



**BALDWIN, COMMISSIONER OF AGRICULTURE & MARKETS, ET AL. v. G.
A. F. SEELIG, INC. ***

* Together with No. 605, G. A. F. Seelig, Inc. v. Baldwin, Commissioner of Agriculture & Markets, et al. Appeal from the District Court of the United States for the Southern District of New York.

No. 604

SUPREME COURT OF THE UNITED STATES

294 U.S. 511; 55 S. Ct. 497; 79 L. Ed. 1032; 1935 U.S. LEXIS 54; 101 A.L.R. 55

**February 11, 12, 1935, Argued
March 4, 1935, Decided**

PRIOR HISTORY: APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

CROSS-APPEALS to review a decree of the District Court, of three judges, in a suit brought by Seelig, Inc., a milk dealer, to restrain Baldwin and other state officials from prosecuting it for selling without a license in New York milk imported from Vermont. The decree was for the plaintiff in respect of milk sold in the original packages, but, in respect of milk sold in bottles filled from those cans, relief was denied. See *7 F.Supp. 776*, opinion on the application for interlocutory injunction.

DISPOSITION: District Court reversed in part; affirmed in part.

LAWYERS' EDITION HEADNOTES:

COMMERCE, §195 ;

regulation of sale of imported milk in original packages. -- ;

Headnote:[1]

A New York Milk Control Act fixing minimum prices to be paid by dealers to producers for milk, and prohibiting the sale within the state of milk brought from outside the state unless the price paid to the producers would be lawful upon a like transaction within the state, is violative of the *commerce clause of the Federal Constitution*, and its enforcement will be restrained by injunction, as applied to sales by a New York dealer in the original packages of milk imported from another state.

COMMERCE, §36 ;

burden upon interstate business. -- ;

Headnote:[2]

A state may not, in any form or under any guise, directly burden the prosecution of interstate business.

COMMERCE, §181;

power to require certificates assuring sanitation in milk production as basis of regulation of prices paid producer. -- ;

Headnote:[3]

The power of a state to exact certificates from producers of milk imported from other states to assure sanitation, and to exclude milk if the necessary safeguards have been omitted, does not justify the regulation of prices to be paid by dealers to producers in other states on the theory of some connection between sanitation and the economic welfare resulting from higher prices.

COMMERCE, §181 ;

prohibiting sale of imported milk for which prescribed prices were not paid to producer. -- ;

Headnote:[4]

A New York Milk Control Act fixing minimum prices to be paid by dealers to producers for milk, and prohibiting the sale within the state of milk brought from outside the state unless the minimum prices have been paid the producer outside the state, is an unconstitutional burden upon interstate commerce, and its enforcement will be enjoined, as applied to sales by a New York dealer of milk imported from another state, although the milk is emptied from the original cans in New York and is sold in bottles.

COMMERCE, §192 ;

original package test as ultimate principle. -- ;

Headnote:[5]

The test of the original package is not an ultimate principle in determining whether a state measure unconstitutionally burdens interstate commerce, but is an illustration of a principle.

COMMERCE, §36;

economic isolation of state. -- ;

Headnote:[6]

Formulas, catchwords, and the original package test are subordinate to the ultimate principle that one state in its dealings with another may not place itself in a position of economic isolation.

COMMERCE, §36;

barrier against competition with products or labor of other states -- form of package immaterial. -- ;

Headnote:[7]

Neither the power to tax nor the police power may be used by the state of destination to establish an economic barrier against competition with the products of another state or the labor of its residents, irrespective of whether the packages are original or broken.

SYLLABUS

1. A law or regulation of a State which prohibits the sale of milk imported from another State unless the price paid in that other to the producer was up to the minimum prescribed by the first State for purchases from local producers, is a direct and unconstitutional burden on interstate commerce, whether applied to milk sold by the importer in the cans in which it was imported, or to milk sold by him in bottles in which it was put after importation. Pp. 521, 526.

2. Such a regulation can not be sustained as an exercise of police power upon the ground that economic security of the dairyman works for the sanitary security of the community by insuring both an adequate supply and a wholesome quality of a necessary food. P. 522.

COUNSEL: Mr. Henry S. Manley, with whom Mr. John J. Bennett, Jr., Attorney General of New York, and Mr. Henry Epstein, Solicitor General, were on the brief, for Baldwin, Commissioner of Agriculture & Markets, et al.

The purposes of the statute are to protect the health and welfare of New York state citizens. It does not discriminate against products coming into the State in interstate commerce. It is concerned with a problem which is predominantly local. *Nebbia v. New York*, 291 U.S. 502, 517.

The milk business does not observe state lines, and yet it is predominantly local. The interests involved center about the particular market, and are not diffused throughout the Nation. Supplying fresh milk is a local business, like supplying water (*Hudson County Water Co. v. McCarter*, 209 U.S. 349); it is not a national business like supplying wheat. (*Lemke v. Farmers Grain Co.*, 258 U.S. 50; *Shafer v. Farmers Grain Co.*, 268 U.S.

189.)

Congress has not occupied the field in any exclusive manner; on the contrary, state regulation has received some federal encouragement. Act of Feb. 15, 1927, c. 155, 44 Stat. 1101; *21 U. S. C.*, § 148.

Each State may use its police power to regulate business within its own borders to the extent necessary to protect its citizens as to their health, safety, morals and general welfare, even though interstate commerce is incidentally affected.

The purposes of the *commerce clause* are two. The one originally of greater importance was to prevent discrimination by the several States, each designing to favor its own products and the local businesses of its citizens. The other, which has become of constantly increasing importance in recent years, is to authorize Congress to give interstate commerce a uniform regulation.

It will readily be agreed that there are two limitations upon state power corresponding to these two purposes of the *commerce clause*. The state statute must not be discriminatory, and it must not conflict with any regulation of commerce enacted by Congress.

Assuming that the state statute is not objectionable upon either of those grounds, but puts some incidental burden or restraint upon interstate commerce, the decision as to its validity will depend upon a balancing of the national and local interests practically involved. In other words, a State can burden interstate commerce somewhat, to afford necessary protection to its people, but it cannot burden interstate commerce much merely to protect its people a little. As illustrations that interstate commerce can be affected incidentally by a valid state regulation, see *Plumley v. Massachusetts*, 155 U.S. 461; *Hennington v. Georgia*, 163 U.S. 299; *Hygrade Provision Co. v. Sherman*, 266 U.S. 497; *Packer Corp. v. Utah*, 285 U.S. 105; *Bradley v. Public Utilities Comm'n*, 289 U.S. 92; *Mintz v. Baldwin*, 289 U.S. 346.

A regulation so necessary and reasonable that it is valid for application to strictly intrastate business is not forbidden to have some incidental effects upon interstate commerce; hence when its subject matter is primarily of local concern, a regulation which is justifiable under the *Fourteenth Amendment* and which neither discriminates against interstate commerce nor conflicts with any federal

regulation, is justifiable under the *commerce clause*.

The more relevant cases fall roughly into three groups. The first group includes regulations affecting instrumentalities of interstate commerce, such as trains, automobiles, motor trucks and buses. Some of them affect telegraph companies, express companies, ferries and bridges and navigation. Perhaps order-takers should be mentioned here, and the grain elevators of North Dakota. The second group includes regulations of goods by the State of destination, such as cattle quarantines, weights and inspections, laws about oleomargarine and fraudulent and adulterated foods, imported game and liquor. The third group includes regulations of goods by the State of production, such as game and shellfish, hides in New Mexico, Florida oranges, North Dakota wheat, natural gas and petroleum, and water.

Of 66 cases we cite (ignoring a few which are inconclusive or merely incidental to argument) 40 resulted in upholding the state regulation and 26 were adverse. The proportions, at least, seem to be approximately representative, because of 72 cases decided by this Court in the last fifteen years, 49 resulted in upholding state regulation and 23 were adverse.

The process of decision illustrated by cases of state regulatory statutes in fields not taken over by the Federal Government involves answering three questions: First, is the statute sincerely and reasonably directed to a proper purpose of government so that it can be justified under the *Fourteenth Amendment*. Second, is the purpose primarily a matter of local concern; is it important relatively to the burdens which it is charged with placing upon interstate commerce. Third, is the statute non-discriminatory against interstate commerce.

It does not appear that any neighboring State resents the claim of power in the present instance; Pennsylvania and New Jersey, at least, agree through their statutes that the price of milk paid to the producer should be fixed by the consuming market. The case of natural gas presents some analogies and some differences. *Pennsylvania Gas Co. v. Public Service Comm'n*, 252 U.S. 23; *Peoples Gas Co. v. Public Service Comm'n*, 270 U.S. 550; *Western Distributing Corp. v. Public Service Comm'n*, 285 U.S. 119. The case of goods made by child labor and moving freely in a nation-wide commerce presents no true analogy, not only because of the difference in the commerce but also because of the difference in the purpose for regulating the manufactured goods of

294 U.S. 511, *; 55 S. Ct. 497, **;
79 L. Ed. 1032, ***; 1935 U.S. LEXIS 54

extra-state origin. A State regulating the "milk-shed" from which its consumers derive a daily supply of food regulates the entire area with an even purpose related to the product itself; a State forbidding child labor within its borders and forbidding other States to send it the products of their child labor has supplemented a regulation of local health or morals, not directed to anything inherent in the product, by another regulation purely economic in purpose directed at the product. It is doubted that a State can do that; the extent to which a State can "burden" interstate commerce in endeavors to eliminate child labor is suggested by the case of *Chesapeake & Ohio Ry. Co. v. Stapleton*, 279 U.S. 587, 593.

The regulation now involved is effective after the milk produced in Vermont has come to New York State and "come to rest within the State." *Gregg Dyeing Co. v. Query*, 286 U.S. 472, 478-479; *Edelman v. Boeing Air Transport*, 289 U.S. 249, 252; *Minnesota v. Blasius*, 290 U.S. 1, 8-12; and *Monamotor Oil Co. v. Johnson*, 292 U.S. 86, 95.

The "original package" has often been suggested as the physical symbol of the importers' interests protected in the name of interstate commerce, and its breaking up as the uttermost limit to which those interests will be protected. Probably this is a rule of thumb, and something will depend upon the relative urgencies of the federal interests and state interests practically involved in a particular case. In recent years it is perceived that there can be no fixed rule for separating interstate commerce from intrastate commerce, because they run into each other as day runs into night; in their extremes they are different but there is no definite and unvarying dividing line. Not always will the "original package" receive immunity from state regulation (*Hygrade Provision Co. v. Sherman*, 266 U.S. 497; *Sonneborn Bros. v. Cureton*, 262 U.S. 506), and in one case federal interests were found to extend beyond the breaking up of the "original package," and "follow the adulterated or misbranded article at least to the shelf of the importer." *McDermott v. Wisconsin*, 228 U.S. 115, 135.

Presumably milk bottled in another State and shipped in cases is not sold at retail in an "original package" and may be regulated at that time. *May v. New Orleans*, 178 U.S. 496; *Austin v. Tennessee*, 179 U.S. 343; *Cook v. Marshall Co.*, 196 U.S. 261; *Purity Extract Co. v. Lynch*, 226 U.S. 192, 200-201; *Price v. Illinois*, 238 U.S. 446, 454-455; *Armour & Co. v. North Dakota*, 240 U.S. 510,

517; Hebe Co. v. Shaw, 248 U.S. 297, 304.

Mr. J. Daniel Dougherty, with whom Mr. John J. O'Connor was on the brief, for G. A. F. Seelig, Inc.

As the processing and bottling of milk are component parts of the interstate transportation, the District Court was in error in excluding such part of the shipment from the injunctive protection of its decree. *Foster-Fountain Packing Co. v. Haydel*, 278 U.S. 1, 10.

The decisions of this Court in such cases as *General Oil Co. v. Crain*, 209 U.S. 211; *Bacon v. Illinois*, 227 U.S. 504; *Champlain Realty Co. v. Brattleboro*, 260 U.S. 366; and *Minnesota v. Blasius*, 290 U.S. 1, are not controlling under the facts of this case. Those cases involved the question of local taxation upon goods placed in storage. In the case at bar the Milk Control Law is not a tax statute, nor is the milk brought in from Vermont placed in storage in any manner.

The rule of the "original package" is not an ultimate principle. It is an illustration of a principle. It assumes transmission in packages, and then supplies a test of the unity of the transaction. The law does not seek to find what the parties may do, but what, in the usual course, it is expected they will do. *Western Union v. Foster*, 247 U.S. 105, 113.

It is admitted that appellee's transportation of the milk from Vermont to New York is interstate commerce. If so, it continues such until it reaches "the point where the parties originally intended that the movement should finally end." *Illinois Central R. Co. v. Louisiana R. R. Comm'n*, 236 U.S. 157, 163. Appellee's customers can not be expected to call at the pasteurizing plant for the milk which was ordered to be delivered to their doorsteps. Practice, intent and the typical method followed by the importer determine the unity or continuity of the transaction. The wants of appellee's customers are known, and the milk is transported, not to be held, but to be used. Pasteurization takes place, not because the importer wills it, but because the health regulations require the milk to be so treated. Any interruption in the interstate movement of the milk thus caused is merely casual and incidental, and the transaction is to be treated as single and continuous. The essential unity of the transaction remains the final test. *Swift v. United States*, 196 U.S. 375; *Rearick v. Pennsylvania*, 203 U.S. 507.

The statutory provision attacked deprives appellee of its

294 U.S. 511, *; 55 S. Ct. 497, **;
79 L. Ed. 1032, ***; 1935 U.S. LEXIS 54

property without due process of law. It is invalid under Art. I, § 8 of the Constitution. *Lemke v. Farmers Grain Co.*, 258 U.S. 50; *Shafer v. Farmers Grain Co.*, 268 U.S. 198; *Minnesota Rate Cases*, 230 U.S. 352; *Missouri v. Kansas Natural Gas Co.*, 265 U.S. 298; *St. Louis & San Francisco Ry. Co. v. Public Service Comm'n*, 254 U.S. 535; *Lemke v. Homer Farmers Elevator Co.*, 258 U.S. 65; *St. Louis-San Francisco Ry. Co. v. Public Service Comm'n*, 261 U.S. 369; *Davis v. Farmers Cooperative Equity Co.*, 262 U.S. 312; *Pennsylvania v. West Virginia*, 262 U.S. 553; *Atchison, T. & S. F. R. Co. v. Wells*, 265 U.S. 101; *Michigan Public Utilities Comm'n v. Duke*, 266 U.S. 570; *Buck v. Kuykendall*, 267 U.S. 307; *Bush v. Maloy*, 267 U.S. 317; *Real Silk Hosiery Mills v. Portland*, 268 U.S. 325; *DiSanto v. Pennsylvania*, 273 U.S. 34; *Public Utilities Comm'n v. Attleboro Steam & E. Co.*, 273 U.S. 83; *Lawrence v. St. Louis-San Francisco R. Co.*, 278 U.S. 228; *Furst v. Brewster*, 282 U.S. 493; *Anglo-Chilean Nitrate Corp. v. Alabama*, 288 U.S. 218.

JUDGES: Hughes, Van Devanter, McReynolds, Brandeis, Sutherland, Butler, Stone, Roberts, Cardozo

OPINION BY: CARDOZO

OPINION

[*518] [**498] [***1035] MR. JUSTICE CARDOZO delivered the opinion of the Court.

Whether and to what extent the New York Milk Control Act (N. Y. Laws of 1933, c. 158; Laws of 1934, c. 126) may be applied against a [***1036] dealer who has acquired title to the milk as the result of a transaction in interstate commerce is the question here to be determined.

G. A. F. Seelig, Inc. (appellee in No. 604 and appellant in No. 605) is engaged in business as a milk dealer in the city of New York. It buys its milk, including cream, in Fair Haven, Vermont, from the Seelig Creamery Corporation, which in turn buys from the producers on the neighboring farms. The milk is transported to New York by rail in forty-quart cans, the daily shipment amounting to about 200 cans of milk and 20 cans of cream. Upon arrival in New York about 90% is sold to customers in the original cans, the buyers being chiefly hotels, restaurants and stores. About 10% is bottled in New York, and sold to customers in bottles. By concession, title passes from the Seelig Creamery to G. A. F. Seelig, Inc. at Fair Haven, Vermont. For convenience the one company will be referred to as the Creamery and the other as Seelig.

[*519] The New York Milk Control Act with the aid of regulations made thereunder has set up a system of minimum prices to be paid by dealers to producers. The validity of that system in its application to producers doing business in New York State has support in our decisions. *Nebbia v. New York*, 291 U.S. 502; *Hegeman Farms Corp. v. Baldwin*, 293 U.S. 163. Cf. *Borden's Farm Products Co. v. Baldwin*, 293 U.S. 194. From the farms of New York the inhabitants of the so-called Metropolitan Milk District, comprising the City of New York and certain neighboring communities, derive about 70% of the milk requisite for their use. To keep the system unimpaired by competition from afar, the Act has a provision whereby the protective prices are extended to that part [*499] of the supply (about 30%) which comes from other states. The substance of the provision is that, so far as such a prohibition is permitted by the Constitution, there shall be no sale within the state of milk bought outside unless the price paid to the producers was one that would be lawful upon a like transaction within the state. The statute, so far as pertinent, is quoted in the margin together with supplementary regulations by the Board of Milk Control.¹

¹ *Section 258 (m) (4)*, Article 21-a, New York Agriculture & Markets Law, L. 1934, c. 126, formerly § 312 (g), Article 25, L. 1933, c. 158: "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 of 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. After any such milk so produced shall have come to rest within the State, any sale, within the State by a licensed milk dealer or a milk dealer required by this article to be licensed, of any such milk purchased from the producer at a price lower than that required to be paid for milk produced within the State purchased under similar conditions, shall be unlawful."

Order of New York Milk Control Board, July 1, 1933: "Any continuous and regular purchase or sale or delivery or receipt of milk passing to a milk dealer at any place and available for utilization as fluid milk and/or cream within New York State, followed by such utilization in one or more instances, where the price involved in such purchase or sale or delivery or receipt is less than the sum of the minimum price established to be paid to producers for such milk plus actual costs of transporting and handling and processing such milk to the place and to the condition involved in such purchase or sale or delivery or receipt, hereby is forbidden."

294 U.S. 511, *520; 55 S. Ct. 497, **499;
79 L. Ed. 1032, ***1036; 1935 U.S. LEXIS 54

[*520] Seelig buys its milk from the Creamery in Vermont at prices lower than the minimum payable to producers in New York. The Commissioner of Farms and Markets refuses to license the transaction of its business unless it signs an agreement to conform to the New York [***1037] statute and regulations in the sale of the imported product. ² This the applicant declines to do. Because of that refusal other public officers, parties

to these appeals, announce a purpose to prosecute for trading without a license and to recover heavy penalties. This suit has been brought to restrain the enforcement of the Act in its application to the complainant, repugnancy being charged between its provisions when so applied and limitations imposed by the Constitution of the United States. *United States Constitution,*

294 U.S. 511, *521; 55 S. Ct. 497, **499;
79 L. Ed. 1032, ***1037; 1935 U.S. LEXIS 54

[*521] *Art. I, § 8, clause 3; Fourteenth Amendment, § 1.* A District Court of three judges, organized in accordance with § 266 of the Judicial Code (28 U. S. C. § 380), has granted a final decree restraining the enforcement of the Act in so far as sales are made by the complainant while the milk is in the cans or other original packages in which it was brought into New York, but refusing an injunction as to milk taken out of the cans for bottling, and thereafter sold in bottles. See opinion on application for interlocutory injunction: -- 7 *F.Supp.* 776; and cf. 293 U.S. 522. The case is here on cross-appeals. 28 U. S. C. § 380.

2 The application blank contains the following questions which show the form of the required agreement: "Do you agree not to sell within New York State after it has come to rest within the State, milk or cream purchased from producers without the State at a price lower than that required to be paid producers for milk or cream produced within the State purchased under similar conditions?"

"Do you agree that you will obtain for the Commissioner and supply to him, at such times and in such manner as he requires, concerning milk and cream produced without the State and in any way dealt in by you, data to whatever extent is necessary to ascertain or compute whether the producers were paid for such milk or cream a price not lower than that required to be paid producers for milk or cream produced within New

York State and purchased under similar conditions?"

[1]*First.* An injunction was properly granted restraining the enforcement of the Act in its application to sales in the original packages.

New York has no power to project its legislation into Vermont by regulating the price to be paid in that state for milk acquired there. So much is not disputed. New York is equally without power to prohibit the introduction within her territory of milk of wholesome quality acquired in Vermont, whether at [**500] high prices or at low ones. This again is not disputed. Accepting those postulates, New York asserts her power to outlaw milk so introduced by prohibiting its sale thereafter if the price that has been paid for it to the farmers of Vermont is less than would be owing in like circumstances to farmers in New York. The importer in that view may keep his milk or drink it, but sell it he may not.

[2]Such a power, if exerted, will set a barrier to traffic between one state and another as effective as if customs duties, equal to the price differential, had been laid upon the thing transported. Imposts or duties upon commerce with other countries are placed by an express prohibition of the Constitution, beyond the power of a state, "except what may be absolutely necessary for executing its inspection

294 U.S. 511, *522; 55 S. Ct. 497, **500;
79 L. Ed. 1032, ***1037; 1935 U.S. LEXIS 54

[*522] laws." *Constitution, Art. I, § 10, clause 2; Woodruff v. Parham, 8 Wall. 123.* Imposts and duties upon interstate commerce are placed beyond the power of a state, without the mention of an exception, by the provision committing commerce of that order to the power of the Congress. *Constitution, Art. I, § 8, clause 3.* "It is the established doctrine of this court that a state may not, in any form or under any guise, directly burden the prosecution of interstate business." *International Textbook Co. v. Pigg, 217 U.S. 91, 112;* and see *Brennan [***1038] v. Titusville, 153 U.S. 289; Brown v. Houston, 114 U.S. 622; Webber v. Virginia, 103 U.S. 344, 351; Kansas City Southern Ry. Co. v. Kaw Valley Drainage District, 233 U.S. 75, 79.* Nice distinctions have been made at times between direct and indirect burdens. They are irrelevant when the avowed purpose of the obstruction, as well as its necessary tendency, is to suppress or mitigate the consequences of competition between the states. Such an obstruction is direct by the

very terms of the hypothesis. We are reminded in the opinion below that a chief occasion of the *commerce clauses* was "the mutual jealousies and aggressions of the States, taking form in customs barriers and other economic retaliation." Farrand, *Records of the Federal Convention*, vol. II, p. 308; vol. III, pp. 478, 547, 548; *The Federalist*, No. XLII; Curtis, *History of the Constitution*, vol. 1, p. 502; Story on the Constitution, § 259. If New York, in order to promote the economic welfare of her farmers, may guard them against competition with the cheaper prices of Vermont, the door has been opened to rivalries and reprisals that were meant to be averted by subjecting commerce between the states to the power of the nation.

The argument is pressed upon us, however, that the end to be served by the Milk Control Act is something more than the economic welfare of the farmers or of any other

294 U.S. 511, *523; 55 S. Ct. 497, **500;
79 L. Ed. 1032, ***1038; 1935 U.S. LEXIS 54

[*523] class or classes. The end to be served is the maintenance of a regular and adequate supply of pure and wholesome milk, the supply being put in jeopardy when the farmers of the state are unable to earn a living income. *Nebbia v. New York, supra*. Price security, we are told, is only a special form of sanitary security; the economic motive is secondary and subordinate; the state intervenes to make its inhabitants healthy, and not to make them rich. On that assumption we are asked to say that intervention will be upheld as a valid exercise by the state of its internal police power, though there is an incidental obstruction to commerce between one state and another. This would be to eat up the rule under the guise of an exception. Economic welfare is always related to health, for there can be no health if men are starving. Let such an exception be admitted, and all that a state will have to do in times of stress and strain is to say that its farmers and merchants and workmen must be protected against competition from without, lest they go upon the

poor relief lists or perish altogether. To give entrance to that excuse would be to invite a speedy end of our national solidarity. The Constitution was framed under the dominion of a political philosophy less parochial in range. It was framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division.

[3]We have dwelt up to this point upon the argument of the state that economic security for farmers in the milkshed may be a means of assuring to consumers a steady supply of a food of prime necessity. There is, however, another argument which seeks to establish a relation between the well-being of the producer and the quality of the product. We are told that farmers who are underpaid will be tempted to save the expense of sanitary precautions. This temptation will affect the farmers outside

294 U.S. 511, *524; 55 S. Ct. 497, **500;
79 L. Ed. 1032, ***1038; 1935 U.S. LEXIS 54

[*524] New York as well as those within it. For that reason the [**501] exclusion of milk paid for in Vermont below the New York minimum will tend, it is said, to impose a higher standard of quality and thereby promote health. We think the argument will not avail to justify impediments to commerce between the states. There is neither evidence nor presumption that the same minimum prices established by [***1039] order of the Board for producers in New York are necessary also for producers in Vermont. But apart from such defects of proof, the evils springing from uncared for cattle must be remedied by measures of repression more direct and certain than the creation of a parity of prices between New York and other states. Appropriate certificates may be exacted from farmers in Vermont and elsewhere (*Mintz v. Baldwin*, 289 U.S. 346; *Reid v. Colorado*, 187 U.S. 137); milk may be excluded if necessary safeguards have been omitted; but commerce between the states is burdened unduly when one state regulates by indirection

the prices to be paid to producers in another, in the faith that augmentation of prices will lift up the level of economic welfare, and that this will stimulate the observance of sanitary requirements in the preparation of the product. The next step would be to condition importation upon proof of a satisfactory wage scale in factory or shop, or even upon proof of the profits of the business. Whatever relation there may be between earnings and sanitation is too remote and indirect to justify obstructions to the normal flow of commerce in its movement between states. Cf. *Asbell v. Kansas*, 209 U.S. 251, 256; *Railroad Co. v. Husen*, 95 U.S. 465, 472. One state may not put pressure of that sort upon others to reform their economic standards. If farmers or manufacturers in Vermont are abandoning farms or factories, or are failing to maintain them properly, the legislature of Vermont and not that of New York must supply the fitting remedy.

294 U.S. 511, *524; 55 S. Ct. 497, **501;
79 L. Ed. 1032, ***1039; 1935 U.S. LEXIS 54

[*525] Many cases from our reports are cited by counsel for the state. They do not touch the case at hand. The line of division between direct and indirect restraints of commerce involves in its marking a reference to considerations of degree. Even so, the borderland is wide between the restraints upheld as incidental and those attempted here. Subject to the paramount power of the Congress, a state may regulate the importation of unhealthy swine or cattle (*Asbell v. Kansas, supra; Mintz v. Baldwin, supra*) or decayed or noxious foods. *Crossman v. Lurman, 192 U.S. 189; Savage v. Jones, 225 U.S. 501; Price v. Illinois, 238 U.S. 446*. Things such as these are not proper subjects of commerce, and there is no unreasonable interference when they are inspected and excluded. So a state may protect its inhabitants against the fraudulent substitution, by deceptive coloring or otherwise, of one article for another. *Plumley v. Massachusetts, 155 U.S. 461; Hebe Co. v. Shaw, 248 U.S. 297; Hygrade Provision Co. v. Sherman, 266 U.S. 497*. It may give protection to travelers against the

dangers of overcrowded highways (*Bradley v. Public Utilities Comm'n, 289 U.S. 92*) and protection to its residents against unnecessary noises. *Hennington v. Georgia, 163 U.S. 229*. Cf., however, *Missouri, K. & T. Ry. Co. v. Texas, 245 U.S. 484, 488*. At times there are border cases, such as *Silz v. Hesterberg, 211 U.S. 31*, where the decision in all likelihood was influenced, even if it is not wholly explained, by a recognition of the special and restricted nature of rights of property in game. Interference was there permitted with sale and importation, but interference for a close season and no longer, and in aid of a policy of conservation common to many states. Cf. [***1040] *Geer v. Connecticut, 161 U.S. 519; Foster Packing Co. v. Haydel, 278 U.S. 1, 11; Silz v. Hesterberg, 184 N. Y. 126, 131; 76 N. E. 1032*. None of these statutes -- inspection laws, game laws, laws intended to curb fraud or exterminate disease -- approaches in drastic quality the statute here in controversy

294 U.S. 511, *526; 55 S. Ct. 497, **501;
79 L. Ed. 1032, ***1040; 1935 U.S. LEXIS 54

[*526] which would neutralize the economic consequences of free trade among the states.

[4]Second. There was error in refusing an injunction to restrain the enforcement of the Act in its application to milk in bottles to be sold by the importer.

[**502] [5][6][7]The test of the "original package," which came into our law with *Brown v. Maryland*, 12 *Wheat*. 419, is not inflexible and final for the transactions of interstate commerce, whatever may be its validity for commerce with other countries. Cf. *Woodruff v. Parham*, *supra*; *Anglo-Chilean Nitrate Sales Corp. v. Alabama*, 288 U.S. 218, 226. There are purposes for which merchandise, transported from another state, will be treated as a part of the general mass of property at the state of destination though still in the original containers. This is so, for illustration, where merchandise so contained is subjected to a non-discriminatory property

tax which it bears equally with other merchandise produced within the state. *Sonneborn Bros. v. Cureton*, 262 U.S. 506; *Texas Co. v. Brown*, 258 U.S. 466, 475; *American Steel & Wire Co. v. Speed*, 192 U.S. 500. There are other purposes for which the same merchandise will have the benefit of the protection appropriate to interstate commerce, though the original packages have been broken and the contents subdivided. "A state tax upon merchandise brought in from another State, or upon its sales, whether in original packages or not, after it has reached its destination and is in a state of rest, is lawful only when the tax is not discriminating in its incidence against the merchandise because of its origin in another State." *Sonneborn Bros. v. Cureton*, *supra*, at p. 516. Cf. *McDermott v. Wisconsin*, 228 U.S. 115, 133; *Bowman v. Chicago & N. W. Ry. Co.*, 125 U.S. 465, 491; *Brimmer v. Rebman*, 138 U.S. 78; *Savage v. Jones*, *supra*, at p. 525; *Western Union v. Foster*, 247 U.S. 105, 114; *Pacific Co. v. Johnson*, 285 U.S. 480, 493. In brief, the test of the original

294 U.S. 511, *527; 55 S. Ct. 497, **502;
79 L. Ed. 1032, ***1040; 1935 U.S. LEXIS 54

[*527] package is not an ultimate principle. It is an illustration of a principle. *Pennsylvania Gas Co. v. Public Service Comm'n*, 225 N. Y. 397, 403; 122 N. E. 260. It marks a convenient boundary and one sufficiently precise save in exceptional conditions. What is ultimate is the principle that one state in its dealings with another may not place itself in a position of economic isolation. Formulas and catchwords are subordinate to this overmastering requirement. Neither the power to tax nor the police power may be used by the state of destination with the aim and effect of establishing an economic barrier against competition with the products of another state or the labor of its residents. Restrictions so contrived are an unreasonable clog upon the mobility of commerce. They set up what is equivalent to a rampart of customs duties designed to neutralize advantages belonging to the place of origin. [***1041] They are thus hostile in conception as well as burdensome in result. The form of the packages in such circumstances is

immaterial, whether they are original or broken. The importer must be free from imposts framed for the very purpose of suppressing competition from without and leading inescapably to the suppression so intended.

The statute here in controversy will not survive that test. A dealer in milk buys it in Vermont at prices there prevailing. He brings it to New York, and is told he may not sell it if he removes it from the can and pours it into bottles. He may not do this for the reason that milk in Vermont is cheaper than milk in New York at the regimented prices, and New York is moved by the desire to protect her inhabitants from the cut prices and other consequences of Vermont competition. To overcome that competition a common incident of ownership -- the privilege of sale in convenient receptacles -- is denied to one who has bought in interstate commerce. He may not sell on any terms to any one, whether the orders were given in

294 U.S. 511, *528; 55 S. Ct. 497, **502;
79 L. Ed. 1032, ***1041; 1935 U.S. LEXIS 54

[*528] advance or came to him thereafter. The decisions of this court as to the significance of the original package in interstate transactions were not meant to be a cover for retortion or suppression.

The distinction is clear between a statute so designed and statutes of the type considered in *Leisy v. Hardin*, 135 U.S. 100, to take one example out of many available. By the teaching of that decision intoxicating liquors are not subject to license or prohibition by the state of destination without congressional consent.³ They become subject, however, to such [*503] laws when the packages are broken. There is little, if any, analogy between restrictions of that type and those in controversy here. In licensing or prohibiting the sale of intoxicating liquors a state does not attempt to neutralize economic advantages belonging to the place of origin. What it does is no more than to apply its domestic policy, rooted in its conceptions of morality and order, to property which for such a purpose may fairly be deemed to have passed out of commerce and to be commingled in an absorbing

mass. So also the analogy is remote between restrictions like the present ones upon the sale of imported milk and restrictions affecting sales in unsanitary sweat-shops. It is one thing for a state to exact adherence by an importer to fitting standards of sanitation before the products of the farm or factory may be sold in its markets. It is a very different thing to establish a wage scale or a scale of prices for use in other states, and to bar the sale of the products, whether in the original packages or in others, unless the scale has been observed.

3 The rule is different today under the *Twenty-first Amendment*. Art. XXI, § 2.

The decree in No. 604 is affirmed, and that in No. 605 reversed, and the cause remanded for proceedings in accordance with this opinion.

No. 604. Affirmed.

No. 605. Reversed.