REVIEW OF RECENT DECISIONS

COMMERCE—INTERSTATE—EFFECT OF TEMPORARY UNLOADING AND CHANGING IDENTITY OF GRAIN—REGULATION OF DEALING IN GRAIN FUTURES—BOARD OF TRADE—REGULATION IN INTEREST OF PUBLIC—REGULATING ADMISSION OF CO-OPERATIVE ASSOCIATIONS—NOT TAKING PROPERTY WITHOUT DUE PROCESS OF LAW.

In September, 1922, Congress passed an act known as the Grain Futures Act (Chap. 369, Stat. at Large 998), the purpose of which is expressed in its title to be for the prevention of obstructions and burdens upon interstate commerce in grain by regulating transactions on grain future exchanges.

The Act defines "interstate commerce" as commerce between any State, territory or possession or the District of Columbia and any place outside thereof or between points within the same State, territory or possession but through any place outside thereof.

Section 2, paragraph (b), further defines the term to include any transaction in respect to any article, if such article is part of that current of commerce usual in the grain trade whereby grain, grain products and by-products are shipped from one State with the expectation that they will end their transit, after purchase, in another. Included in the meaning of the term are all cases where purchase or sale is either for shipment to another State, or manufacture within the State and shipment of the manufactured article.

Section *3* recites that transactions in grain involving the sale thereof for future delivery as conducted on boards of trade and known as "futures" are affected with a national public interest; that such transactions are carried on in a large volume, and form a basis for determining the prices to the consumer and producer; that such transactions are susceptible to manipulation and that sudden fluctuations in the price of grain frequently occur as a result thereof which are detrimental to the public at large and are an obstruction and burden to interstate commerce.

The Act further provides that boards of trade located at "contract markets" or terminal points where cash sales occur in sufficient volume shall be under the supervision of the Secretary of Agriculture and imposes certain regulations upon them.

A bill to enjoin enforcement of this act was brought in the District Court of the United States for Northern Illinois by the Boards of Trade of Chicago v. Olsen, U. S. Attorney for the Northern District of Illinois, *et al.* Appeal was taken from a decree dismissing the bill, and constitutionality of the act was considered by the Supreme Court recently, in a decision affirming the judgment of the lower court.

Objection was made to the constitutionality of the act on several grounds. Firstly, that grain moving through Chicago loses its character as interstate commerce because it is warehoused and mixed with other grain, and all transactions are completed by the delivery of warehouse receipts to an indeterminate mass. Secondly, that trading in futures on boards of trade was not detrimental to the public or an obstruction to commerce and thus not subject to control. Thirdly, that the plaintiffs have been deprived of their property without due process of law because the value of their memberships has been lowered as a result of their being compelled to accept as members representatives of co-operative associations.

The act only purports to regulate interstate commerce and sale of grain for future delivery on boards of trade because it finds that by manipulations they have become a constantly recurring burden and obstruction to that commerce. If the traffic or commerce in question is properly interstate in its nature and the practice of dealing in "futures" directly hinders and obstructs its operation, then Congress lawfully exercised its constitutional power conveyed under the "Commerce Clause." The Supreme Court answers both propositions in the affirmative.

Grain shipments passing through Chicago from the West move on through bills of lading and on through rates. This is true even though the grain is temporarily warehoused there, and mixed with other grain so that it loses its identity. Although it becomes the subject of local taxation and title thereto is passed locally, it is never taken out of that current of interstate commerce so as to deprive Congress of the power to regulate it. The case of Stafford v. Wallace (258 U. S. 495) is cited to support this view, that case holding that sales and purchases made in Chicago at the stockyards of cattle in interstate shipments were subject to regulation even though the transactions were in and of themselves intrastate commerce. Such transactions are the necessary incident of interstate movement of this class of commodiites, and are indispensable to its continuity.

The chief purpose of the act is not to regulate cash sales, but to regulate those contracts of sale of grain for future delivery, most of which do not result in actual delivery, but are settled by offsetting them with sales of the same kind. Is the conduct of such sales subject to constantly recurring abuses which are a burden and obstruction to interstate commerce in grain and does it have a direct effect on that commerce?

Prices of grain futures greatly influence the price of cash grain to the public at large. Manipulations of grain futures for speculative profit even though not carried to the extent of a corner, exert a vicious influence and produce abnormal and disturbing temporary fluctuations of prices that are not responsive to supply and demand, and disturb the normal flow of actual consignments. For these reasons, the Court held that Congress was justified in exerting its powers to provide the appropriate means to restrain such abuses.

The Board of Trade conducts a business which is affected with a national public interest and is therefore subject to reasonable regulation. Congress may, therefore, reasonably limit the rules governing its conduct with a view to preventing abuses and securing freedom from undue discrimination in its operation.

The incidental effect which such rules have in lowering the value of memberships does not constitute a taking, but is only a reasonable regulation in the exercise of the national police power. Hence, the Board is not deprived of its property without due process of law and for this and the foregoing reasons, the act was held to be constitutional.

MINIMUM WAGE LAW—CONSTITUTIONALITY.

In the recent case of Adkins v. Children's Hospital (67 L. Ed., U. S., Supreme Court, 440) the appellee filed a bill for an injunction to restrain the enforcement of an order issued by a board created by an act of Congress passed on September 19, 1918 (40 Stat. at Large 960) providing for the fixing of minimum wages for women and children in the District of Columbia. Under the act, a board was created and empowered to set the standards of minimum wages for women and children. The board had made an order which affected the appellee, a hospital employing a large number of women and some minors. The bill for the injunction was based on the ground that this enactment of Congress violated the Fifth Amendment to the Constitution, which provides that no person shall be deprived of his life, liberty or property "without due process of law." In construing the statute, the Court invoked the rule that every possible presumption is in favor of the validity of an act of Congress until such presumption is overcome beyond rational doubt. However, a congressional statute is but the act of an agency of the sovereign power, the Congress of the United States, and if in conflict with the Constitution, it must fail, for that which is not supreme must yield to that which is. While the Supreme Court has no power to nullify acts of Congress, it has the power to decide whether or not such acts are consistent with the Constitution. The question for decision in the case under consideration was whether that particular statute was an unconstitutional interference with "freedom of contract" which is included in the terms of the Fifth Amendment. Of course, there is no absolute freedom of contract, but freedom of contract is, nevertheless, the general rule, and restraint the exception; and the exercise of legislative authority to abridge can only be justified by the existence of exceptional circumstances. A review of authorities reveal that such interference has been upheld only under four classes of circumstances: (1) Statutes fixing rates and charges to be exacted by business impressed with a public interest. Munn v. Ill. (94 U. S. 113). (2) Statutes prescribing the character, methods and time for payment of wages. McLean v. Arkansas (211 U. S. 539); Knoxville Iron Co. v. Horbison (183 U. S. 13); Erie R. Co. v. Williams (223 U. S. 685). (3) Statutes relating to contracts for performance of public work. Atkins v. Kansas (119 U. S. 207); Heim v. McCall (239 U. S. 175); Ellis v. U. S. (206 U. S. 246). (4) Statutes fixing hours of labor. Holden v. Hardy (169 U. S. 366) Lockner v. N. Y. (198 U. S. 45); Bunting v. Oregon (243 U. S. 426); Wilson v. New (243 U. S 332).