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Recent Decisions

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cepted specially from the local compensation statutes, and railroad workmen engaged in intrastate traffic are affected by schemes on the same order as the federal act.²

By way of conclusion, the author urges that in the interest of equalizing benefits between railroad employees and workers generally, a national compensation scheme for all railroad workers would be highly desirable.

David S. Landis.

RECENT DECISIONS

CONSTITUTIONAL LAW—TAXATION.—The case of *Northwestern Airlines v. Minnesota*¹ deals with the taxation of property of a large corporation that has property spread throughout several states. Heretofore the state taxed the realty located within its territory and then apportioned the tax on the remainder of the property that passed through the state while engaged in interstate commerce. But according to the decision in this case this established procedure has been given a setback.

The main question or issue is: "Whether the Commerce Clause or the Due Process Clause of the Fourteenth Amendment bars the State of Minnesota from enforcing the personal property tax it has laid on the entire fleet of airplanes owned by the petitioner and operated by it in interstate transportation." The issue came up after the Northwest Airlines had paid their apportioned tax assessed by the State of Minnesota, and were then assessed again by the State of Minnesota on the basis of their entire fleet operating in and out of Minnesota.

The majority opinion of the court upheld the power of Minnesota to levy and enforce this tax on the theory that Northwest Airlines was a Minnesota corporation, deriving all of its power from that state, and thereby receiving permanent protection from that state and no other. This was the constitutional basis upon which the court upheld the taxing power that Minnesota had asserted.

The court further stated that this was not a tax on interstate commerce, or upon airlines specifically, or upon planes that had not operated within the state but had taken a situs in another state. Thus this decision did away with the established principle of having the corporation engaged in interstate commerce pay according to the portion of business and stock in each state, and thus relieve them of multiple taxation and a burden on interstate commerce. However, both Justices

² See Burns' Ind. Stat. Ann. Tit. 40, Sec. 1202, 1943 Supplement.

¹ 213 Minn. 395, 7 N. W. (2d) 691 (1942); affirmed, 64 S. Ct. 950 (1944).

Black and Jackson broached the idea that the Federal Government should take over, and pass a uniform set of laws regulating airline corporations — yet both concurred with the majority opinion. This I think would be a sound solution to the problem and some action by Congress on this present decided issue has already begun.

In Chief Justice Stone's dissenting opinion a strong point is brought out that even though interstate business is expected to pay its way, it still should not be taxed to death. The record, in fact, disclosed that this airline not only paid the Minnesota tax but also the apportioned taxes levied by the other states it operated in; and this, as one can see, would create a burden on interstate commerce.

Chief Justice Stone cited the various rules laid down in which the Supreme Court held invalid taxes not apportioned equitably, and those creating a multiple tax burden on interstate carriers. The court added that even though this was a burden on interstate commerce it could be equitably adjusted by the application of the principles of apportionment, which the Supreme Court has upheld, sanctioned, and is the constitutional duty of Minnesota to apply.

Personally, I think that the justices that rendered the majority opinion went out of their way to do so; and closed their eyes to the other side of the issue, which Chief Justice Stone very ably and carefully pointed out — based on common sense and previous principles upheld by the Supreme Court.

J. M. Chrisovergis.

CRIMINAL LAW — VIOLATION OF ESPIONAGE ACT OF 1917.—In the case of *Hartzel v. United States*¹ the facts are these: The petitioner, an American citizen, was born 52 years ago in Pennsylvania. His ancestors, of Scotch, Irish and German descent, came to this country over 120 years ago. He enlisted in the armed forces in 1917 and served overseas. After his honorable discharge in 1917 he went to work in the Akron Health Department in Akron, Ohio. He later earned a degree in science at Akron University. Later he took economics and political economy at the University of Chicago and became a financial analyst and statistician for various banks, and investment brokers. After 1938 he was employed as an auditor for the state of Illinois and then by the federal government. During this time he had published several articles dealing with the economic future of America. Two years later in 1940 the petitioner wrote several articles, attacking the English, the Jews and the President of the United States. He mailed copies of these articles to individuals and organizations appearing on his mailing list. Petitioner then wrote three articles concerning the Jews, denouncing the English

¹ 64 S. Ct. 1233 (1944).

and assailing the President of the United States. After writing these articles, he had them mimeographed and mailed about 600 of them, anonymously to all persons on his mailing list and this included, the President of Northwestern University, the Commanding General of the United States Army and many other persons in high offices. He was arrested and indicted for violating the Espionage Act of 1917. He was later found guilty and sentenced to five years in prison. An appeal was taken to the Supreme Court.

Justice Murphy in giving the majority opinion of the court in substance said that the decision must be *reversed*. The petitioner was convicted for the violation of the 2nd and 3rd clauses of section 3 of the act. These clauses are directed at those who in time of war, "willfully cause or attempt to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States." The language of these clauses makes clear that two major elements are necessary to constitute an offense under these clauses, one the specific intent to cause insubordination or disloyalty in the armed forces, secondly, the danger that the activities in question will bring about substantive evil which Congress may prevent. Justice Murphy decided the petitioner had no intention whatsoever to act as a foreign agent and sabotage the activities of the American Government, furthermore the pre-war writings of the petitioner prove his writings are not of destructive nature. It was up to the government to prove beyond a reasonable doubt that he had the criminal intent to violate the provisions of the Espionage Act, this they failed to do.

Justice Reed in giving the dissenting opinion in substance said that the criminal intent was very much in evidence, his articles attempted to turn the American people against themselves by condemning Jews, the English, and the President. In war time, there are limitations on the privilege of free speech as guaranteed by the constitution, such a limitation should be imposed in the present case Justice Reed added.

In view of the past record of the petitioner, Hartzel, his honorable discharge from the United States Army in 1917, his desire to further his education by attending Akron University, I find it hard to believe that it was the intention of this man to attempt to disunite his country. I am inclined to believe that Justice Murphy was right and that this man should have been freed, as was the case.

Theodore M. Ryan.

TAXES.—In the case of *United States of America & Mesta Machine Company v. County of Allegheny, Pennsylvania*,¹ the facts briefly are as follows: The Mesta Machine Company existed as a corporation under the laws of Pennsylvania and had a manufacturing plant in the County

¹ 64 Sup. Ct. 908 (1944).

of Allegheny, Pennsylvania. It engaged in the manufacture of heavy machinery. In October 1940, the War Department desired to produce a large number of large field guns. It therefore entered into a written agreement with the Mesta Machine Company which provided for three separate titles in a single contract. Under the first title, the government provided certain equipment for the building of these guns, the title to this equipment *remained at all times with the government*. Under the second agreement the equipment was leased to the Mesta Machine Company, the machine company was to act as bailee and was therefore liable for all damage done to machinery. The third and last title stated that the manufacturer was to deliver the guns at a price fixed by the government.

The present dispute arose when the assessing authorities of Allegheny County revised Mesta's previously determined assessment for *ad valorem* taxes. They added thereto, the machinery in question, acquired from other tool manufacturers to be used in the making of the guns. The Mesta Machine Co. claimed that the title to such machinery remain vested with the government and therefore was exempt from the *ad valorem* tax. They paid the tax under protest and brought action to have refund granted. The lower courts held the tax valid and on an appeal to the Court of common pleas in which the United States was granted permission to intervene on Mesta's behalf, the court of common pleas reversed the decision of the lower court and held the tax valid. But the Supreme Court of Pennsylvania reversed the decision of this court on an appeal by the county, the case was then taken to the United States Supreme Court.

The issue involves the recurring conflicts between the power to tax and the right to be free from taxation which are inevitable where two governments function at the same time and in the same territory. In other words does the title to the machinery in question belong to the Mesta Machine Company or to the United States and if it belongs to the United States may the State tax it?

The Supreme Court held the tax invalid. Justice Jackson in giving the majority opinion of the court stated in part that the Mesta Machine Company was a mere bailee of the machinery, the government held full title and therefore properties, functions, instrumentalities, institutions and activities of the United States are not, in the absence of express congressional consent subject to any form of taxation. Also, the state may tax personal property and might tax it to one in whose possession it was found but it could not tax one of its citizens because of moneys of the United States which were in his possession as Collector of Internal Revenue, etc. Government property to the fullest extent of the Government's interest therein, *is immune from taxation* either as against the government itself or as against one who *holds it as bailee*.

Justice Frankfurter in writing a dissenting opinion stated that he construed this tax to be on the realty and not at all as a tax on the

only thing that belongs to the United States, namely machinery annexed to the realty. Therefore as such a tax it must be declared valid.

Justice Roberts also dissented to the majority opinion, he construed the law of Pennsylvania as always having been a tax imposed on real estate and is enhanced in the amount by buildings and machinery placed upon the land with the consent of the owner even though he does not own the improvements but is a mere bailee. Thus it is to be seen that both Justice Frankfurter and Roberts accepted the tax as a tax on the realty as a whole, including all personalty on the land. They thought it was a general tax on all properties, why then should the Mesta Machine Company be allowed to claim exemption?

Thomas F. Bremer.

THE RIGHT TO SEIZE UNION RECORDS—*Subpoena Duces Tecum*.—In the case of *United States v. White*,¹ on writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit. The original proceeding was by the United States against the respondent, an officer of local Union 542, International Union of Operating Engineers, an unincorporated labor union, requesting his punishment for failure to produce certain books and papers in response to a *subpoena duces tecum* directed to said union. Pursuant to the grand jury charge, the District Court of the United States for the Middle District of Pennsylvania held respondent in contempt of court. This judgment was reversed by the Circuit Court of Appeals by a divided vote. 137 F. (2d) 24. The contention of the United States was that the union had violated certain provisions of the so-called "Kickback" Act (40 U. S. C. A. Sec. 276b) with reference to alleged union intimidation of workers engaged in war projects financed wholly or in part by the United States Government.

In reversing the judgment of the Circuit Court, the United States Supreme Court, speaking through Justice Murphy, held that the constitutional privilege against self-incrimination (Fifth Amendment, U. S. Constitution) cannot be invoked by union officials acting in an official capacity. That the constitutional privilege against self-incrimination is essentially a *personal* one was emphasized by the Court, which alludes to the origin and history of the Amendment in question.

The subpoena was here directed to the union by name, no officer of said union being mentioned. The Court's inclination to regard unincorporated labor unions as legal entities, like corporations, for the purpose of gaining access to their papers and effects, reflects a conservative trend in the high tribunal in fastening upon unions at least some semblance of responsibility.

¹ 64 S. Ct. 1248 (1944).