1923

Legislative Acts of 1922

J. G. Bruce

Follow this and additional works at: https://uknowledge.uky.edu/klj

Part of the Legislation Commons

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation
Available at: https://uknowledge.uky.edu/klj/vol11/iss4/3

This Article is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.
LEGISLATIVE ACTS OF 1922.

By J. G. BRUCE.

Of the eight or ten so called "Big bills" enacted by the 1922 session of the General Assembly, but few have successfully withstood the test of the Court of Appeals. Several hard fought measures failed by way of the veto axe and did not get even to the courts. Principal among these was the carbon black bill, upon which powerful lobbies exerted themselves, both for and against it, the city government bill for Louisville and the Thompson tax bill.

The Bingham Co-operative Marketing Act\(^1\) is the outstanding and probably the most important of the laws of 1922 which have so far withstood all attacks upon its constitutionality. This act has been upheld a number of times by many of the circuit courts, but so far its constitutionality has not been brought in question before the Court of Appeals. However, it is understood that some of those sued for breach of their contracts with the Burley Tobacco Growers' Co-operative Association and who have been held liable thereon by the circuit courts are preparing to carry the attack before the Court of Appeals.

The purpose of the Bingham act, as stated in Sec. 1, is to authorize the formation of non-profit, co-operative associations with or without capital stock, for the purpose of encouraging the orderly marketing of agricultural products through co-operation, to eliminate speculation and waste, to make the distribution of agricultural products between producer and consumer as direct as can be efficiently done, and to stabilize the marketing of agricultural products.

The Bingham act is in line with the movement which seems to be spreading over the entire country, a movement toward the co-operative marketing of farm products which is assuming greater scope and greater economic importance from year to year. The immediate cause was the situation in the tobacco markets. The Kentucky bill is based very much upon the plan of the fruit growers' associations of the Pacific coast.\(^2\)

---

\(^1\) Chapter 1, Acts of the General Assembly, 1922. (See also Chapter 109 as to foreign associations.)

\(^2\) For a very able discussion of the Co-operative Marketing Associations, the reader is referred to the article of Mr. Gerard C. Henderson, appearing in Vol. 23, Columbia Law Review (Feb., 1923).
This law is of great interest to the lawyer in that many new problems arise under it. Not only are the associations entering into business relations which require legal analysis and advise, but the farmers, the buyers and the banking institutions dealing with the associations will all be seeking the advice of the lawyer.

The law increasing the powers of the Railroad Commission also remains thus far as valid. It has especially to do with the further regulation of common carriers and prescribes the duties and powers of the Railroad Commission with reference thereto. Bus and trunk lines running on public roads, as well as the street railroad companies, are not included.

The Rash-Gullion Prohibition Act also still stands effective, although some thirty or more cases bringing it in question have been before the Court of Appeals.

The Normal School Act, providing for the establishment of two Normal Schools for the training of white elementary teachers, is the subject of an attack before the Court of Appeals at this time. This Act created a State Normal School Commission, consisting of eight members appointed as follows: Five by the Speaker of the House of Representatives and three by the President of the Senate. This Commission is authorized and empowered to establish two normal schools, one to be located in the western part of the State and the other to be located in the eastern part of the State.

A great deal rivalry has sprung up between various towns of these sections, each bidding for the location of one of the schools in their locality, so that the question of their location has now become almost a political one. The Court of Appeals has refused to advance upon the docket the case attacking the constitutionality of the law. As a consequence it will probably not be heard until sometime during the next term of the court. By that time the next legislature will have met and there is a probability that some action will be taken towards settling the question of the location of the schools.

[Editorial Note:—This act has since been held constitutional by the Court of Appeals in a decision rendered on May 15, 1923, by Judge Clay. Judge Moorman dissenting.]
The load limit law\(^7\) for trucks is also the subject of review before the Court of Appeals at the present time. This is an act fixing the limits on loads moved over any turnpike, gravel or other hard surfaced road in the State, between the 15th day of December and the 1st day of April following. It especially affects the tobacco growers, who must haul their tobacco to market during this period of the year. The purpose of the act is to prevent the roads of the State from being cut up by the moving over them of heavy trucks, during the winter months when they are most easily torn to pieces. The act is being attacked upon the ground that it is an unwarranted exercise of the police powers.

The Anti-Trading Stamp Act\(^8\) was declared to be unconstitutional by the Court of Appeals on January 23, 1923, Judge Clay delivering the opinion of the court.

This is an act to suppress and prohibit the issuance, distribution, gift, supply or procuring of trading stamps by any trading stamp company, persons, firms, corporation or merchants, and to prohibit the redemption of any trading stamps; to prohibit the advertisement of the issuance, distribution, gift, supplying or procuring of trading stamps; to prohibit the acceptance of any trading stamps by any person; and providing penalties for the violation of its provisions.

Four suits were brought for the purpose of testing the validity of the act and were heard together and considered by the court in one opinion: Lawton et al. v. Stewart Dry Goods Company; Lawton, et al. v. United Cigar Stores Company of America; Commonwealth v. United Cigar Stores Company; and Ware, et al v. The Sperry & Hutchinson Company.\(^9\) The act was challenged on the ground that it is not a valid exercise of the police power, and that it is an invasion of the right of acquiring and protecting property.

Commenting upon this, the court said: "Clearly the right of acquiring property is not confined to cases of gift or inheritance, but carries with it as a necessary and inseparable incident the right to engage in any business or occupation that is not injurious to the public weal. Therefore, when it is sought, as in

\(^7\) Chapter 126, Acts of the General Assembly, 1922.  
\(^9\) 197 Ky. 394.
this case, not merely to regulate by reasonable restrictions, but absolutely to prohibit, a particular business, the act cannot be sustained, if, after the ingenuity of man has been strained to the utmost, it appears that all reasons assigned for the exercise of the power are merely fanciful, and such that if the doctrine be carried to its logical extent, no business will be safe from legislative interference."

Among the reasons assigned for the support of the act were: That the trading stamp or premium system encourages profligate and wasteful buying and operates as a lure to improvidence; that it introduces into business a middleman who receives a profit not only from the stamps sold, but from those that are not redeemed, and thereby adds to the cost of the article; that it offers opportunity for fraud in values and prices; that it gives opportunity for coercion in that merchants are compelled to buy in order to compete with their rivals; that it gives an advantage to large concerns and thereby stifles competition; and that it is a system of deceit in that it distracts attention from the quality and price of the article bought, and from the fact that the discount stamp is added to the cost of the article. The court thought these reasons "merely fanciful" and not sufficient to sustain the act.

The main argument in support of the act was that the court must presume that the legislature had before it sufficient facts to justify its action, and that something must be wrong with the trading stamp or premium system because the legislatures of so many states have enacted similar statutes. In reply to this, the court said, "It is true every act of the legislature is presumed to be valid, but the presumption is not conclusive."

In the case of Mugler v. Kansas, 123 U. S. 623, 8 Sup. Ct. 273, 31 L. Ed. 205, Mr. Justice Harlan, commenting upon the relations of the judicial and legislative departments of government with each other, said: "It does not at all follow that every statute enacted ostensibly for the promotion of these ends, is to be accepted as a legitimate exercise of the police powers of the state. There are, of necessity, limits beyond which legislation cannot rightfully go. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those
objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution.”

The General Registration Law was declared unconstitutional by the Court of Appeals on June 28, 1922, Chief Justice Hurt delivering the opinion and Judge Clay giving a dissenting opinion.

This is an act providing for a system of registration of every voter in the Commonwealth of Kentucky and prescribing and naming the qualifications of voters in the State of Kentucky.

This case came up upon a motion for an interlocutory order to direct the circuit court or judge to order an injunction to restrain the members of the election commission and the clerk of the county court from putting into operation the provisions of the registration law. The act was attacked on two grounds, one dealing with the manner of its certification and the other on the ground that its requirements are contrary to section 6 of the Constitution which provides that: “All elections shall be free and equal.” Two other sections of the Constitution must also be considered in this connection. Section 145 prescribes the qualifications of a voter to be a citizen of the United States of the age of twenty-one years, who has resided in the state for one year, in the county for six months, and in the precinct in which he purports to vote for sixty days preceding the election, subject to certain specified exceptions. Section 147 provides that: “The General Assembly shall provide by law for the registration of all persons entitled to vote in cities and towns having a population of five thousand or more; and may provide by general law for

For a discussion of anti-trading stamp or premium legislation, see State, ex rel. Simpson v. Sperry & Hutchinson Co., 110 Minn. 378, 126 N. W. 120, 30 L. R. A. (N. S.) 966 (1910) (collecting cases), wherein the court held: “1. The act is a constitutional exercise of the police power, in so far as it prohibits the issuing of trading stamps or tickets to be redeemed in articles of merchandise in any manner which depends upon any chance, uncertainty, or contingency. 2. The issuing and redemption of trading stamps, as carried on by respondent company, is not attended with such elements of chance, uncertainty, and contingency as to justify the restrictions imposed by the act. The enforcement of those conditions against the company would operate not as a reasonable regulation of its business, but practically as an absolute prohibition thereof.” See also, District of Columbia v. Kraft, 35 App. D. C. 253; Kanne v. Segerstrom Piano Co., 118 Minn. 483.


See under case comments this volume, page 237.
the registration of other voters in the state. Where registration is required, only persons registered shall have the right to vote. Mode of registration shall be prescribed by the General Assembly.'"

In commenting upon sections 145, 147 and 6, supra, the court said that they "must be construed together and in so doing it is manifest that the legislature in enacting registration laws, under section 147, supra, has not the power to enact such a law as will add to the voter a qualification necessary to exercise the right of suffrage in addition to the qualifications prescribed by sections 145 and 147, supra, or will cut off the voter from the ballot box without fault on his part, or prevent his vote from being equal to that of any other citizen as guaranteed him by section 6, supra.

The court cites Mr. Cooley in his work on Constitutional Limitations where the rule is laid down to be: "All regulations of the elective franchise must be reasonable, uniform and impartial, they must not have for their purpose, directly or indirectly, to deny or abridge the constitutional rights of citizens to vote, or unnecessarily to impede its exercise. If so they must be declared void.'"

The necessary nature of a registration law, the court said, is to facilitate the exercise of the right of the ballot, and not to defeat it.13

It is interesting to note that the registration law was one of the hard fought political measures of the 1922 session of the General Assembly. The bill was vetoed by the Governor and was passed by the two houses of the legislature over his veto.

The Simmons Road Bill14 was declared unconstitutional by the Court of Appeals on December 15, 1922, Judge Thomas delivering the opinion of the court and Judge Clay dissenting.

This is an act amending and re-enacting a former act15 relating to the Department of State Roads and Highways, and creating in it a State Highway Commission consisting of four members, the first of whom were named in the act, and providing that their successors shall be elected by the legislature; also

providing salaries for the positions. By the former act the members were appointed by the Governor and there were no salaries attached to the positions.

The main ground upon which the act was assailed was that the legislature possessed no constitutional right to name in the bill the first members of the commission, or to elect their successors thereafter. The provisions of sections 27 and 28 of the Constitution are given in support of this contention. Section 27 says: "The powers of the government of the Commonwealth of Kentucky shall be divided into three district departments, and each of them be confined to a separate body of magistracy, to-wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another."

Section 28 provides that: "No person, or collection of persons, being one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted."

The opinion of the court is a very lengthy one, commenting upon the origin of our Constitution and the reasons underlying the separation of our republican form of government into the three branches and also discussing previous constructions placed upon it by the Kentucky Court of Appeals, as well as the decisions of the courts of other states upon similar provisions.

"Primarily the power of selecting public officers rests with the people they serve, but they may confide it in the Constitution they adopt, either expressly or by necessary implication, to whatever department of the government they see proper, and the question at last becomes one of the correct interpretation of the particular Constitution involved." Quoting Cooley on Constitutional Limitations, 7th Ed., page 127, the court says, "Every positive direction (in the Constitution) contains an implication against anything contrary to it, or which would frustrate or disappoint the purpose of that provision," and page 99, "When the Constitution defines the circumstances under which a right may be exercised—the specification is an implied prohibition against legislative interference to add to the condition." In summing up the discussion, the court says: "From whatever
angle the question is viewed we are carried back to the original proposition that the legislative department shall enact or repeal laws; the executive or administrative department shall enforce them, and the judicial department shall pass upon their validity and declare them; and that neither may encroach upon the functions of the other, unless otherwise provided in the Constitution either expressly or by necessary implication, or where the exercised act is connected with and appertains to the functions of the exercising department. It is unnecessary for the purposes of this opinion for us to determine where or in what department the power to elect or appoint the officer should be lodged by the legislature, since in this case it attempted to lodge it nowhere, but to exercise the right itself, which we hold it did not possess."