RECENT DEVELOPMENTS IN GOVERNMENT PRICE FIXING

by

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TABLE OF CONTENTS

TABLE OF EXHIBITS

- - -

I

THE PROBLEM

While the thought that economic ills might be mollified by price-fixing is by no means new, it has come into particular prominence during the Roosevelt administration. The N. R. A. was the most ambitious and thorough-going attempt to fix prices in substantially all lines of industry and commerce in the United States. It fell by reason of an adverse court decision, although proponents of price-fixing were given encouragement by the absence of anything in the decision against the constitutionality of price-fixing as such. Whatever the merits of such a law, it indicates the direction in which legislatures tend to turn in their efforts to combat the problems of economic maladjustment. The continued resort to different forms of price-fixing during the 1930's shows the recurrent legislative faith in a solution labelled either "regimentation" or "necessary social control", depending upon one's preferences.

This paper is concerned with but two aspects of the price-fixing problem. First, its constitutional history under the due process clauses of the Federal constitution. Secondly, some current State and Federal statutes are named and their principal features explained. A table is given showing which of the states have some of

the better known laws.

The additional question of whether such laws be for good or ill, or whether they have failed or succeeded in the accomplishment of their professed objectives, is studiously avoided.

II

CONSTITUTIONALITY OF PRICE-FIXING STATUTES

EARLY DEVELOPMENT

This section is intended as a commentary upon the development of that field of constitutional law dealing with the power of the state to legislate concerning the price factor in private contracts. The development itself, from the standpoint of authoritative enunciations of the law by the United States Supreme Court, is found in the digests of a number of cases, arranged chronologically, and numbered consecutively, starting with the case of Munn v. Illinois.[1]

Fundamentally, the issues evoked by government price-fixing in the United States revolve around the limitations imposed upon the police power of the legislature by the due process clauses of the 5th and 14th amendments to the Federal Constitution, limiting the Federal and State governments respectively. This paper would go far afield to attempt, categorically, a definition of either "police power", or "due process". Dr. Mott in his work "Due Process of Law" finds something akin to due process appearing as early as 1037 A.D. in a feudal decree of Conrad II, the Salic, Holy Roman Emperor who reigned from 1024 to 1039, said decree providing that "no man shall be deprived of his fief, whether held of the Emperor or of a demi-lord, but by the laws of the Empire and the judgment of his peers." The concept has existed in English law since the Magna Charta of 1215, and was incorporated in one form or another in the American colonial charters. The early state constitutions contained safeguards that liberty should not be arbi-

1. Page 68, infra.

trarily interfered with. Some states made no mention of life or property in this connection.[1] In the words of Thomas M. Cooley,

> "The term 'Due process of Law' has also been held to be synonymous with 'the law of the land' and to include not only the right to 'a general law, a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial,' that is to say, a day in court, and a legally enacted statute or constitutional provision, but also a recognition of fundamental personal and property rights and the freedom of the individual from arbitrary and unnecessary exactions and restrictions in relation thereto."[2]

One thing is certain concerning the constitutional system as developed in this country, viz., that the people in their constitutional assemblies have attempted to set up a framework of government, and, in addition, have denied to their legislatures the future power to enact certain kinds of laws, even though a future majority should desire them. Protection of minority groups against the tyranny of a majority was one salutary objective. The people as constitutional framers mistrusted themselves as legislators, and, like Ulysses of old, had themselves lashed to the mast of constitutional limitations in order to avoid the Sirens of legislative caprice.

By the term "police power" is meant the power of the legislature to act in the interests of public safety, peace, health, morals, and, more recently, convenience or welfare.[3] If a law is reasonably directed to one of these ends, and is free from arbitrary or capricious characteristics, it will be sustained so far as the requirements of due process are concerned, although the length and complexity of the decisions indicate that the actual determination of these propositions

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1. Mott, Rodney L., Due Process of Law, p. 15
2. Constitutional Law, 4th Ed., pp 392-3
3. Separate opinions of Hughes, C.J., and Cardozo, J., in Carter v. Carter Coal Co., 298 U.S. 238.

as they affect particular statutes is not as easily accomplished as their bare assertion.

The cases herein discussed reveal the attitude of the U.S. Supreme Court toward the concepts of police power and due process as they affect price-fixing legislation in a field wherein there has existed considerable doubt as to the power of the legislature to act, to-wit., in private callings. As to public callings the law was clear that the legislature could fix rates.[1] While the Court in the Munn case upheld the Illinois statute fixing the rates applicable to the grain elevators, it felt compelled to find an analogy between them and the public callings.

> "In this connection it must also be borne in mind that, although in 1874 there were in Chicago fourteen warehouses adapted to this particular business, and owned by about thirty persons, nine business firms controlled them, and that the prices charged and received for storage were such as have been from year to year agreed upon and established by the different elevators or warehouses in the City of Chicago, and which rates have been annually published in one or more newspapers printed in said city, in the month of January in each year, as the established rates for the year then next ensuing such publication. Thus it is apparent that all the elevating facilities through which these vast productions 'of seven or eight great States of the West' must pass on the way 'to four or five of the States on the seashore' may be a 'virtual' monopoly.
>
> "Under such circumstances it is difficult to see why, if the common carrier, or the miller, or the ferryman, or the innkeeper, or the wharfinger, or the baker, or the cartman, or the hackney-coachman, pursues a public employment and exercises 'a sort of public office,' these plaintiffs in error do not. They stand, to use again the language of their counsel, in the very 'gateway of commerce,' and take toll from all who pass. Their business most certainly 'tends to a common charge, and is become a thing of public interest and use.' Every bushel of grain for its passage pays a toll, which is a common charge, and, therefore, according to Lord Hale, every such warehouseman 'ought to be under public regulation, viz., that he . . take but a reasonable toll.' Certainly, if any business can be clothed 'with a public interest,

1. Burdick, C.K., The Law of the American Constitution, Sec. 272

and cease to be juris privati only,' this has been. It may not be made so by the operation of the Constitution of Illinois or this statute, but it is by the facts." [1]

There was thus imbedded in the law the concept of "affected with a public interest", a designation destined to serve as the line of demarcation between that group of callings as to which the legislature might and might not fix rates or prices. However, this is not to infer that the opinion of Justice Waite was dependent upon naked concepts rather than upon facts, as the opinion itself reveals.

Neither the Munn, Budd, or Brass cases (numbered 1, 3, & 4 respectively)[2] had occasion to consider the question of reasonableness, or confiscatory nature, of the rates fixed by the legislature. The nature of this newer question is readily perceptible. Granted that there is a theoretical, or legal, taking of private property in the bare fixing of a price, the actual loss to the parties affected may be nothing at all. In fact, they may stand to gain by the fixed price as contrasted with what they might have realized under the operation of the market. However, if the rate is fixed unreasonably low, so that the price received does not permit of profitable operation of the business, the taking is actual, and not merely theoretical. This question was met in the Minnesota cases (No. 2)[3] which established the requirements for notice and hearing to affected parties, and for judicial review on the question of the reasonableness, or confiscatory nature, of the rate. The Budd case, indeed, appears to make a distinction between the case of whether the rate is fixed by the legislature directly (as in the Munn case), or by a commission or administrative agency (as in the Minnesota

1. 94 U.S. 113, pp 131-2
2. Cases numbered consecutively, starting at page 68, infra.
3. Do not confuse with Minnesota Rate Cases, 230 U.S. 352.

cases), implying that the latter, but not the former, should be subject to judicial review as to confiscatory nature. But if the Budd case strayed, any doubts in the matter were set at rest by the Reagan case (No. 5), which denied any such distinction, required that any fixed rate must be reasonable, and declared that the fact of such reasonableness was one subject to judicial review.

An early anti-price-discrimination act was tested and upheld in the Central Lumber Co. case (No. 11). Note that the offense required not only the fact of price discrimination, but also the intent thereby to destroy competition. In this respect the act is distinguishable from the Minnesota act declared unconstitutional in the Fairmont Creamery Case (No. 25). The question of the necessity of such intent, and the effect of presumptions concerning it, are further dealt with in the case of Great Atlantic & Pacific Tea Co. v. Ervin.[1] The latter two decisions do not deny the existence of legislative power to fix prices, or regulate certain business practices tending toward monopoly, but they require that the acts meet certain other tests common to criminal statutes.

House v. Mayes (No. 10) upheld the right of the legislature to regulate the weighing of grain for the purpose of determining the amount due the seller thereof. McLean v. Arkansas and Mail & River Coal Co. v. Yaple (Nos. 9 and 14) sustained the so-called "run of the mine", or "anti-screen" laws, designed to insure to miners who were paid by weight a somewhat better chance that their pay might be commensurate with their productivity.

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1. See page 22 , infra.

Laws fixing time and manner of wage payment were upheld in Knoxville Iron Co. v. Harbison, Erie Co. v. Williams, and Keokee Consolidated Coke Co. v. Kelly (Nos. 8, 12 & 13). Probably all of these weighing and wage-payment statutes grew out of a recognition of disparity in bargaining positions between certain classes of laborers and their employers, for, had such disparity not existed, the inspiration for such legislation would not have arisen. So soon, however, as an individual or group attains a position enabling him to overreach, defraud, or dictate to others, to the public detriment, the matter is a proper one for legislative correction. The legislatures were prone to look to the facts of the case rather than to bare legal axioms in facing these problems. Just as an isolated legal proposition, employer and employee may make any provision they choose as to the amount of wages and the time and manner of payment. But assume one single, powerful employer, and several thousand wage-earners who, according to classical law and economics, may bargain as free men, but who in point of fact are in no position to bargain at all, and the case for social intervention becomes understandable. For a Court to uphold such statutes is not to infer that it approves the legislature's social and economic theories, but simply that it sees a plausible and real connection between the act and a proper public purpose.

We come next to a line of cases which develops to full flower the doctrine nurtured by Justices Field and Brewer following the Munn decision, which, simply stated, is that the price factor in private contracts may not be regulated unless the business sought to be so controlled is "affected with a public interest". Freund mentions the following as coming within that category:

"* * at common law, the business of the carrier, innkeeper, ferryman, wharfinger, miller; the character is frequently indicated by the term public or common carrier, etc., by modern statutes, and in addition to the common law, the business of railroads and telegraph and telephone; also the management of turnpikes and canals; storage of grain and tobacco, and the business of stockyards; the supply of water, gas, light, heat and power, through pipes and wires; and banking and insurance; under recent judicial decisions, also the gathering and distribution of news and market quotations.

While it may be said that the various classes of business mentioned have to do with either transportation, or finance, or the necessaries of life, or the staple products of the community, it does not appear that they have one common characteristic which could explain the special public interest.

Turning to the special control exercised over them, we find that it assumes one or more of the following forms: the regulation of charges; the requirement of equal service; requirements in the interest of public convenience; and requirements and restraints in the interest of financial security." [1]

One might infer from Freund's separation of the common law group from the statutory group that a legislature might cause a business to become affected with a public interest simply by so declaring it, but there is no disposition in the court decisions to permit such a result.

There being no common characteristic, or infallible test, whereby to determing whether a business was affected with a public interest, it is not to be wondered that the decisions of the Supreme Court are not altogether consistent or reconcilable. Thus it came about that in Holden v. Hardy[2] a Utah statute limiting the working hours of underground miners was upheld. But seven years later in Lochner v. New York[3] the law limiting employment in bakeries to 60 hours a week and 10 hours a day was held to be an arbitrary interference with the freedom to contract.[4] Limitation of hours on state contracts was upheld as early as 1903.[5] In 1908 the Oregon law forbidding employment of

1. Police Power, Sec. 373
2. 169 U.S. 366, 18 S.Ct. 383; 3, 198 U.S. 45, 25 S.Ct. 529
4. Munn v. Illinois classified bakers among the common callings.
5. Atkin v. Kansas, 191 U.S. 207, 24 S.Ct. 124.

females in any factory, laundry, or mechanical establishment more than ten hours a day was upheld in Muller v. Oregon.[1] The New York law requiring that railway employees be paid their wages twice monthly was upheld, but the Court found support in the reserved power of the state over corporations.[2] In 1917 the Oregon law limiting employment in a mill or factory to 10 hours a day was upheld in Buting v. Oregon,[3] This case would appear to have approved the Holden v. Hardy decision[4] and to have overruled Lochner v. New York.

Some cases, like Erie Co. v. Williams, uphold special regulation upon grounds other than that of police power alone. In Wilson v. New (No. 15) the effect of emergency was dealt with. There appeared to be a sudden and vital connection between the flow of interstate commerce (movement of trains) and wages paid the train crews. Strathearn S.S. Co. v. Dillon (No. 18) invokes the doctrine that the United States may exclude foreign vessels from its ports, and hence may impose, as a condition of entry, conformity with U.S. wage laws affecting seamen. The grounds for upholding the rent regulation in Levy v. Siegle (No. 20) appear to be a mixture of emergency and a declaration that the relation of landlord and tenant is one affected with a public interest". However, under the traditional test, if the latter were the case the former would not be required. Such a decision leaves one wondering whether the concept "affected with a public interest" is meant to be a descriptive designation of fairly uniform content, or whether it is simply a term applied to such callings as to which special regulation has been upheld. Highland v. Russel (No. 28)

1. 208 U.S. 412, 28 S.Ct. 324
2. Erie Co. v. Williams, No. 12
3. 243 U.S. 426, 37 S.Ct. 435
4. Page 9, note 2.

approved Federal price-fixing of coal prices under the war power of Congress. Stephenson v. Binford (No. 32) approved the Texas law fixing the rates for private contract carriers upon the ground that the state might control the use of its highways, and might impose certain regulations as a condition to such use. The statutes fixing hours and wages on public contracts are supportable on similar grounds.

It is in the cases where there were no such special elements available to uphold a regulatory statute, and the naked police power had to bear the judicial scrutiny unsupported and alone, that the doctrine cherished by Justices Field and Brewer was most clearly enunciated. Two state laws regulating employment agency rates encountered judicial disapproval.[1] New York was held without power to regulate prices exacted by ticket scalpers from the theatre-going public.[2] Tennessee was forbidden to fix the price of gasoline,[3] and Oklahoma could not license the business of ice manufacturing.[4] Nor could Kansas fix prices, wages, etc., in the meat packing industry.[5]

The requirement that there be judicial review as to the reasonableness of the rate set was reiterated in Oklahoma Operating Co. v. Love (No. 19). The statute falling on account of the lack of such provision, the court was spared the necessity of examining too closely the question of affectation with a public interest.

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1. Adams v. Tanner, No. 17; Ribnik v. McBride, No. 24
2. Tyson v. Banton, No. 25
3. Williams v. Standard Oil Co., No. 27
4. New State Ice Co. v. Liebmann, No. 31
5. Wolff Packing Co. v. Court of Industrial Relations, No. 22

MINIMUM WAGE LAWS

Minimum wage legislation for women was brusquely handled by Field's philosophy concerning freedom of contract in other than the public callings, in spite of the hope held out by the favorable disposition of the first of such cases to reach the Supreme Court.[1] The Oregon Court had found wage regulation to be as supportable as was limitation of hours under the police power, and did not choose to substitute its judgment for that of the legislature as to the relation between the fixing of wages and public health, morals and safety. The state courts of Arkansas,[2] Massachusetts,[3] Minnesota,[4] and Washington[5] likewise approved their respective minimum wage laws. The decision in the Adkins case (No. 21) was, in view of this background, something of a surprise, and evoked recurrent expressions of dissatisfaction toward the Court.[6] Turning to the decision itself, Sutherland lists four categories under which regulative legislation might be justified:

1. Those dealing with statutes fixing rates and charges to be exacted by businesses impressed with a public interest.
2. Statutes relating to contracts for the performance of public work.
3. Statutes prescribing the character, methods, and time for payment of wages.
4. Statutes fixing hours of labor.

1. Stettler v. O'Hara, No. 16
2. State v. Crowe, 130 Ark. 272, 197 S.W. 4
3. Holcombe v. Cramer, 231 Mass. 99, 120 N.E. 354
4. Miller Tel. Co. v. Minimum Wage Comm., 145 Minn. 262, 177 NW 341
5. Larsen v. Rice, 100 Wash. 642, 171 P. 1037.
6. Corwin, Edward M., Twilight of the Supreme Court.

The modern trend toward political and social emancipation of women was cited as a reason for invalidating legislation which singled them out (in contrast to men) for wage legislation. But the most plausible fault of the statute, as appears from the opinion, was in its failure to provide for any relationship between the wage fixed and the value of the services rendered.

> "The feature of this statute which perhaps more than any other puts upon it the stamp of invalidity, is that it exacts from the employer an arbitrary payment for a purpose and upon a basis having no causal connection with his business, or the contract or the work the employee engages to do. The declared basis * is not the value of the service rendered, but the extraneous circumstance that the employee needs to get a prescribed sum of money to insure her subsistence, health, and morals. * In principle there can be no difference between the case of selling labor and the case of selling goods. If one goes to the butcher, the baker, or grocer to buy food, he is morally entitled to obtain the worth of his money; but he is not entitled to more. If what he gets is worth what he pays, he is not justified in demanding more, simply because he needs more; and the shopkeeper, having dealt fairly and honestly in that transaction, is not concerned in any peculiar sense with the question of his customer's necessities."

Chief Justice Taft, in dissenting, felt as did the Oregon court in Simpson v. O'Hara (No. 16) that the legislature was empowered to consider the effect of wages as well as hours upon health and morals. The physical differences between men and women he felt to be a reasonable basis for classification, in spite of the political liberties conferred by the Nineteenth amendment. The Chief Justice indulged in a bit of artificiality, perhaps by way of beating the majority with their own stick, when he ventured:

> " * the opinion herein does not overrule the Bunting case in express terms, and therefore I assume that the conclusion in this case rests on the distinction between a minimum of wages and a maximum of hours in the limiting of liberty to contract. I regret to be at variance with the court as to the substance of this distinction. In absolute freedom of contract the one term is as important as the other, for both enter equally into the consideration given and received; a restriction as to one is not any

greater in essence than the other, and is of the same kind. One is the multiplier and the other the multiplicand."

Following the Adkins case, the Supreme Court overruled the minimum wage laws of Arizona[1] and Arkansas[2]. These decisions were proper under the authority of the Adkins case because of the similarity of the statutes, none of which required that the wage fixed have any relation to the value of the services rendered. In Morehead v. Tipaldo (No. 42) the Court considered the argument that this objectionable feature had been met in the New York minimum wage law, and hence that it was distinguishable from the Adkins case. However, a way out was afforded by the decision of the New York court itself,[3] which held that the difference between the New York and District of Columbia laws was one "in phraseology and not in principle", and minimum wage legislation received another set-back.

The minority side of the court finally became the majority, and the Parrish case (No. 45) in 1937, upholding the Washington minimum wage law, appears to remove constitutional doubts as to this type of legislation for women, whether or not there is any provision that the wage fixed have any relation to the reasonable value of the services rendered. There is no reason to suppose, however, that an Industrial Welfare commission would have any greater liberty in fixing wages than that exercised by other rate making agencies, and the general principles concerning notice, hearing, and freedom from confiscatory nature should be followed. On this point the decision reads as follows:

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1. Murphy v. Sardell, 269 U.S. 530, 46 S.Ct. 22
2. Donham v. West-Nelson Company, 273 U.S. 657, 47 S.Ct. 343
3. 270 N.Y. 233, 200 N.E. 799

"The minimum wage to be paid under the Washington statute is fixed after full consideration by representatives of employers, employees, and the public. It may be assumed that the minimum wage is fixed in consideration of the services that are performed in the particular occupations under normal conditions. Provision is made for special licenses at less wages in the case of women who are incapable of full service. * "

As to the social policy involved, we find this:

"There is an additional and compelling consideration which recent economic experience has brought into a strong light. The exploitation of a class of workers who are in an unequal position with respect to bargaining power and are thus relatively defenseless against the denial of a living wage is not only detrimental to their health and well being, but causes a direct burden for their support upon the community. What these workers lose in wages the taxpayers are called upon to pay. The bare cost of living must be met. We may take judicial notice of the unparalelled demands for relief which arose during the recent period of depression * * The community is not bound to provide what is in effect a subsidy for unconscionable employers. * Our conclusion is that the case of Adkins v. Children's Hospital should be, and it is, overruled."

MILK CONTROL LAWS

The Nebbia decision (No. 34) upholding the New York Milk Control law played havoc with the judicial encrustations that had formed about the concepts of due process, police power, and affectation with a public interest in the half century following the Munn case. After citing the long history of legislative regulation of the milk industry, Justice Roberts asks quite simply what there is about price that it may not also be touched if the legislature perceives a real relation between price and the public interest. The decision reveals a wholesome tendency inthe Court to re-examine its former decisions in the light of changing facts, and a readiness to discard an outworn legalistic formula which limited too narrowly and artifically the meaning of "due process." The surprising thing is not that the Court finally took this position, but that Justice Roberts, some two years later, sided with the majority in invalidating the New York minimum wage law.[1]

Following approval of the price fixing principle in the milk industry, a number of collateral problems were raised. The Hegeman case (No. 36) distinguishes between a "minimum" and a "fixed" price, and permits a differential between milk that is, and milk that is not, "well advertised". This latter feature was more clearly before the court, and was again approved, in Borden v. Ten Eyck (No. 38).

1.Morehead v. Tipaldo, No. 40

However, that portion of the act which sought to close the door to dealers in un-advertised milk coming into the field subsequent to April 10, 1933, the date of passage of the act, was held arbitrary and hence unconstitutional.[1] Roberts, the author of both the Borden and Mayflower opinions, had for his concurring associates Hughes, Stone, Cardozo and Brandeis in the former, and Hughes, Butler, Van Devanter, McReynolds and Sutherland in the latter.

It was inevitable that state milk control should be tested as to its effect upon interstate commerce, and Baldwin v. Seelig (No. 37) gives a partial answer. A unanimous court held that the New York Board was without power to regulate the price that a New York dealer must pay a Vermont producer, and could not use the non-compliance of the dealer with such an order as a basis for refusing him a license.[2] The other side of this picture was dealt with by a decision of the Pennsylvania Supreme Court in Milk Control Board v. Eisenberg,[3] wherein the court held the Pennsylvania authority without power to regulate the price which a New York dealer must pay a Pennsylvania producer. The licensing, bonding, and minimum producer price provisions of the Pennsylvania act were upheld in their local application. The situation bears a striking resemblance to that occasioned by the Wabash decision,[4]

1. Mayflower Farms v. Ten Eyck, No. 39

2. "It requires no argument to show that if a State might fix the prices of imported products, or exclude them from its borders, as it wished, in order to safeguard its own policy, freedom of commerce would become a myth. The national market would vanish in a welter of trade barriers which would paralyze trade, bankrupt business and destroy the prosperity of the country. It is precisely this situation which prompted the adoption of the Constitution, and in the light of this purpose its provision must be construed." Lee, Murray G., The Government's Hand in Business, Ch. XIII, p. 402.

3. 200 Atl. 854.

4. 118 U.S. 557, 7 S.Ct. 4.

which held unconstitutional the Illinois long and short haul law because of its effect upon interstate railroad operation. The Interstate Commerce Act came into being the following year (1887) in order that an effective Federal agency might act in those fields wherein the state had been denied power. The Agricultural Adjustment Administration is in an analagous position respecting milk prices in interstate commerce.

The A. A. A. came before the Supreme Court in the case of U.S. v. Butler,[1] decided January 6, 1936. The controversy was over the processing tax provisions, and the employment of the proceeds thereof to buy compliance on the part of farmers with acreage reduction plans. In the opinion by Roberts, invalidating this portion of the act, production was held to be an intra-state matter, separate and apart from commerce in the things produced. In this respect the decision is in accord with the Schecter and Carter cases (Nos. 35 and 41), the former dealing with goods after commerce had ceased, and the latter with production before commerce began. Congress having no power directly to regulate production was held to have no power to employ the taxing and/or spending powers to affect production indirectly.

Following the Butler case, the District Court for Massachusetts, in U.S. v. Buttrick,[2] held that the provisions in the amended A.A.A. authorizing the Secretary of Agriculture to issue orders regulating the sale and distribution of milk in the current of interstate commerce were inseparable from the processing tax and production control provisions, and hence unconstitutional under the Butler case. Upon appeal

1. 297 U.S. 1, 56 S.Ct. 312
2. 15 F.Supp. 655, 7-23-36

this decision was reversed, and the provisions held separable.[1]

The District Court for California, in U.S. v. Edwards, also held that the interstate marketing provisions of the A.A.A. were separable from the processing tax and production control provisions, and upheld them. This decision was affirmed by the Circuit Court of Appeals, 9th Circuit.[2]

U. S. v. Whiting Milk Co.,[3] upheld the A.A.A. provisions as to price fixing of milk in interstate commerce, the court saying:

> "The authority of a state to establish any regulation of, or create a burden upon, traffic in interstate commerce has been expressly denied in Baldwin v. Seelig. * If this authority is denied to the states, I think it can be fairly said that it must exist in Congress."

The Nebbia case was cited as controlling on the due process issue, the court holding that state and Federal legislation presented identical questions. The decision assumes, then, the existence of a federal "police power" within the outlines of the delegated powers of Congress.

Hudson-Duncan Co. v. Wallace[4] upheld the price fixing provisions of the A.A.A. as to walnuts. Though none of these cases has gone to the Supreme Court, the opinion of the Federal judiciary thus far is unanimous that the Butler decision did not invalidate the marketing control and price-fixing provisions of the A.A.A.[5]

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1. 15 F.Supp. 655, 7-23-36, reversed by 91 F.(2nd) 66, 6-16-37.
2. 91 F. (2nd) 767, 7-22-37.
3. 21 F. Supp. 321, D.C. Mass., 11-19-37
4. D.C. Oregon, 21 F.Supp. 295, 5-17-37
5. See Plaintiff's Brief in support of Preliminary Injunction, U.S. v. Hood & Sons, U.S. Dist. Court for Dist. of Massachusetts, Equity Suit No. 4519

Various State and Federal courts, following the lead of the Nebbia case, have upheld the state milk control acts. The general right to fix prices, and the licensing and bonding provisions for dealers contained in the 1934 Pennsylvania act, an emergency measure, were approved in Rohrer v. Milk Control Board.[1] The case of Colteryahn Sanitary Dairy v. Milk Control Commission,[2] went further and upheld the 1937 act, which by its terms is permanent and not an emergency measure. Price equalization and pooling were approved in Crescent Creamery Co. et al. v. Indiana Milk Control Board;[3] the Oregon pooling provisions were approved in a Multnomah County Circuit Court decision,[4] the Court not feeling itself bound by the decision in Van Winkle v. Fred Meyer, Inc.,[5] wherein it was held to be beyond legislative power to fix the price of ice cream.

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1. 322 Pa. 257, 1936
2. 1 Atl. (2nd) 775, 1938
3. 14 N.E. (2nd) 588, 1938
4. Fred W. Meyer et al v. Oregon Milk Control Board, No. 118-326.
5. 21 Adv. Sheets 85, 49 P. (2nd) 1140.

FAIR TRADE AND UNFAIR PRACTICE ACTS

Resale price maintenance has met judicial approval wherever tested.[1] A Federal district court found nothing against due process in the California act prohibiting the retailing of factory marked goods through regular retail channels at a price less than that fixed by the manufacturer.[2] The New York fair trade law was approved in Coty v. Hearn Dept. Stores[3] and in Doubleday Doran v. Macy,[4] which latter decision was affirmed by the New York Court of Appeals.[5] The court explains, however, that this decision does not constitute an approval of price fixing of ordinary commodities. The Coty decision, indeed, intimates that there could be no right of action against a retailer not a party to a price-maintenance contract, in which respect it restricts the New York legislature more narrowly than would be permitted by the Old Dearborn v. Seagram decision.[1]

The readiness of the courts to uphold resale price maintenance is understandable when we consider that its previous illegality was of statutory, rather than constitutional, origin. Even in the early days of the anti-trust acts the manufacturer of a patented or trade-marked article was permitted to fix by contract its resale price.[6] Any restriction upon this practice came through the anti-trust laws, and

1. Old Dearborn Distributing Co. v. Seagram, No. 43
2. Bristol-Myers Co. v. Tischauser, 18 F.Supp. 228; to a like effect see Max Factor v. Kunsman, 5 Cal. (2nd) 446, 55 P (2nd) 177.

(Notes continued to next page)

what the legislature erects it may discard. The manufacturers' rights appear to be based upon his property interest in the good-will represented by his distinctive label, brand, or trade-mark. Quaere, whether such price maintenance would be upheld if applied to unidentifiable goods.

Sales-below-cost laws have not fared so well in the courts as have other price-fixing statutes, although it is yet too early to determine whether it is the fundamental principle itself, or only collateral issues, that make for disapproval. Great Atlantic & Pacific Tea Co. v. Ervin[7], while upholding the Minnesota act in its broad out-

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3. (from previous page) 158 Misc. 516, 284 N.Y.S. 909
4. 158 Misc. 267, 284 N.Y.S. 533
5. 199 N.E. 409, 269 N.Y. 272
6. See pages 32 to 36 infra., and references cited.

7. D.C. Minn., 23 F. Supp. 70, decided April 29, 1938. Suit in equity by the company to enjoin enforcement of the Minnesota Unfair Trade Practices Act, Laws 1937, Ch. 116, repealing Laws 1921 Ch. 413, being Secs. 10464-7 inclusive Mason's Minn. Statutes of 1927. Plaintiff was operator of a large number of retail stores throughout the state. The statute is set out in full in the margin of the decision. The general principle of anti-price-discrimination and sales-below-cost laws was upheld. "The object sought to be accomplished by the legislation with which we are concerned is the prevention of the sale of * merchandise * at prices less than cost, with the intent and purpose * of injuring * competitors and destroying or lessening competition. * While we have no reason to believe that there is a dearth of grocers or other merchants in the state of Minnesota or a lack of competition among them or a present threat of monopoly in the grocery business, we are of the opinion that the state of Minnesota was free to adopt the public policy declared by the Legislature in this statute."

However, particular provisions were declared unconstitutional as follows:

The second paragraph of Sec. 2 provides: "Any * firm which sells goods in any part of the State * at prices lower than those exacted by said person elsewhere in the State * for like quantities and grades and where the effect of such lower prices may be substantially to lessen competition * shall be guilty of unfair competition and subject to the penalties of this act; provided that nothing shall prevent differentials in prices * which make only due

(Note 7, Cont'd)
allowance for differences in costs of delivery * ; nor differences in price made in good faith to meet local competition of any other person in such locality."

No intent to injure competition is required by this provision. Nor would the statute permit a firm having a cash-and-carry store and a credit-and-delivery store to sell at lower prices in the former, though cost of doing business would be less. The statute applying regardless of intent or purpose, the provision was invalidated under the authority of the Fairmont Creamery case, 274 U.S. 1, 47 S.Ct. 506, 52 A.L.R. 163. "The effect upon competition of differences in prices honestly based on differences in selling costs is the normal and natural result of fair competition between merchants whose overhead expenses differ. This type of competition is to be encouraged in the public interest, rather than restrained".

The third paragraph of Sec. 3 of Part 2 was invalidated for defining "cost" as the manufacturer's list price less his published discounts. Inasmuch as this may be far from what the retailer actually pays for the merchandise, and the latter being inadmissible to show true cost, the provision was arbitrary. The court suggested that "cost" be defined as "actual cost plus the cost of doing business by said vendor".

The fourth paragraph of Sec. 3 of part 2, in fixing "cost of doing business", or "overhead expense", as the average of all costs of doing business * during the calendar year next preceding any alleged violation was likewise declared unconstitutional as being arbitrary, in that it ignores current selling costs. The merchant might have become more efficient less than a year prior to the sale, and he should not be compelled to base his selling prices upon the relatively higher overhead existing theretofore. The court ventured that such provision would have been sustained had it provided for such average overhead as prima facie evidence of cost of doing business, rather than in being conclusive.

The sixth paragraph of Sec. 3 of part 2 provides that "any sale made by the retail vendor at less than 10% above the manufacturer's published list price, less his published discounts, where the manufacturer publishes a list price, or in the absence of such a list price, at less than 10% above the current delivered invoice or replacement cost, shall be prima facie evidence of a violation of this act". This provision, the court held, goes too far in its presumption of guilt. Such a state of facts might well be held to presume an injury to competitors, but there are too many occasions when a vendor might sell at less than 10% above cost and have no intent whatever to injure another. Too much of a strain upon a mere presumption. Cites McFarland v. American Sugar Co., 241 U.S. 79, 36 S.Ct. 498, and Morrison v. California, 291 U.S. 82, 54 S.Ct. 281, and other cases. "Intent is something which is

(Note 7, Cont'd)

easily asserted and hard to disprove. To cast upon a merchant who has sold goods at less than 10% above their cost the burden of establishing that the sale was not made with an intent to injure competitors or destroy competition subjects him to unreasonable hardship. * " and, quoting Mr. Justice Holmes in McFarland v. American Sugar Co., supra, "it is not within the province of a legislature to declare an individual guilty or presumptively guilty of a crime."

Sec. 5 of part 2 of the act provides: "Where a particular trade or industry of which the person * complained of is a member has an established survey for the locality and vicinity in which the offense is committed, the said cost survey shall be deemed competent evidence to be used in proving the costs of the person * complained of within the provisions of this act; and it is further provided that where such cost survey has established a fair and reasonable average cost of doing business for that particular trade or industry, such average cost shall be deemed prima facie evidence of cost of all * firms * of such trade or industry in such locality * ; and sales at prices less than the actual replacement cost * plus such average cost * shall be deemed to be sales below cost, within the provisions of this act."

The court was unable to tell from the above what was meant by a "cost survey", or by whom made. Too vague, indefinite, and arbitrary.

Part 1 of the act, a re-enactment of ch. 413, Laws Minn. 1921, was sustained. In provided in substance, that firms who shall discriminate between different sections, communities or cities by selling articles at a lower price in one section than another after making allowance for difference in grade or quantity, and after equalizing the distance from the point of production and freight rates, shall be guilty of unfair discrimination, but provided that the act shall not prevent any person from in good faith meeting local competition within any one section.

lines, found objection to the freedom taken by the legislature with the question of intent to injure competition and the method for determining cost of doing business. The California Supreme Court in Balzer v. Caler and Wholesale Tobacco Dealers Bureau v. National Candy & Tobacco Co.,[1] construed the California statute to require an intent to injure or lessen competition. The lower court had found the statute unconstitutional for want of such requirement. The Supreme Court likewise brushed aside the lower court's holding that the grocery business, not being affected with a public interest, was not subject to special regulation. Inasmuch as the grocers involved in the cases had sold below cost for the purpose of meeting competition, and for advertising and trade stimulation, rather than for the purpose of hindering or lessening competition, the court was not called upon to state clearly any rulings on the question of presumption of such intent, but probably the holding in the Ervin case would be followed were the issues clear. Under such a rule, the plaintiff in any case under these statutes must prove, in addition to the fact of a sale below cost plus overhead, in itself no small task, the additional fact of an intent thereby to injure competitors or suppress competition - a subjective matter most difficult of actual proof. Unless the statutes are permitted the aid of some sort of presumption, possibly such a one as would put upon the defendant the burden of explanation, leaving to the plaintiff the ultimate burden of proof, the acts might well prove to be "but another gelding in the legislative stable".[2]

1. 52 P (2nd) 3, 12-18-57, reversing 74 P (2nd) 839,848.
2. Erdmann, Martin, "Constitutionality of Statutes Prohibiting Sales at Less Than Cost", 47 Yale Law Journal 1201.

MISCELLANEOUS STATE ACTS

The Illinois statute fixing straight rates for newspaper publication of assessment lists was upheld in D.L.Lee Publishing Co. v. St. Clair County.[1] The Missouri statute regulating the price of legal notices in newspapers in cities over 100,000 population was upheld in Sekyra v. Schmall.[2]

Employment agencies have come in for further regulation in spite of the discouragement encountered in Adams v. Tanner (No. 17) and Ribnik v. McBride (No. 24). The Arkansas act was held unconstitutional insofar as it attempted to fix employment agency fees.[3] The Texas act met a similar fate.[4] The New York law requiring that the employment agency's fee be contingent upon success in obtaining employment was upheld in National Employment Exchange v. Geroghty.[5]

The case of Abbye Employment Agency v. Robinson,[6] finally upheld the principle of rate fixing for employment agencies. The decision seeks to distinguish Ribnik v. McBride (No. 24) in that the New Jersey law empowered a commission to fix rates, whereas in New York the legislature itself fixed the rates at 10% of one month's pay. It is

1. 173 N.E. 274, 341 Ill. 257.
2. 282 S.W. 702, 313 Mo. 693.
3. Alsup v. State, 10 S.W. (2nd) 9, 178 Ark. 170
4. Karr v. State, 54 S.W. (2nd) 92, 122 Tex. Cr. 88.
5. 60 F. (2nd) 918; see also Austin v. National Employment Exchange, 266 N.Y.S. 306, 148 Misc. 715, to the same effect.
6. 2 N.Y.S. (2nd) 947, 1938.

submitted that this distinction is unsupportable under the authority of the Reagan case (No. 5). If a legislature has power to act at all, it has power to delegate certain of its functions to an administrative agency provided reasonably definite limits or standards are supplied as guides for administrative action.[1] The statute in Ribnik v. McBride was invalidated not for faulty delegation, but for want of power in the legislature to fix employment agency rates. The New York court is more nearly correct in citing the Parrish case (No. 45), which appears to weaken the authority of such cases as Ribnik v. McBride, (No. 24), Adams v. Tanner (No. 17), Tyson v. Banton (No. 23) and possibly New State Ice Co. v. Liebmann (No. 31).

Oklahoma was held empowered to fix cotton ginning rates in Oklahoma Cotton Ginners Assn. v. State.[2] The Virginia act fixing fire insurance rates was approved in Aetna Insurance Co. v. Commission.[3] Massachusetts was upheld in regulating premiums for automobile insurance, and basing the same according to district.[4]

The New Jersey statute fixing prices in the cleaning and dyeing trade was held unconstitutional, the business not being affected with a public interest.[5] A Georgia city ordinance requiring filing schedule of laundry prices was upheld in City of Newman v. Atlanta Laundries.[6]

Even the barbering trade has not escaped the resourceful legislator bent upon regulating business. A Mobile city ordinance fixing

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1. see Schecter decision, No. 35)
2. 51 P (2nd) 327, 174 Okl 243.
3. 169 S.E. 859, 160 Va. 698
4. Brest v. Commissioner of Insurance, 169 N.E. 657, 270 Mass. 7
5. Kent Stores v. Wilentz, 14 F.Supp. 1.
6. 162 S.E. 497, 174 Ga. 99, 87 A.L.R. 507, appeal dismissed 52 S.Ct. 495, 286 U.S. 526.

hair-cut prices was held unconstitutional as discriminating between barbers and others, the police power not being available to raise the income of a particular group under the guise of protecting public health where the services are not absolutely indispensible to public welfare.[1] However, the Oklahoma hair-cut price law was upheld in Herrin v. Arnold,[2] and the Louisiana Supreme Court, on rehearing, upheld the act authorizing a board to fix hair-cut prices as agreed upon by 75% of the barbers in a given judicial district.[3]

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1. City of Mobile v. Rouse, 173 So. 254, certiorari denied 173 So. 266, 233 Ala. 622.
2. 82 P. (2nd) 977.
3. Board of Barber Examiners v. Parker, 100 La. 214, 182 So. 485

III

F A I R T R A D E A C T S

(Resale Price Maintenance)

THE ANTI-TRUST LAWS

This chapter takes up recent expressions of legislative approval of a practice long desired by many manufacturers - that of fixing the retail prices of their products. These statutes do not themselves fix prices. They represent, rather, governmental permission to certain parties to control the prices of products beyond the point previously allowed. However, they profess some aims and objectives similar to those sought in government price fixing, and are so related to the latter as to merit attention.

Under the common law affecting sales of personal property, a bona-fide sale was final and absolute, vesting in the buyer a perfect title, and power to do with it as he pleased. If title passed at all, all title passed, and there were no twigs from the bundle of rights representing such "title" remaining in the hands of the seller. However, the seller could through contracts obligate the buyer to certain lines of conduct concerning such property, provided the contracts were not so restrictive in nature as to cause undue restraint of trade, or violate the common-law rule against conspiracies.

The Sherman Act in principle was little more than a codification of this common-law rule against restraints and monopolies.[1] The philosophy which inspired it was similar to that which led to State and Federal regulation of railroads - the desire to preserve competition among individuals, and permit the small concerns to remain in business.

As is customary with controversial legislation, occasion soon arose for the testing of its constitutionality, a leading case being Standard Oil Co. of New Jersey v. U.S.[2] This decision, in upholding the statute, went at length into its purposes, and set out with considerable particularity the nature of the illegal practices of the defendants. Between 1870 and the filing of the bill, the Rockefeller's and others had proceeded, step by step, to acquire controlling interests in other petroleum companies until they controlled upwards of 90 per cent. of the U.S. petroleum industry, including producing, refining, transporting, and selling. They indulged in, among other things:

> "rebates, preferences, and other discriminatory practices in favor of the combination by railroad companies; restraint and monopolization by control of pipe lines; contracts with competitors in restraint of trade; unfair methods of competition, such as local price cutting at the points where necessary to suppress competition; espionage of the business of competitors, the operation of bogus independent companies, and payment of rebates on oil, with the like intent; the division of the United States into districts, and the limiting the operations of the various subsidiary corporations as to such districts so that competition * has been entirely eliminated * ; and finally reference was made to what was alleged to be the 'enormous and unreasonable profits' earned by the Standard Oil Trust * as a result of the alleged monopoly * "

By way of generalization, the decision points out the following as reasons for anti-trust legislation:

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1. See page 92 , infra.
2. 221 U.S. 1, 31 S.Ct. 502.

> "The evils which led to the public outcry against monopolies and to the final denial of the power to make them may be thus summarily stated: (1) The power which the monopoly gave to the one who enjoyed it to fix the price and thereby injure the public; (2) the power which it engendered of enabling a limitation on production; and, (3) the danger of deterioration in quality of the monopolized article which it was deemed was the inevitable resultant of the monopolistic control over its production and sale." [1]

Following the lead of the Federal government, most states enacted anti-trust laws of general application.[2] The border line between state and Federal jurisdiction was that rather evanescent concept of interstate commerce. Many states enacted laws designed to curb particular monopolistic practices, such as making it unlawful to discriminate as to selling price between different localities.[3] Some forbade such discrimination by buyers.[4]

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1. For further discussion of the act and court decisions construing it, see 15 U.S.C.A. Secs. 1-7; CCH Trade Regulation Service Vol. 1, p 2001 et seq; see Shannon, Fred Albert, Economic History of the People of the United States, ch. XXII, entitled "The Rise of Great Monopolies"; Willoughby, W.W., Constitutional Law, Ch. XLVI.

2. See table of state acts at page 90 , infra.

3. Ark., Cal., Ida., Ia., Ind., Kan., Mich., Mont., Neb., N.D., S.D., Utah, Wis., Wyo.

4. Ark., Ida., Mich., Minn., Ohio., S.D., Wyo., Wis. See note at 32 Ill. Law Review 816

LEGAL DEVELOPMENT TO 1930

The construction placed upon the Sherman and Clayton acts by the Federal courts and the activities of the Federal Trade Commission combined eventually to make resale price maintenance by the manufacturer a virtual impossibility. Seligman and Love furnish an excellent discussion of the development of this legal attitude, of which the following is a summary:[1]

An early prosecution instituted by the Department of Justice under the Sherman Act came up in the case of In re Green.[2] An alcohol company was indicted for attempting to monopolize that business by buying out competing companies, making exclusive territorial arrangements, and, of particular interest, making price rebates to such dealers as maintained prices. The Court did not regard this latter device as a restraint of trade, and, by dictum, intimated that it would have been perfectly proper for defendant to have required its dealers through contracts to maintain retail prices fixed by defendant.

The right of a patentee to require from a licensee that the patented article should sell at a fixed retail price was first declared in Bement v. National Harrow.[3] This rule was followed as late as 1926

1. Price Cutting and Price Maintenance, Chs. III and IV; see also Zorn and Feldman, Business Under the New Price Laws, Ch. XVIII; Willoughby, Constitutional Law, Ch. XLVIII.
2. C.C. Ohio, 52 Fed 104, 1892
3. 186 U.S. 70, 1902.

in the case of General Electric Co. v. U.S.[1], although intervening decisions restricted this right to cases where the license was one to manufacture rather than to sell. But copyrights did not fare so well, it being held in the cases of Bobbs-Merrill v. Straus[2] and Scribner v. Straus[3] that nothing in the copyright law gave the owner of the copyright any power to fix the resale price of the publication. At this stage, the right to fix such prices by contract had not been definitely interdicted.

The right of a patentee to fix prices through notices, where a license to manufacture was not involved, was denied in Bauer v. O'Donnell.[4] This decision put the patentee in the same position as the owner of a copyright, but left open the question of validity of contracts to maintain prices.

In 1915 two decisions were handed down as a result of government prosecutions under the anti-trust laws. The first, U.S. v. Keystone Watch Case Co.,[5] held that notices as a means of price maintenance of patented articles were illegal. (The Bauer case had held them merely ineffectual). In U.S. v. Kellogg Co.,[6] not only notices, but contracts as well, concerning patented articles, were declared illegal. But in each case the illegality was held to depend upon a system, or policy, of price maintenance contracts. Individual, isolated contracts, not a part of any general scheme or plan, were still apparently valid.

The finis to the legality of price maintenance as to patented

1. 272 U.S. 476
2. 210 U.S. 339
3. 210 U.S. 352
4. 229 U.S. 1
5. 218 Fed. 50
6. 222 Fed. 725

articles was apparently written by the decision in Boston Store v. American Graphophone Co.,[1] Not only was the patentee denied the right to bring suit against a price cutter for patent infringement, but neither could he have his distributors enter into contracts not to cut prices on his patented goods.

There remained to the manufacturer desirous of maintaining retail prices the devices of agency, and refusal to sell to price cutters.[2] The former is still valid provided that the agency is bona fide, and not a mere subterfuge, a legal question of some complexity. The latter device has been tested in a number of cases. In 1915 the Great Atlantic & Pacific Tea Co., a chain grocery store, in a suit against the Cream of Wheat Co.,[3] sought to enjoin the latter from refusing to sell to it. The injunction was denied, the court intimating that the price-cutting practices of the chain were more monopolistic in effect than the refusal of defendant to sell. In the cases of U.S. v. Colgate[4] and U.S. v. Schrader's Son[5] the right of a manufacturer to refuse to sell to wholesalers who permitted price cutting was upheld. However, these decisions by no means approved any concerted plan or scheme to determine which dealers should be put on the "do not sell" list, and this was emphasized in the Beech-Nut case,[6] wherein the Federal Trade Commission was finally sustained in its issuance of a cease-and-desist order forbidding the following practices by defendant:

1. 246 U.S. 8
2. "Consignment" of merchandise might also be mentioned.
3. 224 Fed. 566, affirmed by 227 Fed. 46
4. 250 U.S. 300
5. 252 U.S. 85
6. 257 U.S. 441

(1) issuing price lists and letters, showing uniform suggested resale prices; (2) requesting wholesalers and jobbers to sell only to retailers who in turn were willing to sell at the suggested resale prices; (3) refusing to sell to those who were unwilling to maintain prices or who sold to price cutters; (4) making the last-named policy known generally to all dealers in that trade; (5) requesting reports on price cutting from dealers and from the company's salesmen and agents, these reports being investigated by the company; (6) using serial numbers to assist the company in tracing the source from which price cutters had obtained their merchandise; (7) utilizing card lists of selected dealers, the cards on which the names of price cutters appeared being marked "Do Not Sell." (Dealers were informed of the names of those who were thus cut off and were requested to have no dealings with them. If subsequently those who had been cut off were reinstated the dealers were notified to this effect); (8) requiring from dealers assurances of an intention to maintain prices as a condition precedent to their being reinstated on the company's list after they had once been cut off; (9) turning over to wholesalers who were complying with the company's policy any orders obtained through the company's own salesmen or representatives.

While upholding the right of refusal to sell in theory, the case declared illegal the use of cooperation, or any concerted plan, to determine the undesirable customers. In the words of Seligman and Love, "the manufacturer might refuse to sell to price cutters but could take no step to ascertain their identity."[1]

The holding in the Beech-Nut case was followed, though under varying states of fact, inthe following cases: Sealpax Co. v. F.T.C.;[2] Hill Bros. v. F.T.C.;[3] Cream of Wheat case.[4]

In the span of approximately 35 years following the passage of the Sherman act, resale price maintenance underwent a legal metamorphisis, changing from valid to invalid. Not only was the right of a manufacturer to bring action against a price-cutting dealer removed,

1. op. cit.
2. 5 Fed. (2nd) 574
3. 9 Fed. (2nd) 481
4. 14 Fed. (2nd) 40

but the Federal Trade Commission came upon the scene as a positive governmental factor in prosecuting price-setting practices on allegedly monopolistic grounds. On this situation, Seligman and Love comment as follows:

> "There remains the right of refusing supplies to the price cutter; but in practice the means of making the right effective are pronounced illegal. Under a strict interpretation of the technical rulings, it would seem that a manufacturer could do little more than to suggest the resale price. Provided his knowledge of price cutting came to him only incidentally, he might legally discontinue supplies. If such a step is taken he must make sure to remember not to renew relationships with the distributor, on pain of being charged with having obtained assurances of dealer cooperation. In spite of the danger involved in renewing relationships with dealers who have been cut off, the manufacturer is not permitted to keep a record of those to whom he refuses to sell. * What is imperatively needed is a complete restatement of the law, making it clear under what conditions resale-price-maintenance should or should not be allowed as a manifestation of the refusal-to-sell doctrine; under what conditions it should be adjudged an unfair method of competition; under what circumstances it should be attacked as a combination in restraint of trade; and under what conditions, if any, it should come under the ban of monopolistic tendencies. * " 1

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1. op. cit.

Note: A searching criticism of the U.S. Supreme Court decisions construing the Sherman Act is contained in the Symposium entitled "Business and the Robinson-Patman Law" in the chapter entitled "Anti-Trust Laws," by W. H. Crichton Clarke. The principal indictment is against the construction which permits combinations and mergers, but prevents achievement of similar ends through contracts. The Dr. Miles Company could not through contracts maintain resale prices (220 US. 373), but the American Tobacco Company could maintain uniform prices in thousands of retail stores through the simple device of owning all the stores (221 U.S. 106), and the General Electric Company could control prices of incandescent bulbs in twenty thousand retail stores by consigning, rather than selling, the merchandise.

See also, Javits, Benjamin A., Business and the Public Interest.

PROVISIONS AND PURPOSES:

In 1931 California, embarking upon a legislative policy which proved to be a precedent for the majority of the states, passed her Fair Trade Law, entitled:

> "An Act to protect trade mark owners, distributors and the public against injurious and uneconomic practices in the distribution of articles of standard quality under a distinguishable trade mark, brand or name."

Retailers were prohibited from reselling such commodities except at the price stipulated by the vendor. Under this act, the vendor could fix the maximum as well as the minimum price. Other states, such Oregon, permit the vendor to fix only the minimum price, and the retailer is free to sell for more if he wishes.

It remained for the 1933 amendment to the California act to insert the provision which is most widely copied, to-wit:

> "Wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract entered into pursuant to the provision of section 1 of this act, whether the person so advertising, offering for sale or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby." [1]

The purported aim of the resale price maintenance statutes is to protect trade-mark owners, distributors, and the public. The statutes recognize that advertising by a producer will create good-will for the product if it is distinguishable from other products. Whatever

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1. Only Wyoming provides criminal penalties for violation of such a contract, including forfeiture of corporate charter.

else the manufacturer may do in the way of maintenance of quality standards, service, or otherwise, will tend to increase this good-will. Conversely, any condition tending to create ill-feeling toward the branded product will cause loss of good-will. Taking the next step and looking upon this "good-will" as a sort of property interest in the producer, existing apart from the naked property in the commodity itself, the producers are permitted by these laws to fix the minimum price at which such commodity may be sold at retail in its distinguishable form. The theory is that if such product is sold generally at a given price, but is occasionally offered in the same or competing stores at a lower price, customers will become dissatisfied, and, undiscerning, vent their dissatisfaction by avoiding the future purchase of such commodity.

The economic arguments for and against recognition of this newer interest in good-will are fully discussed and analysed by Seligman and Love.[1] The respective points of view of the manufacturer, the retailer, and the consumer are considered. Summarizing, the manufacturer would like, through price maintenance, to retain consumer good-will and dealer cooperation, both of which are jeopardized through price cutting. The retailer, espedially the small "independents", would like to continue in existence free from the depredations of the chain and department stores which lure customers away through cut prices and loss leaders. The effectiveness of such "bait" is con-

1. op. cit. This work, published in 1932, came out at a time when only California and New Jersey had Fair Trade Acts, and of course the Federal Miller-Tydings act had not yet appeared. The present state of the law is, therefore, considerably more tolerant of the practice than the law at that time.

siderably enhanced if the cut price items are national advertised to sell at a given figure. It is the common practice of the price-cutting establishments, once the customer is inside the store, to urge the purchase of other commodities on which the margin of profit is higher.[1]

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1. Jewelry offers a good example of a type of price cutting adapted to expensive merchandise - the advertisement of low prices on standard articles as "bait" to attract patronage with the intention of persuading customers to purchase non-advertised articles which yield a better profit. An illustration will make the method clear. A well-known cut-rate jeweler in downtown New York advertised some standard article such as an Elgin watch, at cost or less. The clerks, so it is said, are instructed to avoid selling these watches, however, and are told that if they exceed a small quota they will be discharged. When a customer appears in response to the advertisement, he is subjected to every possible artifice in an effort to induce him to buy another watch on which the store earns a big margin. If all other stratagems fail, the customer can usually be induced to take the substitute watch by the warning that because of the cut price the store cannot issue the customary guaranty for a year with the advertised watch. (Seligman and Love, op. cit., Appendix Two, p. 458)

Note. The strongest opposition to resale-price-maintenance in the (food) industry comes, naturally, from the chain stores. While their opposition is outwardly based upon the usual high ethical principles called into play to oppose any interference by government in business, its real basis seems to be the fact that the chains have almost universally depended upon price appeal to build up their business. Assuming that resale price maintenance were legalized and made effective, the principal weapon in their sales equipment would be destroyed. There has been much debate of late whether the weapon's effectiveness has not been destroyed in large part by the rise of so many chain stores. When there was only one chain store in a block its price appeal was effective; but now that any business block adapted to the grocery business usually boasts of several chain stores, each of which has important powers as a buyer, the price appeal is not so effective. Furthermore, extreme price cutting is made less desirable because inter-chain competition makes it more difficult to find other items with prices high enough to make up the loss. It may be that in time a nearer approach to buying equality will appear and that in such an event price, while always important, will drop into a secondary position among sales appeals. Should this happen, chain opposition to resale-price maintenance might decline. (Ibid., p. 417)

Whether either the opponents or proponents of resale-price maintenance are particularly concerned with the welfare of the notoriously inaudicle consumer is a matter of some conjecture. Even if such altruism should form the policy for a firm - manufacturer, distributor, or retailer - such firm's very existence in a competitive world is dependent upon its ability to realize profits from its operations. Profits being the sine qua non of its existence, it is forced from the necessities of the case to practice only that degree of solicitude for the consumer as permits profit to itself. It seems to the writer that arguments upon the merits of price maintenance purporting to represent the consumer point of view, while perhaps interesting and instructive, are only a by-product of the discussion which emanates from the battle of the real issues, viz., the conflicting desires of private firms intent upon their own self-interest.

The consumer's problem may be thought of from two major approaches. First is his desire to obtain goods capable of satisfying certain wants. Secondly, having ordinarily a limited income, he desires to obtain from such income as much value in terms of want-satisfactions as possible. Hence, he is interested in price, for the higher the price of a particular article, the less income remains for other desirable articles.

Proponents of price maintenance argue that, by assuring ample profit for the manufacturer and a satisfactory margin for the dealer, the quality and standards of goods are more likely to be maintained - a point in the consumer's interest, particularly applying to food and drug items. Convenience in buying would be promoted through assurance

that a given brand would represent a uniformly standard product.

Opponents cannot concede that manufacturing integrity and high profits necessarily accompany one another, although maintenance of quality standards may be assumed to be more likely when the manufacturer is prospering. However, many non-financial items combine to make goods more or less desirable to consumers, such as packaging, service by retailers in the way of delivery and exchange privileges, credit, courteous treatment, etc., - items which are not necessarily connected with a fixed resale price. The fear is also expressed that the general level of retail prices will be raised. This could happen only to goods now selling below list prices, and it does not follow that either the manufacturer or the retailer under competitive conditions could profitably lift the cut price back to the list price. The private and unadvertised brands are, in most fields, available to keep advertised brands from getting out of hand. No law as now written compels a manufacturer to fix the retail price of his product if he does not so choose, and doubtless there remain enough in this class to prevent the price setters from having their own way on the market.

The Acts do not in terms require that the prices fixed should be absolutely rigid, and manufacturers might conceivably permit in their contracts some differentials based upon service or other factors. However the decision in Calvert Distillers Corp. v. Nussbaum [1] appears to hold that the retail prices must be uniform in any given competitive area.

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1. 99 N.Y.S. 312.

Note. For discussion of resale price maintenance, see CCH Trade Regulation Service, Vol. 1, pp 2501-2599. Bibliography at p. 2599 thereof; See Seligman and Love, op. cit.; also, Zorn and Feldman, Business under the New Price Laws, Chs. 18 and 19.

The states with but few exceptions having approved the principle of resale-price maintenance, and having specifically exempted the practice from the penalties of their several anti-trust laws, it remained for the Federal government to legislate in similar fashion with respect to its own anti-trust laws. The 1937 Miller-Tydings amendment to the Sherman Act resulted.[1] While "vertical" price agreements are approved, "horizontal" agreements are as much under the ban as they were before the amendment. By "vertical" agreements we mean those between successive handlers of the same product, as manufacturer with wholesaler and wholesaler with retailer. "Horizontal" price agreements are those between concerns performing similar functions in competing lines, such as might exist between manufacturers of rival brands of soap or tooth-paste; or between competing retailers.

Whether the one type of agreement is more conducive to public good than the other may be debatable, but there is no doubt of the present legislative choice in the matter.

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1. P. 92, Infra.

STATE LAWS AFFECTING RESALE PRICE MAINTENANCE[1]

State	Date of act	Contracts Legal?	Apply to non-contracting dealers?	May person other than owner of mark or auth. distr. fix prices?
Ala.		no		
Ariz.	2-25-37	yes	yes	yes
Ark.	6- 9-37	yes	yes	no
Calif.	8-14-31	yes	yes	yes
Colo.	3-15-37	yes	yes	yes
Conn.	7- 1-37	yes	yes	no
Del.		yes	no	yes
D.C.		no		
Fla.	6- 5-37	yes	yes	no
Ga.	3- 4-37	yes	yes	no
Ida.	5- 5-37	yes	yes	no
Ill.	7- 8-35	yes	yes	yes
Ind.	6- 7-37	yes	yes	no
Ia.	7- 4-35	yes	yes	yes
Kan.	3- 4-37	yes	yes	no
Ky.	4-16-37	yes	yes	yes
La.	7-28-36	yes	yes	yes
Maine	7-23-37	yes	yes	yes
Md.	6- 1-35	yes	yes	no
Mass.	8-26-37	yes	yes	yes
Mich.	10-29-37	yes	yes	yes
Minn.	5-30-37	yes	yes	no
Miss.	4- 7-38	yes	yes	yes
Mo.		no		
Mont.	2-23-37	yes	yes	no
Nebr.	4-23-37	yes	yes	no
Nev.	3- 8-37	yes	yes	no
N. H.	8-10-37	yes	yes	yes
N.J.	3-12-35	yes	yes	yes
N.M.	3- 2-37	yes	yes	yes
N.Y.	5-17-35	yes	yes	yes
N.C.	3-22-37	yes	yes	no
N.D.	7- 1-37	yes	yes	yes
Ohio	7- 8-36	yes	yes	yes
Okla.	8- 9-37	yes	yes	yes
Oregon	6- 7-33	yes	yes	no
Penna.	6- 5-35	yes	yes	yes
R.I.	5- 5-36	yes	yes	yes
S.C.	4-23-37	yes	yes	yes
S.D.	6- 3-37	yes	yes	no
Tenn.	2-16-37	yes	yes	yes
Texas		no		
Utah	5-11-37	yes	yes	no
Vt.		yes	no	yes
Va.	6-18-36	yes	yes	no
Wash.	3-25-35	yes	yes	yes
W.V.	5-28-37	yes	yes	no
Wis.	5- 2-35	yes	yes	yes
Wyo.	5- 1-37	yes	yes	no

1. From CCH Trade Reg. Service Vol. 1 (105 CCH) p. 2511

SALES EXCEPTED FROM ESTABLISHED PRICE[1]

State	Closing out sales: Notice to public?	Notice to producer?	Opportunity to repurchase reqired?	When mark or name obliterated?
Ariz.	no	no	no	no
Ark.	yes	yes	yes	yes
Calif.	no	no	no	no
Colo.	yes	yes	yes	yes
Conn.	yes	yes	yes	yes
Fla.	yes	yes	yes	no
Ga.	yes	yes	yes	yes
Ida.	yes	yes	yes	yes
Ill.	no	yes	yes	no
Ind.	yes	yes	yes	yes
Ia.	no	no	no	no
Kan.	yes	yes	yes	yes
Ky.	no	yes	yes	no
La.	no	no	no	no
Me.	no	yes	yes	no
Md.	yes	yes	yes	yes
Mass.	no	yes	yes	no
Mich.	no	yes	yes	no
Minn.	yes	yes	yes	no
Miss.	no	no	no	no
Mont.	yes	yes	yes	yes
Neb.	yes	yes	yes	yes
Nev.	yes	no	no	no
N.H.	no	yes	yes	no
N.J.	no	no	no	no
N.M.	no	no	no	no
N.Y.	no	no	no	no
N.C.	yes	yes	yes	yes
N.D.	no	no	no	no
Ohio	no	yes	yes	no
Okla.	no	no	no	no
Ore.	yes	yes	yes	no
Penna.	no	no	no	no
R.I.	no	yes	yes	no
S.C.	no	yes	yes	no
S.D.	yes	yes	yes	yes
Tenn.	no	no	no	no
Utah	yes	yes	yes	yes
Va.	yes	yes	yes	no
Wash.	no	yes	yes	no
W. Va.	yes	yes	yes	yes
Wis.	no	no	no	no
Wyo.	yes	yes	yes	yes

1. CCH Trade Reg. Service, Vol. 1, p 2513, as of April 14, 1938. Closing out sales and sales under court order are excepted in all states; also sale of damaged or deteriorated goods when notice given public.

IV

UNFAIR PRACTICE ACTS

The sales-below-cost and price-discrimination laws represent twin efforts to prevent ruinous price cutting. Like resale-price maintenance, they find root in the havoc caused by the loss-leader and cut price policies of the chains and department stores, aggravated by the general depression. Briefly, their objects are to make illegal the advertising, selling, or offering for sale by a retailer a commodity at less than its cost, or, in some cases, cost plus a small percentage, plus the cost of doing business, with the intent thereby to lessen competition.[1]

To drop the matter at this point would not be sufficient, however. Manufacturers, through choice or necessity, frequently make price concessions to chains, department stores, or mail-order firms, ostensibly because of the larger quantities taken by these firms and the consequent lower unit cost. But these concessions exceeded in many instances the actual savings properly attributable to the larger quantities alone. With an eye to this situation, Congress in 1936 passed the Robinson-Patman Act[2], amending Sec. 2 of the Clayton Act by adding provisions

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1. In Oregon and Nebraska, proof of such intent is not required if there be in fact injury to competition. Connecticut, Louisiana, and Pennsylvania make liability predicated upon the mere fact of selling below cost without even proof of injury. Arizona, California, Minnesota and Tennessee require such intent, and the fact of injury, but presume the intent from the act of selling below cost. See Comment, 32 Illinois Law Review 816. For constitutionality of these provisions, see Great A & P Tea Co. v. Ervin, supra p 22, note 7.

2. See page 93 , infra.

relative to price discrimination. The amendment makes the act applicable to buyers as well as sellers, but the buyer must know that he is receiving a discriminatory price to come under the penalties of the Act. Sellers are forbidden to discriminate in price between purchasers of like grade and quality where the effect may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with the buyer or seller, or with customers of either of them. However, sellers may continue to select their own customers. If sales are made to a jobber who also retails, jobbers must pay the same price as other retailers as to such of their purchases as are sold at retail.

The Act does not in terms exempt sales to governmental agencies, although that such sales were exempt was held in an opinion by the U.S. Attorney General, and similar opinions of some state attorneys-general. California, however, holds that the act applies to government purchases. Bills have been introduced in Congress specifically making this exemption.[1] Sales to schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit, of supplies for their own use, are exempted by amendment.[2]

Differentials in price between competitive purchasers are limited to the savings accruing to the seller by reason of differences in quantities sold.

Brokerage commissions may not be paid, directly or indirectly, to the purchaser, as this would be a form of rebate. Advertising and

1. S. 1730, S. 3008.
2. Public Law No. 692, approved 5-26-38.

other allowances to purchasers for services or facilities in the handling or sale of goods is forbidden unless available upon equal terms to all customers of the seller.

Sec. 3 of the Robinson-Patman Act is not an amendment to the Clayton Act, but is totally new. While it duplicates Sec. 1 in some particulars, it differs in that it fixes criminal liability for violation. Sec. 1, being part of the Clayton Act, is enforced as are other provisions of the Clayton Act, viz., by private or Government injunction, or by private suit for three-fold damages. Proceedings by the Federal Trade Commission through cease and desist orders under Sec. 11 of the Clayton Act may also be invoked.

A number of states now have anti-discrimination legislation.[1] Of these, only Idaho, Oregon, and Utah follow the Robinson-Patman Act in making the buyer liable with the seller in knowingly receiving the benefit of a price discrimination in his favor. These three states are likewise alone in dispensing with the requirement of an intent thereby to injure competition. Only the fact of injury need be shown. Other states, requiring such intent, will presume the intent from the fact of buying or selling at different prices in different localities.[2]

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1. See table at p 66, infra.
2. Ark., Calif., La., Miss., Mont., Neb. See 32 Ill. L.R. 816.

Note: For a full discussion of the acts, their economic and legal aspects, see: Zorn and Feldman, Business under the New Price Laws; Patman, The Robinson-Patman Act; Symposium edited by Banjamin Werne, Business and the Robinson-Patman Law; Burns, The Decline of Competition, Ch. VI

V

MILK CONTROL

A growing conviction that all was not well with the milk industry led the legislatures of some twenty states, starting with New York, Oregon, Connecticut, Florida, New Jersey, Ohio and Wisconsin in 1933, to enact laws regulating various phases of milk production and marketing, including the fixing of prices. The following preamble from the Pennsylvania act is a comprehensive legislative expression of the evils sought thereby to be remedied:[1]

> " * Milk consumers are not assured of a constant and sufficient supply of pure, wholesome milk unless the high cost of maintaining sanitary conditions of production and standards of purity is returned to the producers of milk. If this is not done, large numbers dispose of their herds or engage in milk strikes, and remaining producers supply unhealthful milk or milk of lower quality and because of financial inability to comply with sanitary requirements and to keep vigilant against contimination. Public health is menaced when milk dealers do not or cannot pay a price to producers commensurate with the cost of sanitary production, or when consumers are required to pay excessive prices for this necessity of life.
>
> Milk dealers must handle constant surpluses to meet the emergency requirements of normal variations in fluid consumption and to meet seasonal variations in production, which amounts in excess of fluid requirements must find a market in fluid use or in manufacture, and tend to demoralize the industry. Only one per centum of the milk dealers of the Commonwealth handle over sixty per centum of the milk sold by producers to dealers; and persons have often combined privately to establish practices or fix prices to the detriment of producers or consumers.
>
> Milk producers must make delivery of their highly perishable commodity immediately after it is produced, and must generally

1. Excerpts only.

> accept any market at any price. Under the utilization method of payment prevailing in the milk industry, particularly in cities, the value of this market is unknown until the milk dealer sells the fluid milk and uses or disposes of the surplus. Furthermore, only the dealers have facilities for accurately weighing and testing milk. * The producers' lack of control over their market is aggravated by the trade custom of dealers in paying weeks after delivery, keeping producers obligated to continue delivery in order to receive payment for previous sales, and permitting dealers to operate on the producers' capital without giving security therefor. Hence, milk producers are subject to fraud and imposition, and do not possess the freedom of contract necessary for the procuring of cost of production.[1]

The sentiments expressed above are corroborated by the conclusions of the legislative fact-finding committee of the State of New York, which are discussed at some length in the case of Nebbia v. New York.[2] In the table at page 54 herein are listed those states which now have such milk control laws, according to information furnished the writer by Paul C. Adams, Administrator of the Oregon Milk Control Law. Some attempt has been made to analyze these laws according to their more important provisions. The limitations of these classifications should be recognized. The headings are necessarily broad, and particular features will vary from state to state, as to which the statutes themselves must be consulted.[3]

The "Producers licensed" column indicates that the Board in such state licenses the dairies. Absence from this column does not imply that producers are not licensed, as this may be handled by a state or local Board of Health, or other agency. All states having milk laws license the dealers, or distributors. Somewhat fewer license retailers (stores). Bonding of dealers is required in some states to insure that

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1. The statute appears to aim for freedom, rather than restriction, of contract.
2. 291 U.S. 502, 54 S.Ct. 505, No. 34 herein.
3. See citations to state statutes, page 96 , infra.

producers are paid.[1] All of the jurisdictions covered fix prices to producers, but some do not fix the retail price.

The factors involved in the "Pool" and "Quota" columns depend to such an extent upon statutory interpretation as to require further explanation. By the term "pool" is meant that device whereby all the milk produced in the pooling area is considered as put into one reservoir, out of which is drawn so much to be sold as fluid milk at a given price, the remaining surplus being made into canned milk, cheese, or other milk products at a somewhat lower price. Assume that producer A markets all his milk as fluid milk, but that B, producing an equal amount of milk of like quality, finds the condensaries as his only outlet. In the absence of any pooling provision, A's return will be higher than B's. Under pooling, enough will be taken, or withheld, from A and given to B, so that their respective returns will be equal.[2]

The term "quota" implies a further step. Instead of all the milk being pooled, and returns being made to producers on the basis of the pool average, each producer is given a quota fixing in advance the amount of his milk that may be sold as "fluid". Any production over this amount will be considered surplus. As a means for determining this quota, some Boards use the amount of milk that was being produced by the dairyman during a given prior period. The Boards of some states appear to have power to limit production according to a base period, and failure or refusal to assign additional quotas, or the assignment of extremely low fluid quotas, would have a result similar to the action

1. See Sec. 258-b, New York Act, page 97, infra.
2. See Sec. 258-m-6, ibid.

of a public service commission in refusing a certificate of convenience and necessity to a prospective public utility.[1]

The power of the State Milk Board to set up a pool, or to fix quotas, apparently need not be spelled out in terms in the statute. For instance, the Milk Commission of Virginia has issued a pamphlet containing rules and regulations for the supervision and control of the Arlington-Alexandria Milk Market, effective July 1, 1937, amended July 1, 1938 and November 1, 1938. Regulation No. 3 thereof fixes "farm basic allotments" for each producer according to his average daily deliveries during the months of October, November, and December, 1937. New producers coming into the field must take a "Class III" price for the first four months, after which time the "base shall be set up by the Milk Board on a basis equitable with established producers". Provision for pooling is also made in the same pamphlet. However, no specific mention of either pools or quotas is made in the Virginia statute itself, the Board evidently drawing its powers as to the same from Sec. 3 of the Act, which reads in part as follows:

> " * The commission is hereby declared to be an instrumentality of the Commonwealth, vested with power:
> (c) to supervise, regulate, and control the production, processing, storage, transportation, distribution and sale of milk *
> (g) to make, adopt and enforce all rules * necessary to carry out the purposes of this act. * "

Practically all the acts define the powers of their respective Boards in similarly general terms. The accompanying table designates only such states whose statutes set out the pool and quota powers expressly and specifically.

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1. For constitutionality of this feature, see Mayflower farms case, No. 39, discussed at p. 17, supra.

Constitutionality of the permanent acts, as contrasted with the emergency acts, is considered in the chapter on constitutionality, supra.

The column headed "Local Option" lists those states whose acts provide for some measure of determination by producers or dealers within a marketing area as to whether the milk control acts, or particular provisions, shall apply as to them.

A more recent development in regulation of the milk industry is the advent of Federal regulation of milk prices in interstate commerce under the amended A.A.A.[1] The necessity for such control is apparent when we consider the magnitude of the milk industry and its interstate character. For instance, in 1934 90.8% of the total volume of milk sold in the Greater Boston area originated in states other than Massachusetts.[2] The practical difficulty of attempted state regulation of an industry which transcends its boundaries was amply illustrated by the railroad situation prior to the Interstate Commerce Act of 1887.

On the extent and nature of Federal regulation, the following information was furnished the writer by E. W. Gaunmitz, Chief, Dairy Section of the A.A.A., in a letter dated January 12, 1939:

> "The Federal authority is operating in over twenty markets, principally under the Agricultural Agreement Act of 1937 and in the form of orders or orders and marketing agreements, and also under an earlier Agricultural Adjustment Act in the form of licenses. In all, 12 states are in part affected by one or more of the foregoing stabilization arrangements: namely, California, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Missouri, New York, and Ohio. Of these States, only California, Indiana, Massachusetts, and New York have milk control laws under which prices may be fixed for milk; and in these four states a satisfactory basis has been found for co-operation. * "

1. Excerpts from the Act at page 100, infra.
2. Brief in support of Motion for Temporary Injunction, U.S. v. Hood, D.C. Mass., Equity No. 4519, p 10.

Either to espouse or denounce the principle of milk control is to invite controversy. The writer would be presumptuous to essay an opinion on the matter, being in no position to make the factual investigation that such opinion would require. Correspondence from the boards of practically all the states contacted is favorable to the act, and it is left to the reader whether said boards speak impartially. They are supposed to represent the public interest. The issues are fundamentally the same as those involved in the early Granger laws - whether it would be in the public interest to extend government regulation over certain businesses theretofore deemed private in nature. Monopoly motivated the Granger laws, and, according to the Pennsylvania preamble, was likewise present in the milk situation. Concern for the public health in the maintenance of an adequate supply of pure milk is expressed in such laws - a concern which requires that the milk be pure, and, in addition, that producers be insured a sufficient return so that standards of sanitation may be maintained and the necessary costs be met. The public interest is supposed to be promoted by assurance of sufficient profits to producer, dealer, and retailer.

The objection is raised that in some states entry of new producers into the field is impeded, but perhaps this is necessary to effective regulation. Limitation upon entry into the fields historically known as public utilities has long been exercised, and none would now go back to unrestricted competition among railroads, telephone companies, light plants, or water works. It may well be that similar regulation of the milk industry would be in the public interest. Current statutes have gone far in that direction.

COMPARATIVE TABLE OF MILK CONTROL LAWS

As of November 30, 1938

State	Producers licensed	Dealers licensed	Retailers licensed	Dealers bonded	Retail price fixed	Producer price fixed	Pool	Quota	Local Option	Date first act	Expiration
Ala.	yes	yes	yes	yes	yes	yes		yes	yes	1935	6-30-39
Calif.		yes				yes		1	yes	1935	Perm
Conn.		yes	yes		yes	yes		2	yes	1933	Perm
Fla.		yes	yes		yes	yes				1933	Perm
Ga.	yes	yes	yes	yes	yes	yes		yes	yes	1937	8-15-41
Ind.		yes	yes	yes		yes	yes	yes	yes	1935	6-30-39
Iowa 3											
La. 4											
Mass.		yes	5		yes	yes				1934	6-30-40
Mont.	yes	yes			yes	yes			yes	1935	Perm
N.J.		yes	yes	6	yes	yes				1933	6-30-39
N.Y.		yes		yes	yes	yes	yes		yes	1933	Perm
Ohio 7											
Ore.		yes	yes		yes	yes	yes	yes		1933	Perm
Penna.		yes		yes	yes	yes				1934	Perm
R.I.		yes	yes		yes	yes				1934	Perm
Vt.	yes	yes	yes		yes	yes				1937	Perm
Va.		yes	yes		yes	yes			yes	1934	(8)
Wash. 9											
Wis.	yes	yes			yes	yes				1933	12-31-39

(See following page for notes)

1. Sec. 736.3, "The board shall formulate a stabilization and marketing plan * . No such plan shall involve a limitation upon the production of fluid milk or fluid cream."

2. Sec. 800c (e) "Said administrator shall have power to establish a production rating system designed to aid conformity to the law of supply and demand by so regulating the production of milk in the state to the demand * that the market may not be demoralized for the producer."

3. Cream Grading Law, ch. 150 G-1, Code 1935, providing for cream grades and price differentials.

4. Sec. 1, " - regulation of the production, manufacture and sale of milk * shall be * under the supervision of the Louisiana Milk Commission, * which * shall have the power and authority to make, publish and enforce all regulations necessary to secure to the public a clean, wholesome and sanitary milk supply, and to promote and encourage the production and manufacture of milk and milk products * , including the right to make such regulations as will protect the production of milk in the quality and price of milk to be sold by them to distributors, pasteurizers and other wholesalers, and to provide such means for the protection of said producers in the collection of the amounts due * them from such distributors * as may be deemed advisable."

5. At option of Board

6. App. A:8-17, Rev. Stat. 1937. Board may promulgate and enforce credit regulations governing sales between dealer, subdealer, and processor.

7. Repealed.

8. Sec. 17 of Ch. 357, Acts 1934: "Termination - The period of public emergency during which this act shall be effective shall be until such date as the Legislature may, by joint resolution, designate to be the termination thereof, or if the Legislature be not in session the date so designated by a proclomation of the Governor".

9. Milk law was part of the state A.A.A. which was declared unconstitutional for improper delegation in 43 P (2nd) 977,983.

VI

MINIMUM WAGE LAWS

The term "minimum wage" as generally understood in the United States implies the establishment by the government of certain minimum rates of pay, hourly, daily, or weekly, for personal services (labor). Thus far the laws have not essayed to require a minimum annual wage. Hence the present minimum wage laws do not guarantee to anyone that he will receive a given amount for services rendered or tendered. He must first find employment.

Historically, this type of law constitutes one of the later expressions of social concern for the well-being of the laborer, other developments being: free public schools; homestead, exemption, and bankruptcy laws; limitation of hours; requirements as to safe working conditions; industrial accident insurance, workmen's compensation, and employers' liability statutes; removal of common law defenses of assumption of risk, contributory negligence, and the fellow-servant doctrine; increasing acceptance of labor unions and the principle of collective bargaining; limitation of the use of the injunction in labor disputes; regulation of manner and time of wage payment, and requirement

that payment be in money; unemployment compensation insurance; Federal Social Security, and others.

The concern manifested by the above developments need not have been purely humanitarian in motive. While there was doubtless considerable sympathy for the distressed laborer trying to bargain individually for a job and a wage in a bear labor market, other considerations of social well-being were important as well. The situation may be compared with that underlying some of our criminal law. If A, at pistol point, holds up B and robs him of his valuables, society could, if it so chose, consider it a mere matter of private dealing between individuals, and leave B to his own devices to protect himself. If C, a laborer is injured in the course of his employment, society could consider it as hos own misfortune, and leave it to him to make whatever provision he might for medical care and continuation of income during his disability. If X, a laborer, loses his job, society could say that, being a free individual in a free country, he should bestir himself and find other employment, selling his services wherever he might find a market.

In the robbery case of A and B, society long has felt that such goings on were of concern to the public as well as to the individuals immediately involved, and hence has catalogued A's conduct as criminal, with prescribed penalties. In the case of the injured C, the workmen's compensation laws have taken an insurance point of view toward such injuries, and provide that the burden should be partly borne by the industry profiting from the laborer's operations, and not altogether by the laborer himself. The case of X, the jobless laborer, is one of greatest public moment, but is not yet definitely settled.

Indicative of the early public interest in laws of the type listed above is the following language from the case of Maxwell v. Reed,[1] upholding a wage exemption statute:

> "The idea underlying the ultimately developed sentiment of the people upon that subject * is that the citizen is an essential elementary constituent of the state; that to preserve the state the citizen must be protected; that to live he must have the means of living; to act and to be a citizen he must be free to act and to have somewhat wherewith to act, and thus to be competent to the performance of his functions as such. Hence it would seem, as no doubt it was, a matter of the gravest state policy to invest the citizen with, and to secure to him, those essential perquisites without which the state could not demand of him at all times his instant service and devoted allegiance."

State laws fixing or providing for minimum wages were ushered in in 1912 by Massachusetts, following the report of an investigating commission. In 1913 eight other states[2] enacted minimum wage laws. The present roster of states having such laws appears below at p 662. One column shows laws applicable to women and children; the other, laws providing minimum standards for laborers on public contracts. The majority of statutes provide for an Industrial Commission or other board empowered to fix the actual rates, following public hearings and other investigations. Three states, South Dakota, and Arkansas, and Nevada fix the rates by statute. For more detailed provisions, see appendix, p 102.

It would be hard to find a clearer exposition of the public purposes sought to be served by minimum wage legislation that in the dissenting opinions in the cases of Adkins v. Children's Hospital, (No. 21) and Morehead v. Tipaldo (No. 42), and in the majority opinion of the Parrish case (No. 45). The industry profiting by the employment of underpaid workers is in effect enjoying a public subsidy.

The immediate inspiration for the laws grew out of a desire to

1. 7 Wis. 582, 1859; 2. Cal., Colo., Minn., Neb., Ore., Utah, Wn., Wis.

avoid the losses resulting from industrial strikes and conflicts, and the situation of women and girls in the "sweated" industries, notably clothing. Cognizance was taken of the weak bargaining position of the individual laborer, and the advantage taken of this situation by unconscionable employers. Fact-finding committees found the resultant conditions detrimental to health and morals. Apparently the automatic operation of the laws of supply and demand was not deemed sufficient to correct the situation, and legislatures were called upon to decide whether it were better to retain full liberty of contract, or limit it somewhat by fixing minimum wages.[1]

At this writing (December, 1938) no state save Oklahoma appears to have attempted to provide for general minimum wages for men. The Oklahoma law was declared unconstitutional upon a ground not related to its merits as a price-fixing statute.[2] A Louisiana constitutional provision expressly forbids the legislature to fix the price of "manual labor".[3]

Commons and Andrews come to the following conclusions respecting the effect of minimum wage legislation.

> "Among the better-established results of minimum wage legislation, therefore, may be mentioned (1) that it has raised wages; (2) that minimum wage rates do not in general tend to become maximum rates; (3) that it does not necessarily force workers out of industry; (4) that it does not unduly handicap employers; (5) that it does not undermine trade union organization; and (6) that it does not decrease efficiency." [4]

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1. See Lien, Herbert A., Labor Law and Relations, Supplement p. 6. Lien lists 14 states, one territory, and D.C. as having minimum wage laws "Before April 1933". He apparently means "1923", for his next reference is to the Adkins case, and later "By 1928 only 8 states * attempted that type of legislation. When the Supreme Court in West Coast Hotel v. Parrish held a minimum wage * law for women * constitutional, interest was revived. Since that date the number of states attempting such legislation has increased to 25."

2. Infra, p 118. 3. Infra, p 107 .

4. Principles of Labor Legislation, ch. on "Minimum Wages".

The Federal Fair Labor Standards Act of 1938[1] is the natural sequence to the ill-fated N.R.A., which was held unconstitutional in the Schecter decision (No. 35) on the grounds of improper delegation of legislative power to administrative agencies, and the regulation of transactions relative to goods that had ceased to be in interstate commerce. The first Bituminous Coal Conservation Act, enacted in 1935, was likewise invalidated.[2] The labor provisions of these acts, being deemed inseparable from the unconstitutional portions, also fell.

Meanwhile, however, Congress had witnessed the reversal by the Supreme Court of its decision in the Adkins case(No. 21) by the decision in the Parrish case (No. 45). The appearance of this liberal tendency may indicate that the Court would take a somewhat different attitude toward at least some of the provisions of the N.R.A. However, the Parrish decision deals only with the right of a state to regulate intra-state affairs, and it by no means suggests any change in the Court's position as to delegation of power, or attempted regulation by Congress of intra-state affairs. Even the Carter case conceded to Congress a power to fix prices within the framework of its delegated powers equal to that enjoyed by the states under the police power.

Congress appears to have eliminated the objection of improper delegation in the present act by fixing fairly definite standards to guide the Administrator. There is not the "delegation run riot" which Cardozo found in the N.R.A. Definite minimum wages are set, or provided to be fixed, by the Administrator, in a manner comparable to that provided in the state acts. There is ample provision for notice, hearing, and

1. See page 125 , infra.
2. Carter v. Carter Coal Co., 298 U.S. 238, 1936. No. 41 herein.

review.

There is also some reason to believe that the Court has enlarged its concept of Interstate Commerce, particularly in the case of NLRB v. Jones & Laughlin Steel Corp.[1], wherein the Board was permitted to regulate the employer-employee relationship as to collective bargaining, even though the employer was engaged in manufacturing (production), if the effect of a violation of the Act would be to obstruct interstate commerce. This case leaves the question of what is interstate commerce more unsettled than ever, and it was never crystal clear at best.

The Federal act is significant in revealing to what extent and by what methods the State and Federal governments cooperate in meeting common problems. This law is to the state acts what the Interstate Commerce Act was to the state railroad laws - a means of meeting an economic problem that is larger in its scope than the boundaries of any single state. The analogy may be further pressed to include Federal and State anti-trust laws, and the more recent milk control laws.

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1. 301 U.S. 1, 1937

Note. The Federal Davis-Bacon act, page 127, infra., provides for minimum wages for laborers on certain Federal public contracts. Excerpts from the Walsh-Healey government contract and the Guffey-Vinson act follow.

VII

CONCLUSIONS

This paper has endeavored to follow the thread of changing judicial attitudes toward the constitutionality of price-fixing legislation from Munn v. Illinois to date, and to explain the principal features of some of the better known current price-fixing laws.

On the constitutional question, the writer makes no claim to seeing more in the decisions than anyone who has cultivated their acquaintance. Without some such acquaintance, indeed, any generalization must necessarily be of doubtful value. An interesting features is the trouble experienced by the Court in dealing with the concept "affected with a public interest". The Nebbia and Parrish decisions appear to have discarded this touchstone, but many recent state decisions reveal that it is yet very much alive. The Supreme Court as now constituted is not likely to take a more restrictive attitude toward price-fixing than that manifested in the later decisions. Probably a statute could go very far in this direction if it were free from arbitrary, capricious, or discriminatory characteristics, but the application of even these liberal-sounding tests to particular laws has promise of being as confusing and unpredictable as was the test of "affected with a public interest." The term "interstate" as applied to commerce has also proved

to be one of somewhat variable content.

The extent of price fixing among the states in the fields covered by this paper is shown in the table at page 66 . Of this group, only the minimum wage and anti-trust laws attained any prominence prior to 1930. The remainder, comprising sales-below-cost, price-discrimination, resale-price maintenance and milk control, was inspired by the economic maladjustments of the depression. Whatever may be ventured for or against government regulation of business, including price-fixing, all must concede that its employment has been attempted only when something has first gone wrong with the economic system, and the laws of supply and demand have not operated in all respects to suit the needs of society, at least in the eyes of the legislatures. In the words of Warren and Pearson, [1]

> "Prices are the major criterion by which the producer can know what society wants. The only way the farmer can tell whether to produce cabbages or wheat is on the basis of price. The only way that his son can determine whether society wants him to be a farmer or a coal miner or doctor is on the basis of price. The woman with the market basket, the retailer who must sell to live, the farmer who must have fence wire to keep his cattle in, the steel producer who must sell in order to operate his mill - all combine to make prices. The algebraic sum of all the millions of transactions between all the buyers and sellers of the world makes prices. The system does not always work perfectly, but no committee could guide the millions of producers to meet human needs so well as prices guide them - provided the medium of exchange functions properly. When it functions badly, the people turn to dictators and social control."

Although the doctrine of laissez-faire has been popular in this country, the economic activities of private citizens have never been wholly free from conscious government control. Tariffs are an early and persistent expression. Others are the land grants to railroads, the

1. Prices, p 3.

Granger laws, regulation of the utilities, labor legislation, special chain store taxation, and the price-fixing laws discussed herein.

The opponents of government regulation, fearful of regimentation, are prone to overlook the stifling of individual initiative by the modern corporation and other late forms of capital aggregations. It is only by the grace of a legal fiction, developed to facilitate law-suits, that the corporation is in any sense an "individual". The anti-trust laws were occasioned by the monopolistic tendencies of huge combinations of capital. Government aid was invoked not to suppress individualism, but to release it from such despotic restrictions.[1]

The current statutes, with the possible exception of the minimum wage laws, are designed in part at least to improve the economic status of certain trade or production groups. The public, as a body of consumers, is supposed to benefit reflexly through the prosperity thus insured to such groups or interest. One danger of this piece-meal approach is that government might take inconsistent and contradictory steps to correct different manifestations of the same fundamental difficulty. The anti-trust laws, for instance, have been severely criticized for taking us from the frying pan of combinations, trusts and agreements into the fire of widespread enterprises under single ownership. Even the Unfair Practices acts (sales-below-cost) were criticized by a California court[2] as being discriminatory against the independent retailer - the very person whose interest it was designed to promote.

1. See Berle and Means, The Modern Corporation and Private Property
2. 74 P (2nd) 839

It seems to the writer that, if regulation be attempted at all, it should aim not to suppress or handicap the increased efficiency made possible by the chain, department, and mail-order stores, and other large-scale industrial and commercial enterprises. Rather, society should provide that such efficiency will inure to the public good. It makes little difference who holds legal title to property if it is used productively, and if the wealth thereby created is distributed according to the greatest social benefit.

* * *

COMPARATIVE TABLE OF STATE PRICE-FIXING & ANTI-TRUST LAWS

State	Sales below cost	Price discrimination	Resale Price Maint	Anti-Trust	Milk Control	Minimum Wage: Women & children	Minimum Wage: Public Contracts
Ala.				yes	yes		
Ariz.	yes	yes	yes	yes		yes	yes
Calif.	yes	yes	yes	yes	yes	yes	
Ark.	yes	yes	yes	yes		yes	
Colo.	yes	yes	yes	yes		yes	yes
Conn.	1		yes	yes	yes	yes	yes
D.C.						yes	yes
Fla.		yes	yes	yes	yes		yes
Ga.			yes	yes	yes		
Ida.		yes	yes	yes			yes
Ill.			yes	yes		yes	
Ind.			yes	yes	yes		yes
Iowa		yes	yes	yes			
Kan.		yes	yes	yes		yes	yes
Ky.	yes	yes	yes	yes		yes	
La.	yes	yes	yes	yes	yes		
Me.			yes	yes			yes
Md.	yes		yes	yes			
Mass.	yes	yes	yes	yes	yes	yes	yes
Mich.	yes	yes	yes	yes			
Minn.	yes	yes	yes	yes		yes	yes
Miss.		yes	yes	yes			
Mo.		yes		yes			
Mont.	yes	yes	yes	yes	yes		yes
Neb.	yes	yes	yes	yes			
Nev.			yes			yes	yes
N.H.			yes	yes		yes	
N.J.	yes		yes		yes	yes	yes
N.M.			yes	yes			yes
N.Y.	yes		yes	yes	yes	yes	yes
N.C.		2	yes	yes			
N.D.		yes	yes	yes		yes	yes
Ohio			yes	yes		yes	yes
Okla.		yes	yes	yes		yes	
Ore.	yes	yes	yes		yes	yes	3
Penna.	yes		yes		yes	yes	yes
R.I.			yes		yes	yes	
S.C.	yes	yes	yes	yes			
S.D.		yes	yes	yes		yes	
Tenn.	yes		yes	yes			
Texas				yes			yes
Utah	yes	yes	yes	yes		yes	yes
Vt.		yes	yes	yes	yes		4
Va.	yes	yes	yes	yes	yes		
Wash.			yes	yes		yes	
W.Va.			yes	yes			yes
Wis.		yes	yes	yes	yes	yes	yes
Wyo.	yes	yes	yes	yes			

Notes to Table on Previous Page:

1. Affects drug trade only
2. Life insurance rates
3. Not of state-wide application
4. Highway work only

DIGESTS OF CERTAIN U.S. SUPREME COURT DECISIONS

ON PRICE FIXING LAWS

1

Munn v. Illinois, Oct. term 1876, 94 U.S. 113

Pursuant to provision in Illinois constitution, the Illinois legislature, in act approved April 25, 1871, provided for the licensing of grain elevators in cities of not less than 100,000 population, publication of rates for storing and handling grain, and setting maximum rates. Criminal action against elevator violating the act.

Opinion by Waite, upholding the statute, found not to be repugnant to due process clause of 14th amendment. A person in society is under obligation to so use his property as not to injure another, which maxim declared to be the source of the police power. English regulation of ferries, common carriers, hackmen, bakers, millers, wharfingers, innkeepers, etc. U.S. regulation of rates of wharfage at private wharves, sweeping of chimneys, weight and quality of bread, rates of hackney carriages, rates of cartmen, wagoners, carmen, draymen, and auctioneer's commissions cited. Then quoting Lord Chief Justice Hale's treatise De Portibus Maris, 1 Harg. Law Tracts, 78: "Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control".

"Neither is it a matter of any moment that no precedent can be found for a statute precisely like this. It is conceded that the business is one of recent origin, that its growth has been rapid, and that it is already of great importance. And it must also be conceded that it is a business in which the whole public has a direct and positive interest. It presents, therefore, a case for the application of a long-known and well-established principle in social science, and this statute simply extends the law so as to meet this new development of commercial progress."

Concurring, Clifford, Miller, Bradley, Swayne, Davis, Hunt.

Dissenting, Field, Strong. "There is no doubt of the competency of the State to prescribe the weight of a loaf of bread, as it may declare what weight shall constitute a pound or a ton. But I deny the power ot any legislature under our government to fix the price which one shall receive for his property of any kind. If the power can be exercised as to one article, it may as to all articles, and the prices of every thing, from a calico gown to a city mansion, may be the subject of legislative direction."

2

Minneapolis E. Ry. Co. v. Minn.; Chicago, M. & St. P. Ry. v. Minn., 3-24-90, 10 S.Ct. 462, 473

A Minnesota act of 1887 created a railroad and warehouse commission; provided that all charges for transportation by common carriers should be equal and reasonable, and empowered the commission, on its finding that any part of the schedule of charges of a common carrier is unequal or unreasonable, to compel such carrier to change the same and adopt the charge fixed by the commission. No provision for hearings before the commission. Commission brings mandamus to compel railroad to put such charges into effect.

Opinion by Blatchford, favor of railroad. General right of regulation is conceded, in spits of prior charger, through the nature of the business as a public utility. But there must be opportunity for judicial review as to what rates are equal and reasonable. "(The law) deprives the company of its right to a judicial investigation, by due process of law, under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of a matter in controversy, and substituted therefor, as an absolute finality, the action of a commission which, in view of the powers conceded to it by the state court, cannot be regarded as clothed with judicial functions, or possessing the machinery of a court of justice."

Concurring, Fuller, Miller, Field, Harlan, Brewer

Dissenting, Bradley, Gray, Lamar

3

Budd v. N.Y., 2-29-92, 12 S.Ct. 468

A N.Y. law fixed maximum charges for grain elevators in cities of 130,000 population or more. Criminal penalties, under which defendant was conficted.

Opinion by Blatchford, upholding the act. Business affected with a public interest, and virtual monopoly. Citing numerous state cases, it finds the principle of Munn v. Illinois firmly established. Incidental effect only on interstate commerce. The Minnesota case (supra) wherein fixing railroad rates held judicial, not legislative, function was distinguished in that in the Minn. case the rates were fixed by a commission, but in the Budd and Munn cases, by the legislature itself. Equal protection of laws not violated, the act applying equally to all elevators in cities over 130,000.

Concurring, Fuller, Harlan, Gray, Lamar. (Bradley died January 22, 1892.

Dissenting, Brewer, Field, and Brown.

4

Brass v. North Dakota, 5-14-94, 14 S.Ct. 857

Laws N.D.1897, c. 126, declared all grain elevators to be public warehouses, and prescribed maximum rates of charges for storage and handling grain therein. Brass declined to receive grain except at prices higher than those fixed, and the farmer brought mandamus.

Opinion by Shiras, upholding the act, though no monopoly, and though operator used elevator principally for storage of his own grain. Munn and Budd cases cited, although their operation was restricted to larger cities, and the N.D. case covered the whole state. This was a matter felt to be addressed to the legislative discretion.

Concurring, Fuller, Harlan, Gray, Brown

Dissenging, Brewer, Field, Jackson, and White

5

Reagan v. Farmers Loan & Trust Co., 5-26-94, 14 S.Ct. 1047, 154 U.S. 362

Law of Texas, April 3, 1891, provided for a railroad commission with power to fix rates. This policy upheld, but subject to the right of judicial review as to the reasonableness, or confiscatory nature, of the rates set, considering in such inquiry questions of capitalization, prices paid for labor and materials in construction and operation, skill in management, etc.

The distinction drawn in Budd v. N.Y. between rates set by a legislature and those set by a commission was apparently dismissed as mere dictum. In the instant case, the revenue from the road being insufficient to pay interest on bonded indebtedness, the finding was that the rates were confiscatory, and that the commission should proceed to determine reasonable rates.

Opinion was by Brewer. Concurring - entire court, consisting of Fuller, Field, Harlan, Gray, Brewer, Brown, Shiras, Jackson, and White. White had been appointed February 19, 1894, to succeed Justice Blatchford, who died July 7, 1893.

6

Frisbie v. U.S., 3-18-95, 15 S.Ct. 586

Act Congress June 27, 1890, provided that no attorney or agency prosecuting U.S. pension claim could claim a fee greater than $10. Opinion by Brewer, affirming conviction under this statute. Pensions being a bounty of the government, Congress may grant or withhold, and may prescribe who shall receive, and determine all circumstances and conditions under which any application shall be prosecuted, as to which no other may interfere.

7

Allgeyer v. Louisiana, 3-1-97, 17 S.Ct. 427

Laws Louisiana 1894 No. 66 made it a criminal offense to do any act effecting insurance on goods within the state under the open marine policy of any foreign corporation that had not in all respects complied with Louisiana law. Opinion by Peckham, reversing conviction under the act. Counsel for state had conceded the essential validity of the contract, and that it was made in New York, the situs of the company, thus distinguishing the case of Hooper v. California, 155 U.S. 648, 15 S.Ct. 207, wherein the contract, being written within the state, was properly interdicted. All concur.

8

Knoxville Iron Co. v. Harbison, 10-21-01, 22 S.Ct. 1, 183 U.S. 13

Tennessee Act 3-17-99 required that all persons who issued store orders, scrip, etc., in payment of wages should redeem them in money on any regular pay day or at any time within 30 days after issuance. Action by holder, to recover money. Coal company relied on contract with miners that they would take pay in coal.

Opinion by Shiras, upholding statute. Some infringement upon employer's right to contract, but deemed that it could well be sacrificed to the public good. Cites Holden v. Hardy, 169 U.S. 366, 18 S.Ct. 383, wherein held that Utah had power to limit hours of labor of miners underground, though right of private contract thereby limited. "The legislature evidently deemed the laborer at some disadvantage under existing laws and customs, and by this act undertook to ameliorate his condition in some measure by enabling him or his bona fide transferee * to demand and receive his unpaid wages in money rather than in something less valuable."

Concurring, Fuller, Harlan, Gray, Brown, White, McKenna

Dissenting, Brewer, Peckham, without opinion.

9

McLean v. Arkansas, 29 S.Ct. 206, 1-4-09

Defendant had been convicted for violation of the Arkansas statute prohibiting screening coal before giving the miner credit for its weight.

Opinion by Day, upholding the conviction and the statute. "Laws tending to prevent fraud and to require honest weights and measures in the transaction of business have frequently been sustained in the courts, although they interfere with the freedom of contract. Cited Knoxville Iron Co. v. Harbison (supra No. 8), Frisbie v. U.S. (No. 6), Munn v. Illinois; also Soon Hing v. Crowley, 113 U.S. 703, 5 S.Ct. 730, wherein California could prohibit labor in laundries between 10 p.m. and 6 a.m.

Concurring, Fuller, Harlan, White, McKenna, Holmes, Moody

Dissenting, Brewer and Peckham

10

House v. Mayes, 1-9-11, 31 S.Ct. 234, 219 U.S. 270

Missouri Statute, June 8, 1909, required that every sale of grain, seed, hay, or coal, should be made on the basis of the actual weight thereof, and not subject to deductions under claim of right by custom, or rule of a board of trade, or any pretense whatsoever. Criminal penalties. Defendant convicted, and relies upon ruling of Kansas City Board of Trade.

Opinion by Harlan, upholding conviction. Wheat buyers had developed the custom of deducting 100# from each carload of wheat, in addition to deductions already arrived at through grading, on the theory that there would average about that much dirt. But the deduction being made whether the wheat was clean or dirty was arbitrary. In commenting on this practice, we read: "Petitioner insists that by prohibiting him from making the deduction of 100 pounds, his property is taken without due process of law. We agree with the attorney general that he has reversed the conditions. To strike down this act will be to permit him to continue to take the shipper's property without due process of law, and without any compensation therefor. * "

All concur, but McKenna and White would hold the statute invalid as against an express contract between seller and buyer to evaluate the wheat any way they chose. Others on the bench, Holmes, Day, Lurton, Hughes, Van Devanter, Lamar.

11

Central Lumber Co. v. S.D., 12-2-12, 33 S.Ct. 66, 226 U.S. 157

S.D. statute made it criminal offense to sell goods at a lower rate in one place than in another for the purpose of destroying competition.

Opinion by Holmes, upholding the statute. Repugnant neither to equal protection or due process clauses. On the latter: " * we think it enough to say that as the law does not otherwise encounter the 14th amendment, it is not to be disturbed on this ground. The matter has been discussed so often in this court that we simply refer to Chicago, B & Q R. Co. v. McGuire, 219 U.S. 549, 31 S.Ct. 259, and the cases therein cited to illustrate how much power is left in the states. (This case concerned the Iowa law which defined the liability of railway corporations for injuries resulting from negligence and mismanagement in the operation of their railways, so that a railway company, when sued on such liability, was precluded from making the defense that recovery was barred by acceptance of benefits under a contract of membership in its relief department.)

12

Erie R.R. v. Williams, 5-25-14, 34 S.Ct. 761, 233 U.S. 685

N.Y. Laws 1897, ch. 415, as amended, provided that railway employees shall be paid their wages semi-monthly. Was construed by the state court to apply only to those servants who are employed wholly within the state, and those whose duties take them from the state into other states, but not to those employed in other states. Railroad seeks to enjoin enforcement.

Opinion by McKenna, upholding statute, based on reserved power of state over corporations. "The effect of the reserved power of amendment is said to be to make any alteration or amendment of a charter subject to it which will not defeat or substantially impair the object of the grant or any right vested under the grant. * Surely the manner or time of paying employees does not come within such limitation." Other language in the decision indicates that the statute would be sustained regardless of whether the employer was a corporation or a natural person. Extra administrative burden of paying twice monthly has to be borne by the railroad in the interest of general welfare. Burden on interstate commerce only incidental.

All concur, court consisting of White, McKenna, Holmes, Day, Lurton, Hughes, Van Devanter, Lamar, and Pitney.

13

Keokee Cons. Coke Co. v. Kelly, 34 S.Ct. 856, 234 U.S. 224

A Virginia act forbade any person engaged in mining or manufacturing to pay wages in other than money, or paper redeemable in U.S. money.

Opinion by Holmes, upholding the statute. As to being class legislation, denying equal protection of the laws in singling out mining and manufacturing interests, "But while there are differences of opinion as to the degree and kind of discrimination permitted by the 14th amendment, it is established by repeated decisions that a statute aimed at what is deemed an evil, and hitting it presumably where experience shows it to be most felt, is not to be upset by thinking up and enumerating other instances to which it might have been applied equally well. * That is for the legislature to judge unless the case is very clear. * The suggestion that others besides mining and manufacturing companies may keep shops and pay their workmen with orders on themselves for merchandise is not enough to overthrow a law that must be presumed to be deemed by the legislature coextensive with the practical need."

All concur. Court same as in Erie case.

14

Rail & River Coal Co. v. Yaple, 2-23-15, 35 S.Ct. 359, 236 U.S. 338

Ohio "run of mine" or "anti-screen" law provided that coal miners, whose compensation is fixed on the basis of weight, must be paid according to the total of all the coal contained in the mine car in which it is removed from the mine, provided that no greater percentage of dirt, etc., shall be contained therein than that ascertained to be unavoidable by the State Industrial Commission, whose orders are subject to review, and provided that miner and company may agree upon deductions for impurities. The screening system prevented payment to miners of a considerable quantity of marketable coal, which evil the legislation attempted to correct.

Opinion by Day, upholding the statute. The due process issue, interference with freedom of contract, is disposed of under McLean v. Ark.

All concur.

15

Wilson v. New, 37 S.Ct. 298, 243 U.S. 332, 3-19-17

Act of Congress 9-5-16, 39 Stat. 721, ch. 436, enacted to meet a threatened strike of railway employees arising out of wage dispute, fixed 8 hours as the standard working day, and, pending investigation by a commission to consume not longer than nine months, fixed wages at the then prevailing standard during the period of the investigation, and not longer than 30 days thereafter. Railway brings injunction.

Opinion by White. Not against due process, nor equal protection, in singling out employees engaged in movement of trains as against other employees. Power to regulate hours conceded. And Congress must have the right temporarily to fix wages, if necessary to the continued flow of commerce. "Emergency may not call into life a power which has never lived, nevertheless emergency may afford a reason for the exercise of a living power already enjoyed." Right to regulate railroad rates not disputed. Public regulation was not invoked until the private parties failed to exercise their private rights to agree as to wages.

Concurring, McKenna, Holmes, Brandeis, Clarke.

Dissenting, Day, Pitney, Van Devanter, McReynolds, who, following Adair v. U.S., fail to see any connection between trainmen's wages and commerce. The effect of wage fixing was to raise them somewhat, and this increased burden, for benefit of public, was charged to the railroads.

16

Stettler v. O'Hara, 37 S.Ct. 475, 4-9-17, affirming without opinion, and by an equally divided court, Simpson v. O'Hara, 141 P. 158, and Stettler v. O'Hara, 139 P. 743. Court consisted of: White, McKenna, Holmes, Day, Van Devanter, Pitney, McReynolds, Brandeis, and Clarke. Brandeis did not participate on account of his prior activity as counsel for Oregon in the same matter.

16 (Cont'd)

The two Oregon cases upheld the Oregon minimum wage law for women and minors as not repugnant to the privileges and immunities clauses of the Federal Constitution. " * the right to labor for such hours and at such wages as would reasonably seem to be detrimental to the health or welfare of the community is not a privilege or immunity of any citizen."

The Stettler decision puts minimum wage legislation well within the police power, being in the furtherance of peace, health, morals and public welfare. Relative novelty of this type of legislation recognized, but likewise recognized that the conditions impelling it are recent. Tendency to uphold maximum hour legislation cited, although some trouble with the Lochner case. Quoting from Elizabeth Beardsley's Butler's "Women of the Trades," "Wherever the wages of such a woman are less than the cost of living and the reasonable provision for maintaining the worker in health, the industry employing her is in receipt of the working energy of a human being at less than its cost, and to that extent is parasitic. * If an industry is permanently dependent for its existence on underpaid labor, its value to the commonwealth is questionable." On the due process issue - "Due process of law merely requires such tribunals as are proper to deal with the subject in hand. Reasonable notice and a fair opportunity to be heard before some tribunal before it decides the issues are the essentials of due process of law * "

"We think we should be bound by the judgment of the legislature that there is a necessity for this act, that it is within the police power of the State to provide for the protection of the health, morals and welfare of women and children, and that the law should be upheld as constitutional."

17

Adams v. Tanner, 6-11-17, 37 S.Ct. 662, 244 U.S. 590

Washington Employment agency law made it criminal offense to collect fees from workers for furnishing them with employment. Private employment agency brings injunction.

Opinion by McReynolds, invalidating the act as prohibiting a business not inherently immoral or dangerous. Abuses perhaps should be regulated.

Concurring, White, Day, Van Devanter, Pitney

Dissenting, McKenna, Brandeis, Holmes, Clarke. Brandeis points out that the agencies may continue to collect their fees from the employers, and that the judgment of the legislature should be followed as to the reasonableness or necessity of the legislation.

18

Strathearn S.S. Co., Ltd., v. Dillon, 3-29-20, 40 S.Ct. 350, 252 U.S 348

Action by British sailor against master of British ship in U.S. port, under U.S. Statute which authorized every seaman on a vessel in U.S. port to demand one-half of the wages then earned at every port subsequent to start of voyage, and voiding contracts to contrary.

Opinion by Day, upholding act. Cites Patterson v. Bark Eudora, 190 U.S. 169, 23 S.Ct. 821, basing control over jurisdiction of this government over foreign merchant vessels in our ports; can prescribe conditions to entry.

All concur, court consisting of White, Holmes, Van Devanter, Pitney, McReynolds, Brandeis, Clarke, Day, and McKenna.

19

Oklahoma Operating Co. v. Lofe, 3-22-20, 40 S.Ct. 338, 252 U.S. 331

Opinion by Brandeis, invaliditing Oklahoma law which authorized public service commission to fix rates for laundries, but failed to make provision for review of rates on the question of confiscatory nature. The Laundry could obtain review only through appeal from contempt proceedings following violation of board's order, at a possible cost of $500 per day for each day in contempt. All concur.

20

Levy Leasing Co. v. Siegle, 42 S.Ct. 289, 258 U.S. 242

Action by landlord against tenant for one month's rental of apartment, per lease. Defense under New York Emergency Housing Law, 1920, which, in order to meet an acute housing shortage, provided that tenants then in possession of dwelling places could continue in possession until Nov. 1, 1922, by payment of a reasonable rental to be determined by the courts. Other features of the law encouraged new building, etc.

Opinion by Clarke, upholding statute. Relation of landlord and tenant sufficiently affected by a public interest to render it subject to regulation under the police power. Grave social problem of lack of housing recognized. No impairment of obligation of contract as to plaintiff, as statute was in force before their contract was drawn.

Concurring, Taft, Holmes, Day, Pitney, Brandeis

Dissenting, Van Devanter, McReynolds, McKenna, with no opinion.

21

Adkins v. Children's Hospital, 43 S.Ct. 394, 261 U.S. 525

Act Congress Sept. 19, 1918 provided for a board to fix minimum wages for women and children in the District of Columbia, using as a standard the wage necessary to supply the necessary cost of living (as to women workers) and to maintain them in good health and protect their morals. Special provision for aged, or any whose efficiency otherwise impaired. Act attacked by an employer, and by an employee of another firm who was subject to discharge if her employer was compelled to pay the higher rate prescribed by the commission.

Opinion by Sutherland, invalidating the act. Legislative acts presumed to be valid, but Constitution is the supreme law. Statute is unwarranted interference with freedom of contfact. Businesses not "affected with a public interest"; nor are they related to performance of public work; nor does the law prescribe character, methods, and time for wage payment; nor regulate hours of labor, all of which are approved in principle. The spirit of the times in emancipation of women (19th amendment) was cited. If legislatures can now fix a minimum wage, they may some day fix a maximum. Even if desirable as policy, the court can look only to power. "A statute which prescribed payment without regard to value of services is so clearly the product of a naked, arbitrary exercise of power that it cannot be allowed to stand."

Concurring, McKenna, Van Devanter, McReynolds, Butler.

Dissenting, Taft, Sanford, and Holmes. Brandeis took no part. Taft thought the physical differences between men and women a reasonable for classification. Legislature entitled to judgment as to economic desirability of wage contracts.

22

Wolff Packing Co. v. Court of Ind. Relations, 43 S.Ct. 630, 262 U.S. 522, 6-11-23

The Kansas legislature declared the following businesses to be affected with a public interest: manufacture of food for human consumption; manufacture of clothing for human wear; production and transportation of fuel; and public utilities and common carriers. Provided for a board for arbitration of labor disputes in these industries, with power to fix wages and other terms.

Opinion by Taft, invalidating the act, under authority of Adkins case. Does not find that meat packing is a business affected with a public under any of the known tests. Distinguishable from Wilson v. New in that railroads are clearly a utility, and cannot cease doing business at their own will. All concur.

23

Tyson v. Banton, 2-28-27, 47 S.Ct. 426, 273 U.S. 418

New York law 1922 declared that admission charges to theatres, amusements, etc., were matters affected with a public interest and subject to supervision by the state for the purpose of safeguarding the public against fraud, extortion, exorbitant rates, and similar abuses, and restricted brokers from selling such tickets at a price higher than 50¢ each over the price printed on said ticket. Injunction.

Opinion by Sutherland, invalidating the act, as contrary to equal protection and due process clauses. Declaration by legislature does not make a business "affected with a public interest". Following tests offered for such determination:

1. Operating under public grant; obligatinn to serve any member of the public, as railroads, other carriers, utilities.

2. Historical test - businesses regarded from early times as exceptional, surviving the days when Parliament regulated all callings, such as inns, cabs, gristmills.

3. Business which though not public at inception may be fairly said to have risen to be such (citing the Munn case.

Theatres not falling in any of these three classes may not be regulated as to price.

Concurring, Van Devanter, McReynolds, Butler, Sanford, Taft

Dissenting, Holmes, Brandeis, Stone

24

Ribnik v. McBride, 5-28-28, 48 S.Ct. 545, 277 U.S. 350

New Jersey law provided for licensing of employment agencies and conforming to a schedule of fees filed with and approved by the Commissioner of Labor. Commissioner refused license to Ribnik on grounds his proposed schecule was too high, and Ribnik appeals to courts, losing in the state Court.

Opinion by Sutherland, invalidating the statute under authority of Tyson v. Banton. Not affected with a public interest. "Fraud, imposition, discrimination, and the like * are grounds for regulation, but not for price-fixing as we have already definitely decided."

Concurring, Sanford, Butler, Van Devanter, McReynolds, Taft

Dissenting, Stone, Holmes, Brandeis. Stone's dissent goes in detail into the evils of employment agency practice and the need for regulation. The phrase "affected with a public interest" is not in the Constitution, and can have only such meaning as may be given to it by the courts. "As I read those decisions, such regulation is within a state's power whenever any combination of circumstances seriously curtails the regulative force of competition, so that buyers or sellers are placed at such a disadvantage in the bargaining struggle that a legislature might reasonably anticipate serious consequences to the community as a whole."

25

Fairmont Creamery Co. v. Minn., 4-11-27, 47 S.Ct. 506, 274 U.S. 1

Minn. law prohibited discrimination by milk buyers as to price between different localities, in excess of mere differences in transportation costs, irrespective of motive. Object was to prevent strong buyers from over-bidding in certain localities, destroying competition. Criminal penalties, from conviction for which creamery appeals.

Opinion by McReynolds invalidating the statute, which, because it touched the price factor, was bad. By dictum, if the statute had provided that if the price discrimination was motivated by intention to destroy competition, and this made the crux of the offense, the statute would be valid. "One vice of the contention is that the statute itself ignores the righteous distinction between guilt and innocence, since it applies wholly irrespective of the existence of fraud, collusion, or extortion * and fixes the resale price as well where the evils are absent as where they are present. It is not permissible to enact a law which, in effect, spreads an all-inclusive net for the feet of everybody, upon the chance that, while the innocent will surely be entangled in its meshes, some wrongdoers also may be caught." (from Tyson v. Banton).

Dissenting, Holmes, Brandeis, Stone.

Concurring, Van Devanter, Sutherland, Butler, Sanford

26

Liberty Warehouse Co. v. Burley Tobacco Growers' Co-op, 48 S.Ct. 291, 276 U.S. 71

Kentucky co-operative marketing act authorizes incorporation of non-profit cooperative associations for agricultural marketing. Misdemeanor to maliciously and knowingly spread false reports about finances or management of these co-ops, and civil damages to the injured co-op if a member was induced to break his marketing agreement.

Opinion by McReynolds, upholding the law. Statute not repugnant to equal protection clause because warehousemen are treated same as others for inducing breach of marketing contract. Proper to encourage co-operatives and agriculture, and some discrimination allowable to this end. "The liberty of contract guaranteed by the Constitution is freedom from arbitrary restraint - not immunity from reasonable regulation to safeguard the public interest. The question is whether the restrictions of the statute have reasonable relation to a proper purpose.* *

All concur.

27

Williams v. Standard Oil Co., 49 S.Ct. 115, 278 U.S. 235

Suit to enjoin Tennessee officers from enforcing Act fixing gasoline prices. Opinion by Sutherland, invalidating the statute because " * the effect will be to deprive the vendors of such gasoline of their property without due process of law. * It is settled by recent decisions of this court that a state legislature is without constitutional power to fix prices at which commodities may be sold, services rendered, or property used, unless the business or property involved is affected with a public interest. (citing cases). Nothing is gained by reiterating the statement that the phrase is indefinite. By repeated decisions of this court, beginning with Munn v. Illinois, that phrase, however it may be characterized, has become the established test by which the legislative power to fix prices * must be measured.

Only Holmes dissents, without opinion.

28

Highland v. Russell Car & Snowplow Co., 49 S.Ct. 314, 279 U.S. 253

Action by coal mine operator against snowplow manufacturer for difference between price paid for coal as set by President under the Lever Act, and a higher price claimed by plaintiff for coal delivered in 1917-18. Lever act was one of a number of war measures designed to encourage production, conserve supply, and control distribution of foods, fuel, and many other things deemed necessary to carry on the war.

Opinion by Butler, upholding the act. Proper use of War power. Plaintiff's coal could have been seized under eminent domain if necessary, being necessary to keep railroads operating.

29

Frost v. Corp. Comm. of Okla., 49 S.Ct. 235, 278 U.S. 515, 2-18-29

Oklahoma statute of 1915 declared cotton gins to be public utilities, requiring license to operate, no license to issue without a showing of necessity, but a 1925 amendment exempted co-operative societies from this requirement. Injunction by private ginner to prevent issuance of license to a co-op.

Opinion by Sutherland, sustaining injunction. Amendment repugnant to equal protection of the laws in exempting cooperatives.

Brandeis, Stone, and Holmes dissent, largely on the factual differences between co-operatives of farmers, and ordinary corporations. The legislature should be permitted to use not only the licensing, but also the co-operative, provision in aid of agriculture. Stone sees appellant's only injury as that of competition, against which he should not complain.

30

Tagg Bros. & Moorhead v. U.S., 50 S.Ct. 220, 280 U.S. 420

Suit by Omaha Stockyards interest to enjoin Secretary of Agriculture from enforcing Packers and Stockyards Act, Aug. 15, 1921, which declared that persons engaged in buying or selling in interstate commerce livestock at a stockyard on commission are "market agencies" and empowering Secretary of Agriculture to fix rates for their services.

Opinion by Brandeis, sustaining the Act. Provision for hearings. The fact that brokers' charges are largely for personal services, their business involving relatively little capital investment, does not prevent regulation. "Plaintiffs perform an indispensable service in the interstate commerce in livestock. They enjoy a substantial monopoly at the Omaha Stockyards. * The purpose of the regulation * is to prevent their service from becoming an undue burden upon (interstate) commerce.

All concur.

31

New State Ice Co. v. Liebmann, 3-21-32, 52 S.Ct. 371, 285 U.S. 262

Suit by ice manufacturer, duly licensed by Corporation Commission of Oklahoma, to enjoin defendant from going ~~in~~ into ice business without first obtaining license under 1925 law.

Opinion by Sutherland, denying injunction, invalidating statute, which declared ice making a "public business", and required certificate of convenience and necessity. Ice making distinguished from cotton gin, being but an ordinary business and not a paramount industry. "It is a business as essentially private in its nature as the business of the grocer, the dairyman, the butcher, the baker, the shoemaker, or the tailor, each of whom performs a service which, to a greater or less extent, the community is dependent upon and is interested in having maintained, but which bears no such relation to the public as to warrant its inclusion in the category of businesses charged with a public use. Anyone can get himself an electric refrigerator and make his own ice. No monopoly.

Concurring, Van Devanter, McReynolds, Butler, Roberts

Dissenting, Brandeis and Stone. Cardozo (newly appointed) took no part. Holmes had resigned January 12, 1932

32

Stephenson v. Binford, 12-5-32, 53 S.Ct. 181, 287 U.S. 251

Suit to enjoin enforcement of Texas statute which, through empowering commission to fix rates for private contract carriers, would prohibit carrier from carrying out existing contracts. Upheld under power of legislature to control use of public highways. Butler alone dissents.

33

Home Building & Loan Ass'n. v. Blaisdell, 1-8-34, 54 S.Ct. 231, 290 U.S. 398

Minnesota Mortgage Moratorium law, 1933, authorized district courts to extend period of redemption of mortgages not beyond May 1, 1935, upon application of mortgagor, who meanwhile had to pay all or part of rental, income, or rental value toward taxes, insurance, interest, and principal. No deficiency judgments until end of this period.

Opinion by Hughes, sustaining the act. All concede obligations of contracts were impaired, but this deemed subservient to reserved power in legislature to act in interest of public health or morals, which cannot be bargained away. Technical taking of property under sort of eminent domain. Temporary suspension of rights of mortgagee, while clearly impairing his contract, still is in keeping with spirit of constitutional prohibition, in view of greater public interest in property values and ownership, and the hazards to them as a result of depression. " * the question is no longer merely that of one party to a contract as against another, but of the use of reasonable means to safeguard the economic structure upon which the good of all depends."

Concurring, Roberts, Cardozo, Brandeis, Stone.

Dissenting, McReynolds, Sutherland, Butler, Van Devanter. "If the provisions of the Constitution be not upheld when they pinch as well as when they comfort, they may as well be abandoned. Hav Being unable to reach any other conclusion than that the Minnesota statute infringes the constitutional restriction under review, I have no choice but to say so." (Sutherland).

34

Nebbia v. New York, 3-5-34, 54 S.Ct. 505, 291 U.S. 502

The Milk Control Board, pursuant to statutory authority, fixed 9¢ as the price to be charged by a store for a quart of milk. Nebbia sold two quarts and a loaf of bread for 18¢, and was convicted for violation of the act.

Opinion by Roberts, upholding the conviction. Chaotic conditions in dairy industry cited, and need for regulation in interest of continued supply of wholesome milk. After citing the many laws regulating different aspects of the milk industry, the opinion fails to see why price itself may not be touched, if the legislature sees a reasonable connection between it and a public end. Discards the determination of whether the business is "affected with a public interest" by somewhat mechanical tests. Need no monopoly, or public grant or franchise. "Price control, like any other form of regulation, is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy the Legislature is free to adopt * ."

Concurring, Hughes, Cardozo, Brandeis, Stone

Dissenting, McReynolds, Butler, Van Devanter, Sutherland

35

Schechter Poultry Corp. v. U.S. 5-27-35, 55 S.Ct. 837, 295 U.S. 495

Appeal from conviction for violation of "Live Poultry Code", promulgated under Sec. 3 of N.I.R.A. of June 16, 1933, c. 90, 48 Stat. 195,6, which provided for nation-wide codes of fair competition in substantially all industries or trades. Codes to be submitted by the trade or industrial association or group, and approved by the President. Provision for setting selling prices, maximum hours, and minimum wages.

Opinion by Hughes, invalidating the act. Improper delegation of legislative power. Not sufficiently definite standards for the executive. Trade groups would be doing the law-making. Also, interstate commerce had ceased as to the poultry for sale by the dealer in New York City.

Separate concurring opinion by Cardozo. * * here in effect is a roving commission to inquire into evils and upon discovery correct them."

Stone specially concurs. All concur.

36

Hegeman Farms v. Baldwin, 11-5-34, 55 S.Ct. 7, 293 U.S. 163

Milk dealer complains of order of N.Y. Milk Board fixing the prices of Grade B Milk at 5¢ to be paid by dealer to producer, and at 9¢ to be charged customer, allowing 1¢ less to customer if the milk be not well advertised. Plaintiff claims rates confiscatory, and he cannot make money under the schedule.

Opinion by Cardozo, upholding act and its application. Plaintiff had not sought relief through administrative agencies, which he should do before resorting to the courts. The prices being minimum only, dealers at liberty to charge more if they wished. If other dealers make money at the minimum rate, plaintiff must be inefficient if he cannot.

All concur.

37

Baldwin v. Seelig, 3-4-35, 55 S.Ct. 497, 294 U.S. 511

New York Milk Control Board refused to license a New York dealer on grounds that he had failed to comply with the Board's order as to price to be paid by him to a Vermont producer.

Opinion by Cardozo, favor of dealer. No difference whether his New York sales were in bulk, or bottled. New York may require that Vermont milk coming into the state be free from impurities, but not that a certain price had been paid for it. Burden on interstate commerce. Not the business of N.Y. to save the Vermong producers from economic oppression.

All concur.

38

Borden's Farm Prod. Co. v. Ten Eyck, 2-10-36, 56 S.Ct. 453, 297 U.S. 251

Opinion by Roberts, approving that feature of the New York Milk Control Law which permitted milk that did not have "a well advertised trade name" to be sold at a differential of 1¢ per quart lower at retail than milk which had such a trade name. The differential had in fact existed prior to the act. Prices being equal, the advertised brand would be called for, and the law adopted the existing trade practice. This for legislature to decide, not the Court. "Judicial inquiry does not concern itself with the accuracy of the legislative finding, but only with the question whether it so lacks any reasonable basis as to be arbitrary. Standard Oil Co. v. Marysville, 279 U.S. 582, 49 S.Ct. 430.

Concurring, Hughes, Stone, Cardozo, Brandeis

Dissenting - McReynolds, Van Devanter, Sutherland, Butler, who believe that the advertisers are entitled to the good-will of their advertising.

39

Mayflower Farms, Inc. v. Ten Eyck, 2-10-36, 56 S.Ct. 457, 297 U.S. 266

Opinion by Roberts, invalidating provision of New York Milk Control Law which closed the door to dealers in un-advertised milk coming into the field after April 10, 1933, date of passage of the act. "The challenged provision is an attempt to give an economic advantage to those engaged in a given business at an arbitrary date as against all those who enter the industry after that date."

Concurring, Hughes, Butler, Van Devanter, McReynolds, Sutherland

Dissenting, Cardozo, Brandeis, Stone, citing Standard Oil Co. v. Marysville, (supra in No. 38).

40

Morehead, Warden, v. People ex rel. Tipaldo, 6-1-36, 56 S.Ct. 918, 298 U.S. 587.

Opinion by Butler, affirming decision of N.Y. Court of Appeals which reversed a conviction for violation of minimum wage law for women. The New York act authorized the commission to fix minimum wages according to two criteria: (1) that it meet the cost of living necessary for health, and (2) that it be not less than the fair and reasonable value of the services rendered, the latter test being urged as a feature distinguishing the law from the D.C. law in the Adkins case. However, the New York Court itself had characterized the difference as "one in phraseology and not in principle", and the statute fell for undue interference with liberty of contract, and ~~with~~ for unreasonable classification in not also including men.

Concurring, Butler, Van Devanter, McReynolds, Sutherland, Roberts

Dissenting, Hughes, Stone, Brandeis, Cardozo

41

Carter v. Carter Coa. Co., 5-18-36, 56 S.Ct. 855, 298 U.S. 238

The Bituminous Coal Conservation Act of 1936, declaring the production, distribution, and use of coal to be affected with a national public interest, created a National Bituminous Coal Commission with power to establish Codes, and, among other things, fix minimum wages and maximum hours for miners, according to districts. An excise tax was placed upon sales of coal, but producers complying with the act were entitled to 90% rebate of such tax. Injunction.

Opinion by Sutherland, invalidating the act. Commerce does not begin until production ceased, and mining is production. Cites Shhechter case, wherein commerce had ceased - both cases being out of interstate commerce, and not subject to Federal control. All concur in result.

42

Acker v. U.S., 5-18-36, 56 S.Ct. 824, 298 U.S. 426

Injunction by stockyard market agency against enforcement of rates for their services as fixed by Secretary of Agriculture, under Packers and Stockyards Act of 1921, on ground that Secretary failed to apply principles for rate determination approved in Tagg Bros. v. U.S., and otherwise fixed unreasonable and confiscatory rates.

Opinion by Roberts, upholding Secretary, who had broken down the agency costs into a number of items, and allowed for profit. Throughout the decision the power of the Secretary to fix rates is assumed, and the inquiry was limited to the fairness of the particular rates. The Secretary was found to have fixed them not arbitrarily, but with due regard to plaintiff's costs.

All concur.

43

Old Dearborn Distributing Co. v. Seagram Distillers, 57 S.Ct. 139, 299 U.S. 183.

Illinois Fair Trade Act gave producers or vendors of trade-marked commodities the right to fix the resale price. Civil action for damages for not following the price set.

Opinion by Sutherland, upholding act on theory of vendor's ownership of the good-will represented by the brand, as distinguished from title to the bare commodity. Non-contracting parties also bound if they know of such a contract. By dictum, unidentifiable goods would not be protected by such a contract, citing Liberty Warehouse v. Burley Tobacco Growers, 276 U.S. 71, 48 S.Ct. 291.

All concur. Justice Stone took no part.

44

West Coast Hotel Co. v. Parrish, 57 S.Ct. 578, 300 U.S. 379

Action by employee against employer to recover difference between wages paid and those fixed by the Wash. Industrial Welfare Commission under the 1913 minimum wage law, which forbade employment of women and minors at wages inadequate for their maintenance, a criterion substantially similar to that set by Congress in the District of Columbia law invalidated by the Adkins case.

Opinion by Hughes, upholding the statute. Recognized the differences in bargaining position between the parties, in spite of their being of legal age. Recognized propriety of singling out women and children, as contrasted to men, because of their physical differences and effects on the race. Provision for hearings deemed sufficient guarantee that wages set would be fair. Wages below living cost deemed subsidy of those industries by the public, which must provide balance of support.

Concurring, Brandeis, Stone, Roberts, Cardozo

Dissenting, Sutherland, Van Devanter, McReynolds, Butler

45

Townsend v. Yeomans, 1937, 57 S.Ct. 842, 301 U.S. 441

Injunction to restrain enforcement of Georgia statute fixing maximum charges for handling and selling leaf tobacco.

Opinion by Hughes, upholding at statute, goes at some length into the findings of the lower court as to practices in the tobacco industry. The rates for commission, auction fees, weighing and handling, set by the legislature, were somewhat lower than fees prevailing theretofore, but identical with those fixed by North and South Carolina. The "bright leaf" grown in Georgia, being used mostly in cigarettes, was practically all bought by "the Companies". The warehousemen acted together through their "Tobacco Warehousemen's Association", reminiscent of the elevator agreements in Munn v. Illinois. Warehousemen could buy for their own account. Buyers and warehousemen combined to return to the grower a price somewhat smaller than deemed equitable by the legislature.

Warehouses as a link in the chain of interstate commerce recognized, but state action proper until Congress acts. Local interest chiefly, not directly burdening interstate commerce. Due process issue disposed of with finding that rates were not confiscatory.

All concur.

CLAYTON ANTI-TRUST ACT
(Excerpts)

Act of Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended by Public Act No. 416, 73rd Congress, approved June 9, 1934; Public Act No. 305, 74th Congress, approved Aug. 1, 1935; Public Act No. 692, 74th Congress, approved June 19, 1936; and public Act No. 706, 75th Congress, approved June 23, 1938; 15 U.S.C.A. Secs. 12-27, 18 U.S.C.A. Sec. 412, 28 U.S.C.A. Secs. 381-383, 386-390, 29 U.S.C.A. Sec. 52, entitled

AN ACT to supplement existing laws against unlawful restraints and monopolies, and for other purposes.

Sec. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce * to discriminate in price between different purchasers of commodities * where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: Provided, That nothing herein shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, cuality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition; And provided further, That nothing herein contained shall prevent persons engaged in selling goods * in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

Sec. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce to lease or make a sale or contract for sale of goods * for use, consumption, or resale within the United States * or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods * of a competitor or competitors of the lessor, or seller, where the effect of such lease, sale, or contract for sale, or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

Sec. 4 That any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws may sue therefor in any district court of the United States * and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

Sec. 6 That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help * nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws.

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FEDERAL TRADE COMMISSION ACT
(Excerpts)

(Sept. 26, 1914, c. 311, 38 Stat. 717, 15 USC Secs. 41-51, as amended by March 21, 1938, Public Act No. 447, and June 23, 1938, Public Act No. 706, 75th Congress.

Sec. 5 (a) Unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce are hereby declared unlawful.

The Commission is hereby empowered and directed to prevent persons * except banks, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938, and persons * subject to the Packers and Stockyards Act, 1921, except as provided in section 406(b) of said Act, from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.

(b) Whenever the Commission shall have reason to believe that any such person * has been or is using any unfair method of competition or unfair or deceptive act or practice in commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person * so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person * to cease and desist from the violation of the law so charged in said complaint.

(c) Any person * required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the circuit court of appeals of the United States, within any circuit where the method of competition or the act or practice in question was used or where such person * resides or carries on business by filing in the court within sixty days from the date of the service of such order a written petition * . The findings of the Commission as to the facts, if supported by the evidence, shall be conclusive.

(l) Any person * who violates an order of the Commission to cease and desist after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than $5,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

CITATIONS TO THE STATE FAIR TRADE ACTS
(Resale Price Maintenance)

Arizona - ch. 11, Session laws, 1st sp. sess. 1936
Arkansas - Act No. 92, Acts 1937
California, Ch. 278, Laws 1931; ch. 260, Laws 1933; ch. 843, Laws 1937
Colorado, House Bill No. 513, 1937
Connecticut, Ch. 304, Laws 1937
Florida, Senate Bill No. 1, 1937 regular session
Georgia, Act No. 100, 1937
Idaho, House Bill 315, Regular Session 1937
Illinois, Senate Bill 598, Laws 1935
Indiana, Ch. 17, Laws 1937
Iowa, Ch. 106, Senate Bill 222, Regular session 1935
Kansas, Senate Bill 96, Regular session 1937
Kentucky, House Bill 13, Fourth special session, 1936
Louisiana, Act No. 13, approved June 26, 1936, effective July 28, 1936
Maine, Ch. 204, Public Laws 1937
Maryland, Ch. 239, Laws 1937
Massachusetts, Ch. 398, Laws 1937
Michigan, Act 50, Laws 1937
Minnesota, Ch. 117, Laws 1937
Mississippi, Senate Bill No. 188, Regular Session, 1938
Montana, Ch. 42, Laws 1937
Nebraska, Ch. 136, Laws 1937
Nevada, Ch. 48, Laws 1937
New Hampshire, House Bill 62, Regular Session 1937
New Jersey, Article 2, ch. 4, Title 56, Rev. Stat. 1937, approved and effective Dec. 20, 1937, by authority of Ch. 189, laws 1937; restating ch. 58, Laws 1935, approved and effective March 12, 1935; amended by ch. 165, Laws 1938, approved and effective May 14, 1938
New Mexico, Ch. 44, Laws 1937
New York, Ch. 976, Laws 1935; amended Ch. 14, Print 558, Laws 1938
North Carolina, House Bill 435, Regular Session 1937
North Dakota, House Bill 209, Regular session 1937
Ohio, House Bill 609-x, First special session
Oklahoma, Senate Bill 45, Regular session 1937
Oregon, Secs. 70-401-6, Code 1935 Supp., amended by ch. 113, Laws 1937
Pennsylvania, Act No. 115, 1935
Rhode Island, Ch. 2427, Senate Bill 180, Laws 1936; amended by Senate Bill No. 206, effective April 22, 1938
South Carolina, Governor's Act 356, effective April 23, 1937
South Dakota, Senate Bill No. 8, approved Feb. 11, 1937
Tennessee, Ch. 58, Public Acts 1937
Utah, Ch. 20, Laws 1937
Virginia, Ch. 413, 1938 Acts of Assembly, amending and re-enacting Ch. 321, Laws 1936
Washington, Ch. 176, Laws 1937
West Virginia, House Bill 104, regular session, 1937
Wisconsin, Ch. 52, Laws 1935, amended by Sec. 7, ch. 477, Laws 1935
Wyoming, Ch. 58, Laws 1937

CITATIONS TO STATE ANTI-TRUST LAWS

Alabama, Constitution Sec. 103; Ch. 211, Code 1928; Ch. 252, Code 1928; Chs. 272 and 91, Code 1928

Arizona, Article XIV Constitution; Ch. 77, Rev. Code 1928; Ch. 44, Laws 1937

Arkansas, Article 2, Sec. 19, Constitution; Code 1921, ch. 124; Act 92, 1937; House Bill 100, regular session 1937; also, ch. 177, Crawford & Moses' Digest of Arkansas Stat., 1921; Act 253, Laws 1937

California, Cartwright Act, being Act 8702, General Laws 1931; Secs. 1673-5, Civil Code 1931; Act 8781, Gen. Laws 1931; Ch. 396, Laws 1937; Act 372, Laws 1931; Ch. 404, Laws 1937; Act 8782 Gen. Laws 1931. Held unconstitutional in C.W.Blake v. Paramount Pictures, D.C. Calif. 1938, CCH No. 190414.

Colorado. The first Anti-trust law of Colorado, passed in 1913, sec. 4056 et seq., comp. Laws Colo. 1921, was declared unconstitutional by the U.S. Supreme Court in Cline v. Frink Dairy Co., 274 U.S. 445, 47 S.Ct. 681. A law of 1925, Secs. 4127, 1-4127.4, 1932 Supp., was repealed by a law passed by regular session 1933, ch. 187, which was, in turn, repealed by House Bill No. 642, Regular Session, 1937. Also, see House Bill 513, 1937 regular session.

Connecticut, Article 1, Sec. 1, constitution. Ch. 330, Sec. 6352, Gen. Stats., Revision of 1930; ch. 136a, Laws 1935

Deleware - none

District of Columbia - none except Sherman and Clayton acts as amended

Florida - Ch. X, Article 12, Comp. Gen. Laws 1927; Ch. LXII, ibid.; Ch. X, Sec. 7871, ibid.; Ch. VI, ibid.; Ch. III, Florida Comp. Gen. Laws 1934 Supp.; Senate Bill No. 1, Regular Session 1937

Georgia, Constitution Article IV, Sec. II. Following in Code 1933: Ch. 20-5, Sec. 20-504; Ch. 65-2, Sec. 65-220; Ch. 56-2, Sec. 56-219. For Fair Trade Act, see Senate Bill 72, Regular Session 1937

Idaho, Article II, Sec. 18, Constitution; Title 47, Ch. 1, Code 1932; Ch. 40, Sec. 17-4013, Code 1932; House Bill 368, Regular Session 1937

Illinois, Ch. 38, Secs. 569-577; ch. 32, Sec. 468; ch. 121½ Secs. 188-191, Smith-Hurd Illinois Rev. Stats., 1935

Indiana, Title 23, Burns Ind. Stats. 1933; Title 15, Ch. 16, ibid.; Senate Bill 23, Regular Session, 1937

Iowa, Ch. 434, Code 1935; Ch. 432, and 431-G1, Code 1935

Kansas, Ch. 50, Kansas Rev. Stats. 1923, and 1933 Supp. ch. 16, Rev. Stats. 1923; Senate Bill No. 96, Regular Session 1937

Kentucky, Ch. 109, Laws 1936. Sec. 198, Constitution

Louisiana, Constitution Sec. 14. Title XL Dart's Louisiana Gen. Stats. 1932

Maine, Chs. 56 & 138, Rev. Stats. 1930

Maryland, Article 41, Constitution; Ch. 211, Laws 1937; Ch. 239, ibid.

Massachusetts, Ch. 93, Gen. Laws 1932; ch. 410, Laws 1938; ch. 93 of General Laws, Secs. 14E-14K. Ch. 398, Laws 1937.

Michigan, Secs. 17115-151 to 17115-157, and Secs. 17115-555 to 17115-560, Mason's 1935 Supp. to Comp. Laws; Public Act 282, 1937; Act No. 50, Laws 1937

Minnesota: Secs. 10463-10486, inc., Mason's Minn. Stats. 1937; Const. Art. 4, Secs. 35; Ch. 116, Laws 1937; Ch. 117 & Ch. 235, Laws 1937

Citations to State Anti-Trust Laws - Cont'd.

Mississippi, Ch. 68, Code 1930. Constitution Sec. 198. Senate Bill No. 168, Laws 1938
Missouri, Ch. 47, 1929 Rev. Stats. Articles 1 & 2.
Montana, Secs. 10898-10915 incl, Mont. Penal Code (Anderson & McFarland's Rev. Codes of Month. 1935). Article 15, Sec. 29, Const. Secs. 7559-7561, Civil Code, Ch. 109
Nebraska, Ch. 59, Comp. Stats. Nebraska, 1929
Nevada, none
New Hampshire, Ch. 168, Public Laws N.H. 1926. Amendment (1903) to Article 83, Constitution
New Mexico, Article 29 (Monopolies). Ch. 35 (Crimes), N.M. Statutes 1929 compilation. Constitution Art. 4, Sec. 38
New York - Secs. 340-347, Ch. 21, Cahill's Cons. Laws N.Y. 1930
North Carolina, Secs. 2559-2574 incl. N.C. Code 1935. Art. 1 Sec. 31, constitution.
North Dakota, Ch. 65, Crim. Code; Constitution Art. 7, Sec. 146
Ohio, Ch. 31, Ohio Gen. Code
Oklahoma, Constitution Art. 2, Sec. 32; Art. 5, Sec. 44; Art. 9, Sec. 45. Statutes 1931, Ch. 68, Art. 1; 1936 supplement
Oregon. No constitutional or statutory provisions against trusts in general terms, but particular transactions or combinations are forbidden, such as: Eliminating competition in public contracts, Sec. 14-865; preventing competitive bidding for livestock, 14-869; sellers of gasoline forbidden to fix prices for purpose of suppressing competition or creating monopoly, Secs. 55-1709 to 55-1713. All references to Oregon Code 1930, or 1935 Supplement.
South Carolina - Constitution Art. 9, Sec. 13. Code 1932, Title 34, Art. 14; Act No. 356, 1937
South Dakota, Const. Art. 17, Sec. 20. Comp. Laws Secs. 4352-64.
Tennessee, Code 1932, Title 14, Ch. 1
Texas, Const. Art 1, Sec. 26. Rev. Civ. Stat. Title 126; Penal Code, Title 19, Ch. 5
Utah, Const. Art. 12, Sec. 20. Rev. Stat. 1933 Title 73, Ch. 1; Title 103, Ch. 55
Vermont, Public Laws 1933, Secs. 5855, 5942, 6012, and 7722-28.
Virginia, Constitution 1902, Article XII, Sec. 165. Code 1936, Ch. 185A
Washington, Const. Art. 12, Sec. 22; Secs. 3898, 7076, 8301, 8302, Remington's Comp. Stats. 1922, Supp. 1927, as amended to date.
West Virginia, Code 1931, Ch. 61, Art. 10, Sec. 19; Ch. 19, Art. 4, Sec. 28
Wisconsin - Statutes 1935, Ch. 133
Wyoming, Const. Art. 1, Sec. 30; Art. 10, Sec. 8. Wyoming Rev. Statutes 1931, Ch. 117, Art. 2

MILLER-TYDINGS RESALE PRICE MAINTENANCE ACT

(Section 1 of Sherman Anti-Trust Act)

July 2, 1890, Ch. 647, 26 Stat. 209; 15 USC Secs. 1-7, as amended by Public Act No. 314, 75th Congress, approved and effective August 17, 1937.

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreignnations, is hereby declared to be illegal:

(Provided, That nothing herein contained shall render illegal contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 5, as amended and supplemented of the Act entitled "An Act to Create a Federal Trade Commission, to define its powers and duties, and for other purposes," * : Provided further, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other.)

Every person who shall make any such contract or engage in any such combination or conspiracy (hereby declared to be illegal) shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

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Note: Bracketed portions indicate Miller-Tydings amendment.

ROBINSON-PATMAN ACT
(Excerpts)

June 19, 1936, Public Act No. 692, H.R. 8442, 74th Congress

An Act to amend Section 2 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes (Clayton Act) * and for other purposes.

Secs. 2 (a) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate between different purchasers of commodities of like trade and quality, where either or any of the purchases involved in such discrimination are in commerce * where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: Provided, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: Provided, however, That the Federal Trade Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits, and revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce: * And provided, further, that nothing herein contained shall prevent persons engaged in selling goods * from selecting their own customers in bona fide transactions and not in restraint of trade: And provided further, That nothing herein shall prevent price changes from time to time where in response to changing conditions affecting the market for * the goods concerned, such as but not limited to actual or imminent deterioration or perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

Sec. 3. It shall be unlawful for any person engaged in commerce * to be a party to, or assist in, any transaction of sale * which discriminates to his knowledge against competitors of the purchaser, in that any discount, rebate, allowance, or advertising service charge is granted to the purchaser over and above any discount, rebate, allowance or advertising service charge available at the time of such transaction to said competitors in respect of a sale of goods of like grade, quality, and quantity: to sell,* goods in any part of the United States at prices lower than those exacted by said person elsewhere in the United States for the purpose of destroying competition * : or to sell * goods at unreasonably low prices for the purpose of destroying competition * .

Any person violating any of the provisions of this section shall, upon conviction thereof, be fined not more than $5,000 or imprisoned not more than one year, or both.

CITATIONS TO STATE ANTI-PRICE DISCRIMINATION LAWS

Arizona, Ch. 44, Laws 1937.
Arkansas, Act. 253, Laws 1937; Ch. 177, Code 1921
California: Act 5514 Gen. Laws, reenacted by Ch. 477, Laws 1935, amended by Ch. 860, Laws 1937.
Colorado, House Bill No. 642, Regular Session 1937
Florida, Ch. LXII, Comp. Laws 1927; penalty for violation, Ch. X, Sec. 7871
Idaho: House Bill No. 368, Regular Session 1937
Iowa, Ch. 432, Code 1935, amended April 8, 1937
Kansas, Sec. 50-149 of Ch. 50, Kan. Rev. Stat. 1923
Kentucky, Ch. 109, Laws 1936
Louisiana: Title XL, Ch. 3, Dart's Louisiana Gen. Stats. 1932
Massachusetts, Contained in anti-trust law, Ch. 93, Gen. Laws 1932
Michigan: Penal Code, Act No. 328, 1931, Secs. 17115-553,4,5.
Minnesota, Ch. 116, Laws 1937
Mississippi, Ch. 68, Code 1930, Sec. 3437
Missouri, In anti-trust act, Ch. 47, 1929 Mo. Rev. Stats. Sec. 8703-17.
Montana, Secs. 10904, 10908, anti-trust Laws Montana, Montana Penal Code, Anderson & McFarland's Rev. Codes of Montana, 1935. Senate Bill No. 19, Reg. Session 1937.
Nebraska, Bill No. 157, Reg. Session, 1937
North Carolina: Ch. 53, Sec. 6458, 6488, Code 1935, re Life Insurance rates.
North Dakota: Political Code Ch. 38, Art. 66, 68.
Oklahoma, Laws 1931, Ch. 68, Art 1, Sec. 12812, 1936 Supplement; also, Sec. 12797
Oregon, Senate Bill No. 103, Reg. Session 1937
South Carolina, Code 1932, Title 34, Art. 14, Sec. 6626
South Dakota, Comp. Laws 1929, Secs. 44 4365, 4369
Utah, House Bill 7, Reg. Session 1937
Vermont, Public Laws 1933, Secs. 7722-3, re buying dairy products.
Virginia, Senate Bill 107, Reg. Session 1938
Wisconsin, Ch. 133, Stats. 1935, Secs. 133.17, 133.18
Wyoming: Rev. Statutes 1931, Ch. 117, Art. 2; Ch. 73, Laws 1937

Note: Idaho, Oregon, and Utah modeled after Robinson-Patman Act in making buyers, as well as sellers, liable under the Act.

CITATIONS TO STATE UNFAIR SALES & PRACTICES ACTS
(Sales below cost)

Arizona, Ch. 44, Laws 1937, secs. 5,6. Sales below cost with the intent or effect of injuring competitor are unfair competition.
Arkansas, Act 253, Laws 1937.
California, Act 5314 Gen. Laws, as reenacted by Ch. 477, Laws 1935, amended by ch. 860, Laws 1937, Sec. 3
Colorado, H.B. 642, Sec. 3, reg. session 1937
Connecticut, Retail Drug Control Act, Ch. 135a, Laws 1935. Drugs only
Kentucky, Ch. 109, Sec. 3, Laws 1936
Louisiana, Acts 1936, No. 152, prohibit sales of drugs below cost in connection with lotteries, or games of chance.
Maryland, Ch. 211, Laws 1937, approved April 15, 1937
Massachusetts, Ch. 410, Laws 1938, approved June 14, 1938; ch. 93, Gen. Laws, Secs. 14E-14K.
Michigan, Public Act 282, Acts 1937, affecting bakery and petroleum products only
Minnesota, Ch. 116, Laws 1937; sec. 2
Montana, Sec. 3 of Unfair Practices Act, Senate Bill 19, regular session 1937
Nebraska, Sec. 3 Unfair Practices Act, Bill No. 137, Regular Session 1937
New Jersey, Fair Sales Act, Ch. 394, Laws 1938, passed over Governor's veto June 17, 1938; ch. 163, Laws 1938, approved May 12, 1938, pertains to petroleum products only.
New York, Ch. 976, Laws 1935, as amended by Ch. 14, Laws 1938
Oregon, Sec. 4 of Anti-Price discrimination act, Senate Bill No. 103, Regular Session 1937, approved March 6, 1937
Pennsylvania, Act 533, Laws 1937
South Carolina, Code 1932, title 34, Art. 14, Sec. 6634
Tennessee, Ch. 69, Public Acts 1937
Utah, Unfair Practices Act, House Bill No. 7, Regular Session 1937
Virginia, Senate Bill No. 107, Regular Session 1938
Wyoming, Ch. 73, Laws 1937, approved Feb. 23, 1937

CITATIONS TO STATE MILK CONTROL LAWS

Alabama, General Laws 1935, No. 165, approved 7-9-35
California, Ch. 241, Stats. 1935, amending Ch. 10 of Agricultural Code, Effective June 1, 1935
Connecticut, Ch. 107a of Cumulative Supplement to Gen. Stats. Rev. of 1930, Jan. Sessions 1931, 1933, 1935, as amended by Ch. 107a of 1937 Supplement to Gen. Stats. Jan. session 1937, special session 1936.
Florida, Ch. 16,708, Laws 1933, continued by Ch. 17,103 Laws 1935, amended by Senate Bill No. 510, approved June 9, 1937
Georgia, House Bill 310, effective March 30, 1937
Indiana, Ch. 281, Acts 1935, effective March 12, 1935, as amended by Acts 1937 p. 1071 et seq.
Iowa, Cream Grading Law, Ch. 150 G-1, Code 1935
Louisiana, Act 195, H.B. 23, 1938
Massachusetts, Ch. 376, Acts 1934, as amended by Ch. 300, Acts 1936, and Ch. 426, Acts 1937
Montana, Senate Bill 163, approved March 16, 1935
New Jersey, App. A - Ch. 8, Rev. Stats. 1937, being Laws 1935, c. 175 p. 412, approved April 29, 1935, as amended by L. 1937 c. 56, Sec. 1, p. 163
New York, Ch. 158, Laws 1933, succeeded by Ch. 126, Laws 1934, as amended by chs. 10, 297, 401, 402, 403, and 404 Laws 1935; Chs. 383, 405, 409, 876, and 919, Laws 1937, and ch. 229, Laws 1938. (Contained in Circular 542, N.Y. Dept. of Agriculture & Markets).
Ohio, Act Aug. 1, 1933, repealed June 30, 1935
Oregon, Ch. 72, 2nd special session 1933, as amended by Ch. 250, Laws 1935; chs. 65, 67, 69, Laws 1935 special session; ch. 279, Laws 1937.
Pennsylvania, Act approved Jan. 2, 1934, PL 174, as amended by Act approved April 30, 1935, PL 96, as amended by July 9, 1935, PL 614, as amended by Act of Gen. Assembly No. 105, approved April 28, 1937
Rhode Island, Ch. 2089, Public Laws 1934, superseded by Ch. 2310 Public Laws 1936
Vermont, No. 99, Acts 1937, approved March 26, 1937.
Virginia, Ch. 357, Acts of Assembly, Session 1934, approved March 29, 1934.
Wisconsin, Secs. 100.03 et seq., Laws Wisconsin relating to Regulation of the Distribution of Milk and Licensing of Milk Dealers.

EXCERPTS FROM THE NEW YORK MILK CONTROL LAW

Sec. 252. There shall be in the department a division to be known as the division of milk control. The head of the division shall be a director, who shall be appointed by the commissioner (of Agriculture & Markets) and serve during his pleasure.

Sec. 253. Definitions. "Milk Dealer" means any person who purchases or handles or sells milk, including brokers, agents, co-partnerships, co-operative corporations and unincorporated co-operative associations. A hotel or resturant which sells only milk consumed on the premises where sold, or a producer who delivers milk only to a milk dealer, shall not be deemed a milk dealer.

"Market" means any city, town or villate, or two or more cities and or towns and/or villates and surrounding territory designated by the commissioner as a natural marketing area.

Sec. 254. General powers. The department through the commissioner is hereby vested with the powers heretofore conferred with respect to milk gathering stations, manufactories and plants, including the following:

(a) To supervise and regulate the entire milk industry of New York state, including the production, transportation, manufacture, storage, distribution, delivery and sale of milk and milk products in the state of New York; provided, however, that nothing contained in this article shall be construed to abrogate or affect the status, force or operation of any provision of the public health law, the public service, the state sanitary code or any local health ordinance or regulation.

(b) To investigate all matters pertaining to the production, manufacture, storage, transportation, disposal, distribution and sale of milk and milk products in the state of New York. The commissioner shall have the power to subpoena milk dealers, their records, books and accounts, and any other person from whom information may be desired to carry out the purpose and intent of this chapter.

Sec. 256. Any employee designated for the purpose shall have access to and may enter at all reasonable hours all places where milk is being stored, bottled or manufactured, or where milk or milk products are being bought, sold or handled, or where the books, papers, records or documents relating to such transactions are kept.

Sec. 257. No milk dealer shall buy milk from producers or others or deal in, handle, sell or distribute milk unless such dealer ~~by~~ be duly licensed. It shall be unlawful for a milk dealer to buy milk from or sell milk to a milk dealer who is unlicensed, or in any way deal in or handle milk which he has reason to believe has previously been dealt in or handled in violation of the provisions of this chapter. Stores shall be exempt from the license requirements provided by this article.

258-b. Each milk dealer buying milk from producers for resale or manufacture shall execute and file a bond, unless relieved therefrom as hereinafter provided. The bond shall be upon a form prescribed by the commissioner, shall be in the sum fixed by him, but not less than two thousand dollars, shall be executed by a surety company authorized to do business in this State, and shall be conditioned for the prompt payment of all accounts due to producers for milk sold by them to such licensee * . (exemption as to natural persons or domestic corporations if in good financial condition to satisfaction of commissioner).

258-c. No license shall be granted to a person not now engaged in as a milk dealer except for the continuation of a now existing business, and no license shall be granted to authorize the extension of an existing business by the operation of an additional plant or other new or additional facility, unless the commissioner is satisfied that the applicant is qualified by character, experience, financial responsibility and equipment to properly conduct the proposed business, and that the issuance of the license will not tend to a destructive competition in a market already adequately served, and that the issuance of the license is in the public interest. (criminal penalties for violation of act).

258-k. It is hereby declared that the dairy industry is a paramount agricultural industry of this state and the normal processes of producing and marketing milk have become an enterprise of vast economic importance to the state and of vital interest to the consuming public which ought to be safeguarded and protected in the public interest; that it is the policy of this state to promote, foster and encourage the intelligent and orderly marketing of milk through producer owned and controlled cooperative associations; that unfair, unjust and destructive demoralizing trade practices have been and are likely to be carried on in the production, sale, processing and distribution of milk and that it is a matter of public interest and for the public welfare for the state to promote the orderly exchange of commodities and in cooperation with the federal government, in its regulation of interstate commerce, to take such steps as are necessary and advisable to protect the dairy industry and insure an adequate supply of milk for the inhabitants of this state.

258-m. 1. Upon the petition of a producers' bargaining agency of the production area supplying a marketing area, such agency representing at least thirty-five per centum of the producers of milk therein, alleging the existence of conditions so affecting the orderly marketing of milk in such area that the public policy declared in sec. 258-k of this chapter shall be effective, it shall be the duty of the commissioner to call a public hearing * . If after such hearing * it is favored by at least seventy-five per centum of the producers * he may by order fix and determine for such marketing area fair and equitable minimum prices to be paid to producers. Such price fixing order or orders shall be rescinded effective at the end of the current month after a public hearing whenever the commissioner shall find either that such conditions have ceased to exist or that such termination is favored by at least thirty-five per centum of the producers of milk handled within such market.

3. Before fixing any prices * the commissioner shall investigate what are reasonable costs and charges for producing, hauling, handling processing and/or other services performed in respect of milk and what prices for milk in the market * affected * will be most in the public interest. The commissioner shall take into consideration the balance between production and consumption of milk, the cost of production and distribution, including compliance with all sanitary regulations in force *, the cost of feeding stuffs used in the production of milk, the supply of milk in such market and the purchasing power and welfare of the public. * Any prices fixed or approved by the commissioner shall be deemed to be prima facie reasonable.

6. If approved by seventy-five per centum of the producers affected any order or marketing agreement * may provide for an equalization of prices to all producers of the * area of the market affected so that each producer * shall receive the same base price for all milk delivered subject to reasonable differentials for quality and location and for services.

In order to effect such equalization of prices to producers the commissioner shall require a monthly report from each dealer receiving milk from producers for such market showing the disposition of all milk handled by the reporting dealer * and shall thereafter require payment by each dealer, to a trust company designated as a fiscal agent by the commissioner, of any amount by which the sum otherwise due by such dealer to its producers in accordance with the prices fixed by such order exceeds the equalized base price as determined by the commissioner from such reports, which amounts so paid to said fiscal agent, the commissioner shall direct it to pay to those dealers whose reports show that the base prices they will pay their producers in accordance with such order are less than the equalized base price as so determined by the commissioner, for ~~prey~~repayment in turn by such dealers to their producers, so as to bring all lower rates of payment up to the equalized base price.

8. It is the intent of the legislature that the instant, whenever that may be, that the handling within the state by a milk dealer of milk produced outside of the state becomes a subject ot regulation by the state, in the exercise of its police powers, the restrictions set forth in this article respecting such milk so produced shall apply and the powers conferred by this article shall attach.

258-n. The commissioner is hereby authorized to confer with legally constituted authorities of other states and of the United States with respect to a uniform milk control with states and/or as between states, and with the federal government in its control of prices of milk handled in interstate commerce, and may exercise his powers hereunder to effect such uniform milk control. * .

EXSERPTS FROM AGRICULTURAL ADJUSTMENT ACT

As Amended and re-enacted by

AGRICULTURAL MARKETING AGREEMENT ACT OF 1937

Being Act of May 12, 1933, Ch. 25, Title I, Secs. 1, et seq., 48 Stat. 31, et seq.; amended April 7, 1934; May 9, 1934; June 16, 1934; June 19, 1934; June 26, 1934; March 18, 1935; August 24, 1935; August 26, 1935; June 19, 1936; June 5, 1937; August 5, 1937; 7 U.S.C. Secs. 601 et seq.)

(Note. This act should not be confused with the Agricultural Adjustment Act of 1938, which related to soil conservation and crop insurance and does not affect the 1933 act, providing for marketing agreements and orders.)

TITLE I
Agricultural Adjustment

Sec. 1. It is hereby declared that the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure and that these conditions affect transactions in agricultural commodities with a national public interest, and burden and obstruct the normal channels of interstate commerce.

Sec. 2. It is hereby declared to be the policy of Congress -

1. * to establish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period; and, in the case of all commodities for which the base period is the pre-war period, August 1909 to July 1914, will also reflect current interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during the base period. The base period in the case of all agricultural commodities except tobacco and potatoes shall be the pre-war period* . In the case of tobacco and potatoes, the base period shall be the postwar period, August 1919 to July, 1929.

Sec. 8b. (Marketing agreements promulgated by Secretary of Agriculture not to be deemed violative of anti-trust laws).

8c (2) Orders issued pursuant to this section shall be applicable only to the following agricultural commodities and the products thereof (except products of naval stores and the products of honeybees), or to any regional, or market classificatinn, of any such commodity or products: Milk, fruits (including pecans and walnuts but not including apples and not including fruits, other than olives, for canning), tobacco,

vegetables (not including vegetables, other than asparagus, for canning), soybeans, hops, honeybees, and naval stores as included in the Naval Stores Act and standards established thereunder, (including refined or partially refined oleoresin).

(5) In the case of Milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions.-

A. Classifying milk in accordance with the form in which, or the purpose for which, it is used and fixing, or providing a method for fixing, minimum prices for each such use classification which all handlers shall pay, and the time when payments shall be made, for milk purchased from producers.

B. Providing for the ~~payment~~ payment to all producers * delivering milk to the same handler of uniform prices for all milk delivered by them; Provided, That, except in the case of orders covering milk products only, such provision is approved or favored by at least three-fourths of the producers who, during a representative period determined by the Secretary of Agriculture, have been engaged in the production for market of milk covered in such order or by producers who, during such representative period, have produced at least three-fourths of the volume of such milk produced for market during such period; the approval required hereunder shall be separate and apart from any other approval * in this section; or, (ii) for the payment to all producers delivering milk to all handlers of * uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered.

(18) The Secretary of Agriculture, prior to prescribing any term in any marketing agreement or order * relating to milk or its products, if such term is to fix minimum prices to be paid to producers * shall ascertain * the prices that will give such commodities a purchasing power equivalent to their purchasing power during the base period. * Whenever the Secretary finds * that the prices that will give such commodities a purchasing power equivalent to their purchasing power during the base period * he shall fix such prices as he finds will reflect such factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest. * .

(Paragraph 18 added by Public Act No. 137, 75th Congress, approved June 3, 1937).

SUMMARY OF STATE LAWS AFFECTING THE WAGE FACTOR

ALABAMA

No general minimum wage law.

Employees of public service corporations engaged in transportation and employing 50 or more shall be paid twice monthly. Sec. 3733, Supp. 1936

Arizona

Paydays must not be more than sixteen days apart. Wages up to date of pay day must be paid, except that wages for five days prior thereto may be withheld when laborer continues in employment. 1935, c. 34. When employee quits or is discharged, wages are payable at once. 1931, c. 54.

Employer may not use scrip in payment of wages (4878, Rev. Code 1928)

Misrepresentation as to ability to pay wages and nonpayment within five days after due date constitute obtaining labor under false pretenses and are penalized (Code 1928 4778. 226 P. 557.

Wage boards are provided to make recommendations to Industrial Commission as to fair wages for women and minors. If Commission accepts recommendation, it issues a directory order for sixty days, after which time it becomes mandatory if not appealed from. Appeal to superior court. Employer must post copy of Commission's order. (1937 sp. sess. c. 20)

Contracts with state for $1,000 or over involving manual or mechanical labor shall provide a wage rate not less than the prevailing rate paid for such work in the political subdivision where the work is to be performed.

The minimum per diem wage fixed by the highway commission for manual or mechanical work shall be paid to public works laborers. Ch. 24, Sec. 1350, Supp. 1934.

Arkansas

Minimum wage of not less than $1.25 per day for women with 6 months' experience, and not less than $1 per day for inexperienced help. Persons working less than 9 hours a day shall receive the same rate per hour as full-time workers. Ch. 117, Sec. 7108, Crawford and Moses' Digest 1921.

Corporations shall pay employees twice monthly. Sec. 7131

Railroads shall pay discharged employees at time of discharge. Ch. 117, Sec. 7125.

Wage payments in scrip, token, draft, check, or other evidence of indebtedness unlawful if payable in other than lawful money at the next pay day. Ch. 117, Sec. 7128.

Coal mining companies must give a bond conditioned on semi-monthly payments of wages in the full amount due. Act 116, L. 1937.

California

Industrial Welfare Commission may fix the minimum wages to be paid to women and minors in any industry. Sec. 1182, Labor Code 1937.

Payment shall not be in check or other indebtedness acknowledgment unless negotiable, and payabbe in case, on demand, without discount, at an established place of business in the state, the name and address of which appears on instrument. Sec. 212.

Discharged employees shall be paid their earned wages at discharge. Sec. 201.

Wages, generally, due twice monthly. Sec. 204. (See In re Moffet, 1937, 68 Calif. App. 384).

Wages in agricultural employment, stock and poultry raising, and domestic service, when employees are boarded by employer, are payable once in each calendar month. Sec. 205.

Laborers, miners, mechanics, salesmen, servants, clerks, or others rendering personal service for a defendant within 90 days prior to levy, shall have a preferred claim to be satisfied from the remainder of the proceeds from such levy. Gen. Laws 1935, Supp. Act. 1206.

No mining employer shall begin work of any wage period without having cash or salable securities sufficient to pay wages. Sec. 258.

Colorado

Minimum wage commission, a body composed of representatives of the employer, the employees, and the public, shall fix the wages for female and minor employees in each occupation. Ch. 97, Sec. 257, Col. Stats. Anno. 1935, held valid by Atty. Gen. Opinion April 10, 1937.

State contracts in excess of $5,000, requiring employment of labor, shall contain a wage rate equal to the prevailing wages for similar work in the locality where the work is to be performed, but not less than the rate established by the state highway commission under the authority of the Federal Relief Act of 1932. Ch. 97, Sec. 257, Col. Stats. Anno. 1935

All private and quasi-public corporations shall pay their employees each 15 days in cash, or checks convertible into cash on demand at their full face value. Ch. 97, Sec. 200.

The lessee of a coal mine, if he fails to meet the semi-monthly payroll, shall execute a bond of $1000 for each 10 employees, conditiond on prompt payment of the workers. Ch. 110, Sec. 165.

Coal miners shall be paid for their work according to weight ascertained by weighing the coal in the receptacle in whibh it is taken from the mine, prior to screening, at the agreed price per 2000 lb. ton, but coal mined from pitching veins shall be paid for, in the absence of an ggreement, upon a yardage basis. Ch. 110, Sec. 102.

Connecticut

Commissioner of labor and factory inspection or director of minimum wage division which may be set up in the department of labor may establish minimum wages for women and minors. Secs. 910c-923c, 1931-35 Supp.

State road and bridge laborers shall be paid the prevailing wage rate in their locality. Sec. 955c. Public works laborers shall receive a wage equal to the wage paid for similar work intthe town where the work is performed. Sec. 546d, 1937 Supp.

All employees shall be paid weekly. Discharged employees shall be paid not later than the business day next succeeding the date of discharge. An employee leaving voluntarily shall be paid on the following regular pay day. Sec. 1606c, Supp. 1935

Delaware

Contracts for public works shall contain the minimum wage rates to be paid laborers and mechanics thereon. Ch. 90, Sec. 3660, Rev. Code 1935.

The Labor Commission of Delaware has supervision of the enforcement of statutory regulations concerning female employees and child labor. Rev. Code 1935 Sec. 3592 et seq.

District of Columbia

Minimum wage law validated by West Coast Hotel Co. v.Parrish, 300 U.S. 379, re women and minors.

Public works contracts in excess of $2,000 must provide wages for laborers not less than the prevailing rate, as determined by Secretary of Labor. Title 20, ch. 1, sec. 56b, Supp. I, 1929-1933, as amended by Public Act No. 403, 74th Congress.

Failure of street railway company to pay monthly the salaries of special policemen stationed at crossings by the Commissioners of D.C. shall be punishable by fine. Title 20, Ch. 3, Part 1, Sec. 461, Code 1929.

Florida

Public works contracts in excess of $5,000 shall contain a provision that laborers be paid the prevailing wages. 1st Div. Title VI, Ch. VI, Art. 5, Sec. 1365 (5) Supp. 1936, 1933, cc. 16300-16301.

If issuer of checks in payment for labor redeemable in goods or merchandise fails to pay same in current U.S. money on demand * thirty days after issuance, full face value of such checks with legal interest and 10% attorney's fee may be collected by suit. 1937, c. 18004.

Georgia.

Wages twice monthly, except farming, sawmill, or turpentine industries, and employees on monthly or annual salaries. Code 1933 66-102.

Idaho

All public works contracts shall contain a provision that the contractor will pay the prevailing wages. Ch. 140, L. 1935.

Wages earned must be paid immediately upon discharge. Title 44, Ch. 6, Sec. 44-606, Anno. Code 1932. No employer shall require an employee to contract relative to the manner or place of expenditure of his wages. Title 43, Ch. 6, Sec. 43-602.

Illinois

Department of Labor shall make rules and regulations for the selection of a wage board, to investigate the conditions and wages in each occupation where females are employed, and the Board shall determine what a minimum fair wage for women is in each instance. Ch. 48, Secs. 198-215.

Corporations must pay the full wage on pay days (semi-monthly), but may make deduction for insurance, or similar relief. Ch. 48, Secs. 32 & 36, State Bar Stats. 1937. Employers must post list of pay days. Ch. 48, Sec. 39.

Payment by time check, store order, or similar evidence of indebtedness, is unlawful unless redeemable on demand for face value, in lawful money. Ch. 48, Sec. 38, Ill. State Bar Stats. 1937.

Payment at termination of employment shall be not later than next regular pay day if the employee quits, or within 5 days if discharged or laid off. In the event of a strike, wages earned shall be paid at the next regular pay day following such strike, or if less than 5 days remain between such strike and pay day, then payment must be made not later than 5 days after such strike. Ch. 48, Sec. 39h.

Indiana

Public works contractors shall pay laborers a wage not less than the prevailing scale for such work inthe locality, nor shall such wages exceed the prevailing rate. Ch. 319, L. 1935.

Pay days twice monthly, lawful money. Employees voluntarily leaving employment shall be paid on the next regular pay day, Title 40, Ch. 1, Sec. 40-101, Burns' Stats. 1933. Exempts farmers and those engaged in agricultural and horticultural pursuits. Sec. 40-103.

Mining and quarrying, and iron, steel, lumber, staves, heading, barrel, brick, tile, machinery, agricultural or mechanical implement, or merchandise manufacturing companies shall pay wages once weekly, if demanded, inlawful money, and shall file bond to insure same. Sec. 40-104, 40-113, Burns' Stats. 1933.

Unlawful for employer to issue any card, check or other paper which is not commercial paper payable at a fixed time, in a bank in the state at full value, in lawful money, with 8% interest, or by bank check in payment of wages. Title 40, Ch. 1, Sec. 40-106. And no employer named in 40-104 shall sell goods to employees at a higher price than such employer sells such goods to others for cash. Sec. 40-107.

No fine shall be assessed against an employee, and any change in wages must be announced to the affected employees 24 hours prior to the change. Sec. 40-116. No employer named in 40-104 shall procure his employees to contract to waive their right to payment of wages once every two weeks, in lawful money. See 40-117.

No railroad shall take any portion of the employees' wages for the maintenance of any hospital, library, etc.,wwithout the written consent of each employee. Title 10, Ch. 39, Sec. 10-3919. Final payment to a public works contractor shall be withheld until he has paid all wage claims. Title 53, Ch. 2, Sec. 53-201, Burns Stats. 1933.

Iowa

Wages of railway employees must be paid at least semi-monthly. Sec. 7990, Code 1935. Wages of coal mine employees must be paid in money semi-monthly. Sec. 1322.

Kansas

Public works laborers shall receive the prevailing rate of wages which is paid to the greater number of workmen in the locality performing the same type of work. Ch. 44, Art. 2, Sec. 44-201, Gen. Stats. 1935.

Women shall not be employed at wages that are inadequate or are detrimental to their health and welfare. The Commissioner of labor and industry shall issue minimum wage orders effective sixty days thereafter in any occupation in which women, minors, learners and apprentices are employed, after investigation, notice, hearing. Orders may set different standards on a locality basis, and posting of orders by affected employers is required. Ch. 44, Secs. 44-640, 639, 650, Gen. Stats. 1935.

Opinion of Assistant Attorney General March 14, 1935, Kansas minimum wage law, invalidated in Topeka Laundry V. Court of Industrial Relations, 119 Kan. 12, 237 Pac. 1041, is declared to be in effect.

All corporations, except state and municipal, shall pay their employees twice monthly. When scrip, etc., is given for merchandise in lieu of wages, at the option of the holder it must be payable on demand in lawful money, unless the due date shall be plainly stated thereon, which shall be not more than 15 days after date. Secs. 44-301,309.

An employee of a corporation leaving his employment voluntarily or because of discharge therefrom shall be paid within 10 days of the termination of such employment. Ch. 44, Art. 5, Sec. 44-307.

Deduction of wages for time spent in voting shall be a misdemeanor. Ch. 25, Art. 4, Sec. 25-418. Corporations shall be liable to the employees of their contractors. Sec. 44-306. Public works contractor shall give bond for wage payments in lieu of a mechanic's lien. Sec. 68-410.

No coal mine employer employing at quantity rates shall pass the output of coal mined over any device which may detract from its value before it is weighed and credited to the employees. Sec. 44-305.

Kentucky

The Commissioner of Industrial Relations, after hearings on the report of wage boards appointed by the Governor, shall establish minimum fair wage rates for women and minors in any occupation. The employment of women and minors at a wage which is both less than the fair and reasonable value of the service rendered, and less than sufficient to meet the minimum cost of living necessary for health, is unlawful. Ch. (H. 368), L. 1938, Reg. Session.

Where 10 or more persons are employed in mines they shall be paid twice monthly. Ch. 88, Sec. 2738r-1, Carroll's Statutes, 1936.

If checks, scrip, etc., are issued in payment of wages they must be redeemable in cash at their face value at least once a month on a regular payday, but firms employing less than 20 persons are exempt from such act. Ch. 132a, Sec. 4758b-1, Carroll's Stats. 1936

Employees of corporations shall be paid twice monthly, and an employee absent on payday shall be paid any time thereafter upon 6 days demand, and any employee who voluntarily leaves or is discharged from employment shall be paid at any time after 3 days demand. No corporation shall secure exemption from the above provisions by a contract with its employees, or by any other means. Ch. 32, Sec. 576a-1, Carroll's Stats. 1936.

Wage earners in factories, mills or workshops, or employed by corporations, must be paid in lawful money. Kentucky constitution Sec. 244

Louisiana

The Legislature shall pass no law fixing the price of manual labor, but may, through a commission or otherwise, establish minimum wages for and regulate the hours and working conditions of women and girls, except for those engaged in farm or domestic work. Constitution Art. 4 Sec. 7.

Before highway work is begun a schedule showing the minimum wages and the maximum hours shall be submitted for approval to the Highway Commission and Engineer. Ch. 24, Sec. 3, L. 1935, Fourth sp. sess.

Corporations, oil and mining companies, or persons engaged in manufacturing of any kind, employing 10 or more persons, and every public service corporation shall pay wages in full once every 2 weeks or twice each calendar month. Title XXXIV, Ch. 8, Sec. 4358, Bart's Gen. Stats. 1932. 1918 Act. 255.

Discharged laborers shall be paid within 24 hours. Act 1936, No. 138. Fines shall not be assessed against salaries. Sec. 4363, ibid. Employers paying wages in checks or tokens redeemable in merchandise must redeem on demand at face value in legal money. Sec. 4365, Ibid. (1908 Act 228; 1924 Act 210).

A public works contractor shall not be paid until he has paid his laborers, or given security for their payment. Title XLI, Ch. 15, Sec. 5103, Dart's Gen. Stats. 1932, Laws 1918 Act 255. Public works contractors shall give a bond conditioned on the payment of wages to the laborers. Sec. 5123.

The employment of a person with intent to defraud is, if the wages are not paid when due, a misdemeanor. Act No. 206, L. 1936.

Wages shall not be advanced to employees at a greater interest rate than 8%. Title XXXIV, Ch. 10, Sec. 4387.

Employees may not be required to forfeit wages upon discharge or quitting. 1914 Act 62.

Maine

Public works laborers shall receive a daily wage not less than the prevailing rate paid by the state for similar work done by the state highway commission. Ch. 238, L. 1933.

Manufacturing, mechanical, mining, quarrying, etc., industries shall pay their employees weekly, the wages earned to within 8 days of the pay day. Employees terminating employment shall be paid in full on the following pay day, and wages earned by discharged employees shall be payable on demand. State, county, city and town employees shall be paid likewise. Log cutters, haulers, drivers, and employees of cooperative corporations in which they are stockholders are excepted. A true and accessible record of periods worked, payments and the dates thereof shall be kept. Ch. 59, Sec. 39, Rev. Stats. 1930, as amended by Chs. 111, 147, L. 1935, and Ch. 193, L. 1937.

Railroads contracting for road building shall require contractors to give security for payment of laborers, and shall be liable for the wages if the laborers notify the railroad within 20 days after completion that they have not been paid. Ch. 63, Sec. 47, Rev. Stats. 1930.

No person shall be required to work in any factory, work shop, manufacturing, mechanical or mercantile establishment without monetary compensation as a condition of employment, or to make any agreement to return a part of his compensation to the employer, except in repayment of a loan, or in payment of sick benefits, insurance, rent, light, water, or merchandise. Ch. 54, Sec. 40A, Rev. Stats. 1930, as amended by Ch. 155, L. 1935.

Textile companies operating on a piece-rate basis shall place pick clocks on each loom in operation, and the weavers shall be paid according to the picks registered on said clocks. Gang-looms, and the weaving of carpets or elastic webbing are excepted. Ch. 188, L. 1937.

Maryland

Corporations shall pay their employees in lawful money twice a month. Art. 23, Sec. 151, Anno. Code 1924. Mine employees shall be paid in lawful money twice a month. Art. 89, Sec. 160, ibid.

It shall be unlawful for any bank or trust company in Allegany county to make any service charge for exchange or for cashing any wage check or pay to the payee of such check any sum less than the full face value, when such check is marked "wage check", or other phrase identifying it as given for wages. The employer must stamp or mark each check, given for wages, in the above manner. Ch. 340, L. 1937.

It shall be unlawful for any railroad to withhold wages for the benefit of any relief association. Art 23, Sec. 252, Anno. Code of 1924.

Mines, manufactories, electric and street railways, telegraph, telephone, and express companies, shall pay employees in lawful money twice monthly, on paydays not more than 16, or less than 14 days apart. Art. 27, Sec. 532, ibid.

Massachusetts

The Minimum Wage Commission in the Department of Labor and Industries shall, upon the recommendation of the wage board appointed by it, establish minimum fair wage rates in any occupation where females and minors are employed, where the Commission finds the wages paid are less than the fair and reasonable value of the services rendered and less than sufficient to meet the minimum cost of living necessary for health. Ch. 151, Gen. Laws 1933, as amended by Ch. 220, L. 1933; Sec. 1, Ch. 308, L. 1934; Ch. 267, L. 1935; Chs. 175, 450, L. 1936; Ch. 401, L. 1937.

Public works laborers shall be paid no less than the wage rate for such work as determined by the commissioner of labor and industries. Ch. 149, Sec. 26, Gen. Laws 1932, amended by ch. 461, L. 1935. The minimum wage for temporary laborers for metropolitan districts shall be not less than that for permanent laborers. Ch. 92, Sec. 64.

The interstate compact for establishing uniform standards of wages is ratified. Ch. 383, L. 1934. A commission shall act under the terms of the interstate compact on minimum wage laws, ibid. also ch. 404, L. 1937.

All employers shall pay each employee weekly the wages earned to within 6 days of the payment, if employed for 6 days in a week. or to within 7 days of payment if employed 7 days a week, or if the employee has worked less than 6 days such a casual employee shall be paid within 7 days after the termination of such period; but employees leaving their employment shall be paid in full on the following regular pay day or if there is none, on the following Saturday, and discharged employees shall be paid upon their discharge, or in Boston as soon as the laws requiring the certification of payrolls have been complied with. Employees absent on the regular pay day shall be paid on demand. Employees of co-operative organizations who are stockholders are excepted unless they request weekly payments, as are casual employees of the state, county, city or town. Railroads may be exempted from weekly payments by the public utility department. Domestic and agricultural workers may be paid monthly. Public hospitals are excepted. Ch. 149, Sec. 148, Gen. Laws 1932, as amended by ch. 101, sec. 1, L. 1932, as amended by Ch. 350, L. 1935, and Ch. 160, L. 1936

Manufacturing businesses employing 100 or more shall pay the employees working on the pay day before the end of the working hours. Ch. 149, Sec. 151, Gen. Laws 1932.

No deduction for tardiness shall be made from the wages of employees in factories, workshops, manufactories, mechanical, or mercantile establishments, or of mechanics, workmen or laborers, in excess of the proportionate wage which would have been earned during the lost time.Ch. 149, Sec. 152, Gen. Laws 1932.

No system for grading weaving work shall lessen a weaver's wages except for imperfections in his own work, and the imperfections must be pointed out before a fine may be imposed. Ch. 149, Sec. 153, Gen. Laws 1932.

No deduction shall be made from the pay of women and children paid by the hour or day in manufacturing or mechanical establishments while machinery is stopped unless they may leave the mill while the machinery is being repaired. Ch. 149, Sec. 158, Gen. Laws 1932.

Anyone allowing a woman or minor to work in any factory, workshop,

manufacturing, mechanical or mercantile establishment without monetary compensation shall be guilty of a misdemeanor. Ch. 149, Sec. 158A, Gen. Laws 1932.

Employers in manufacturing establishments who require a notice of intention of quitting under forfeiture of a part of the wages shall be liable to a like forfeiture for discharge without similar notice. Ch. 149, Sec. 159, Gen. Laws 1932.

Public works laborers shall be protected by bond conditioned upon payment of labor. Ch. 149, Sec. 29, Gen. Laws 1932.

Factory and workshop employees who are paid by the piece shall be given a ticket stating the basis of remuneratin, or a statement shall be posted showing the pay earned by an employee within 48 hours after he has finished the piece. Ch. 149, Sec. 157A, as added by Ch. 268, L. 1933.

Textile factories operating the looms on a piece rate basis shall place pick clocks on each loom, except gang looms in operation on work other than carpet weaving or elastic web weaving, and the weavers shall be paid according to the number of picks registered on the clock. Ch. 149, Sec. 156, Gen. Laws 1932, as amended by ch. 363, Laws. 1935.

Hat-check and cigarette girls shall not have to pay over tips unless the licensee displays a sign stating the percentage of the tips which the employee may retain. Ch. 149, Sec. 159A, as added by Ch. 342, L. 1937.

Michigan.

Wage payments twice monthly, except employers of farm labor, domestic labor, and employees of the state or its subdivision. Upon termination of employment, within 5 days; if discharged, or if absent on regular pay day, payment forthwith as soon as amount due can be determined, using utmost diligence. Payment in lawful U.S. money, or in paper redeemable in such without discount. Employers may deduct for indebtedness or liability owed by employee to employer, rates or assessments becoming due to any hospital association or to any relief, savings, or other department or association maintained by the employer for the benefit of employees. Ch. 15, Sec. 8499, Compiled Laws 1929.

No employer of male and female workers shall discriminate in wages between the sexes on the basis of sex. Ch. 151, Sec. 8497, Comp. Laws 1929.

Employees may voluntarily request or consent to receive scrip in lieu of money. Ch. 151, Sec. 8511, Comp. Laws 1929.

Minnesota

The Industrial Commission shall have the power and duty to set minimum wages for women in each occupation where females are employed. Mason's Minn. Stats. 1936 Supp. Ch. 23, Sec. 4214; as amended by Ch. 79, L. 1937. Minimum wage law declared valie by Atty. Gen. Opinion April 16, 1937.

Specifications for all county public work shall contain a provision that laborers employed therein shall be paid a wage equal to that required to be paid by contractors doing work for such city, if such city has in force an ordinance providing a scale of wages. Ch. 7, Sec. 643-15, Supp. 1936.

Whenever any group of employers of labor, residing or operating in this state, have, by written agreement between themselves, agreed upon certain minimum wages to be paid to their employees, hours of labor, and/or other conditions of employment, and such agreement is wilfully violated, then, in that event, any one or more such employers, parties to the agreement, may, by an appropriate action in a district court, make application for a restraining order, and/or temporary injunction, and/or permanent injunction, against the party or parties so violating said agreement, to restrain the violation thereof as to the said conditions. The provisions of Laws 1933 ch. 416, Secs. 4260-1, to 4260-15, Anti-Injunction laws, shall not apply to actions or proceedings to which this act applies. Ch. 23, Sec. 4260-23, Supp. 1936.

No employer other than a public service corporation shall issue any non-negotiable time check or order in payment of wages. Ch. 23, Sec. 4134, Mason's Stat. 1927.

All persons employing laborers on transitory work, or work requiring the employee to change his abode shall pay wages at intervals of not more than 15 days. Ch. 23, Sec. 4140-1, Supp. 1936. Termination of such work requires payment within 24 hours. Sec. 4140-2.

Mississippi

Employers shall not discount trade checks issued in payment of wages Trade checks shall be redeemable at face value. Ch. 110, Secs. 4656-7, Code 1930.

Manufacturing establishments employing 50 or more, and those employing public labor, and public service corporations, shall pay wages every two weeks, or twice monthly, or on second and fourth Saturday, up to 10 days prior to payment, but in case of public service corporations, up to 15 days prior. Ch. 110, Sec. 4654, Code 1930.

Missouri

Mine, stone and granite operators shall pay wages once every 15 days in lawful money, except that coal mine operators may withhold 5 days' pay. Sec. 13620, Rev. Stats. 1929. Railroad employees shall be paid once in every 30 days in lawful money, and at no pay day shall more than 10 days' pay be withheld. Sec. 13215, 13215.

Employees of all manufactories, including plate glass, shall be paid once in every 15 days in lawful money, and at no pay day shall there be withheld any sum to exceed 5 days pay. Sec. 13214.

All corporations employing mechanics, laborers, or other servants, shall pay wages as often as semi-monthly. Sec. 4608. Discharged employees shall be paid earned wages within 7 days after discharge. Sec. 4610.

Deduction of wages for time spent in voting shall be a misdemeanor. Sec. 10477.

Montana

Public works laborers shall receive the prevailing rate of pay at the county seat of the county where the work is being performed. Sec. 3043.1, Rev. Code 1935.

All employers of labor, except agricultural, shall pay their employees every 15 days in cash, or checks so convertible. Absent employees shall be paid at any time thereafter. A discharged employee shall be paid immediately upon demand. Secs. 3084, 3086, Rev. Code 1935.

Withholding wages to obtain a discount shall be a misdemeanor. Sec. 11403.

Nebraska

Laws may be enacted securing to female and minor employees a minimum wage. Constitution Art XV, Sec. 8.

Every railroad authorized to do business in this state shall pay its employees twice monthly. Any employee absent on payday may demand his wages at the next regular pay day. Sec. 74-574, Compiled Stats. 1929.

Nevada

The minimum wage for all females employed by any person, firm, association, or corporation shall be $3 a day of 8 hours, or $18 a week of 6 days or 48 hours, and those females working less than the regular number of hours shall be paid not less than the minimum wage, except that female employees, by stipulation with employers that this section shall not apply during a 3-month probationary period, may receive less than the minimum wage, but the employer must give a written certificate of such, and the employee shall never have to serve another such period in any business. Each female employee shall be paid in lawful money at least twice a month, and no contractual stipulation between employer and employee for board, room or clothing shall be for more than 40% of such wages due the employee, and the value of such necessities shall be computed at a lesser rate than the wages. Where the employee reports for work at the regular time, and there is no work, employee shall receive 1/2 a day's wage, unless the employer notifies the employee 8 hours before work begins. Sec. 3, Ch. 20, L. 1937.

This act does not apply to the state, or any city or town therein, or to it or their female employees, or to any female employees in domestic service. Sec. 6, Ch. 207, L. 1937.

Unskilled public works laborers shall not receive less than $5 for each 8 hour day or $ .62½ per hour. This is applicable to males over 18. Ch. 7, L. 1935.

Skilled public works laborers shall receive not less than the prevailing rate of wages for similar work in the locality where the work is performed. Ch. 139, L. 1937. All wages semi-monthly. Sec. 2775, Comp. Laws, 1929, as amended by Ch. 3, L. 1937.

Employers issuing time checks for labor performed shall not discount such checks. Sec. 10469, Comp. Laws 1929. Interest at 7% per year shall be allowed on due unpaid wages, after demand. Sec. 4322. Wages in cash, or paper so convertible. Sec. 2783.

Hospital and savings dues may be retained from wages by employer. Sec. 2778.

Discharged employees shall be paid within 5 days and employees quitting shall be paid within 24 hours after demand, under penalty. Sec. 2776. Discharged employees shall be paid at the time of discharge in full and in lawful money or its equivalent, under penalty. Sec. 2785.

New Hampshire

The labor commissioner shall investigate the wages of women and minors employed in any occupation, and shall, if he considers a wage to be oppressive, appoint a wage board, to report on the establishment of minimum fair wage rates for such women and minors. The board's report shall be approved or disapproved by the labor commissioner within 10 days after the hearing. If approved, the commissioner shall make a directory order which may then be made mandatory. Ch. 87, L. 1933.

The unpaid wages of a discharged employee shall become due immediately on demand by the employee, and shall be paid within 72 hours of the demand, except where the discharged employee is working in other than the principal place of business, in which case he shall be paid on the next regular payroll date. When an employee (not having a written contract for a definite period) quits, the wages earned shall be due and payable not later than the next regular pay day. If work is suspended due to an industrial dispute, the wages earned and unpaid at the time of the suspension shall become due and payable at the next regular pay day including, without reduction, all amounts due all persons whose work has been suspended due to the dispute, together with any deposit held by the employer for the faithful performance of the duties of the employment. Ch. 176, Pub. Laws 1926, Sec. 28-b; as added by Ch. (H.324), L. 1937.

Substantially all industries employing laborers or mechanics must pay employees weekly in cash, but checks may be used if acceptable to the employee. Ch. 176, Sec. 25, Public Laws 1926, as amended by Ch. 69, L. 1935.

New Jersey

The commissioner of labor or the director of the minimum-wage division shall establish minimum fair wage rates for women and minors. Secs. 34:11-35, 34:11-56, Rev. Stats. 1937.

Public works laborers shall be paid not less than the prevailing wage rate paid in the locality to a majority of the workers in the craft. Contracts under which wage payment is partly from federal funds are excepted. Secs. 34:10-1, 34:10-2.

An employer engaged in manufacturing, requiring from employees, under forfeiture of a part of the wages earned, a notice of intention to quit, shall be liable to a like forfeiture, for discharge without similar notice, except in case of general suspension of business or where the employee's misconduct or incompetency warrants the discharge. Secs. 34:11-27, 34:11-28.

Wages in money, or so redeemable. 34:11-17. No requirement that employee contribute to any relief fund. Sec. 34:11-23. Railroad companies shall pay wages twice monthly. Sec. 34:11-2. Generally, wages every two weeks in lawful money. 34:11-4.

New Mexico

Every contract in excess of $2,000 to which the state is a party for public works shall provide a rate of wages equal to the prevailing rate for work of a like character in the locality and such wages shall be paid once a week. Ch. 179, L. 1937. Ordinarily, wages paid twice-monthly. Ch. 32, Sec. 32-303, Stats. 1929; Ch. 109, Sec. 2, L. 1937.

A discharged employee shall be paid within 5 days after demand when wages are a definite amount; in all other cases, payment shall be made within 10 days after demand. Ch. 109, Sec. 4, L. 1937. Employees voluntarily quitting shall be paid at the next regular pay day. Ch. 109, Sec. 6, L. 1937. Payment of mine employees in scrip unless redeemable in money is unlawful. Ch. 88, Sec. 88-614, Laws 1929, (Stats.)

New York

The Industrial Commission and the Wage board fix minimum wages payable to women and minors, in amounts sufficient for adequate maintenance and protection of their health; domestic and agricultural employees excepted. Minimum wage may vary according to occupation, locality, and experience. Laws 1937, Art 19, Ch. 276.

Advertised specifications for public works contracts shall state minimum wages to be paid, as determined by the Industrial Commissioner, and all contractors must pay minimum. Ch. 32, Sec. 220-d, 1931-35 Supp. Rate paid to employees of contractor must be not less than prevailing rate of wages. Ch. 32, Sec. 220, Cahill's Consol. Laws 1930, as amended in 1936 Supp.

Employees are allowed 2 hours to vote on election day; employers may not deduct from their wages for time so spent. Ch. 16, Sec. 200, Cahill's Consol. Laws 1930.

Wages must be paid in cash, or good checks. Ch. 32, Sec. 195 ibid, as amended by 1931-1935 Supp.

North Carolina

Railroad employees paid semi-monthly in cash, or good checks. Issuance of non-transferable scrip shall be a misdemeanor. Ch. 108, Art. 3, Sec. 6558, and Ch. 82, Art. 41, Sec. 4479, Code 1935.

North Dakota

The Commissioner of Agriculture and Labor is authorized to ascertain and declare standards of minimum wages for women in any occupation in the state, what wages are adequate to supply the necessary cost of living and to maintain them in good health. Comp. Laws N.D. 1913-1925, as amended by Session Laws 1935, Ch. 162, Sec. 296b2(c). The Board of administration shall fix maximum hours and minimum wages for minors. Sec. 1412a2, Suppl. 1913-25.

Where the compensation for roadwork for any town or county has not been fixed the rate shall be $2 per day for each man. Sec 2015 Comp. Laws 1913.

Public works contractors must give a bond conditionned that all claims for labor be paid. Sec. 6832. Comp. Laws 1913, as amended by Ch. 100, L. 1931, Ch. 81, L. 1933, and Ch. 100, L. 1937.

No domestic life insurance company shall pay any salary of over $5,000 per year unless the directors authorize such payment. Sec. 485o, Comp. Laws 1913.

Railroad employees payable semi-monthly. Upon discharge, payable at once. Sec. 4802a1, Supp. 1913-25.

Ohio

Industrial Wage Commission shall create wage boards to investigate and determine minimum wage rates for females and minors in all occupations. Part First, Title III, Div. I, Ch. 1a, Sec. 154-45d, Page's Ann. Code Supp. 1926-1935. Law upheld in Walker v. Chapman, DC Ohio, 17 F. Supp. 308.

Public works contracts shall pay prevailing rate, unless department of industrial relations has fixed such rates. Part First, Title I, Ch. 1, Secs. 17-4, 17-5, ibid., as amended by S. 294, L. 1935, and S. 54, L. 1937.

All employers of 5 or more regular employees shall pay them the wages earned twice monthly. Part Fourth, Title I, Ch. 10, Sec. 12946-2, ibid. In money, sec. 12945, ibid.

Oklahoma

Industrial Welfare Commission may fix minimum wages for women and minors, excepting agriculture, horticulture, dairy, or stock raising pursuits. Ch. 52, Art. 1, L. 1936-37, S. 399. (The statute also includes men, but this provision declared unconstitutional for want of so indicating same in title. Assoc. Industries of Okla. v. Industrial Welfare Commission, No. 95,775.)

Employees mining coal, ore, or other minerals, quarrying stone, manufacturing, etc., shall be paid twice monthly in cash, or paper so redeemable. Ch. 52, Art. 4, Secs. 10875, 10876, Stats. 1931. Coal miners employing more than 5 must give bond for wages. Ch. 55, Art. 1, L. 1937

Oregon

The State Welfare Commission may fix minimum wages for women and children in any occupation. Title 49, Sec. 49-303(c) Supp. 1935.

In all counties of 100,000 or more all public works contracts shall include a covenant by the contractor to pay not less than the prevailing rate of wages as of the date of his bid in such county. Ch. 200, L. 1937.

All employees shall be paid at least once monthly, in cash or checks, etc.,that must be negotiable and payable without discount in cash on demand, but the employee may agree to accept a negotiable instrument, payable at some future date, with interest. Sec. 49-501,2, Code 1930.

A discharged employee shall be paid immediately. An employee, having no employment contract for a definite period, voluntarily leaving, shall be paid immediately after he has given 5 days notice to his employer, and in case no notice was given the wages are due and payable 5 days after he has quit, and the employer must mail the employee his wages if the employee has requested it; where employer can pay, but refuses to do so, the wages will run for 30 days from the date payable. Where there is a dispute over the wages, the employer may pay all wages he believes due and let the employee pursue his remedy at law. Sec. 49-504, Supp. 1935, as amended by Ch. 92, L. 1937.

Employers may, under lawful contract, retain part of the wages of an employee for the purpose of affording the employee insurance, or sick, hospital, or similar relief. Title 49, Sec. 49-513, Supp. 1935.

Pennsylvania

The Secretary of Labor and Industry and the wage boards shall investigate, ascertain and determine the minimum fair wages for any service or class of service performed by females or minors. Act No. 248, L. 1937.

Public works contracts shall contain the minimum wage which may be paid to laborers. Title 71, Sec. 202, Purdon's Stats. Anno. Cumulative Annual Pocket Part 1936. Bond required. Act 396, Sec. 317, L. 1937

Unless otherwise stipulated in the contract of hiring, employees, save those receiving an annual salary, shall be paid at least semi-monthly. Title 43, Ch. 8, Secs. 251, 253, Purdon's Stats. Anno. Perm. Ed. 1931. An employer who requires from employees under penalty of forfeitur of part of wages earned, a notice of intention to leave, shall be liable to pay an equal sum if he discharges, without similar notice, a person in his employ, except for incapacity or misconduct, or in case of a general suspension of work or strike. Title 43, Ch. 8, Sec. 291.

Corporations, manufacturing establishments and collieries shall retain from an employee's wages, on his written order, any contribution by him for the support of any charitable institution. Title 43, Ch. 8, Sec. 301.

Miners employed to mine bituminous coal shall receive full and exact wages whether the coal is in nut or lump form. In determining wages 80 pounds shall be 1 bushel, and 2000 pounds net 1 ton. Cars in bituminous mines where coal is mined by measurement shall be branded, and of uniform capacity, and the miners may also have a checkweighman who shall be paid from deductions from their wages. Act No. 21, L. 1937, as amended by Act 483, L. 1937.

Rhode Island

Minimum wage commissioner shall fix wages for women and minors, except those in domestic or agricultural work. Ch. 2289, L. 1936.

Wages, generally, payable weekly, to within 9 days of payment. Sec. 3558, Gen. Laws 1923, as amended by Ch. 1783, L. 1931.

Employers requiring a notice of intention to leave under a forfeiture of wages shall pay a like forfeiture if they discharge employee without similar notice, except for incapacity, misconduct, or a general or partial suspension of labor. Ch. 85, Sec. 38, Gen. Laws 1923, added by ch. 1251, L. 1928.

Textile factory employers shall post in any room where employees work by the job the rates of pay for work; and, in mills operating looms on a piece-rate basis, shall place pick clocks on each loom, and payment shall be according to the picks registered on said clock. Gang-looms, and the weaving of carpets, elastic webbing, are excepted. Ch. 2291, L. 1936.

South Carolina

At discharge unpaid wages become due immediately, and shall be paid within 48 hours under penalty of continuance of the wages, but if the employee or his agent fails to call at the regular place of payment within 7 days after making written demand penalties are forfeited.

No employer in any textile or manufacturing industry producing, dyeing, processing, or manufacturing cloth or yarns or products therefrom, who rents houses to the employees, shall apply in payment of rent arrears occasioned by causes beyong an employee's control a sum in excess of 50% of the employee's weekly earnings in any one week. Act No. 1288, Acts. 1938.

Unless provided otherwise by special contract, employers of plantation or other laborers by the day, week, month or year, shall pay wages in lawful money. Sec. 7032, Code 1932.

Wages, generally, payable in money, or paper so redeemable. Sec. 7034, Code 1932, as amended by Act No. 735, Acts 1932.

Textile industries shall pay employees on the regular pay day, during working hours, once each week. Secs. 1316, 1317, Code 1932. Railroad companies shall pay semi-monthly, except railroads with less than 36 miles of track in the state. Sec. 1717.

No electrical utility shall require employee to permit pay deductions as payment on securities of the utility. Act 871, Acts. 1932.

South Dakota

No woman or girl over 14 shall be employed in any factory, work shop, mechanical or mercantile establishment, laundry, hotel, restaurant, or packing house at less than $12 per week, or a proportionate amount of periods of less than 1 week, the same to be paid in cash or by check. Sec. 10022-A, Comp. Laws 1929, as amended by Ch. 173, L. 1931. Learners, apprentices, deficient or disabled persons excepted upon special permit. Sec. 10022-C,D.

Tennessee

Housing authorities may stipulate in project contracts that the contractors and sub-contractors comply with minimum wage and maximum hour requirements. Ch. 20, Sec. 9, L. 1935, 1st spec. sess., as amended by Ch. 234, L. 1937.

All wages in private employments earned and unpaid prior to the 1st day of any month shall be payable not later than the 20th day of the month following, and all wages earned prior to the sixteenth day of any month shall be payable not later than the 5th day of the succeeding month. Secs. 6713, 6715, Code 1932. Employers shall establish regular paydays and post two notices of such. Sec. 6712. Payment in money, Sec. 6717. If an employee is absent when wages become payable, he shall be paid within a reasonable time after making demand. Sec. 6718.

No public works contract shall be let until the contractor executes a bond that he will pay for all labor and material used by him or any subcontractor in lawful money. Sec. 7955, Code 1932.

Wages paid in scrip or other evidence of indebtedness shall be redeemable by the employer on demand in lawful money. Sec. 6710.

Texas

Public works laborers shall receive not less than the general prevailing rate of per diem wage for similar work in the locality, and not less than the general prevailing rate of per diem wages for legal holidays and overtime. Title 83, Ch. 3, Art. 5159a, Vernon's Anno. Civ. Stats, Supp. 1936, and Title 18, Ch. 5, Art. 1580, Vernon's Anno. Penal Code Supp. 1936. Wages, generally, twice monthly. Title 83, Civ. Supp., Ch. 3, Art. 5155.

Bond required of public works contractors conditioned upon wage payment. Title 83, Ch. 4, Art. 5160, Civ. Supp. 1936.

It shall be unlawful to deduct from wages the time the employee has spent in voting. Title 6, Ch. 3, Art. 209, Penal Code 1925.

Wage payment must be in lawful money. H. 19, L. 1937.

Utah

The Industrial Commission shall fix the minimum wage for females and minors in each business or occupation when deemed to be needed. Ch. 38, Sec. 10, L. 1933. Public works laborers shall be paid not less than prevailing wage, maintenance work excepted. Ch. 39, Sec. 1.

Discharged employees payable immediately, and an employee who quits shall be paid on the next regular payday. Title 49, Ch. 9, Sec. 49-9-1, Rev. Stats. 1933.

Payment twice monthly, except those on yearly salary, which shall be once a month. Lawful money required, or so convertible. Sec. 3, Ch. 60, Laws 1937.

Vermont

The highway board shall fix, subject to local conditions, a minimum wage per hour for various classes of highway labor. Ch. 20, Sec. 4690, Public Laws 1933.

Corporations shall pay weekly, in money. Discharged employees on day of discharge. Ch. 268, Secs. 6614, 6615, 6618, Pub. Laws 1933.

Virginia

Wages for laborers and mechanics, generally, payable twice a month, in money. Sec. 1818, 1819, Code 1936.

No employer listed in Secs. 1818, 1819 shall sell goods to his employees at a higher price than the case price charged to other customers. Sec. 1820.

It shall be unlawful for any employer to receive any part of any fee or percentage of wages which his employee may agree to pay for employment. Sec. 1805. Code 1936.

Washington

The Industrial Welfare Commission may after inquiry fix minimum wages for women and minors. Sec. 7635, Comp. Stat. 1933.

Corporations or persons engaged in manufacturing, mining, railroading, constructing railroads, or any business, shall pay wages in other than money, or paper so redeemable. Payment to discharged employees at once. Secs. 7594, 7595, Comp. Stats. 1922; amended Ch. 20, L 1933 sp. session.

Public works contractors shall file a bond conditioned upon the payment of all laborers. Sec. 1159, Comp. Stats. 1922.

West Virginia

Public improvement laborers, generally, shall be paid the prevailing wage. Ch. 95, L. 1935, as amended by H.B. 108, L. 1937.

Railroad companies shall pay wages earned by employees during the first 15 days of the preceding month on the 1st day of the month, and on the 15th of each month pay wages earned during the last half of the preceding month. Ch. 21, Art. 5--Sec. 1, Official Code 1931. May pay more frequently.

All employers, except railroad companies, shall pay wages once every two weeks, in lawful money. Ch. 21, Art. 5, Sec. 3, Off. Code 1931, as amended by S.B. 15, L. 1937.

Employers may issue, on employee's request, nontransferable scrip payable in merchandise in payment of wages. Ch. 21, Art. 5, Sec. 4. Coercion of employees to purchase merchandise in payment of wages shall be a misdemeanor. Ch. 21, Art. 5, Sec. 5.

Discharged employees shall be paid within 72 hours after demand, under penalty. Ch. 21, Art. 5, Sec. 7.

When wages in mining, manufacturing and other enterprises are determined by production employees may appoint checkweighmen at their own cost. Ch. 21, Art. 5, Sec. 8, and Ch. 22, Art. 2, Sec. 76, Official Code 1931.

Wisconsin

The Industfial Commissiin shall fix classifications, and issue general or special orders to determine the living wage for women and minors, which shall be paid. Sec. 104.02 et seq., ch. 33, L. 1937

Public works laborers shall be paid not less than prevailing wage. Ch. 103, Sec. 103.49, Stats. 1935.

All wages semi-monthly, except employees in hospitals, sanitariums, logging operations, farm or domestic service. Payment must be in money, or so redeemable. Ch. 103, Sec. 103.49, Stats. 1935.

Employers, engaged in manufacturing, who require from employees, under penalty of forefeiture of part of the wages, a notice of intention to quit, shall be liable to a like forfeiture if they discharge such employees, except for incapacity or misconduct, or in general suspension of operations, without similar notice. Ch. 103, Sec. 103.17, Stats. 1935.

Wyoming

Every person, firm or corporation engaged in operating any railroad, mine, refinery, or work incidental to gas and oil production, or factory, mill or workshop, shall pay its employees twice monthly; and any absent employees may receive his wages on demand. Regular pay days must be established. Employer and employee may contract for different pay days but employment shall be not conditioned upon employee entering into such contract. Ch. 63, Secs. 63-114, 63-115, Rev. Stats. 1931.

All employees employed in or about any coal mine shall be paid twice monthly. Ch. 23, Sec. 23-173, Rev. St. 1931.

Discharged employees shall be paid wages due in lawful money, or by check or draft payable at a bank, within reasonable time. Sec. 63-126, Rev. St. 1931.

EXCERPTS FROM FEDERAL FAIR LABOR STANDARDS ACT OF 1938

Being Public Act No. 718, 75th Congress, approved June 25, 1938.

Sec. 2. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burden commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.

(b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several states, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power.

Sec. 4. There is hereby created in the Department of Labor a Wage and Hour Division which shall be under the direction of an Administrator to be known as the Administrator of the Wage and Hour Division * ".

Sec. 5. The Administrator shall as soon as practicable appoint an industry committee for each industry engaged in commerce or in the production of goods for commerce. * It shall include a number of disinterested persons representing the public, one of whom the Administrator shall designate as chairman, a like number of persons representing employees in the industry, and a like number prepresenting employers in the industry. * "

Sec. 6. (a) Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates:

(1) during the first year from the effective date, not less than 25 cents an hour.

(2) during the next six years from such date, not less than 30 cents an hour.

(3) after the expiration of seven years from such date, not less than 40 cents an hour, or the rate (not less than 30 cents an hour) prescribed in the applicable order of the Administrator issued under section 8, whichever is lower, and

(4) at any time after the effective date of this section, not less than the rate (not in excess of 40 cents an hour) prescribed in the

applicable order of the Administrator issued under section 8.

(b) This section shall take effect upon the expiration of one hundred and twenty days from the date of enactment of this Act.

Sec. 7 concerns maximum hours.

Sections 8-11 inclusive deal with mechanics of wage determination, hearings, attendance of witnesses, judicial review, and records.

Sec. 12, Child Labor provisions

Sec. 13 lists exemption from the act, including retailing, air carriers, seamen, fishing, agriculture, newspapers, municipal railways, processing agricultural commodities, and employees covered by provisions of Sec. 204 of Motor Carrier Act, 1935, as to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours.

Sec. 14 concerns learners, apprentices, and handicapped workers.

Secs. 15 & 16, penalties for violation.

Sec. 17, use of injunction in restraining threatened violation, or practices deemed to be violative of the act.

Sec. 18 stipulates that the act is not to be controlling in the event of conflict with other Federal or State laws setting higher wages or shorter hours in particular industries.

Sec. 19 - provision for separability of different parts of the act in case any part is found to be unconstitutional.

EXCERPTS FROM DAVIS-BACON ACT

Being Act of March 3, 1931, c. 411, Sec. 1, 46 Stat. 1494; August 30, 1935, c. 825, Secs. 1-7, 49 Stat. 1011-1013; 40 U.S.C. Secs. 276a-276a-6, entitled:

AN ACT relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes.

Sec. 1 of the act provides in substance that such contractors performing work on public buildings under contracts in excess of $2,000 shall pay their laborers and mechanics wages not less than those determined by the Secretary of Labor to be the prevailing wages for similar work in the locality where the contract is being performed.

EXCERPTS FROM WALSH-HEALEY GOVERNMENT CONTRACT ACT

Being Public Act No. 846, 74th Congress, approved June 30, 1936, entitled:

AN ACT to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes.

Sec. 1. That in any contract made and entered into by (any U.S agency or instrumentality) for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding $10,000, there shall be included the following representations and stipulations:

(a) That the contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract;

(b) That all persons employed by the contractor in the manufacture or furnishing of the materials (etc.) used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, (etc.) are to be manufactured or furnished under said contract;

(d) That no male person under sixteen years of age and no female person under eighteen years of age and no convict labor will be employed.

Sec. 9. This act shall not apply to purchases of such materials, supplies, articles (etc.) as may usually be bought in the open market; nor shall this act apply to perishables, including dairy, livestock and nursery products, or to agricultural or farm products processed for first sale by the original producers; nor to any contracts made by the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof. Nothing in this Act shall be construed to apply to carriage of freight or personnel by vessel (etc.) where published tariff rates are in effect or to common carriers subject to the Communication Act of 1934.

EXCERPTS FROM BITUMINOUS COAL ACT OF 1937

(Guffey-Vinson Act)

Being Public Act No. 48, approved April 26, 1937, entitled:

AN ACT to regulate interstate commerce in bituminous coal, and for other purposes.

Sec. 1. That regulation of the sale and distributiin in interstate commerce of bituminous coal is imperative for the protection of such commerce; that there exist practices and methods of distribution and marketing of such coal that waste the coal resources of the nation and disorganize, burden, and obstruct interstate commerce in bituminous coal, with the result that regulation of the prices thereof and of unfair methods of competition therein is necessary to promote interstate commerce in butiminous coal and to remove burdens and obstructions therefrom.

Sec. 3 imposes an excise tax of 1¢ per ton on coal sales; additional excise tax of 19½% of sale price at the mine, but "code members" exempt from this latter tax.

Sec. 4 contains the Bituminous Coal Code, providing for different districts wherein minimum prices would be established, and maximum prices if necessary for the public interest.

Secs. 5-8 inclusive deal with administrative set-up, enforcement, and review.

Sec. 9 guarantees to employees the right to organize and bargain collectively.

The operation of the Code is confined "only to matters and transactions in or directly affecting interstate commerce in bituminous coal."

The act by its own terms is to terminate April 26, 1941.

(Note on Constitutionality. This act was enacted following Carter v. Carter Coal Co. (Case No. 41 herein) which held unconstitutional the labor provisions of the 1935 act, and invalidating the price-fixing feature because of inseparability. The present act does not contain the objectionable labor provisions).

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