Nebraska Law Review

Volume 34 | Issue 4 Article 17

1955

Constitutional Law—Interstate Commerce—Antitrust Laws

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CONSTITUTIONAL LAW—INTERSTATE COMMERCE—ANTITRUST LAWS

Petitioner who was engaged in a wholly intrastate activity, the bakery business, at Santa Rosa, New Mexico, brought an action for treble damages.[1] The corporate respondent was a Clovis, New Mexico, bakery which sold bread in interstate commerce. Respondent was one of several corporations having interlocking ownership and management, all marketing bread under a common name. The syndicate promoted the product through a common advertising program and purchased supplies as a unit. Respondent, claiming petitioner had instigated a boycott against it, cut the price of bread by one-half in Santa Rosa, thereby driving the petitioner out of business, but did not cut prices at other locations. The court of appeals reversed the trial court judgment for petitioner upon the ground that the injury was to a purely local competitor whose business was in no way related to interstate commerce.[2] Upon appeal to the United States Supreme Court, *held*: reversed. Although the victim was a local merchant and no interstate transactions were used to destroy him, the aggressor was an interstate business. The treasury used to finance the warfare was drawn from interstate as well as local sources.[3]

1 38 Stat. 731 (1914), 15 U.S.C. § 15 (1952). The action was brought for violation of § 2(a) of the Clayton Act, as amended by the Robinson-Patman Act, 49 Stat. 1526 (1936), 15 U.S.C. § 13a (1952) and of § 3 of the Robinson-Patman Act, 49 Stat. 1526 (1936), 15 U.S.C. § 13a (1952).

2 Mead's Fine Bread Co. v. Moore, 208 F.2d 777 (10th Cir. 1953).

3 Moore v. Mead's Fine Bread Co., 348 U.S. 115 (1954).

Congress enacted the antitrust laws by virtue of its constitutional power to regulate commerce among the states.[4] The definition of "commerce" in the antitrust laws is virtually the same as in the constitutional grant.[5] The respondent's activities seem to fall within the prohibitions of the antitrust laws;[6] however, the laws can have no greater potency than the commerce clause of the Constitution. The wrongs complained of must involve commerce "among the several states" in such a way as to fall within the scope of the federal power. The interstate element seems lacking in the instant case.

The Supreme Court in establishing the limits of federal power has defined certain situations which involve interstate commerce to a degree sufficient to permit the exercise of congressional control. The most common situation is where intrastate activity has an undesired *effect* on interstate commerce.[7] It has been held that Congress can regulate (1) activity which interferes with

[4] U.S. Const. Art. 1, § 8.

[5] 38 Stat. 730 (1914), 15 U.S.C. § 12 (1952).

[6] Section 2(a) of the Clayton Act, as amended, 49 Stat. 1526 (1936), 15 U.S.C. § 13(a) provides in part: "It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States . . . . and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them . . . ." Section 3 of the Robinson-Patman Act, 49 Stat. 1526, (1936), 15 U.S.C. § 13a (1952) provides in part:

"It shall be unlawful for any person engaged in commerce, in the course of such commerce, . . . to sell . . . goods in any part of the United States at prices lower than those exacted by said person elsewhere in the United States for the purpose of destroying competition, or eliminating a competitor in such part of the United States; or, to sell . . . goods at unreasonably low prices for the purpose of destroying competition or eliminating a competitor."

[7] Mandeville Island Farms v. American Crystal Sugar Co., 334 U.S. 219 (1948); Wickard v. Filburn 317 U.S. 111 (1942); United States v. Wrightwood Dairy Co., 315 U.S. 110 (1942); National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1 (1937); Local 167 International Brotherhood of Teamsters v. United States, 291 U.S. 293 (1934); Coronado Coal Co. v. United Mine Workers, 268 U.S. 295 (1925); Houston, E. & W. T. R.R. v. United States, 234 U.S. 342 (1914); Southern Ry. v. United States, 222 U.S. 20 (1911); Swift & Co. v. United States, 196 U.S. 375 (1905).

the exercise of federal power;[8] (2) control of "production for interstate commerce";[9] (3) intrastate activities which are a part of the "stream of commerce";[10] (4) a conspiracy to control purchase of goods, thus limiting the interstate market;[11] (5) intrastate commodities and transactions inextricably comingled with interstate commerce;[12] (6) sales and transportation of goods restricted by the laws of the state of destination;[13] (7) sales and transportation of goods conceived to be injurious to the public health, morals, or welfare even though the state of destination has not sought to regulate their use.[14]

The present case reaches the outer boundary of federal power in holding that a strictly intrastate situation which has no effect on interstate commerce can be controlled through the commerce clause because the profits and finances of an interstate organization are used to attain an end the antitrust laws seek to prohibit. The Court's construction of the commerce clause in this case seems to support the liberal view of one authority who states that the intent of the framers of the constitution was to define the power as plenary over all commerce and who rejects the "interstate" limitation.[15]

Hal W. Bauer, '56

[8] United States v. Wrightwood Dairy Co., 315 U.S. 110 (1942); Houston, E. & W. T. R.R. v. United States, 234 U.S. 342 (1914); Second Employers Liability Cases, 223 U.S. 1 (1912); Gibbons v. Ogden, 9 Wheat. 1 (U.S. 1824).

[9] United States v. Darby, 312 U.S. 100 (1941).

[10] Chicago Board of Trade v. Olsen, 262 U.S. 1 (1923); Stafford v. Wallace, 258 U.S. 495 (1922); Swift & Co. v. United States, 196 U.S. 375 (1905); cf. United States v. Yellow Cab Co., 332 U.S. 218 (1947).

[11] United States v. Yellow Cab Co., 332 U.S. 218 (1947).

[12] Mulford v. Smith, 307 U.S. 38 (1939); Currin v. Wallace, 306 U.S. 1 (1939); United States v. New York Central R.R., 272 U.S. 457, 464 (1926); Houston, E. & W. T. R.R. 234 U.S. 342 (1914).

[13] Kentucky Whip & Collar Co. v. Illinois Central Ry., 299 U.S. 334 (1937).

[14] Hoke & Economides v. United States, 227 U.S. 308 (1913); Hipolite Egg Co. v. United States, 220 U.S. 45 (1911); Lottery Case, 188 U.S. 321 (1903).

[15] 1 Crosskey, Politics and the Constitution, Part I (1953).