AMERICAN CONSTITUTIONALISM

VOLUME I: STRUCTURES OF GOVERNMENT

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Supplementary Material

Chapter 7: The Republican Era – Federalism/States and the Commerce Clause

**Smith v. St. Louis & Southwestern Railway Co., 181 U.S. 248 (1901)**

*In 1895, Texas adopted a statute that made it the duty of the Livestock Sanitary Commission “to protect the domestic animals of this state from all contagious and infectious disease of a malignant character, whether said diseases exist in Texas or elsewhere, and for this purpose they are hereby authorized and empowered to establish, maintain and enforce such quarantine lines and sanitary rules and regulations as they may deem necessary.” In 1897, the livestock commission determined that there was an anthrax outbreak in part of Jefferson County, Texas (near the Louisiana border). It issued a quarantine on livestock in that area. In addition, the commission reported that “has reason to believe that charbon or anthrax has or is liable to break out in the State of Louisiana” and similarly issued a quarantine on livestock being “transported or driven into the State of Texas from the State of Louisiana. Both quarantine orders were promulgated by the governor of Texas.*

*W.P. Smith owned some 46 head of cattle that were to be delivered by train from Plain Dealing, Louisiana to Fort Worth, Texas. When the cattle arrived in Fort Worth, the stockyard refused to receive them because of the governor’s quarantine order. The railroad company shipped the cattle back to Plain Dealing, but the shipper refused to take them back. The cattle were then sold at auction and the proceeds offered to the owner, who refused to accept it. Instead, the owner filed suit in the Texas courts seeking to recover the value of the cattle. Although the Louisiana cattle were never found to have been infected with anthrax, the railroad company pointed to the quarantine order as releasing it from liability for any loss on the cattle. The trial court found that the quarantine order was a constitutionally impermissible interference with interstate commerce and therefore invalid and awarded damages to Smith. The railroad appealed, and the state appellate court reversed the trial court. Smith then appealed to the U.S. Supreme Court. In a 6-3 decision, the Court affirmed the ruling of the Texas appellate court and upheld the governor’s quarantine order as within the police power of the state and not an impermissible interference with interstate commerce.*

JUSTICE McKENNA, delivered the opinion of the Court.

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To what extent the police power of the state may be exerted on traffic and intercourse with the state without conflicting with the commerce clause of the Constitution of the United States has not been precisely defined. In the case of Henderson v. New York (1875) it was held that the statute of the state, which, aiming to secure indemnity against persons coming from foreign countries becoming a charge upon the state, required shipowners to pay a fixed sum for each passenger -- that is, to pay for all passengers, not limiting the payment to those who might actually become such charge -- was void. Whether the statute would have been valid if so limited was not decided.

In Chy Lung v. Freeman (1875) a statute declaring the same purpose as the New York statute, and apparently directed against persons mentally and physically infirm, and against convicted criminals and immoral women, was also declared void because it imposed conditions on all passengers and invested a discretion in officers which could be exercised against all passengers. . . .

In Railroad Company v. Husen (1877) a statute of Missouri which [prohibited conveying any Texas cattle into Missouri during most of the year] was held to be in conflict with the clause of the Constitution which gives to Congress the power to regulate interstate commerce.

The case was an action for damages against the railroad company for bringing cattle into the state in violation of the act. A distinction was made between a proper and an improper exertion of the police power of the state. The former was confined to the prohibition of actually infected or diseased cattle and to regulations not transcending such prohibition. The statute was held not to be so confined, and hence was declared invalid.

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In Schollenberger v. Pennsylvania (1898) some prior cases were reviewed, and the Court, speaking by Justice Peckham, said:

"The general rule to be deduced from the decisions of this Court is that a lawful article of commerce cannot be wholly excluded from importation into a state from another state where it was manufactured or grown. A state has power to regulate the introduction of any article, including a food product so as to insure purity of the article imported, but such police power does not include the total exclusion even of an article of food."

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The exclusion in the case at bar is not as complete as in the cited cases. That, however, makes no difference if it is within their principle, and their principle does not depend upon the number of states which are embraced in the exclusion. It depends upon whether the police power of the state has been exerted beyond its province -- exerted to regulate interstate commerce -- exerted to exclude, without discrimination, the good and the bad, the healthy and the diseased, and to an extent beyond what is necessary for any proper quarantine. The words in italics express an important qualification. The prevention of disease is the essence of a quarantine law. Such law is directed not only to the actually diseased, but to what has become exposed to disease. In Morgan's Steamship Co. v. Louisiana Board of Health (1886) the quarantine system of Louisiana was sustained. It established a quarantine below New Orleans, provided health officers and inspection officers, and fees for them, to be paid by the ships detained and inspected. The system was held to be a proper exercise of the police power of the state for the protection of health, though some of its rules amounted to regulations of commerce with foreign nations and among the states. . . .

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What, however, is a proper quarantine law -- what a proper inspection law in regard to cattle -- has not been declared. Under the guise of either, a regulation of commerce will not be permitted. Any pretense or masquerade will be disregarded, and the true purpose of a statute ascertained. But we are not now put to any inquiry of that kind. The good faith and sincerity of the Texas officers cannot be doubted, and the statutes under which they acted cannot be justifiably complained of. The regulations prescribed are complained of, but are they not reasonably adaptive to the purpose of the statutes -- not in excess of it? Quarantine regulations cannot be the same for cattle as for persons, and must vary with the nature of the disease to be defended against. As the court of civil appeals said:

"The necessities of such cases often require prompt action. If too long delayed, the end to be attained by the exercise of the power to declare a quarantine may be defeated, and irreparable injury done."

It is urged that it does not appear that the action of the Livestock Sanitary Commission was taken on sufficient information. It does not appear that it was not, and the presumption which the law attaches to the acts of public officers must obtain and prevail. The plaintiff in error relies entirely on abstract right, which he seems to think cannot depend upon any circumstances, or be affected by them. This is a radical mistake. It is the character of the circumstances which gives or takes from a law or regulation of quarantine a legal quality. . . . But the presumptions of the law are proof, and such presumptions exist in the pending case, arising from the provisions of and the duties enjoined by the statute, and sanction the action of the sanitary commission and the Governor of the state. If they could have been, they should have been met and overcome. . . .

*Affirmed*.

JUSTICE HARLAN, with whom JUSTICE WHITE joins, dissenting.

. . . . The authority of the state to establish quarantine regulations for the protection of the health of its people does not authorize it to create an embargo upon all commerce involved in the transportation of livestock from Louisiana to Texas. The regulations and the Governor's proclamation, upon their face, showed the existence of a certain cattle disease in one of the counties of Texas. If, under any circumstances, that fact could be the basis of an embargo upon the bringing into Texas from Louisiana of all livestock during a prescribed period, those circumstances should have appeared from the regulations and the proclamation referred to. On the contrary, there does not appear on the face of the transaction any ground whatever for establishing a complete embargo for any given period upon all transportation of livestock from Louisiana to Texas.

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It seems to me that the present case comes within the principles announced in Henderson v. Mayor of New York (1875). That case involved the validity of a statute of New York having for its object the protection of the people of that state against the immigration of foreign paupers. It was held by this Court to be unconstitutional because "its practical result was to impose a burden upon all passengers from foreign countries." In that case it was said that, in whatever language a statute was framed, its purpose must be determined by its natural and reasonable effect. So also, Railroad Co. v. Husen (1877). . . .

. . . . The result, in my judgment, is, in view of our former decisions, that the quarantine regulations and proclamation in question involved, by their natural and practical operation, an unauthorized obstruction to the freedom of interstate commerce. This must be so even if the statute of Texas, reasonably interpreted, was itself not repugnant to the Constitution of the United States.

JUSTICE BROWN, dissenting.

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[T]he second order assumes to quarantine against cattle from the entire State of Louisiana without any finding that the disease has broken out there or that the cattle in such state are liable to communicate such disease to other cattle. The order is not limited to cattle coming from any particular portion of the state, but applies to the whole state, regardless of the actual existence of the disease or the liability to communicate contagion.

It seems to me that the proclamation goes far beyond the authority of the statute, beyond the necessities of the case, and is a wholly unjustifiable interference with interstate commerce. The statute, thus construed, puts a power into the hands of a Sanitary Commission which is liable to be greatly abused and to be put forward as an excuse for keeping out of Texas perfectly healthy animals from other states, and putting a complete stop to a large trade.

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It was practically as sweeping as the statute of Missouri, condemned by this Court in Railroad Co. v. Husen (1877). . . . As justly observed of the opinion in that case by the Court in its opinion in this case,

"A distinction was made between a proper and an improper exertion of the police power of the state. The former was confined to the prohibition of actually infected or diseased cattle, and to regulations not transcending such prohibition. The statute was held not to be so confined, and hence was declared invalid."

This is the precise objection I make to the finding of the commission, and to the proclamation of the Governor in this case.

It is sufficient to say of the finding of the court of civil appeals of Texas that, "so far as the record shows, every animal of the kind prohibited in the State of Louisiana may have been actually affected with charbon or anthrax," that there is no such finding in the report of the commission or in the Governor's proclamation, and that, under the statute, there must be a finding either of disease or of a liability to communicate disease to justify the action of the commission. It cannot, of its own motion, put in force the quarantine laws of the state without the finding of some facts that such enforcement is necessary to the protection of Texas cattle. I am therefore constrained to dissent from the opinion of the Court.