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CONSTITUTIONAL LAW — INTERSTATE COMMERCE — STATE REGULATION OF EXPORTS OF INTOXICATING LIQUOR — On being refused a license, a carrier operating under the provisions of the Federal Motor Carrier Act¹ sought to enjoin public officials of Kentucky from enforcing the penal and contraband portions of the Kentucky Liquor Law,² which required a license from the state as a prerequisite to the right to transport liquor. Plaintiff claimed that the state act was a violation of its rights under the commerce clause in that the requirement of the license placed an unconstitutional burden on its right to transport liquor in interstate commerce. On appeal from a federal three-judge court's ruling sustaining a motion to dismiss,³ it was held that the application of the Kentucky act to an interstate carrier was constitutional; decree affirmed. *Ziffrin, Inc. v. Reeves*, 308 U. S. 132, 60 S. Ct. 163 (1939).

The decision can only be justified on the theory that the case falls within the purview of the established doctrine that a state may burden interstate commerce if reasonably necessary to protect vitally important state interests.⁴ Under this doctrine it has been held that a state may enforce reasonable quarantine regulations to protect the morals, health, safety, and welfare of its people.⁵ Where the articles involved are not legitimate articles of commerce and the state policy seems desirable, regulation of exports has been upheld even though it burdened interstate commerce directly.⁶ The exact basis for the Court's decision in the principal case is not clear. However, since intoxicating liquor, long considered a proper object of commerce,⁷ is now interpreted as a commodity that is subject to Congressional prohibition,⁸ the validation of the Kentucky act, which

¹ 49 Stat. L. 543 (1935), 49 U. S. C. (Supp. 1939), § 301.

² Ky. Acts (1938), c. 2, Stat. (Baldwin, Supp. 1938), c. 81, § 2554b-97 et seq.

³ *Ziffrin, Inc. v. Martin*, (D. C. Ky. 1938) 24 F. Supp. 924.

⁴ ROTTSCHAEFFER, AMERICAN CONSTITUTIONAL LAW, §§ 148-150 (1939). See also the exhaustive list of cases recognizing this doctrine in *South Carolina State Highway Dept. v. Barnwell Bros.*, 303 U. S. 177 at 188, note, 58 S. Ct. 510 (1937).

⁵ *Smith v. St. Louis & S. W. Ry.*, 181 U. S. 248, 21 S. Ct. 603 (1900); *Missouri, K. & T. Ry. v. Haber*, 169 U. S. 613, 18 S. Ct. 488 (1897); *Asbell v. State of Kansas*, 209 U. S. 251, 28 S. Ct. 485 (1907); ROTTSCHAEFFER, AMERICAN CONSTITUTIONAL LAW, § 153 (1939).

⁶ Prohibiting export of citrus fruit unfit for consumption, *Sligh v. Kirkwood*, 237 U. S. 52, 35 S. Ct. 501 (1915); prohibiting export of animal carcasses not slaughtered for food, *Clason v. Indiana*, 306 U. S. 439, 59 S. Ct. 609 (1938).

⁷ *Bowman v. Chicago & N. W. Ry.*, 125 U. S. 465, 8 S. Ct. 689, 1062 (1888); *Leisy v. Hardin*, 135 U. S. 100, 10 S. Ct. 681 (1890).

⁸ *Clark Distilling Co. v. Western Maryland Ry.*, 242 U. S. 311, 37 S. Ct. 180 (1917); Corwin, "Congress's Power to Prohibit Commerce—A Crucial Constitutional Issue," 18 CORN. L. Q. 477 passim (1933).

directly burdens interstate commerce, may be explained on the theory that the Twenty-first Amendment⁹ and legislation of the type of the Wilson¹⁰ and Webb-Kenyon¹¹ acts have indicated a general trend of policy toward recognizing that liquor is not a legitimate article of commerce and that its regulation should be left largely to the states.¹² The opinion mentions the Twenty-first Amendment¹³ and then states that the power in the state to prohibit the manufacture of liquor for any purpose, even for an intended export user, includes the lesser power to regulate export and the manner of exportation of liquor manufactured within the state.¹⁴ It would seem that this conclusion should be qualified by the proviso that such regulation must not impose unconstitutional conditions.¹⁵ Prohibiting a carrier, authorized by the Federal Motor Carrier Act to transport interstate goods, from engaging in the transport of liquor in such commerce without a state license might be an unconstitutional condition, as it deprives the carrier of a constitutional right to engage in interstate commerce. Therefore, the constitutionality of strict state regulation of interstate carriers of liquor manufactured in the state would seem to depend on the reasonable necessity for such regulation to protect its citizens from the evils of intoxicants as compared with the resulting hardship imposed on interstate commerce.¹⁶ The court evidently believes that the gain to the state outweighs the obstruction placed on commerce. The principal case is an extreme

⁹ U. S. Constitution, Amendment 21, § 2.

¹⁰ 26 Stat. L. 313 (1890), 27 U. S. C. (1934), § 121.

¹¹ 37 Stat. L. 699 (1913), re-enacted 49 Stat. L. 877 (1935), 27 U. S. C. (Supp. 1939), § 122. See Rogers, "State Legislation under the Webb-Kenyon Act," 28 HARV. L. REV. 225 (1915).

¹² 11 TEMP. L. Q. 247 (1937); 3 UNIV. CHI. L. REV. 636 (1936); 14 N. Y. UNIV. L. Q. 361 (1937). In *Commonwealth v. One Dodge Motor Truck*, 123 Pa. Super. 311, 187 A. 461 (1936), affirmed on lower court's opinion, 326 Pa. 120, 191 A. 590 (1937), which was based on a reasonable exercise of the police power, the court strained the meaning of the Webb-Kenyon Act to uphold a Pennsylvania statute declaring it to be unlawful to transport intoxicating liquor within the state without a permit from the state, even though it applied to a carrier transporting liquor to a point outside the state.

¹³ In terms the Twenty-first Amendment applies only to imports: "The transportation or importation into any state . . . for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited." One state court has held that, although the Twenty-first Amendment applies to imports, it does not authorize a state to regulate the shipment of intoxicants transported through a state. *Williams v. Commonwealth*, 169 Va. 857, 192 S. E. 795 (1937).

¹⁴ Principal case, 308 U. S. 132 at 138, citing *Kidd v. Pearson*, 128 U. S. 1, 9 S. Ct. 6 (1888), *Seaboard Air Line Ry. v. North Carolina*, 245 U. S. 298, 38 S. Ct. 96 (1917), and *Clark Distilling Co. v. Western Maryland Ry.*, 242 U. S. 311, 37 S. Ct. 180 (1917). See also *Eberle v. Michigan*, 232 U. S. 700, 34 S. Ct. 464 (1913).

¹⁵ *Western Union Tel. Co. v. Kansas*, 216 U. S. 1 at 54, 30 S. Ct. 190 (1910). See Oppenheim, "Unconstitutional Conditions and State Powers," 26 MICH. L. REV. 176 (1927); also Hale, "Unconstitutional Conditions and Constitutional Rights," 35 COL. L. REV. 321 (1935); 37 COL. L. REV. 307 (1937); 53 HARV. L. REV. 671 (1940).

¹⁶ ROTTSCHAFFER, AMERICAN CONSTITUTIONAL LAW, § 150 (1939).

example of the power of a state validly to interfere with interstate commerce, and perhaps the policy of the state does not necessitate this decision. However, it may be said that the Kentucky act was a reasonable means of effectuating a legitimate state policy, because the rigid control contemplated by the act would undoubtedly go far in regulating local sale of liquor by focusing attention on those few interstate carriers permitted to transport it. Nevertheless, if the purpose of the state were merely to prevent bootlegging in order to insure collection of a tax on all local liquor sales, it is doubtful if that end would justify the burden imposed. Certainly the necessity for state interference should be very great before the right to engage in interstate commerce is impaired.¹⁷

¹⁷ The principal case is noted in 53 HARV. L. REV. 671 (1940).