The Supreme Court in the instant case adopts this latter view and thus clarifies the ambiguity resulting from the statute. Once again the corporate reorganization lawyers seem to have suffered a setback.[15] After the passage of the Bankruptcy Act, this group felt that the reorganization of an insolvent corporation would be more practical with less attention paid to dissenting minorities;[16] and that consequently the stockholders of a bankrupt concern having no equities could be included in the reorganized company without furnishing additional consideration. The holding in the principal case, however, definitely repudiates such a view.

L. M. B.

CONSTITUTIONAL LAW—COMMERCE POWER—WAGE REGULATION—FAIR LABOR STANDARDS ACT—[Federal].—Plaintiff, pursuant to the Fair Labor Standards Act,[1] procured a *subpoena duces tecum* ordering defendant to produce wage-books covering employees in its mail order branch at Kansas City. Defendant resisted on the ground, *inter alia*, that the Act, in so far as it seeks to apply to production for commerce as such, exceeds the interstate commerce power. *Held*, that the Act is within the commerce power.[2]

The Act seeks to eliminate from industry labor conditions detrimental to the maintenance of the minimum standard of living necessary for the health, efficiency, and general well-being of the works for several reasons, each presumed to justify invocation of federal power.[3] Of these, the court seems to emphasize the first, namely, that these conditions cause commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such undesirable labor conditions among the workers of the several states.[4] This seems to appeal to the recognized federal power to exclude from interstate commerce such things as would have a deleterious effect. Thus Congress may remove the immunity from state control of liquor as an article of commerce, since it is deleterious to morals and health.[5] Congress may prohibit traffic in diseased cattle, for no one is entitled by

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15. The first setback was in Northern Pac. Ry. v. Boyd (1912) 228 U. S. 482. Frank, Some Realistic Reflections on Some Aspects of Corporate Reorganization (1933) 19 Va. L. Rev. 541, 550.

16. Dodd, Reorganization Through Bankruptcy: A Remedy For What? (1935) 48 Harv. L. Rev. 1100, 1110; Foster, Conflicting Ideals For Reorganization (1935) 44 Yale L. J. 923, 959.

1. Fair Labor Standards Act (1938) 52 Stat. 1060, (1938 Supp.) 29 U. S. C. A. secs. 201-219. The Act regulates the employment of those engaged in interstate commerce or production for such commerce. Employees "employed in a *bona fide* executive, administrative, professional, or local retailing capacity, * * * or any employee * * * the greater part of whose selling or servicing is in intrastate commerce * * *," are exempted from the provisions of the Act. (1938 Supp.) 29 U. S. C. A. sec. 213. The instant case is not brought within this exception.

2. Andrews v. Montgomery, Ward & Co. (D. C. N. D. Ill. 1939) 84 C. C. H. Labor Law Serv. par. 18,465.

3. Note (1939) 8 Geo. Wash. L. Rev. 68.

4. (1938 Supp.) 29 U. S. C. A. sec. 202a (1).

5. In re Rahrer (1891) 140 U. S. 545.

right to its pursuit.[6] Likewise with traffic in tickets which spreads the demoralizing influence of lotteries,[7] in women for the purpose of debauchery,[8] in food and drugs debased by adulteration with deleterious ingredients.[9] The deleterious effect must arise, however, in connection with transportation. Thus in *Hammer v. Dagenhart*[10] it was held that traffic in the products of child labor as such could not be banned. Although that case has never been directly overruled, the court in the instant case says: "Certainly it cannot be maintained now that Congress may not in the interests of the general welfare of the country prohibit the shipment in interstate commerce of the products of underpaid and sweated labor."[11]

The Act seeks to remove these conditions in industry also on the ground that, since they burden commerce and the free flow of goods, they are within the commerce power.[12] It was thought for a time that industry, mining, and agriculture were so obviously local in nature as to be immune to such power.[13] That power, however, has been extended to the regulation of those activities in industry which would otherwise interfere materially with interstate commerce.[14] It is this aspect of the commerce power which has served to support other phases of the centralizing legislation of recent years. The question thus presented to the court is: "Does the relationship between the flow of commerce and production for commerce justify application of the commerce power?" Recent cases have held that the relationship must be direct, or immediate, or intimate, or substantial. Slaughtering poultry taken from interstate commerce for local consumption does not

6. Reid v. Colorado (1902) 187 U. S. 137.
7. Champion v. Ames (1903) 188 U. S. 321.
8. Hoke v. United States (1913) 227 U. S. 308.
9. Hipolite Egg Co. v. United States (1910) 220 U. S. 45.
10. Hammer v. Dagenhart (1918) 247 U. S. 251.
11. Andrews v. Montgomery, Ward & Co. (1939) 84 C. C. H. Labor Law Serv. par. 18,465. The court cited Kentucky Whip & Collar Co. v. Illinois Central R. R. (1937) 299 U. S. 334; Mulford v. Smith (1939) 307 U. S. 38; United States v. Rock Royal Co-op (1939) 59 S. Ct. 993. However, the Kentucky Whip case, 299 U. S. at 351, holds merely that "where the subject of commerce is one as to which the power of the State may constitutionally be exerted by restriction or prohibition in order to prevent harmful consequences, the Congress may, if it sees fit, put forth its power to regulate interstate commerce so as to prevent that commerce from being used to impede the carrying out of state policy." In the Mulford case, 307 U. S. at 48, it is said: "Any rule * * * which is intended to * * * prevent the flow of commerce from working harm to the people of the nation, is within the competence of Congress." Since it is the flow which must work the harm, that rule does not contravene Hammer v. Dagenhart. The Rock Royal case involves the directness of effect on commerce, rather than the deleterious effect rule.
12. (1938 Supp.) 29 U. S. C. A. sec. 202a (ii).
13. Oliver Iron Mining Co. v. Lord (1923) 262 U. S. 172; United States v. Knight Co. (1895) 156 U. S. 1; but see Standard Oil Co. v. United States (1910) 221 U. S. 1, 68.
14. Southern Ry. v. United States (1911) 222 U. S. 20; Railway Comm. of Wis. v. Chicago, B. & Q. Ry. (1922) 257 U. S. 563; Northern Securities Co. v. United States (1904) 193 U. S. 197; Coronado Coal Co. v. United Mine Workers (1925) 268 U. S. 295.

affect commerce directly.[15] Mining coal to be shipped in commerce is not intimate to that commerce.[16] But there is a close and substantial connection between commerce and producing steel from outstate materials to be shipped outstate.[17] Nor is commerce only remotely affected by the activities of men making heavy repairs on locomotives which may haul interstate trains.[18] The news, as part of commerce, is directly affected by employing a rewrite editor working locally within a state.[19] There is a close and substantial relationship between warehousemen handling fruit which will be shipped in commerce and commerce itself.[20] The production of a local utility company which supplies power to carriers in interstate as well as intrastate commerce bears more than a mediate, indirect, and relatively remote relationship to interstate commerce.[21] Grading and inspection of tobacco to be sold for interstate commerce bears an immediate relation to that commerce.[22] Quotas for tobacco crops destined largely for interstate commerce affect interstate commerce closely enough to warrant federal regulation.[23] The price which small domestice producers charge for milk sold to a wholesaler who ships in interstate commerce is related to that commerce closely enough to justify federal regulations.[24] It is difficult to find any common denominator in these decisions which can be used as a criterion for what is direct and what is not, but it would appear in the instant case that the court in finding the act constitutional is in line with the obviously liberal[25] trend reflected by these recent decisions of the Supreme Court.

W. G. P.

CONSTITUTIONAL LAW—INTERGOVERNMENTAL TAX IMMUNITY—CONGRESSIONAL POWER TO EXTEND IMMUNITY—[United States].—The state of Maryland placed a tax of one-tenth of one per cent of their amount on all mortgages recorded. The act creating the H. O. L. C. exempted its "loans and incomes" from state taxation.[1] The H. O. L. C. obtained a writ of mandamus in a state court directing the recorder to enter a mortgage held by

15. Schechter Poultry Corp. v. United States (1935) 295 U. S. 495.
16. Carter v. Carter Coal Co. (1936) 298 U. S. 238.
17. National Labor Relations Board v. Jones & Laughlin Steel Corp. (1937) 301 U. S. 1.
18. Virginian Ry. v. System Federation No. 40 (1937) 300 U. S. 515.
19. Associated Press v. N. L. R. B. (1937) 301 U. S. 103.
20. Santa Cruz Fruit Packing Co. v. N. L. R. B. (1938) 303 U. S. 453.
21. Consolidated Edison Co. v. N. L. R. B. (1938) 305 U. S. 197.
22. Currin v. Wallace (1939) 306 U. S. 1.
23. Mulford v. Smith (1939) 307 U. S. 38.
24. United States v. Rock Royal Co-op (1939) 59 S. Ct. 993.
25. Liberal in interpreting federal power. The present minority adheres to the basic distinction between commerce and industry; cf. cases cited supra, note 13. For a clear statement of this position, see Justice McReynolds's excellent dissent in National Labor Relations Board v. Fainblatt (1939) 306 U. S. 601, 609.

1. Home Owners' Loan Act (1933) 48 Stat. 128, 130, c. 64, 12 U. S. C. A. sec. 1463.