in the present case was checked in accordance with facilities offered and provided by the defendant for that purpose, and accepted and held in the exclusive possession of the defendant in its capacity as a carrier.[31] The majority opinion was a correct statement of the law, and there seems little ground in support of the minority view.

CONSTITUTIONAL LAW

FEDERAL IMMUNITY FROM STATE INSPECTION LAWS

The Florida Commercial Fertilizer Law[1] requires an inspection fee for all commercial fertilizers used in the state, and unless each bag sold bears the stamp of approval, it is made subject to seizure and destruction by the sheriff of the county where found.[2] For purposes of carrying out the National Soil Conservation Program,[3] the United States, acting through the Secretary of Agriculture, bought fertilizer outside Florida and shipped it into the state for distribution without state inspection. The Florida Commissioner of Agriculture ordered county agricultural associations to stop distribution. The United States was given an injunction in the district court[4] and defendants appeal. Held, affirmed. The Florida regulation was made in the exercise of its police power and as such, it does not extend to the Federal government; its property and transactions are immune from state police power. Mayo et al. v. United States, 63 Sup. Ct. 1137 (1943).

There can be no doubt that a state can, in the exercise of its general police power, pass regulatory acts providing for inspection fee[5] so long as the fees are reasonably proportionate to the expenses

31. The dissenting opinion cites Hasbrouck v. New York Central & H.R.R.R., 202 N.Y. 363, 95 N.E. 808 (1911), as sustaining its argument to the effect that there was a bailment for a special purpose, not subject to the contract limitation. Here a suitcase was intrusted to a trainman to set off at the next stop. When the plaintiff later opened the bag she found some of her property had been stolen. Held, the valuation agreement did not apply. Possession of defendant was not that of a carrier, because the suitcase had not been checked as baggage nor intrusted to it for the journey, but only for the special purpose of aiding a passenger to get the train. Similarly it has been held that the contract provisions in a steamship ticket did not apply to baggage intended to be taken by the passenger to her stateroom for use during the voyage, but applied only to baggage left in exclusive control of the carrier, for which insurance liability existed at common law. Holmes v. North German Lloyd S.S. Co., 184 N.Y. 280, 77 N.E. 21 (1906). But cf. Cleveland, C., C. & St. L. R.R. v. Dettlebach, 239 U.S. 588 (1916), cited supra note 25.

1. Fla. Stat. (1941) c. 576. See particularly §576.11.
2. Id. §576.15.
3. Soil Conservation and Domestic Allotment Act, 49 Stat. 163, 16 U.S.C.A. 590 (1935).
4. United States v. Mayo et al., 47 F. Supp. 552 (N.D. Fla. 1942).
5. U.S. Const. Art. I, §10. " . . . no State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing

incurred in administering the inspection details,[6] and if some social interest can be found sufficient to justify such an exercise.[7] The social interest in this case was in the prohibition of inferior fertilizer,[8] so the statute seems perfectly proper as applied to any property other than that of the federal government.

However, state powers, except in a few cases, do not extend to the United States or its property,[9] or to federal agencies where it affects the federal power under our dual form of government.[10] Neither

its inspection laws." Mintz v. Baldwin, 289 U.S. 346 (1933); Texas Co. v. Brown, 258 U.S. 466 (1922); Red "C" Oil Co. v. North Carolina, 222 U.S. 380 (1912); Postal Tel. Co. v. New Hope, 192 U.S. 55 (1904); Patapsco Guano Co. v. North Carolina, 171 U.S. 345 (1898); Turner v. Maryland, 107 U.S. 38 (1882).

6. Texas Co. v. Brown, 258 U.S. 466 (1922); Postal Tel. Co. v. New Hope, 192 U.S. 55 (1904); Patapsco Guano Co. v. North Carolina, 171 U.S. 345 (1898).

7. Willis, "Constitutional Law" (1936) 728. "There are two main requirements for a proper exercise of the police power: (1) there must be a social interest to be protected which is more important than the social interest in personal liberty, and (2) there must be, as a means for the accomplishing of this end, something which bears a substantial relation thereto."

8. Waller, J., dissenting in United States v. Mayo et al., 47 F. Supp. 552, 557 (N.D. Fla. 1942). "This Florida Fertilizer Inspection Statute is a valid exercise of the police power of the State to protect the farmers against the sale of inferior or fraudulent fertilizer."

9. State of Arizona v. State of California, 283 U.S. 423 (1931); City of New Brunswick v. United States, 276 U.S. 547 (1928) (property of the United States Housing Corporation); Hunt v. United States, 278 U.S. 96 (1920); State of Ohio v. Thomas, 173 U.S. 276 (1899) (a soldiers home); Van Brocklin v. Tennessee, 117 U.S. 151 (1886); Union Pac. Ry. v. McShane, 22 Wall. 444 (U.S. 1874); Chalk v. United States, 114 F. (2d) 207 (C.C.A. 4th, 1940), cert. denied, 312 U.S. 679 (1941). See Rockwell, "Situs of Contract for Purchase of Federal Property" (1928) 8 N.C. L. Rev. 479. Cf. Penn Dairies, Inc. et al. v. Milk Control Comm. of Pa., —— U.S. ——, 63 Sup. Ct. 617 (1943) noted in 18 Ind. L. J. ——. There the court allowed the Pennsylvania Milk Control Commission to regulate prices of milk sold to a United States army camp in Pennsylvania. However, it must be noticed that there the federal government was operating the camp not as its own property, but under a permit from the state, the state retaining jurisdiction. A companion case, Pacific Coast Dairy, Inc. v. Dep't of Agriculture of California et al., —— U.S. ——, 63 Sup. Ct. 628 (1943) involved the same question, but was decided differently because the camp was under the exclusive jurisdiction of the federal government at the time the regulation was adopted.

10. Posey v. T.V.A., 93 F. (2d) 726 (C.C.A. 5th, 1937) (In spite of the corporate capacity of the T.V.A. and its subjection to suit, it was held to be a governmental agency and free from stato regulation and control); Johnson v. State of Maryland, 254 U.S. 51 (1920) (stato automobile operator's competency regulations held not to apply to an employee of the post office department while driving a government truck on a post road in the performance of his duties). However, where the regulation affects the federal government only incidentally, it may be upheld. James Stewart & Co. v. Sadrakula, 309 U.S. 94 (1940)

can it interfere with federal transactions or functions,[11] and it can not trespass upon rights vested in the federal government.[12] Therefore, since the fertilizer was property owned by the United States government itself, it was immune from regulation by the state in the exercise of its police power.

It might be contended that the regulation was valid as a tax since it has been held that a state may tax the property of private individuals or corporations although they are operating under a license of the federal government or are instrumentalities of the federal government.[13] Likewise, taxes on materials purchased under a contract with the federal government have been upheld[14] on the theory that those who furnish supplies or render services to the government under contract are not governmental agencies.[15]

If the measure be an exercise of the police power merely disguised in the form of taxation, its validity would be extremely questionable,[16] but even if it be considered a legitimate tax, it was not levied on licenses or instrumentalities of the United States, or on materials furnished under contract with the United States; if a tax at all, it was a tax on property belonging to the United States itself and as such, it would be invalid[17] unless expressly authorized by Con-

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(upholding local building regulations involved in a contract to build a post office for the government); Baltimore & A.R.R. v. Lichtenberg, 176 Md. 383, 4 A. (2d) 734 (1939) (upholding regulations affecting operations of a trucking company in performing its contracts with the federal government to transport workers employed on a P.W.A. project).

11. State of Arizona v. State of California, 283 U.S. 423 (1931); Johnson v. State of Maryland, 254 U.S. 51 (1920); McCulloch v. Maryland, 4 Wheat. 316, 427 (U.S. 1819) (disallowing a state tax on the activities of a bank incorporated by Congress to serve as an instrumentality of the federal government).
12. Hanley v. Moody, 39 F. (2d) 198 (N.D. Tex. 1930).
13. Colo. Nat'l Bank v. Bedford, 310 U.S. 41 (1940); Alward v. Johnson, 282 U.S. 509 (1931) discussed in Note (1931) 44 Harv. L. Rev. 1141. A state may tax property bought with war risk insurance money even though such money was not exempt. Trotter v. State of Tenn., 290 U.S. 354 (1933).
14. Alabama v. King & Boozer, 314 U.S. 1 (1941) discussed in Note (1942) 40 Mich. L. Rev. 457. Cf. Graves v. New York, 306 U.S. 466 (1939) (salary for an attorney for the H.O.L.C. held subject to state taxation).
15. See Buckstaff Bath House Co. v. McKenley, 308 U.S. 358, 359, 362 (1939); James v. Dravo Contracting Co., 302 U.S. 134, 149 (1937); Metcalf & Eddy v. Mitchell, 269 U.S. 514, 524, 525 1925). Cf. Susquehanna Power Co. v. State Tax Comm., 283 U.S. 291, 294 (1931); Helvering v. Mountain Producers Corp., 303 U.S. 376, 385, 386 (1938).
16. Trusler v. Crooks, 269 U.S. 475 (1926) (a tax on "future" transactions in the grain market held unconstitutional); Bailey v. Drexel Furniture Co. (Child Labor Tax Case), 259 U.S. 20 (1922) (a tax on the employment of child labor held unconstitutional).
17. See note 9 supra.

gress.[18] Thus, this particular application of the statute seems invalid as an exercise of either the police power or the taxing power.

CONSTITUTIONAL LAW

SCOPE OF THE FAIR LABOR STANDARDS ACT

Respondents, a partnership, were engaged in furnishing meals and beds to maintenance-of-way employees of a railroad. The meals were served and beds were furnished in railway cars operated on the railroad's tracks under a contract arrangement between respondents and the railroad. The cars were located conveniently to the place of the employees' work and in emergencies followed the gang to the scene of its activities. The employees paid the respondents for these services by authorizing the railroad company to deduct the amount due from their wages and to pay it over to the respondents. The petitioner, employed by respondents as a cook on one of its commissary cars and performing all of his duties in the state of Texas, sought to recover wages for overtime under the Fair Labor Standards Act.[1] Held, the petitioner was not "engaged in commerce" or in the "production of goods for commerce" and thus does not come within the purview of the act. McLeod v. Threlkeld, 63 Sup. Ct. 1248 (1943).

The constitutionality of a minimum wage and hour law and the plenary power of Congress over all phases of interstate commerce have been well established.[2] The question involved, however, due to the variance in the different statutes as to what constitutes commerce,[3] is the determination of the scope of the Fair Labor Standards Act. This Act embraces all persons "engaged in commerce" or "engaged in

18. Pacific Coast Dairy, Inc. v. Dep't of Agriculture of California et al., —— U.S. ——, 63 Sup. Ct. 628 (1943); Baltimore Nat'l Bank v. Tax Comm., 297 U.S. 209 (1936); Owensboro Nat'l Bank v. Owensboro, 173 U.S. 664 (1899).

1. 52 Stat. 1060, 29 U.S.C.A. §201 et seq. (1938).

2. 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, 9 Wheat. 1, 196 (U.S. 1824); see also N.L.R.B. v. Planter Mfg. Co., 105 F. (2d) 750 (C.C.A. 4th, 1939); Santa Cruz Fruit Packing Co. v. N.L.R.B., 303 U.S. 453 (1938). For the first cases upholding the broad aspects of the F.L.S.A. see United States v. Darby, 312 U.S. 100 (1941); Opp Cotton Mills, Inc. v. Administrator of the Wage and Hour Division of the Dep't of Labor, 312 U.S. 126 (1941).

3. In F.T.C. v. Bunte Bros., Inc., 312 U.S. 349, 353 (1941) the Court said, "Translation of an implication drawn from the special aspects of one statute to a totally different statute is treacherous business." See also Kirschbaum Co. v. Walling, 316 U.S. 517 (1941). Cf. National Labor Relations Act, 49 Stat. 448, 450, 29 U.S.C.A. §152 (1935); Bituminous Coal Act, 50 Stat. 72, 83, 15 U.S.C.A. §828 (1937); Agriculture Adjustment Act, 50 Stat. 246, 7 U.S.C.A. §601 (1937); Public Utility Holding Act, 49 Stat. 803, §1 (c), 15 U.S.C.A. §79a(c) (1935).