



UNITED STATES v. DARBY  
SUPREME COURT OF THE UNITED STATES  
312 U.S. 100  
February 3, 1941

**OPINION:** MR. JUSTICE STONE...The two principal questions raised by the record in this case are, first, whether Congress has constitutional power to prohibit the shipment in interstate commerce of lumber manufactured by employees whose wages are less than a prescribed minimum or whose weekly hours of labor at that wage are greater than a prescribed maximum, and, second, whether it has power to prohibit the employment of workmen in the production of goods "for interstate commerce" at other than prescribed wages and hours?...

The District Court [dismissed] the indictment and the case comes here on direct appeal...

The Fair Labor Standards Act set up a comprehensive legislative scheme for preventing the shipment in interstate commerce of certain products and commodities produced in the United States under labor conditions as respects wages and hours which fail to conform to standards set up by the Act. Its purpose...is to exclude from interstate commerce goods produced for the commerce and to prevent their production for interstate commerce, under conditions detrimental to the maintenance of the minimum standards of living necessary for health and general well-being; and to prevent the use of interstate commerce as the means of competition in the distribution of goods so produced, and as the means of spreading and perpetuating such substandard labor conditions among the workers of the several states...

[Section 15(1) makes unlawful the shipment in interstate commerce of any goods in the production of which any employee was employed who did not earn a minimum wage of 25 cents per hour or who worked > 40 hours per week without increased overtime compensation...]

The indictment charges that appellee is engaged, in the State of Georgia, in the business of acquiring raw materials, which he manufactures into finished lumber with the intent, when manufactured, to

ship it in interstate commerce to customers outside the state, and that he does in fact so ship a large part of the lumber so produced. There are numerous counts charging appellee with the shipment in interstate commerce from Georgia to points outside the state of lumber in the production of which, for interstate commerce, appellee has employed workmen [in violation of the Act's requirements.]...

[Darby]...challenged the validity of the Fair Labor Standards Act under the Commerce Clause and the Fifth and Tenth Amendments. The district court quashed the indictment in its entirety upon the broad grounds that the Act, which it interpreted as a regulation of manufacture within the states, is unconstitutional. It declared that manufacture is not interstate commerce and that the regulation by the Fair Labor Standards Act of wages and hours of employment of those engaged in the manufacture of goods which it is intended at the time of production "may or will be" after production "sold in interstate commerce in part or in whole" is not within the congressional power to regulate interstate commerce...

Are the issues here any different than those involved in <i>E.C. Knight Company</i> (sugar in Pennsylvania) or <i>Schechter Poultry Corp.</i> (poultry in Brooklyn) ?
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The prohibition of shipment of the proscribed goods in interstate commerce...While manufacture is not of itself interstate commerce, the shipment of manufactured goods interstate is such commerce and the prohibition of such shipment by Congress is indubitably a regulation of the commerce. The power to regulate commerce is the power "to prescribe the rule by which commerce is governed." *Gibbons v. Ogden*.<sup>1</sup> It extends not only to those regulations which aid, foster and protect the commerce, but embraces those which prohibit it. It is conceded that the power of Congress to prohibit transportation in interstate commerce includes noxious articles, *Lottery Case*;...stolen articles, *Brooks v. United States*; kidnapped persons, *Gooch v. United States* and articles such as intoxicating liquor or convict made goods, traffic in which is forbidden or restricted by the laws of the state of destination. *Kentucky Whip & Collar Co. v. Illinois Central R. Co.*

But it is said that the present prohibition falls within the scope of none of these categories; that while the prohibition is nominally a regulation of the commerce its motive or purpose is regulation of wages and hours of persons engaged in manufacture, the control of which has been reserved to the states and upon which Georgia and some of the states of destination have placed no restriction; that the effect of the present statute is not to exclude the proscribed articles from interstate commerce in aid of state regulation as in *Kentucky Whip & Collar Co. v. Illinois Central R. Co.*, but instead, under the guise of a regulation of interstate commerce, it undertakes to regulate wages and hours within the state contrary to the policy of the state which has elected to leave them unregulated.

The power of Congress over interstate commerce "is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution." *Gibbons v. Ogden*. That power can neither be enlarged nor diminished by the exercise or non-

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<sup>1</sup>Case 1-14 on this website.

exercise of state power. Congress, following its own conception of public policy concerning the restrictions which may appropriately be imposed on interstate commerce, is free to exclude from the commerce articles whose use in the states for which they are destined it may conceive to be injurious to the public health, morals or welfare, even though the state has not sought to regulate their use. *Reid v. Colorado; Lottery Case; Hipolite Egg Co . v. United States; Hoke v. United States.*

...Whatever their motive and purpose, regulations of commerce which do not infringe some constitutional prohibition are within the plenary power conferred on Congress by the Commerce Clause. Subject only to that limitation, presently to be considered, we conclude that the prohibition of the shipment interstate of goods produced under the forbidden substandard labor conditions is within the constitutional authority of Congress.

In the more than a century which has elapsed since the decision of *Gibbons v. Ogden*, these principles of constitutional interpretation have been so long and repeatedly recognized by this Court as applicable to the Commerce Clause, that there would be little occasion for repeating them now were it not for the decision of this Court twenty-two years ago in *Hammer v. Dagenhart*. In that case it was held by a bare majority of the Court over the powerful and now classic dissent of Mr. Justice Holmes setting forth the fundamental issues involved, that Congress was without power to exclude the products of child labor from interstate commerce...

*Hammer v. Dagenhart* has not been followed. The distinction on which the decision was rested that Congressional power to prohibit interstate commerce is limited to articles which in themselves have some harmful or deleterious property -- a distinction which was novel when made and unsupported by any provision of the Constitution -- has long since been abandoned...The thesis of the opinion that the motive of the prohibition or its effect to control in some measure the use or production within the states of the article thus excluded from the commerce can operate to deprive the regulation of its constitutional authority has long since ceased to have force...The conclusion is inescapable that ***Hammer v. Dagenhart...should be and now is overruled.***

*Validity of the wage and hour requirements...*As appellee's employees are not alleged to be "engaged in interstate commerce," the validity of the prohibition turns on the question whether the employment...of employees engaged in the production of goods for interstate commerce is so related to the commerce and so affects it as to be within the reach of the power of Congress to regulate it.

To answer this question we must at the outset determine whether the particular acts charged in the counts...constitute "production for commerce" within the meaning of the statute. As the Government seeks to apply the statute in the indictment,...the phrase "produced for interstate commerce"...embraces at least the case where an employer engaged...in the manufacture and shipment of goods in filling orders of extrastate customers, manufactures his product with the intent or expectation that according to the normal course of his business all or some part of it will be selected for shipment to those customers.

...[W]e think the acts alleged in the indictment are within the sweep of the statute. The obvious

purpose of the Act was not only to prevent the interstate transportation of the proscribed product, but to stop the initial step toward transportation, production with the purpose of so transporting it. Congress was not unaware that most manufacturing businesses shipping their product in interstate commerce make it in their shops without reference to its ultimate destination and then after manufacture select some of it for shipment interstate and some intrastate according to the daily demands of their business, and that it would be practically impossible, without disrupting manufacturing businesses, to restrict the prohibited kind of production to the particular pieces of lumber, cloth, furniture or the like which later move in interstate rather than intrastate commerce.

The recognized need of drafting a workable statute and the well known circumstances in which it was to be applied are persuasive of the conclusion, which the legislative history supports,...that the "production for commerce" intended includes at least production of goods, which, at the time of production, the employer, according to the normal course of his business, intends or expects to move in interstate commerce although, through the exigencies of the business, all of the goods may not thereafter actually enter interstate commerce...

The power of Congress over interstate commerce is not confined to the regulation of commerce among the states. **It extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce.** *McCulloch v. Maryland.*<sup>2</sup>

...[I]t does not follow that Congress may not by appropriate legislation regulate intrastate activities where they have a **substantial effect on interstate commerce**...Congress has sometimes left it to the courts to determine whether the intrastate activities have the prohibited effect on the commerce, as in the Sherman Act. It has sometimes left it to an administrative board or agency to determine whether the activities sought to be regulated or prohibited have such effect, as in the case of the Interstate Commerce Act, and the National Labor Relations Act, or whether they come within the statutory definition of the prohibited Act, as in the Federal Trade Commission Act. And sometimes Congress itself has said that a particular activity affects the commerce, as it did in the present Act, the Safety Appliance Act and the Railway Labor Act. In passing on the validity of legislation of the class last mentioned the only function of courts is to determine whether the particular activity regulated or prohibited is within the reach of the federal power.

Congress, having by the present Act adopted the policy of excluding from interstate commerce all goods produced for the commerce which do not conform to the specified labor standards, it may choose the means reasonably adapted to the attainment of the permitted end, even though they involve control of intrastate activities. Such legislation has often been sustained with respect to powers, other than the commerce power granted to the national government, when the means chosen, although not themselves within the granted power, were nevertheless deemed appropriate aids to the accomplishment of some purpose within an admitted power of the national government...Congress

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<sup>2</sup>Case 1-7 on this website.

may require inspection and preventive treatment of all cattle in a disease infected area in order to prevent shipment in interstate commerce of some of the cattle without the treatment. *Thornton v. United States*. It may prohibit the removal, at destination, of labels required by the Pure Food & Drugs Act to be affixed to articles transported in interstate commerce. *McDermott v. Wisconsin*. And we have recently held that Congress in the exercise of its power to require inspection and grading of tobacco shipped in interstate commerce may compel such inspection and grading of all tobacco sold at local auction rooms from which a substantial part but not all of the tobacco sold is shipped in interstate commerce. *Curran v. Wallace*...

Our conclusion is unaffected by the Tenth Amendment which provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The amendment states but a truism that all is retained which has not been surrendered. There is nothing in the history of its adoption to suggest that it was more than declaratory of the relationship between the national and state governments as it had been established by the Constitution before the amendment or that its purpose was other than to allay fears that the new national government might seek to exercise powers not granted, and that the states might not be able to exercise fully their reserved powers...

The Act is sufficiently definite to meet constitutional demands. One who employs persons, without conforming to the prescribed wage and hour conditions, to work on goods which he ships or expects to ship across state lines, is warned that he may be subject to the criminal penalties of the Act. No more is required...*Reversed*.