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Constitutional Law--Power of Congress to Regulate Rates for Personal Services in Interstate Commerce (Tagg Bros. and Moorhead et al. v. U.S. et al., 280 U.S. 420 (1929))

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sel or its owner.[9] Thus, in effect, an American seaman became a foreign seaman as soon as he stepped on board a foreign vessel, and if he chanced to work on many ships in the course of a day, his nationality would change in each instance to that of the ship on which he was working.[10] The federal courts, on the other hand, have held that an American seaman so employed is entitled to the benefits of the Act.[11] The purport of the Act being to benefit American seamen, to deny relief merely because the injury occurred on a ship of foreign registry would be a strained and unreasonable application of it.[12]

R. L.

CONSTITUTIONAL LAW—POWER OF CONGRESS TO REGULATE RATES FOR PERSONAL SERVICES IN INTERSTATE COMMERCE.—Plaintiffs were all registered under the Packers and Stockyards Act,[1] and comprised the entire membership of the Omaha Livestock Exchange. In an effort to secure a better return on their respective investments, plaintiffs filed a new schedule of rates with the Secretary of Agriculture. The latter, on his own motion, issued an order suspending the operation of the proposed schedule and held a public hearing on the reasonableness of the proposed rates. The Livestock Exchange then sought an injunction restraining the Secretary of Agriculture on the ground that the Act in question if construed to give the Secretary of Agriculture such power would be in contravention of the Fifth Amendment.[2] *Held,* that Congress has power to authorize the Secretary of Agriculture to fix the rate of compensation for personal services where the services are rendered in a business that is subject to public regulation. Tagg Bros. and Moorhead *et al.* v. U. S. *et al.,* 280 U. S. 420, 50 Sup. Ct. 220 (1929).

The plaintiff relied upon Tyson v. Bonton[3] and Ribnik v. McBride,[4] contending that those cases held that the rate of compensation for personal services cannot be regulated. But Justice

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[9] See Schotis v. North Coast Stevedoring Co., 24 F. (2nd) 591 (D. C., Wash., 1927).

[10] Zarowitch v. F. Jarka Co., 21 F. (2nd), 187 (D. C., N. Y., 1927); Mahoney v. International Elevating Co., 23 F. (2nd) 130 (D. C., N. Y. 1927); *aff'd* 26 F. (2nd) 1019 (C. C. A. 2nd, 1928).

[11] *Id.,* Williams v. Oceanic Stevedoring Co., *supra* note 6.

[12] Williams v. Oceanic Stevedoring Co., *ibid.*

[1] U. S. C. A., Tit. 7, Secs. 201-217, 42 Stat. 159, 163-168.

[2] U. S. Constitution, Fifth Amendment.

[3] 273 U. S. 418, 47 Sup. Ct. 426 (1927). For a detailed and authoritative consideration of this subject see Finkelstein, *From Munn v. Illinois to Tyson v. Banton, A Study In the Judicial Process,* (1927) 27 Col. L. Rev. 769.

[4] 277 U. S. 350, 48 Sup. Ct. 545 (1928). See also notes (1928) 3 St. John's L. Rev. 104 and (1929) 3 St. John's L. Rev. 244.

Brandeis, writing for the court, disposed of this contention by stating, "This court did not hold in Tyson v. Bonton and Ribnik v. McBride that charges for personal services cannot be regulated. The question upon which this court divided in those cases was whether the services sought to be regulated were then affected with a public interest. Whether a business is of that class depends not upon the amount of capital it employs but upon the character of the services which those who are conducting it engage to render." [5] Whether this be the test in the determination of the propriety of rate regulation or whether we adopt Justice Holmes's view "* * * that, subject to compensation when compensation is due, the legislature may forbid or restrict any business when it has a force of public opinion behind it," [6] the conclusion reached by the Court is a just one. As stated by the Court in the instant case, the plaintiffs performed an indispensable service in the interstate commerce in livestock. They enjoyed a substantial monopoly. They had eliminated rate competition and had substituted therefor rates fixed by agreement among themselves, without consulting the shippers and others who pay the rates. They had bound themselves to maintain uniform charges regardless of the difference in experience, skill and industry.

The purpose of the regulation attacked is to prevent their service from thus becoming an undue burden upon, and obstruction of, that commerce. In Stafford v. Wallace,[7] the Court said: "The chief evil feared is the monopoly of the packers, enabling them unduly and arbitrarily to lower prices to the shippers who sell, and unduly and arbitrarily to increase the prices to the consumer who buys. * * * The act, therefore, treats the various stockyards of the country as great national public utilities to permit the flow of commerce from the ranges and farms of the West to the consumers in the East. It assumes that they conduct a business affected by a public use on a national character and subject to national regulation. That it is a business within the power of regulation by legislative action needs no discussion; that has been settled since the case of Munn v. Illinois." [8] It is submitted that this case is in harmony with recent expressions of the Supreme Court on questions of social control of industry.[9]

W. L. W.

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[5] Instant case at p. 438, 9, 50 Sup. Ct. 224.

[6] Tyson v. Banton, *supra* note 3 at 448, 47 Sup. Ct. at 434.

[7] 258 U. S. 495, 42 Sup. Ct. 397 (1922).

[8] *Ibid.* at 514, 515, 516, 42 Sup. Ct. at 401, 402.

[9] It will be interesting to note what effect, if any, the recent change in the personnel of the Supreme Court will have on the course of decisions testing the validity of legislation seeking to control and regulate industries not yet adjudicated as "a business affected with a public interest and subject to public regulation."