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Constitutional Law-Interstate Commerce-Peddlers

CONSTITUTIONAL LAW—INTERSTATE COMMERCE—PEDDLERS.—The town of Sellersburg passed an ordinance levying a license tax of twenty-five dollars per year on peddlers and hawkers. The defendant was arrested and charged with peddling without having procured a license. The defendant was employed

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24 Cline v. Union Trust Co. (1934), 99 Ind. App. 296, 189 N. E. 643, 647, Mo. etc. v. Holland Banking Co. (1927), 290 S. W 101, 103, Old Colony v. Puritan (1923), 244 Mass. 259, 138 N. E. 321, 323.

25 In re North Missouri Trust Co. (1931), 39 S. W. (2nd) 412.

by the Louisville store of the Great American Tea Company. His duties were to take orders for the products of the tea company in Sellersburg and other Indiana towns and forward the orders to the Louisville store. There the orders were put up in the proper sized packages for delivery. Some two weeks later the defendant called for these packages and, in a truck furnished by the tea company, delivered the orders across the Indiana line to the vendees in Sellersburg. The lower court found that the defendant was engaged in interstate commerce, and therefore could not be required to procure a license. Held, that the defendant was engaged in intrastate commerce, and was therefore subject to the tax.[1]

A state cannot directly regulate or burden interstate commerce.[2] It has been held that a tax imposed upon drummers for the privilege of soliciting orders within the state for tangible goods to be shipped from without the state directly to the purchaser is such a burden or regulation.[3] A state cannot avoid this rule by defining peddlers so as to include persons taking orders for future shipment into the state or so as to include persons delivering goods pursuant to such orders. Thus, if the foreign manufacturer delivers in his own trucks,[4] or ships to an agent within the state, to be sorted and delivered by such agent,[5] no tax can be imposed. The defendant relies upon these established rules of law to escape the tax in the instant case. His contention is that he is an agent of the tea company, a foreign corporation, and that his business consists of taking orders for future delivery by the tea company, and in acting as agent for the tea company in delivering such orders. His argument prevailed in the lower court and there is much authority to support him in cases involving almost identical facts.[6]

But the upper court decides that the defendant is engaged in peddling, which is generally considered to be intrastate commerce and subject to direct regulation by the states.[7] To support its holding, the court relies upon the fact that the tea company did not deal directly with the purchasers in Indiana, but dealt with the defendant, relying upon him for payment for all goods sold. From this, the court determines that defendant became the owner of the goods in bulk when he received them at the office of the tea company in Kentucky,[8] and was therefore peddling his own goods in his own behalf. It is difficult to follow the court in its conclusion that if defendant became the owner of the goods in bulk when he received them at the office of the tea company in Kentucky, that "it necessarily follows that he solicited purchasers of his own

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[1] Town of Sellersburg v. Stanforth (1935), — Ind. —, 198 N. E. 437.

[2] Robbins v. Shelby County Taxing District (1887), 120 U. S. 489, 30 L. Ed. 694; Brennan v. Titusville (1894), 153 U. S. 289, 38 L. Ed. 719.

[3] McLaughlin v. City of South Bend (1890), 126 Ind. 471, 26 N. E. 185; Purchase v. State (1922), 109 Neb. 457, 191 N. W 677, Wilk v. City of Partow (1923), 86 Fla. 186, 97 So. 307, Real Silk Hosiery Mills v. Portland (1925), 286 U. S. 325, 69 L. Ed. 982.

[4] Wagner v. City of Covington (1919), 251 U. S. 95, 64 L. Ed. 157.

[5] Caldwell v. North Carolina (1903), 187 U. S. 622, 47 L. Ed. 336.

[6] Hewson v. Inhabitants of Englewood (1893), 55 N. J. Law 522, 27 A. 904; Jewel Tea Co. v. Lee's Summit (1911), 189 Fed. 280; Grand Union Tea Co. v. Evans (1914), 216 Fed. 791, City of Anniston v. Jewel Tea Co. (1920), 18 Ala. App. 4, 88 So. 351.

[7] Willis, Constittuional Law (1936), P 294, and cases there cited.

[8] See Grand Union Tea Co. v. Evans (1914), 216 Fed. 791, for a case involving similar facts in which the court reached an opposite conclusion.

goods and was conducting a strictly intrastate business as a peddler" This conclusion is difficult to follow because the goods were purchased after the orders were taken. The fact that defendant subsequently purchased the goods in Kentucky could not affect the interstate character of the prior solicitations of the orders for the goods in Indiana.[9] And if he did become the owner, the transportation and delivery of the goods from Kentucky to Indiana was interstate commerce.[10]

But apparently the court does not rely entirely upon the fact that defendant became the owner of the goods, because it determines that the tea company, and therefore defendant, was engaged in peddling in Indiana, even if it be conceded that defendant was the agent of the tea company throughout the entire transaction. No rationalization for this position is given. To support this position the court cites *International Harvester Co. v. Kentucky*,[11] which held that the Harvester Co. was so engaged in doing business in Kentucky as to be subject to service of process. But, since doing business for purposes of service of process is different from doing business for purposes of taxation,[12] little help is given by this case.

Because of this confusion, it is believed that one must look elsewhere for an explanation of this decision. This explanation apparently is found in the fact that a state has a social interest in the regulation of peddling which is just as great when the soliciting of the order and the delivery are separated in time, as it is when the sale and delivery are made simultaneously.[13] States can indirectly regulate interstate commerce when necessary to protect some general social interest of the people of the state.[14] It is believed that such a regulation of peddling as was attempted in the instant case falls within this rule. In a recent Supreme Court case, a merchant, located and operating in Illinois, sold produce forwarded to him from outside the state. He objected

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[9] The test seems to depend entirely upon whether or not the goods were in the state at the time of the sale. Wilcox v. People (1904), 46 Colo. 382, 104 P 408, Roselle v. Commonwealth (1909), 110 Va. 235, 65 S. E. 526; American Amusement Co. v. East Lake Chutes Co. (1911), 174 Ala. 526, 56 So. 961, S. F Bowser and Co. v. Schwarz (1913), 152 Wis. 408, 140 N. W. 51, Wilk v. City of Bartow (1923), 86 Fla. 186, 97 So. 307.

[10] Commonwealth v. Ober (1853), 66 Mass. 493, In re Spain (1891), 47 Fed. 208; Hewson v. Inhabitants of Englewood (1893), 55 N. J. Law 522, 27 A. 904, Calwell v. North Carolina (1903), 187 U. S. 622, 47 L. Ed. 336. As said by the court in In re Spain: "It is idle to say that a non-resident may send drummers or persons to solicit sales in a sister state, but that the state may tax him for making deliveries of the goods sold."

[11] International Harvester Co. v. Kentucky (1914), 234 U. S. 579, 34 St. Ct. 944, 58 L. Ed. 1479.

[12] Willis, Constitutional Law (1936), p. 295.

[13] No better expression of this interest could be found than that of the court in the instant case: "But the objections to peddling are no less real when the peddler solicits orders and later returns to deliver the goods for which he has taken orders. There is the same objectionable use of public highways and homes of prospective purchasers for a place of business; the same unbidden and frequently forced and disturbing intrusions into the private homes; and the same viciously unfair competition with local merchants whose business is a necessary element in the community life."

[14] Willis, Constitutional Law (1936), p. 309; Plumley v. Massachusetts (1894), 165 U. S. 461, 39 L. Ed. 223, Vandalia Railroad Co. v. Public Service of Indiana (1916), 242 U. S. 255, 61 L. Ed. 276, Buck v. Kuykendall (1925), 267 U. S. 307, 69 L. Ed. 623.

to paying a license tax and to posting a bond as was required by an Illinois statute. The United States Supreme Court said, "The sole question presented is the constitutional validity of the act as it affects the appellant's liability under its bonds. The statute is a police regulation. The business regulated is local, having its situs within the state and being conducted therein. The fact that the commission merchant contracts to sell, and sells, farm produce forwarded to him from points without, as well as from points within, the state is not enough to condemn the regulation of business carried on within her borders. Such effect as the regulation has upon interstate commerce is indirect and incidental and does not trespass upon the power conferred on Congress by Article I, Section 8, of the Federal Constitution."[15] Obviously, the Supreme Court believes that in some instances the requirement of a license and the posting of a bond only indirectly and incidentally affects interstate commerce. It is submitted that this case indicates that the proper rationalization for upholding the ordinance involved in the instant case, is that it operated as an indirect regulation of interstate commerce under the state's police power.[16]

S. H.

STATUTES—TITLE—SERVICE OF PROCESS ON NON-RESIDENT MOTORISTS.—Action by appellee against appellant to recover damages occasioned by an automobile collision. Appellant is a nonresident of the State of Indiana and service of process was had upon the treasurer of state (secretary of state) under the provision of chapter 179, sec. 15, Acts 1931. By special appearance appellant moved to set aside the service and quash the return indorsed on the summons on the ground that he was not a resident of Indiana and was not personally served with summons. Appellant appeals from judgment for appellee, contending the provision of chapter 179, sec. 15, Acts of 1931, to be unconstitutional as in violation of sec. 19, article 4 of the Indiana Constitution which provides, "Every act shall embrace but one subject and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title." The title to the act in question is "An act concerning the financial responsibility of owners and operators of motor vehicles for damages caused by the operation of motor vehicles on public highways." Held, the provision authorizing service of process upon the treasurer of state as agent for a nonresident operator of motor vehicles is within the title of the act announcing that the act has to do with the financial responsibility of owners and operators of motor vehicles for damages caused by the operation of motor vehicles on the public highways.[1]

The interpretation of the Constitutional limitation upon legislative action, that the title to an act shall express the subject of the act and that every act shall have but one subject, is well settled in the United States and Indiana. The great weight of authority holds such constitutional provisions to be satis-

[15] Hartford Accident and Indemnity Co. v. People of State of Ill. (1936), 56 S. Ct. 685.

[16] See Gavit, The Commerce Clause (1932), p. 40; Haines, Federal Restraints on the States' Power to Regulate House to House Selling (1934), 6 Rocky Mountain Law Rev. 85.

[1] Herman v. Dransfield (1936), 200 N. E. 612.