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Charles W. Hall

CONSTITUTIONAL LAW

CRUEL AND UNUSUAL PUNISHMENTS

Louisiana. The Uniform Narcotics Act[1] as adopted by Louisiana provides a mandatory sentence of from ten to fifteen years for those convicted under the Act of such activities as possession, control and transportation of narcotics.[2] The Act also makes the offenders ineligible for parole.[3] In *State v. Roth*[4] the defendant was indicted on a charge of possession, control and transportation of marijuana, a narcotic drug. He moved to quash the indictment, one ground of the motion being that the Act, in providing a mandatory sentence without right of parole, violated the constitutional prohibition in the Eighth Amendment of the Federal Constitution against the infliction of cruel and unusual punishments.

After the motion to quash was overruled, the defendant was convicted and sentenced to six years at hard labor. Upon appeal the conviction was affirmed.

The Supreme Court of Louisiana pointed out that there was no violation of the Federal Constitution since its prohibition against cruel and unusual punishments is a limitation upon the Federal Government, not the states. In regard to similar provisions of state constitutions, they were held to apply to the form or nature of the punishment rather than to its duration. In view of the moral degeneracy involved in a narcotics crime, six years at hard labor was found not to be disproportionate to the offense.

In respect to the cruel and unusual punishments clause of the Eighth Amendment, the Louisiana court is on firm ground, for it was early held that the first eight Amendments to the Federal

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1 23 LA. REV. STAT. (West, 1951) §§ 40:961-1022.
2 § 40: 981.
3 *Ibid.*
4 ____La.____, 69 So. 2d 741 (1953).

Constitution were limitations upon the Federal Government only, and not upon the states.[5]

The adoption of the Fourteenth Amendment in 1868 changed this. This Amendment provides: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law." The Supreme Court of the United States did not take long to reject the idea that the Privileges and Immunities Clause incorporated the first eight Amendments in their entirety. In the famous *Slaughter House Cases*[6] it was laid down that the privileges and immunities of the Fourteenth Amendment are very limited in scope and are only such as arise out of the nature and essential character of the national government, or are specifically granted or secured to all citizens or persons by the Constitution of the United States.[7]

There is a different situation in regard to the Due Process Clause. At first the doctrine was announced that the Due Process Clause of the Fourteenth Amendment does not necessarily incorporate the Eighth Amendment so as to restrain a state from inflicting cruel and unusual punishments.[8] However, over a period of time and a process of judicial construction the Supreme Court has come around to the view that the Due Process Clause does secure certain fundamental rights against deprivation by state authority. Justice Cardozo concluded in *Palko v. Connecticut*[9] that certain rights have been taken from these first Amendments and brought within the Due Process Clause by absorption. Whether or not a right is secured by the Fourteenth Amendment is determined

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[5] Barron v. Mayor of Baltimore, 7 Pet. 243 (U. S. 1833).

[6] 16 Wall. 36 (U. S. 1873).

[7] For example: (1) the right of citizens to come from one part of the country to another; (2) the right to demand the care and protection of the Federal Government over one's life, liberty or property when on the high seas or within the jurisdiction of a foreign government; (3) the right to assemble peaceably and to petition for redress of grievances; (4) the privilege of the writ of habeas corpus.

[8] Collins v. Johnson, 237 U.S. 502 (1915); *In re* Kemmler, 136 U.S. 436 (1890).

[9] 302 U. S. 319 (1937).

by deciding if the denial of the particular right would violate those fundamental principles of liberty and justice which are the foundation stones of our civil and political institutions.[10]

The recent case of *Louisiana* ex rel. *Francis v. Resweber*[11] seems to make it reasonably certain that the Supreme Court, when the question is squarely presented to it, will hold that cruel and unusual punishment by a state violates the "fundamental principles of liberty and justice" test. The facts were that a convicted murderer was placed in an electric chair to be executed, but he was not executed because the apparatus did not function properly. A second date for the execution was set by the governor, but in the interim the prisoner contended that the state in subjecting him to a second attempt would be inflicting a cruel and unusual punishment. In overruling his contention, the court was of the opinion that no case of cruel and unusual punishment was spelled out, but that, if one had been spelled out, the due process guaranty would have been violated. It was stated:

> Prohibition against the wanton infliction of pain has come into our law from the Bill of Rights of 1688. The identical words appear in our Eighth Amendment. The Fourteenth would prohibit by its due process clause execution by a state in a cruel manner.[12]

What is cruel and unusual punishment? The terminology implies something which amounts to physical torture or to such punishment as would by its very character shock the minds of persons possessed of the ordinary feelings of humanity. *Weems v. U. S.*[13] held that a punishment was cruel which consisted of imprisonment in chains, complete isolation from the outside world, and imposition of permanent civil disabilities. Likewise, it was held cruel to chain a prisoner by the neck so that he could not lie or sit for several hours.[14] Another example is *Howard v. State*,[15]

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[10] Hebert v. Louisiana, 272 U. S. 312 (1926).
[11] 329 U. S. 459 (1947).
[12] *Id.* at 463.
[13] 217 U. S. 349 (1910).
[14] *In re* Birdsong, 39 Fed. 599 (S. D. Ga. 1899).
[15] 28 Ariz. 433, 237 Pac. 203 (1925).

wherein the Arizona Supreme Court declared that, while a prison superintendent has authority to punish for infraction of prison rules, to subject an offender to thirty days' deprivation of all food save bread and water and to five months' solitary confinement without cause was illegal. In still another case involving a fugitive, a federal court was of the opinion that punishments meted out to prisoners in a Georgia chain gang were cruel and unusual.[16]

Taking into consideration the above examples and the fact that sentences to hard labor are more common than unusual, it is difficult to conceive of the United States Supreme Court holding a sentence of six years at hard labor without right of parole to be a cruel and unusual punishment.

STATE TAXATION OF INCOME FROM INTERSTATE TRANSACTIONS

Oklahoma. The perennial question as to when a state may tax an interstate business was raised once more in *Southwestern Gas & Electric Co. v. Oklahoma Tax Commission.*[17] A Delaware corporation appealed from an order of the Oklahoma Tax Commission assessing income taxes on the corporation based upon its net income allocable to the property and operations of the corporation in Oklahoma. The corporation had no employees, officials, or directors in Oklahoma; generated no electricity in Oklahoma; made no sales of current in Oklahoma; did no banking business in Oklahoma; and directly captured no income in Oklahoma. The business done in the state encompassed only the ownership of 137 miles of transmission line from Weleetka, Oklahoma, to the Arkansas line. Electric current was purchased in Weleetka, transmitted over the 137 miles of line in Oklahoma, and then sold in Arkansas, Louisiana, and Texas.

Before the Supreme Court of Oklahoma the corporation contended that the state income tax was unconstitutional under the

16 Johnson v. Dye, 175 F. 2d 250 (3d Cir. 1949).
17 ___Okla.___, 253 P. 2d 549 (1953).

Commerce and Due Process Clauses because in the situation at hand there was no local or intrastate business and because there was no direct capturing of income within the state.

The tax was upheld by the court. The business was found to be "obviously unitary." As such, in view of the fact that the net income accrued to the business as a whole, it was said to be clear that a state may tax that portion of a corporation's income attributable to property owned within the state.[18]

The Oklahoma statute was unambiguous in setting forth a very inclusive definition of doing business for purposes of taxation. Indeed, the statute declared: "The terms 'transacting business' and 'business transacted' are used herein in their broadest sense."[19] This language, added to the fact that the corporation was qualified to do business in Oklahoma and did in actuality carry on in Oklahoma a substantial part of its normal business of owning transmission lines and transmitting current, precluded the argument that no business was done in the state.[20]

But what of the argument that the income taxed was not captured in Oklahoma, that it, therefore, accrued wholly from interstate commerce, and that the taxation was unconstitutional as being imposed on interstate commerce in violation of the Constitution of the United States? The court held that purely interstate commerce is not exempt *per se* from a net income tax imposed by a state. *McGoldrick v. Berwin-White Coal Mining Co.*, cited by the court, is to the following effect: "A tax may be levied on net income wholly derived from interstate commerce. Non-discriminatory taxation of the instrumentalities of interstate commerce is not prohibited."[21] Quoting further from the same case,[22] the court said that an interstate business may be required to bear its just

[18] Underwood Typewriter Co. v. Chamberlain, 254 U. S. 113 (1920).
[19] 68 OKLA. STAT. ANN. (Perm. ed.) § 874 (o).
[20] See 20 C. J. S., *Corporations*, § 1829.
[21] 309 U. S. 33, 47 (1940).
[22] *Ibid.*

share of the tax burdens of the state. The corporation was the beneficiary of the substantial privilege of carrying on a portion of its business in the state, and this privilege was not a complete gratuity. In a nutshell the test for the validity of the taxation questioned was stated to be: "Has the state given the interstate business anything for which it can ask return?"[23] Here the answer was, "Yes." Thus, the conclusion was that the transaction of intrastate business or the capturing of income within the state was not a condition precedent to Oklahoma's taxing of the corporation's net income.

The Oklahoma holding is indisputably in line with the decisions of the United States Supreme Court in regard to a state's taxing of the net income derived within it from interstate commerce.[24] Taxation of net income is distinguished from taxation of gross income. The latter is held to be an immediate burden upon interstate commerce on the ground that it does not take into consideration the profitableness of the commerce. A tax on net profits is indirect and incidental in regard to interstate commerce and does not have the same onerous effect because it is in harmony with the net profit to the interstate business and hence is not a detriment to it. The result is that a tax on net income is a proper manner in which interstate commerce may be made to pay its fair share of the expenses of local government.[25]

Assuming that the character of the state taxation is constitutional, is the method of imposition and allocation valid and equitable? It was admitted here that the corporation's business was unitary in character. Thus it could be valued as units for taxation. A state, in taxing a foreign corporation, is limited to the value of the corporation's property within the state. But it is common knowledge that the value of property alone may not

[23] State of Wisconsin v. J. C. Penney Co., 311 U. S. 435 (1940).

[24] Barrett, *"Substance" v. "Form" in the Application of the Commerce Clause to State Taxation*, 101 U. of Pa. L. Rev. 740 (1953).

[25] Freeman v. Hewitt, 329 U. S. 249 (1946); Memphis Natural Gas Co. v. Beeler, 315 U. S. 649 (1942); United States Glue Co. v. Oak Creek, 247 U. S. 321 (1919).

nearly approach the value of the same property as it is used in a system in connection with the use of other property. Thus, the unit theory of valuation in taxation of interstate commerce is permitted under the rationale that property used in one portion of a business tends to make property in the other portions of the business more valuable. Since the property in a state has a proper value only in its relation to other out-of-state property, a state may treat the property within its confines as a "unit" of the entire business, without coming within the interdiction of the rule against taxing out-of-state property.[26]

The Oklahoma statute rests its formula for the taxation of the corporation's business upon the ratio between property, expense and sales within and without the state. This would seem to be a fair and proper application of the unit rule of valuation. The complaint that no income was directly captured in Oklahoma would seem to be equalized by the provision in the formula relating to sales. The ratio of sales in Oklahoma to total sales would be zero to total sales, and it is too obvious for remark that this part of the formula would lead to little or no tax. Similar reasoning applies to the items of property and expense in Oklahoma. All that is involved in regard to these two items is the value and expense of caring for a mere 137 miles of power line.[27]

Returning, then, to the original test expounded by the court, the answer must be that the state *has* given to the interstate business benefits, such as the privilege to do business therein, for which it may ask return in the form of a tax.[28]

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[26] Butler Brothers v. McColgan, 315 U. S. 501 (1942); 27 AM. JUR., *Income Taxes,* § 193.

[27] See Silverstein, *Problems of Apportionment in Taxation of Multistate Business,* 4 Tax. L. Rev. 207 (1949).

[28] See HARTMAN, STATE TAXATION OF INTERSTATE COMMERCE (1953); Barrett, *State Taxation of Interstate Commerce — "Direct Burdens," "Multiple Burdens," or What Have You?* 4 Va. L. Rev. 496 (1951); Cox, *Interstate Commerce and a State's Right to Revenue,* 30 Taxes 25 (1952); *but cf.* Clark, *Interstate Commerce and a State's Right to Revenue: A Rejoinder,* 30 Taxes 263 (1952).

LICENSE TAXES UPON INTERSTATE SALES

Oklahoma. In *Bossert v. City of Okmulgee*[29] a Tennessee corporation, having neither property nor place of business in Oklahoma, used traveling salesmen to solicit orders for the sale of photographs in Oklahoma. The City of Okmlugee levied a tax of $3.00 per day on solicitors who went from door to door selling such items as photographs and works of art. The defendant solicitor was fined for not paying the license fee, and she appealed, charging among other things that the city ordinance imposing the tax was unconstitutional as imposing a discriminatory tax on interstate commerce.

The Criminal Court of Appeals of Oklahoma held that the tax was clearly unconstitutional in that it was discriminatory against the "drummer" or itinerant traveling salesman. The tax was discriminatory in that no provision was made for taxing a firm which maintained a local office and could solicit orders by telephone, mail, newspapers or radio.

The decision is based on the case of *Nippert v. City of Richmond*,[30] which recognizes the accepted doctrine that even interstate commerce may be taxed locally so as to pay its own way so long as the taxation is not discriminatory. This means that the tax "must not only be non-discriminatory on its face, but it must be non-discriminatory in its practical effect as well."[31] Under the ordinance in question, if one did not make a personal solicitation of an order, *i.e.*, if one could, for example, establish a local office and solicit by telephone, he would not be subject to the tax. The obvious result was that a transient, lacking the financial resources to obtain orders other than by personal solicitation, was discriminated against in that he came within the ordinance and

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29 ____Okla. Crim. Rep.____, 260 P. 2d 429 (1953).

30 327 U. S. 416 (1946). Discussions of this case may be found in Recent Decisions, 44 Mich. L. Rev. 1135 (1946); Recent Cases, 20 Temp. L. Q. 586 (1947). See also Note, 162 A.L.R. 857 (1946).

31 260 P. 2d at 436.

had to to pay the tax, which tax was disproportionate to the probable returns to the city. Thus, the ordinance was an unreasonable restraint on interstate commerce.

The dispute in the *Nippert* case concerned a municipal ordinance imposing a similar license tax on solicitors of orders for goods. In declaring the tax unconstitutional, the United States Supreme Court was cognizant of the fact that there was a variance between the effect of the tax upon the drummer and upon the local salesman in that the flat license tax lacked any proportion to the number or length of visits, the volume of business, or return from the business, and, therefore, meant a stoppage of a large amount of commerce. Mr. Justice Rutledge concluded:

> The tax, by reason of those variations, cannot be taken to apply generally to local distributors in the same manner and with like effects as in application to out-of-state distributors. The very difference in locations of their business headquarters, if any, and of their activities makes this impossible. This, of course, is but another way of saying that the very difference between interstate and local trade, taken in conjunction with the inherent character of the tax, makes equality of application as between those two classes of commerce, generally speaking, impossible.[32]

In a multitude of cases the United States Supreme Court has illustrated that the sway of the definition of interstate commerce has an almost limitless perimeter. The business engaged in by the defendant solicitor was clearly interstate in character. The solicitations were a species of commercial intercourse among the states, for the activity contemplated and necessarily involved the transmission of goods over state lines.[33] In his inimitable fashion Justice Cardozo stated the rationale of the common precepts respecting a state's behavior in the realm of interstate commerce as follows: "What is ultimate is the principle that one state in its dealings with another may not place itself in a position of economic

[32] 327 U. S. at 432.

[33] For a relevant discussion see: Carpenter and Mardian, *What Is Commerce*, 22 So. Calif. L. Rev. 398 (1949); Carpenter and Mardian, *When Is Commerce Interstate*, 22 So. Calif. L. Rev. 406 (1949).

isolation. Formulas and catchwords are subordinate to this overmastering requirement."[34] However, the Commerce Clause does not prohibit the imposition of a non-discriminatory license tax on local sales merely because the goods come from another state.[35] *Cooley v. Board of Wardens of Philadelphia*[36] is authority for the proposition that a local government under prescribed circumstances may regulate interstate commerce if the regulation does not burden or discriminate against interstate commerce.[37]

Let it be assumed in favor of the instant ordinance that it possesses all the characteristics which would stamp it as being in harmony with the doctrine permitting local regulation of interstate commerce, if such regulation is not of a type which is discriminatory. Then the crux of the case under discussion is reached. Does this license fee *discriminate* against interstate commerce?

On its face, the argument of the court seems to stretch the *sequiturs* of logic insofar as it states: the ordinance imposing the license fee applies only to personal, face-to-face solicitations; a poor itinerant salesman can sell only by personal door-to-door solicitations and thus is within the application of the ordinance; local people with financial resources sufficient to set up a place of business can sell otherwise than by personal solicitation and thus in some situations are outside the application of the ordinance; itinerant salesmen are frequently in interstate commerce; therefore, interstate commerce is being burdened and discriminated against.

Yet if one considers the hard facts of the typical local business competition, the conclusion is inescapable that some local businessmen exert every possible pressure on the local law-making body to enact any ingenious tariff device possible to drive away

[34] Baldwin v. Seelig, 294 U. S. 511, 527 (1935).

[35] Rast v. Van Deman & Lewis Co., 240 U. S. 342 (1916); Cox, *The State's Power and Constitutional Limitations to Tax,* 30 Taxes 638 (1952).

[36] 12 How. 299 (U. S. 1851).

[37] Morrison, *State Taxation of Interstate Commerce,* 36 Ill. L. Rev. 727 (1942).

solicitors of orders for outside goods. "Provincial interests and local political power are at their maximum weight in bringing about acceptance of this type of legislation."[38] Appraising the situation in this way, one sees that in actuality the court's logic is not so credulous as it seems on first blush.

Consequently, the facts of this Oklahoma case correctly bring it within the doctrine that the soliciting of orders for goods to be filled by shipment from outside the state is interstate commerce and may not be subjected to a license tax. Solicitors who confine their activities only to the solicitation of orders which will be followed by shipment of goods in interstate commerce are not subject to state license taxes.[39]

Break in Transit of an Interstate Shipment

Oklahoma. When does a temporary stoppage of a shipment of goods within a state destroy the interstate character of the shipment?[40] The Supreme Court of Oklahoma held in the recent case of *300 Pin Ball, Slot or Marble Machines v. State*[41] that, if there were an honest and bona fide intention of continuing the shipment, then a temporary storage within Oklahoma did not terminate the shipment's interstate character.

The defendants owned 300 pin ball machines in Texas, where their operation was not illegal at the time but where the owners knew that a legislative act would soon make such machines illegal. To circumvent this eventuality the machines were sent in interstate shipment to be stored in Oklahoma. They bore labels: "To—Taylor Warehouse, Durant, Oklahoma." The machines could be

38 Nippert v. City of Richmond, 327 U. S. at 434.

39 Crenshaw v. Arkansas, 227 U. S. 389 (1913); Dozier v. Alabama, 218 U. S. 124 (1910); Caldwell v. North Carolina, 187 U. S. 622 (1903); Stockard v. Morgan, 185 U. S. 27 (1902); Robbins v. Taxing District of Shelby County, 120 U. S. 489 (1887); see Barrett, *supra* note 28.

40 For excellent annotations see: 60 A.L.R. 1465 (1929); 155 A.L.R. 936 (1945); 171 A.L.R. 283 (1947); 78 L. ed. 138 (1934).

41 ___Okla.___, 264 P. 2d 337 (1953).

set for amusement purposes only or for gambling purposes. By virtue of Oklahoma law[42] the local sheriff confiscated the machines.

In upholding the confiscation the lower court excluded evidence tending to prove that the machines had come merely to a temporary rest in Oklahoma, that it was the defendants' intention to continue shipment to other states, and that in fact contracts for the sale and delivery of some of the machines to other states had been accomplished even before the machines reached Oklahoma.

The supreme court vacated the confiscation orders on the ground that the exclusion of such evidence was erroneous and prejudicial and held in reference to the possible cessation of the shipment's interstate character:

> If the owners and consignors were bona fide in their alleged intention not to use these machines in this state and in their intention to continue the shipment outside this state temporary stoppage within the state would not destroy the interstate character of the shipment and would not subject the machines to confiscation.[43]

The question of what break in transit in interstate commerce is sufficient to terminate the interstate character of a shipment is important in that, when the interstate transit is so broken or interrupted in a state as to destroy its interstate character, then the shipment loses the protection from state taxation and regulation extended by the operation of the Commerce Clause of the Federal Constitution. Most of the cases dealing with this problem have been concerned with state taxation. From these tax cases an insight may be gained as to how the courts determine when interstate protection is lost.

The general guide may be set forth that personal property moving in interstate commerce is protected from state action so long as it possesses the quality which may be termed continuity of

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[42] 21 OKLA. STAT. ANN. (Perm. ed.) §§ 969, 972-974, 976.
[43] 264 P. 2d at 338.

transit.[44] This quality comes into existence dependent upon such factors as the intention of the owner, the control retained by the owner, the agency by which the transit is effected and the cause or reason for the interruption in transit.[45]

A leading case is *Minnesota v. Blasius*[46] wherein Chief Justice Hughes laid down the rule as follows:

> Similarly the States may not tax property in transit in interstate commerce. But by reason of a break in the transit, the property may come to rest within a State and become subject to the power of the State to impose a non-discriminatory property tax. ... The "crucial question," in determining whether the State's taxing power may thus be exerted is that of "continuity of transit." ...
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> ... If the interstate movement has begun, it may be regarded as continuing, so as to maintain the immunity of the property from state taxation, despite temporary interruptions due to the necessities of the journey or for the purpose of facility and convenience in the course of the movement. ... The question is always one of substance, and in each case it is necessary to consider the particular occasion or purpose of the interruption. ...
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> Where property has come to rest within a State, being held there at the pleasure of the owner, for disposal or use, so that he may dispose of it either within the State, or for shipment elsewhere, as his interest dictates, it is deemed to be part of the general mass of property within the State and is thus subject to its taxing power.

The facts were that cattle were consigned to a commission firm in St. Paul. They were sold to a trader who then shipped them out of the state, but one day of his brief period of ownership coincided with the date set by state law for levying personal property taxes. The cattle were held not immune from state taxation because the original shipment was found to be ended, not just suspended.

As to property in storage *General Oil Co. v. Crain*[47] is in point.

[44] 11 AM. JUR., *Commerce*, § 71.
[45] Champlain Realty Co. v. Brattleboro, 260 U. S. 366 (1922).
[46] 290 U. S. 1, 9, 10 (1933).
[47] 209 U. S. 211 (1908).

Here oil was shipped from Pennsylvania to Memphis, Tennessee. Memphis was a distribution point from which the oil was shipped in smaller lots to Louisiana, Arkansas, and Mississippi. The court relied on the summary of cases in *Kelley v. Rhoades*,[48] wherein it was stated that property is subject to local taxation when it comes to rest for an indefinite period awaiting distribution or sale. The following statement was made:

> Propery, therefore, at an intermediate point between the place of shipment and ultimate destination, may cease to be a subject of interstate commerce.[49]

A comparatively recent opinion[50] emphasizes that the controlling fact is, not what ultimately happens to the goods, but the occasion and purpose of the interruption in transit. In this case the length of time of interruption was indefinite, and the owner retained full freedom in determining where the goods would finally be sent.

Again in *Bacon v. Illinois*[51] the determinative question was whether a shipment of grain was still moving in interstate commerce. A resident of Illinois had purchased the grain while it was in transit across country. In view of the facts that the owner held the grain in Illinois with full power over its disposition and that it was without the control of the carriers and was not actually being transported, it was held by Mr. Justice Hughes that "neither the fact that the grain had come from outside the state, nor the intention of the owner to send it to another state, and there to dispose of it, can be deemed controlling."[52]

The general rule is clear. *Missouri Pacific Railway v. Schnipper*[53] asserts it to be that the continuity of an interstate journey is not broken by an interruption in transit if there is good faith

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48 188 U. S. 1 (1903).
49 209 U. S. at 229, 230.
50 Independent Warehouses, Inc. v. Scheele, 331 U. S. 70 (1947).
51 227 U. S. 504 (1913).
52 *Id.* at 515, 516.
53 51 F. 2d 749 (E.D. Ill. 1931), *aff'd*, 56 F. 2d 30 (7th Cir. 1932).

intention to ship beyond the point of interruption, the interruption is not indefinite, and the interruption is in furtherance of the intended transportation to the ultimate destination. Only the application is obscure.

In the Oklahoma pin ball machine case the holding that the continuity of the machines' interstate journey had not been broken seems to rest primarily on the good faith intention of the owners to continue the shipment to other states. Is this reasoning sufficient in the face of the circumstances of the case? There is no showing as to the period of time of interruption or that it was not indefinite. At least as to part of the machines the owners kept full control over their ultimate disposition. Can it be said that the purpose and reason for the delay was in furtherance of the intention to continue the interstate shipment and that the storage of these pin ball machines in Oklahoma was caused merely by exigencies of the means of transportation, the safety of the goods in transit, or natural causes over which the owners had no control? It is submitted that the fact situation is a close one, and the holding that the pin ball machines did not forfeit their interstate immunity might well be questioned in the light of the above authorities.[54]

Charles W. Hall.

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[54] See also Powell, *Taxation of Things in Transit,* 7 Va. L. Rev. 167 (1920); Note, 74 U. of Pa. L. Rev. 390 (1926).