and developed by Justice Rutledge in the now famous case of Prudential Ins. Co. v. Benjamin, 328 U. S. 408, 66 S. Ct. 1142, 90 L. Ed. 1342 (1946).

5. 94 U. S. 113, 24 L. Ed. 77 (1876). The leading case in which a divided court upheld state control of grain elevators in spite of commercial implications.

6. Ill. Rev. Stat. Ann. (Smith-Hurd, 1934) c. 111 2/3, § 32 et seq.

7. 39 Stat. 490 (1916), 1 U. S. C. A. § 270 (1916).

8. Ill. Rev. Stat. Ann. (Smith-Hurd, 1934) c. 114, § 194c.

9. 39 Stat. 480 (1916), 7 U. S. C. A. § 260 (1916).

preserved intact and the state left free to protect local interests. It was also recognized that Congress has here legislated in a field traditionally occupied by the states,[10] and therefore there must be a "clear and manifest purpose of Congress" to supersede the historic police powers of the state.[11] Nonetheless, state control is drastically curtailed because of an amendment to the Warehouse Act in 1931,[12] which states that "this act shall be exclusive with respect to all persons receiving a license hereunder so long as said license remains in effect"—an amendment inspired chiefly by *conflicts* between state and federal law affecting the negotiability of warehouse receipts.[13]

In the analogous case of *Southern Pacific Railway v. Arizona,*[14] concerning the constitutionality of state regulation of train lengths, the Court resolved the problem into two parts: First, had Congress by legislative enactment restricted the power of the state to so regulate trains? Second, if not, does the action of the state contravene the commerce clause?

In answer to the first question, the Court used the "clear and manifest intention" test of the *Napier* case[15] and found that limiting the length of trains was not included in the powers given the Interstate Commerce Commission and that since Congress itself had specifically refused to limit the length of trains, the field was a valid one for state legislation so long as the commerce clause was not contravened.

In answer to the second question, the Court pointed out that in the absence of conflicting regulation there was a residuum of power in the state to govern matters of local concern, even though interstate commerce is affected to some extent. The Court recognized that while some state legislation would clearly conflict, other legislation would not. For the infinite variety of cases between these two extremes, the court set up this test:

> "Reconciliation of the conflicting claims of the state and national power is to be attained only by some appraisal and accommoda-

10. See Munn v. Illinois, 94 U. S. 113, 24 L. Ed. 11 (1876); Budd v. People, 143 U. S. 517, 12 S. Ct. 468, 36 L. Ed. 247 (1891); Brass v. State, 153 U. S. 391, 14 S. Ct. 857, 38 L. Ed. 757 (1893).

11. Napier v. Atlantic Coast Line R. R., 272 U. S. 605, 47 S. Ct. 207, 71 L. Ed. 432 (1926).

12. 46 Stat. 1463 (1931), 7 U. S. C. A. § 241 (Supp. 1946).

13. H. R. Rep. 7, 71st Cong., 3rd Sess. (1930) 10, 22-26 (recommendations of the Secretary of Agriculture).

14. 325 U. S. 761, 65 S. Ct. 1515, 89 L. Ed. 1915 (1944).

15. Napier v. Atlantic Coast Line R. R., 272 U. S. 605, 47 S. Ct. 207, 71 L. Ed. 432 (1926).

tion of the competing demands of the state and national interests involved."

Applying this test the Court found that the state interests were outweighed by "the interests of the nation in an adequate, economical and efficient railway transportation service."[16] In the present case, the Court stressed the provisions of the 1931 amendment and the intention of Congress, and did not go into the test for reconciliation at any great length. It seems that the 'demands of the state' should outweigh the 'national interests involved' whenever the federal act could remain effective without destroying much essential regulation by the state. Here, however, it is only where the federal act failed to mention certain activities at all that the states are left free to act.[17]

This admixture of views, plus the possibility of substantial injury to the public and confusion in the industry led to a vigorous and well-reasoned dissent by Justice Frankfurter in which Justice Rutledge concurred apparently thinking in terms of "coordinated action."

The point of departure between the majority and the dissenting views appears to rest almost wholly on whether federal statutes and agencies are to be supreme and exclusive in the limited realm of regulation in the interest of the security of warehouse receipts (a fair implication from the statute in question), leaving financial structures and kindred matter for state control, or whether even where the implication of exclusiveness is clear, there should nonetheless be left room for coordinated action.

Obviously, the Court was well within the limits of statutory interpretation. The decision was a clear departure, however, from the principle that the Court will not "assume in advance that a state will construe its law as to bring it in conflict with . . . an act of Congress."[18] A strong factor that influenced the majority to preclude any state regulation in an area where federal exclusiveness can be sustained may have been to forestall the inherent possibilities of playing off a state agency against a federal agency to which only coordinate jurisdiction has been attributed.[19]

16. For an interesting study of the position of Chief Justice Stone in similar situations, see Konefsky, Chief Justice Stone and the Supreme Court (1945).

17. Rice v. Santa Elevator Corp., 67 S. Ct. 1146, 1155 (U. S. 1947) (generally, regulations to prevent the creation of unsound financial structures). Nice problems are conjured up with which the Court refused to deal until "they arise."

18. Allen Bradley Local v. Wisconsin Employment Relations Board, 315 U. S. 740, 62 S. Ct. 820, 86 L. Ed. 1154 (1942) and related cases.

19. Arkansas Power and Light Co. v. Federal Power Commission, 156 F. (2d) 821 (App. D. C. 1946).

It is submitted that the view of the dissenters might also have been permissible without transcending the limits of statutory interpretation[20] and that the possibility of dissatisfaction and confusion in the industry such as existed in the insurance field between the time of deciding the *Southeastern Underwriters'* case[21] and the passage of the McCarran Act[22] might thus be avoided.[23] Such a possibility, of course, is very real where a body of comprehensive state regulation dating from *Munn v. Illinois*,[24] decided some seventy years earlier, is stricken down in favor of a toothless federal act, having as its chief sanction the revocation of a federal license obtained on a voluntary basis and which act is administered by an understaffed, overworked Secretary of Agriculture, whose organizational setup is woefully inadequate to cope with the duties imposed on it by the Court's ruling.

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CONSTITUTIONAL LAW—STATE AID TO PAROCHIAL SCHOOLS—A New Jersey statute authorized a township board of education to reimburse parents of public and Catholic parochial school children money expended for transportation on public buses. Plaintiff, a local taxpayer, challenged the statute as being in violation of the First[1] and Fourteenth Amendments of the United States Constitution,[2] by

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20. Ibid. In this case, which involved the question of whose authority, that of the state or the commission, was superior in the regulation of the utility's method of accounting, two members of the circuit court of appeals found a conflict sufficient to invoke the Federal Declaratory Judgment Act. The other member of the court, reasoning in a manner analogous to that advocated in this writing, concluded that there was no conflict justifying the application of the act. The case is now pending in the United States Supreme Court.

21. United States v. Southeastern Underwriters' Ass'n, 322 U. S. 533, 64 S. Ct. 1162, 88 L. Ed. 1440 (1944).

22. 59 Stat. 33 (1945), 15 U. S. C. A. § 1011 (1945).

23. For an interesting commentary on this situation see Comment (1946) 30 Marquette L. Rev. 77-97.

24. 94 U. S. 113, 24 L. Ed. 77 (1876).

1. The First Amendment is now applicable to the states by transmission through the Fourteenth: Schneider v. State, 308 U. S. 147, 60 S. Ct. 146, 84 L. Ed. 155 (1939); Murdock v. Pennsylvania, 319 U. S. 105, 63 S. Ct. 870, 87 L. Ed. 1292, 146 A. L. R. 81 (1942); Prince v. Massachusetts, 321 U. S. 158, 64 S. Ct. 438, 88 L. Ed. 645 (1943); Thomas v. Collins, 323 U. S. 516, 530, 65 S. Ct. 315, 322, 89 L. Ed. 430 (1944); West Virginia State Board of Education v. Barnette, 319 U. S. 624, 639, 63 S. Ct. 1178, 1186, 87 L. Ed. 1628, 1638, 147 A. L. R. 674, 682 (1943).

2. The problem of state support of religious schools and the teaching of religion in public schools has received considerable attention in recent years. See cases collected in 14 L. R. A. 418 (1892), 5 A. L. R. 879 (1920), 141 A. L. R.