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CONSTITUTIONAL LAW—VALIDITY OF STATE STATUTE FORBIDDING SALE OF PRISON-MADE GOODS MANUFACTURED IN OTHER STATES—VALIDITY OF FEDERAL STATUTE PERMITTING STATE CONTROL OF GOODS IN INTERSTATE COMMERCE—Defendant was prosecuted in an Ohio court for selling in original packages goods shipped to him from an Alabama prison in which they were manufactured. The prosecution was under an Ohio statute¹ prohibiting sale on the open market of goods, wares, or merchandise manufactured or mined wholly or in part in any other state by convicts or prisoners except those on parole or probation. Other Ohio statutes impose a like prohibition on the sale of convict-made goods manufactured in Ohio. The federal Hawes-Cooper Act² provides that all goods, wares, and merchandise manufactured, produced, or mined wholly or in part by convicts or prisoners, except those on parole or probation or in federal institutions, transported into another state shall be subject to the laws of such state on arrival to the same extent as though manufactured therein. The Supreme Court of Ohio dismissed an appeal from a conviction³ and on certiorari the Supreme Court of the United States affirmed the judgment, holding that since Ohio law applied equally to prison-made goods manufactured in and out of the state the state statute does not violate the privileges and immunities clause of the Fourteenth Amendment, that the Hawes-Cooper Act permits such a state statute, and that the Hawes-Cooper Act is not an unconstitutional delegation of Congressional power. *Whitfield v. State of Ohio*, 296 U. S. 561, 56 S. Ct. 532 (1936).

The appellant's contention that the Ohio statute in question abridged the privileges and immunities of citizens of the United States within the meaning of section one of the Fourteenth Amendment would seem to have very slim foundation. This provision has been held to protect the privilege of expatriation,⁴ the right to federal protection on the high seas and abroad,⁵ access to all federal agencies and free migration,⁶ the use of navigable waters,⁷ the right peaceably to assemble and petition Congress,⁸ the right to freedom from race discrimination,⁹ the right to vote for federal officers,¹⁰ the privilege of acquiring a homestead under federal law,¹¹ protection from violence while in federal custody,¹² the privilege of informing federal officials of breaches of federal law,¹³ and the privi-

¹ Ohio Laws (1933), p. 73, § 2228-1.

² 45 Stat. L. 1084, 49 U. S. C., § 60 (1929).

³ *Whitfield v. State*, 129 Ohio St. 543, 196 N. E. 164 (1935).

⁴ *Talbot v. Janson*, 3 Dall. (3 U. S.) 133, 1 L. Ed. 540 (1795); *Murray v. Schooner Charming Betsy*, 2 Cranch (6 U. S.) 64, 2 L. Ed. 208 (1804).

⁵ *Murray v. Schooner Charming Betsy*, 2 Cranch (6 U. S.) 64, 2 L. Ed. 208 (1804); *Neely v. Henkel*, 180 U. S. 109, 21 S. Ct. 302 (1901).

⁶ *Crandall v. Nevada*, 6 Wall. (73 U. S.) 35, 18 L. Ed. 745 (1867); *Williams v. Fears*, 179 U. S. 270, 21 S. Ct. 128 (1900); *Chin Yow v. United States*, 208 U. S. 8, 28 S. Ct. 201 (1908).

⁷ *Slaughter House Cases*, 16 Wall. (83 U. S.) 36, 21 L. Ed. 394 (1873).

⁸ *United States v. Cruikshank*, 92 U. S. 542, 23 L. Ed. 588 (1876).

⁹ *United States v. Reese*, 92 U. S. 214, 23 L. Ed. 563 (1875); *United States v. Cruikshank*, 92 U. S. 542, 23 L. Ed. 588 (1876).

¹⁰ *Ex parte Yarbrough*, 110 U. S. 651, 4 S. Ct. 152 (1884).

¹¹ *United States v. Waddell*, 112 U. S. 76, 5 S. Ct. 35 (1884).

¹² *Logan v. United States*, 144 U. S. 263, 12 S. Ct. 617 (1892).

¹³ *In re Quarles*, 158 U. S. 532, 15 S. Ct. 959 (1895).

lege of resorting to the federal courts,¹⁴ but there has been no intimation in any of the cases that an otherwise proper exercise of state police power to control the sale of certain types of goods within its borders would abridge any privilege or immunity of a citizen of the United States.¹⁵ The Court upheld the Hawes-Cooper Act¹⁶ as on the same principle as the Wilson Act of 1890,¹⁷ which provided that intoxicating liquor shipped into any state should on arrival be subject to the laws of such state as though produced therein notwithstanding its being in the original packages. This act was sustained on the ground that, since the only reason states cannot regulate any part of interstate commerce is a presumption that Congress intended it to be free,¹⁸ Congress can rebut this presumption by an express declaration to the contrary, thus not delegating any of its power to the states but simply signifying its willingness that the states exercise power they had all the time.¹⁹ The conclusion of the Court seems inescapable in view of the cases decided under the Wilson Act, but it is interesting to observe the application of these principles to prison-made goods, traffic in which, unlike that in liquor, has only recently been considered an evil.

W. F. F.

¹⁴ *Terral v. Burke Const. Co.*, 257 U. S. 529, 42 S. Ct. 188 (1922).

¹⁵ LIEN, PRIVILEGES AND IMMUNITIES OF CITIZENS OF THE UNITED STATES (1913); McGovney, "Privileges or Immunities Clause—Fourteenth Amendment," 4 IOWA L. BUL. 219 (1918). But see dictum of Mr. Justice Peckham in *Allgeyer v. Louisiana*, 165 U. S. 578 at 579, 17 S. Ct. 427 (1897).

¹⁶ 45 Stat. L. 1084, 49 U. S. C., § 60 (1929).

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

¹⁸ *Cooley v. Board of Wardens of Philadelphia*, 12 How. (53 U. S.) 299, 13 L. Ed. 996 (1851).

¹⁹ *In re Rahrer*, 140 U. S. 545, 11 S. Ct. 865 (1891); *Rhodes v. Iowa*, 170 U. S. 412, 18 S. Ct. 664 (1897). And see: *Clark Distilling Co. v. Western Maryland Ry.*, 242 U. S. 311, 37 S. Ct. 180 (1917); *United States v. Hill*, 248 U. S. 420, 39 S. Ct. 143 (1919); *Sonneborn Bros. v. Cureton*, 262 U. S. 506, 43 S. Ct. 643 (1923); *Biklé*, "Silence of Congress," 41 HARV. L. REV. 200 (1927).