St. John's Law Review

Volume 16, April 1942, Number 2 Article 9

Constitutional Law--Interstate Commerce--Privileges and Immunities--Police Power--Indigent Migrants (Edwards v. California, 314 U.S. 160 (1941))

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CONSTITUTIONAL LAW—INTERSTATE COMMERCE—PRIVILEGES AND IMMUNITIES—POLICE POWER—INDIGENT MIGRANTS.—Appellant, a citizen of the United States and a resident of California, was convicted of violating the California anti-migrant law for having transported his jobless brother-in-law, a citizen of the United States and a resident of Texas, into the State of California. The statute provided that "Every person, * * * that brings or assists in bringing into the state any indigent person who is not a resident of the state, knowing him to be an indigent person, is guilty of a misdemeanor." [1] *Held,* conviction reversed. Such a statute penalizing the bringing into the state any indigent non-resident, even in cases of persons who are presently destitute of property and without resources to obtain the necessities of life, is an unconstitutional barrier to interstate commerce, and not a valid exercise of the police power of the state. While Mr. Justice Byrnes, writing for the majority of the court, placed his decision on the commerce clause of the Federal Constitution, Mr. Justice Douglas, joined by Mr. Justice Black and Mr. Justice Murphy, concurred on the ground that the "right" of freedom of movement is an incident of *national* citizenship protected against state interference by the privileges and immunities clause of the Fourteenth Amendment. Mr. Justice Jackson, who also based his opinion upon the privileges and immunities clause, was of the view that "indigence" does not warrant restricting the freedom of a citizen, as does crime or contagion. *Edwards* v. *California,* 314 U. S. 160, 62 Sup. Ct. 164 (1941).

Notwithstanding a line of reiterated Supreme Court *dicta* to the effect that a state in the exercise of its police power may exclude actual paupers and others likely to become public charges,[2] one entertains no doubt that the decision under consideration is a sound one. The opinion tolled the death knell of the Elizabethan notion that "poor law" administration is a matter of local concern,[3] and placed the problem within those subjects embraced in the commerce clause that are of such a nature as to demand that if regulated at all, their regulation must be prescribed by a single co-ordinating authority.[4] Since commerce among the states consists of intercourse and traffic

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[1] CAL. WELF. AND INST. CODE (Deering 1937) § 2615.

[2] *See* Prigg v. Pennsylvania, 16 Pet. 539, 625 (U. S. 1842); City of New York v. Miln, 11 Pet. 102 (U. S. 1837). (Decided prior to the broadening of the concept "commerce" as employed in the commerce clause.) The court stated that *City of New York* v. *Miln, supra,* is disapproved in so far as it intimates that a state may exclude persons on the ground that they are paupers.

[3] In the United States, the various types of legislation stem from the Elizabethan poor law of 1601. 12 ENCYCLOPAEDIA OF THE SOCIAL SCIENCES 230, 233. For exhaustive treatment of the English statutes enacted to cope with the problem of unemployment and pauperism, see 4 HOLDSWORTH, HISTORY OF ENGLISH LAW 387 *et seq.*

[4] *See* Milk Control Board v. Eisenberg Farm Products, 306 U. S. 346, 351, 59 Sup. Ct. 528 (1939); 2 COOLEY, CONSTITUTIONAL LIMITATIONS (8th ed. 1927) 1274 *et seq.*

between their citizens, and includes the transportation of persons as well as property,[5] whether the transportation is commercial in character or not,[6] statutes aimed at the removal or exclusion of indigent migrants are clearly within the scope of the commerce clause.[7] Depriving a person of freedom of movement is a deprivation of "liberty" within the due process clause of the Fourteenth Amendment.[8] Among the rights and privileges of national citizenship recognized by the courts, is the right to pass freely from state to state.[9] In the past, removal and exclusion statutes have been upheld by state courts on the ground that indigents, because of their dependence on public funds, constitute a special class, and are therefore subject to public control.[10] Hence, it seems that the issue logically narrows down to whether "indigency" constitutes a basis for restricting the privileges and immunities of a citizen,[11] and if so, may a state in the exercise of its police power remove or exclude such indigents? Even though the majority opinion was based upon the commerce clause it, too, judging from the result, would appear to answer both queries in the negative. As to the opinions of Mr. Justice Douglas and Mr. Justice Jackson, there is no doubt that the answer is in the negative.[12]

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[5] United States v. Hill, 248 U. S. 420, 39 Sup. Ct. 143 (1919); Hoke and Economides v. United States, 227 U. S. 308, 33 Sup. Ct. 281 (1917).

[6] Caminetti v. United States, 242 U. S. 470, 37 Sup. Ct. 192 (1917).

[7] For the possible constitutional objections, *see* Note, *Interstate Migration and Personal Liberty* (1940) 40 COL. L. REV. 1032; Note, *Depression Migrants and the States* (1940) 53 HARV. L. REV. 1031; Bowman, *The United States Citizen's Privilege (of) State Residence* (1930) 10 B. U. L. REV. 459.

[8] *See* Truax v. Raich, 239 U. S. 33, 36 Sup. Ct. 7 (1915) (State cannot deny to an alien admitted into the country by the Federal Government, the privilege to enter any state of the Union and reside therein); Allgeyer v. Louisiana, 165 U. S. 578, 17 Sup. Ct. 427 (1897).

[9] *See* Twining v. New Jersey, 211 U. S. 78, 29 Sup. Ct. 14 (1908); Crandall v. Nevada, 6 Wall. 35 (U. S. 1867); United States v. Moore, 129 Fed. 630, 633 (C. C. A. 5th, 1904).

[10] *See* note 2, *supra;* Mr. Justice Finch, dissenting in Matter of Rosario Chirillo, 283 N. Y. 417, 436, 28 N. E. (2d) 895 (1940).

The exclusion or removal contemplated in this discussion is from one state into *another* state. Statutes permitting removal from one county or "settlement" into another *within* the state, when applied to proper cases, have not been deemed an interference with personal liberty "without due process of law". Lovell v. Seeback, 45 Minn. 465, 48 N. W. 23 (1891).

[11] The Articles of Confederation expressly excepted "paupers, vagabonds, and fugitives from justice", from those inhabitants of each state entitled to all the privileges and immunities of the citizens of the several states. United States v. Wheeler, 254 U. S. 281, 294, 296, 41 Sup. Ct. 133 (1920). "The word, [Pauperism] strictly speaking, applies not to temporary destitution, not at all to 'honest poverty', but to chronic willing dependency". 21 ENCYCLOPEDIA AMERICANA 423. As used in "poor laws", indigents, poor persons, and paupers, include those persons who are destitute and in need of relief. 48 C. J. 428; 22 AM. AND ENGL. ENCYCLOPAEDIA OF LAW (2d) 947; Polk County v. Owen, 187 Iowa 220, 239, 174 N. W. 99 (1919).

[12] "'Indigence' in itself is neither a source of rights nor a basis for denying them. * * * —constitutionally an irrelevance, like race, creed or color". Mr. Justice Jackson concurring in Edwards v. California, 314 U. S. 160, 184-185, 62 Sup. Ct. 164 (1941).

The problem herein involved was clearly one of extreme *national* importance, and a statute whereby a state seeks to "isolate itself from difficulties common to all of them" is definitely diametrically opposed to national unity. To employ the phraseology of Mr. Justice Cardozo, "It (the Federal Constitution) was framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division." [13]

E. D. R.

CRIMINAL LAW—EVIDENCE—CORROBORATION OF ACCOMPLICE AS TO MATTERS CONNECTING DEFENDANT WITH THE CRIME.—The defendant is charged with the murder of one Shuman, whose body was found in a stolen automobile in the Borough of Brooklyn. The defendant and the deceased were members of that borough's group of criminals known as "Murder, Inc.". The deceased was believed to have been conveying certain secret information to a member of the Detective Bureau and for that reason the members of the "corporation" desired to have him killed. The accused was chosen as the person to do the killing, and by a ruse the decedent was enticed into the automobile and was shot. Among three accomplices there was one by the name of Reles who testified on behalf of the State that the defendant was the murderer. To corroborate the accomplice, non-accomplice witnesses testified that the decedent did have certain conversations with a member of the police force; that the automobile in which the decedent was found was stolen from the non-accomplice witness; that a policeman was on duty at all times at the place of killing first planned; that the accomplice, Reles, was present at the apartment of one, Lepke, about whom the decedent was telling the police. At the trial, the court was requested to charge that the evidence by the non-accomplice witnesses was insufficient to corroborate the accomplice. The court so charged and added that the evidence did not tend to connect the defendant with the commission of the crime but was intended to corroborate the witness as to whether or not he was "telling the truth as to credibility." To this, counsel took objection and the court again charged that the evidence did not tend to connect the defendant with the commission of the crime but it did "tend to show, or prove or disprove, the credibility of a witness." *Held,* judgment of conviction reversed and a new trial ordered. *The People of the State of New York* v. *Irving Nitzberg,* 287 N. Y. 183, 38 N. E. (2d) 490 (1941).

There has always been a natural distrust of the testimony of an accomplice to a crime. Prior to the enactment of Section 399 of the

[13] Baldwin v. G. A. F. Seelig, 294 U. S. 511, 523, 55 Sup. Ct. 497 (1935).