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CONSTITUTIONAL LAW - CARRIERS - SUPERSEDURE OF STATE REGULATIONS BY FEDERAL REGULATIONS - REGULATION OF HOURS OF SERVICE OF MOTOR VEHICULAR DRIVERS - EFFECT OF FEDERAL MOTOR CARRIER ACT OF 1935

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CONSTITUTIONAL LAW — CARRIERS — SUPERSEDURE OF STATE REGULATIONS BY FEDERAL REGULATIONS — REGULATION OF HOURS OF SERVICE OF MOTOR VEHICULAR DRIVERS — EFFECT OF FEDERAL MOTOR CARRIER ACT OF 1935 — Defendant, whose business was chiefly interstate, violated a statute [1] of New Hampshire which regulated the hours of service of drivers of certain motor vehicles. The violation occurred after the passage of the Federal Motor Carrier Act of 1935,[2] which, among other things, conferred authority upon the Interstate Commerce Commission "to establish reasonable requirements with respect to . . . maximum hours of service of employees" of common and contract carriers by motor vehicle in interstate commerce.[3] At the time of the breach of the state statute, the Interstate Commerce Commission had not prescribed regulations as to hours of service. Defendant contended that the Federal Motor Carrier Act superseded the provisions of the state statute, which regulated hours of service, and that for that reason he was not liable under the state statute. *Held,* the Federal Motor Carrier Act had not superseded the state statute at the date the breach occurred, and therefore defendant was liable for breach of the state statute. *H. P. Welch Co. v. New Hampshire,* 306 U. S. 79, 59 S. Ct. 438 (1939).

It is elementary that valid federal laws prevail over state laws pertaining to the same subject matter.[4] The difficult problem arises in connection with the determination of when Congress intended the federal laws or regulations to supersede the state laws or regulations.[5] The difficulty arises because Congress does not expressly state its intention. The Court is consequently faced with a problem of construction. In solving the problem the Court generally relies on

[1] N. H. Laws (1933), c. 106, § 8, as amended by c. 169.

[2] 49 Stat. L. 543, 49 U. S. C. (Supp. 1938), §§ 301-327.

[3] 49 Stat. L. 546, § 204 (a) (1) and (5), 49 U. S. C. (Supp. 1938), § 304 (a) (1) and (5).

[4] 11 Am. Jur. 26, 872 (1937); Northern Pacific Ry. v. Washington, 222 U. S. 370, 32 S. Ct. 160 (1912), noted in 10 MICH. L. REV. 555 (1912).

[5] An excellent note dealing with the problem in general appears in 86 UNIV. PA. L. REV. 532 (1938).

the statute itself.[6] The results have varied considerably. This is especially true in cases where, as in the principal case, Congress has merely delegated authority to an administrative agency to prescribe regulations. Of course, if the federal administrative agency has published regulations that are actually inconsistent or coincident with state regulations, the regulations of the federal agency prevail. In the absence of inconsistent action by the federal agency or even in the complete absence of action by that agency, the Court has held in some cases that the mere delegation of authority to act was enough to suspend the state regulations. In other cases, as in the principal case, the mere delegation of authority to act was not sufficient to suspend the state regulations. Cases falling in the first group are represented by *Oregon-Washington Railroad & Navigation Company v. Washington*[7] and *Napier v. Atlantic Coast Line*.[8] In the first case it was held that the Plant Quarantine Act,[9] which vested extensive powers in the Secretary or Agriculture to control foreign and interstate transportation of infected plants, prevented a state official from quarantining certain areas in other states and prohibiting importation of alfalfa from those regions. In the second case, it was held that the vesting of authority in the Interstate Commerce Commission by Congress, under the Locomotive Boiler Inspection Act,[10] to regulate generally the construction of locomotives prevented states from requiring certain safety appliances to be affixed to locomotives. In both cases the intent of Congress to supersede the state laws was found in the sweeping scope of the federal statutes.[11] Cases coming within the second group are represented by *Mintz v. Baldwin*[12] and *Missouri Pacific Railway v. Larabee Flour Mills*.[13] In *Mintz v. Baldwin* the broad powers of the Secretary of Agriculture under the Cattle Contagious Diseases Act[14] were insufficient to prevent a state from requiring, as a condition to importation in the state, inspection and certification of cattle and the herds from which they came as being free of Bang's disease. And in the *Missouri Pacific* case a state was permitted to regulate local switching, although the Interstate Commerce Commission might have prescribed regulations as to this matter. The Court did attempt to distinguish the *Mintz* case on the ground that the federal statute provided that in case of federal inspection of livestock no further inspection could be required. The Court inferred that Congress intended that the states might require inspection in the absence of federal inspection. If the test to determine Congress' intent as to the supersedure of state

[6] Occasionally some reliance is had on Committee Reports, as in Northern Pacific Ry. v. Washington, 222 U. S. 370, 32 S. Ct. 160 (1912).

[7] Oregon-Washington R. R. & Navigation Co. v. Washington, 270 U. S. 87, 46 S. Ct. 279 (1926).

[8] Napier v. Atlantic Coast Line R. R., 272 U. S. 605, 47 S. Ct. 207 (1926).

[9] 37 Stat. L. 318, as amended by 39 Stat. L. 1165, 7 U. S. C. (1934), § 161.

[10] 43 Stat. L. 659 (1924), 45 U. S. C. (1934), § 23.

[11] Oregon-Washington R. R. & Navigation Co. v. Washington, 270 U. S. 87, 46 S. Ct. 279 (1926); Napier v. Atlantic Coast Line R.R., 272 U.S. 605, 47 S. Ct. 207 (1926).

[12] Mintz v. Baldwin, 289 U. S. 346, 53 S. Ct. 611 (1932).

[13] Missouri Pacific Ry. v. Larabee Flour Mills Co., 211 U. S. 612, 29 S. Ct. 214 (1909).

[14] 32 Stat. L. 791, 21 U. S. C. (1934), §§ 111, 120-122.

regulations by federal regulations were the sweeping scope of the legislation, certainly the provisions of the Federal Motor Carrier Act are sweeping enough to satisfy such a test.[15] However, the Court did not see fit to adopt this test. Rather the Court seemed to take the position that the dissenting judges did in the *Oregon-Washington Railroad* case,[16] i.e., that Congress could not have intended that the safety of the people of a state depended upon action by a far-away federal agency. The Court pointed out that some regulation of the highways is necessary to protect life and limb. Prescription of maximum hours of continuous driving would appear to be within such necessary regulation. For this reason it is submitted that the result in the instant case is socially desirable. And in so far as the decision indicates that state regulations providing for the safety of its people will not be superseded by a mere delegation of authority by Congress, the decision contributes to certainty in the law.

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[15]Cf. 36 MICH. L. REV. 450 at 452 (1938).

[16] Oregon-Washington R. R. & Navigation Co. v. Washington, 270 U. S. 87 at 103, 46 S. Ct. 279 (1926). See Kelly v. Washington ex rel. Foss, 302 U. S. 1 at 14, 58 S. Ct. 87 (1937).