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# Constitutional Law: Codes: Delegation of Power

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held void and against public policy in the lower court because its effect was to relieve the carrier from the consequences of its own negligence, *i.e.,* though some goods might be lost, if the remainder brought a price equal to the invoice value of the whole the carrier would not pay any damages for the lost or injured articles. *The Ansaldo San Giorgio* I., 73 F. (2d) 40 (C.C.A. 2nd, 1934). The liability of a common carrier for goods lost through negligence is not merely a breach of contract, it is also tortious. See *Pearse* v. *Quebec,* 24 Fed. 285, 287 (S.D. N.Y. 1885). If the invoice price is used as a basis of determining the damages on each article injured this would not be against public policy. See *The Merauke,* 31 F. (2d) 974 (C.C.A. 2nd, 1929).

The carrier is responsible for each item of the cargo, and thus in case of injury to any item damages must be paid by the carrier. While by valid stipulation these damages may be limited to the invoice price, this must be interpreted to mean the invoice price of each unit and not of the cargo as a whole. To permit the carrier to offset the increment in value at point of destination against the partial loss sustained through damage in transit, is to deprive the shipper of his profit, a rightful incident of commerce.

OLIVER H. BASSUENER.

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CONSTITUTIONAL LAW—CODES—DELEGATION OF POWER.—The plaintiff, a retail automobile dealer, seeks to restrain the defendant administrative officials of the Wisconsin Motor Vehicle Retailing Code from enforcing the provisions thereof. The code was adopted under Chapter 110 of the Wisconsin Statutes 1933, entitled Emergency Promotion of Industrial Recovery, which provides that, if a preponderant majority of any trade or industry submits a code of fair competition, the governor upon finding it to conform to certain specifications may give it the force of law. The plaintiff attacks the constitutionality of the code and the constitutionality of Chapter 110 on four grounds: 1) the exemptions granted code industries from prosecution under the anti-trust laws is unreasonably discriminatory; 2) the plaintiff is prevented from carrying on a lawful business in a lawful manner; 3) prices are regulated in an industry not affected with the public interest; and, 4) there is an unauthorized delegation of power. The trial court found the chapter constitutional. On appeal, *Held,* the chapter is a clearly unauthorized delegation of legislative power. *Gibson Auto Co. Inc.,* v. *Finnegan, Atty. Gen., et al.,* (Wis. 1935) 259 N.W. 420.

Section I of Article IV of the Wisconsin Constitution, providing that legislative power be vested in a senate and assembly, is interpreted to mean that the legislature must determine whether or not there shall be a law. *State ex rel. Wisconsin Inspection Bureau* v. *Whitman,* 196 Wis. 472, 220 N.W. 929 (1928). There is no clause in Chapter 110 giving the governor a power comparable to that given the President in the national act [48 STAT. 199 (1933), 15 U.S.C.A. § 703 (d) (1934] to formulate and impose a code of fair competition on a reluctant industry which has not voluntarily come forward with one. Thus the basic determination as to whether or not there shall be a code, which is no less than a law for a particular industry, rests with the preponderant majority of the industry, and upon this fundamental defect the entire chapter is declared unconstitutional. The court in the instant case refers to *Panama Refining Co.* v. *Ryan,* 55 Sup. Ct. 241, 79 L.ed. 223 (1935), as throwing some light on the subject, but it must be pointed out that the unauthorized delegation in that case was to a definite person (the President), and was illegal because it was unlimited, while in the instant case

the delegation was to a group which might presently exist or come into being at some future time. The California legislature adopted the National Industrial Recovery Act for the state of California and automatically made federally adopted codes California codes. Cal Stat. 1933, p. 2635 § 6. In a prosecution under the price setting clause of one of the codes the court held that a primary standard had been set and that delegating to a foreign body power to "fill in the details" did not violate the state constitution. *Ex parte Lasswell,* (Cal. App. 1934) 36 P. (2nd) 678. In the instant case there was no question of the delegation of power to "fill in the details" which has almost uniformly been upheld. See *Wayman* v. *Southard,* 10 Wheat. 1, 6 L.ed. 253 (1825). Undoubtedly a standard must be set before there can be an effective delegation of power to anyone to fill in the details of a legislative scheme. The slightest care in drafting the bill will enable the legislature to avoid the kind of difficulty presented in the instant case. Cousens, *The Delegation of Federal Legislative Power to Executive Officials* (1935) 33 MICH. L. REV. 512. It must be admitted that the reasoning in the instant case invalidating the chapter is unanswerable and it is only to be regretted that the court found it unnecessary to consider the more fundamental questions raised in the bill such as price fixing, undue discrimination under the anti-trust laws, and unwarranted interference with the right to carry on a lawful business in a lawful manner.

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RADIO—NEWS PUBLISHED—UNFAIR COMPETITION.—The complainant appealed from an order procured on a motion by the defendant to dissolve a temporary restraining order in a suit by the complainant, a news gathering agency, to restrain a radio station from broadcasting news items published by some members of the association. The complainant is a corporation, its members being the proprietors or representatives of some twelve hundred newspapers published throughout the United States. The defendant conducts a radio station in Bellingham, Wash., and three times daily conducts "news broadcasts" by reading verbatim or paraphrasing the news from three of complainant's members' latest editions. The complainant contends that by so doing the defendant station is competing unfairly with some members of the association in that the defendant is appropriating to its own use and without the complainant's consent a service supplied by the association to its members. *Held,* motion dismissed. The broadcasting by the defendant of news published without compensation or direct profit therefor does not constitute competition by the defendant with the business of news-gathering and dissemination for profit by complainant. *Associated Press* v. *KVOS, Inc.,* 9 F. Supp. 279 (W.D. Wash. 1934).

The basis for relief on the doctrine of unfair competition was confined in the earlier cases to instances where there was some element of dishonesty in business, for example, where there was a conscious scheme to present the defendant's goods as those of the plaintiff, *Hanover Star Mill Co.* v. *Metcalf,* 240 U.S. 403, 60 L.ed. 713, 36 Sup. Ct. 357 (C.C.A. 5th, 1916); *Prest-O-Lite Co.* v. *Bournonville,* 260 Fed. 440 (D.C. N.J. 1914), or where the defendant had consciously sought to cause a client to break his contract with the defendant's competitor, *Board of Trade* v. *Christie Grain & Stock Co.,* 198 U.S. 236, 49 L.ed. 1031, 25 Sup. Ct. 637 (1905), or where the defendant, consciously intending to destroy the plaintiff's business, had palmed off upon its public his own vari-