

### THE CONFLICT BETWEEN CONGRESS AND THE LEGISLATURE OVER THE CONTROL OF COMMERCE

By CALVIN CRUMBAKER

The line of demarcation between state and interstate commerce was frequently, in the earlier history of the country, brought out by attempts of state governments to regulate commerce in the interest of citizens of that state. More recently the shoe has been on the other foot and the Federal Congress has been attempting to reach into the state to control state commerce.

Regulation has been defined by the court liberally to include policies designed to foster and to protect as well as to control and to restrain. It is positive as well as negative. Almost anything may be done under the term regulate when it means to foster as well as to restrict.

So the question is not what may be done, but whether the state or federal government shall do the regulating.

Commerce likewise has been given the broadest of meanings. It means not only commodities and goods subject to purchase and sale, but it refers to goods in transit. For example, lumber shipped under local bill of lading to a wharf and awaiting transportation by vessel in interstate commerce is an interstate shipment as is a drive of logs frozen in a river and delayed in transit. Neither is taxable by the state as they are articles of interstate commerce.

Conveying stolen automobiles across state lines, whether for sale or for use by the thief, is commerce subject to severe penalties provided by Congress under the commerce clause.

Likewise, persons are "commerce" under certain circumstances when conveyed across state lines. The Mann act provides heavy penalties for transporting, or encouraging a female to go across state lines for immoral purposes. The so-called Lindbergh Act provides severe penalty under the commerce clause for transporting across state lines "in interstate or foreign commerce" those who have been unlawfully seized, confined, kidnapped, abducted, or carried away and held for ransom or reward.

Most students of history are familiar with the first great case involving the attempt of New York to grant a monopoly on steam navigation to Robert Fulton and his partner. Under their monopoly they granted a permit to one Ogden to operate a steam ferry between New York City and the New Jersey shore. Gibbons, operating a like conveyance under a Federal coasting license, undertook to compete. A New York court promptly enjoined Gibbons from interfering with the monopoly. An appeal to the Supreme Court under the leadership of Daniel Webster, resulted in the invalidation of the New York monopoly.

Under this case commerce included navigation and transportation as well as goods. So Congress now regulates vessels plying between states, and the waters over which they ply.

It dredges rivers and harbors, constructs canals, marks channels and operates lighthouses. It controls the type of bridges which may be constructed over navigable waters and excludes or regulates the participation of foreigners in interstate commerce. It likewise regulates streams wholly within a state but connected to navigable waters reaching interstate, and the use of all power sites found in navigable waters.

Most recent development is that the lower Federal courts hold that under the Commerce clause the Federal Government can regulate the power development of non-navigable streams which "contribute to the flow of navigable streams"

to such an extent as may be necessary to protect, preserve and insure the interests of interstate or foreign commerce as affected by the proposed construction. This decision reaches far into powers heretofore supposed to be reserved to the states.

Over common carriers by land, notably railroads, the Congress has gradually extended its authority. In 1876 the court held that until Congress acted the state might protect itself by regulating portions of interstate commerce.

In 1886 the Wabash case decided that all portions of interstate commerce were beyond the authority of the state regardless of the inaction of Congress in providing regulation. In 1914 the Shreveport cases extended the power of Congress by ruling that Congress had authority over purely intrastate rates that through competition, actually regulated interstate commerce.

Most sweeping case of all came in 1922, when the Wisconsin Passenger Fares case ruled that intrastate freight and passenger service that used interstate facilities were subject to Federal and not state authority.

Decisions have not all extended the power to Congress. Federal laws on trusts and combinations in restraint of trade were held not applicable to a combination of sugar refineries, because manufacturing, even if the product were intended for interstate shipment, is not interstate commerce. Jurisdiction belongs to the state legislature and not to Congress.

Moreover, the exclusion of goods from interstate commerce because manufactured by child labor was beyond the power of Congress. The state police power governed manufacturing, and Congress could not pretend to regulate commerce actually regulate manufacturing which was not interstate commerce.

Likewise, the National Recovery Act was declared beyond the power of Congress as it sought to regulate not only interstate commerce, but all commerce "affecting" interstate commerce. Clearly enough the court is adhering to its former ruling that manufacturing and merchandising do not become interstate because they incidentally affect interstate commerce. They must actually be dominantly interstate in nature.

State encroachment upon interstate commerce has been denied by the Court with equal zeal. It would astound the average reader to review the cases in which acts by which state legislatures have sought to benefit the states' citizens by mercantilistic practices were overturned by the courts.

The Supreme Court has been forced to hold that interstate commerce cannot be taxed by a state until it actually comes to rest. Imagine the plight of Oregon prunes enroute to New York if states through which they passed were able to tax them. When they come to rest they cannot be taxed higher than similar goods produced within the state. Neither may a state put a higher license on the right to deal in goods produced outside the state than is required for domestic goods of a similar nature.

States may tax interstate carriers and facilities on the same basis as domestic carriers provided the tax is not otherwise unreasonable.

A state may regulate by tax or otherwise the production of petroleum even if destined for immediate shipment in interstate commerce. Mining, like manufacturing, appears to be intrastate and not interstate commerce.

The most interesting case involving the regulation of interstate commerce is one of the most recent. It involved shipment of milk from Vermont to New York in defiance of the New York milk con-



C. F. ADAMS, Chairman of the board of The First National Bank of Portland

### FIRST NATIONAL PASSES 70th MARK

Parent of Local Institution Has 64 Years Uninterrupted Dividend Record; Deposits \$60,000,000.

Seventy years ago this week a charter was issued to The First National Bank of Portland, Oregon, under provisions of the National Banking act, which had become a law shortly before. It is also noteworthy that this was the first charter to be issued for a national bank west of the Rocky mountains.

While the bank is not making formal recognition of its 70th birthday, those who have been in contact with it for many years and who are cognizant of the incident, are quietly extending their congratulations to the officials of the bank.

In commenting on this anniversary, E. B. MacNaughton, president of the bank, stated that one of its proudest accomplishments is the long and uninterrupted dividend record which its stockholders have enjoyed. The first dividend to stockholders was paid in 1867, two years after the bank started operations. This was for 7 per cent on the capital stock, which was then \$100,000. In 1869, two years later, there was a larger dividend. In 1871 there was a 4 per cent dividend on a capitalization of \$250,000, and since that date, dividends for a period of 64 years have been paid without interruption. Data obtained from business research bureaus indicate that there are today less than 200 corporations in the country which have had uninterrupted dividend record equal to that attained by The First National Bank of Portland.

In commenting on the anniversary of this pioneer Oregon institution, striking contrast is drawn between the bank that opened in 1865 on the second floor of Portland's only two-story building and the bank of today. The First National now has, in addition to the main branch, Fifth, Sixth and Stark streets in Portland, seven other Portland branches as well as branches at Astoria, Albany, Condon, The Dalles, Gresham, Heppner, Pendleton, Stayton, Salem, Hillsboro, Woodburn, La Grande and the recently opened branches at Union and Enterprise. Deposits of The First National, 69 years ago, at close of its first year of business, were \$257,827.05. Deposits of this bank today are more than \$60,000,000. Within the last three years the deposits of this bank have more than doubled.



E. B. MacNAUGHTON, President, The First National Bank of Portland

### Queen and Attendants Named for Grant Fair

John Day, Sept. 11.—Miss Mary Keerins of Ize was elected Queen of the 1935 Grant County Fair as the result of a contest which was conducted throughout the county and which terminated Saturday night, August 31. The contest began August 10. Miss Keerins is an excellent horsewoman and a very charming young lady. She is the daughter of the late Joe Keerins and Mrs. Keerins of Ize.

Eight attendants from the different sections of the county will ride with the Queen during the three days of the Grant fair, September 19, 20 and 21. At John Day, participate in the various events and lead in the big parade at 12:20 Saturday, the last day of the fair. These attendants will be Miss Patty Carroll of Seneca; Miss Wava Lennon of Mt. Vernon; Miss Lillian Carter of Long Creek; Miss Gladys Deardorff of Prairie City; Miss Wilma Ames of Dayville; Miss Henrietta Bradley of Canyon City; and Miss Elaine Hiatt of Fox.

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### Large Rook Class Due at OSC for Opening Sept. 23

The largest freshman class since depression hit college enrollment is in prospect when freshman week opens at Oregon State college Monday, September 23. Advance applications, between 40 and 50 percent greater than a year ago, indicate a class of around 1200, says E. B. Lemon, registrar, with total enrollment of about 3000.

Every freshman is expected to report for freshman week in order to become acquainted with college procedure, requirements and opportunities before classes begin, says Lemon. Under the personal guidance of faculty leaders the newcomers become oriented before the old students return.

The freshman week idea in Oregon originated at the state college eleven years ago and has become one of the most valuable features of the year to students. Even rushing by fraternities and sororities is prohibited until the "rooks" become settled in their new environment. Registration of old students is Saturday, September 28, with classes starting Monday, September 30.

### New State Association Formed by Hog Growers

Salem.—The Oregon Swine Growers' association, open to all hog producers whether for meat or breeding purposes, was formed this fall during the state fair. Its purpose is to bring the purebred and the commercial swine growers together for furtherance of their mutual interests.

First officers of the new association are:

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tion are Cass Nichols, Salem, president; M. Averhoff, Lebanon, vice-president; Edwin Ridder, Sherwood, secretary-treasurer; and Joe Church, Brooks, and E. C. McLain, Lebanon, executive committeemen. Officers have announced another meeting during the Pacific International Livestock exposition in Portland at which time it is hoped to bring eastern and southern Oregon growers into the organization.

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### Deschutes Ships First Lettuce

Bend.—Deschutes county is beginning to realize a cash return on its newest agricultural industry—the growing of head lettuce. Harvest of the first commercial head lettuce crop in Deschutes county was started the latter part of August, and the first carload of ice packed heads was shipped out of Bend August 31, County Agent Gus Haglund reports. Some job lots of dry pack lettuce have been sent to Portland, and one grower sold locally more than \$200 worth of head lettuce from three-fourths of an acre.

### Boys Kill Many Animal Pests

Lakeview—More than 7400 rodents, predatory animals and bird pests were exterminated by the 10 boys who took part in the Lake County Pomona Grange rodent control project from April 20 to August 20, reports County Agent Victor W. Johnson. These included 1435 ground squirrels, 1072 jack rabbits, 1171 field mice, 549 pocket gophers, 74 coyotes, 1 bobcat, and miscellaneous other pests.

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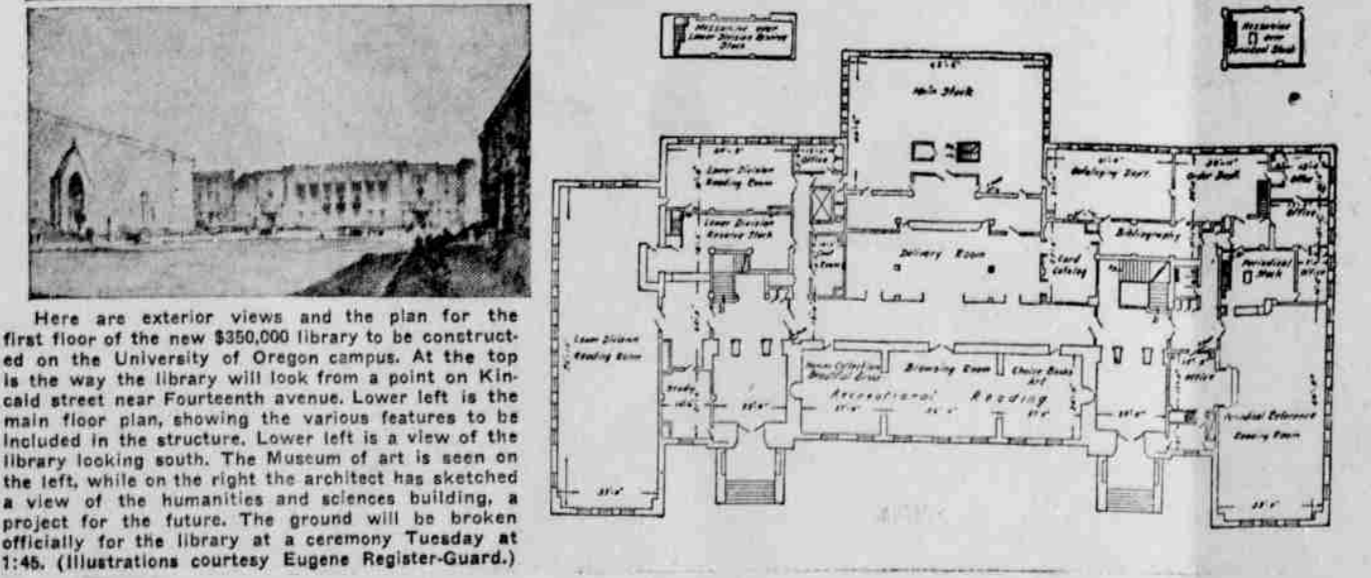
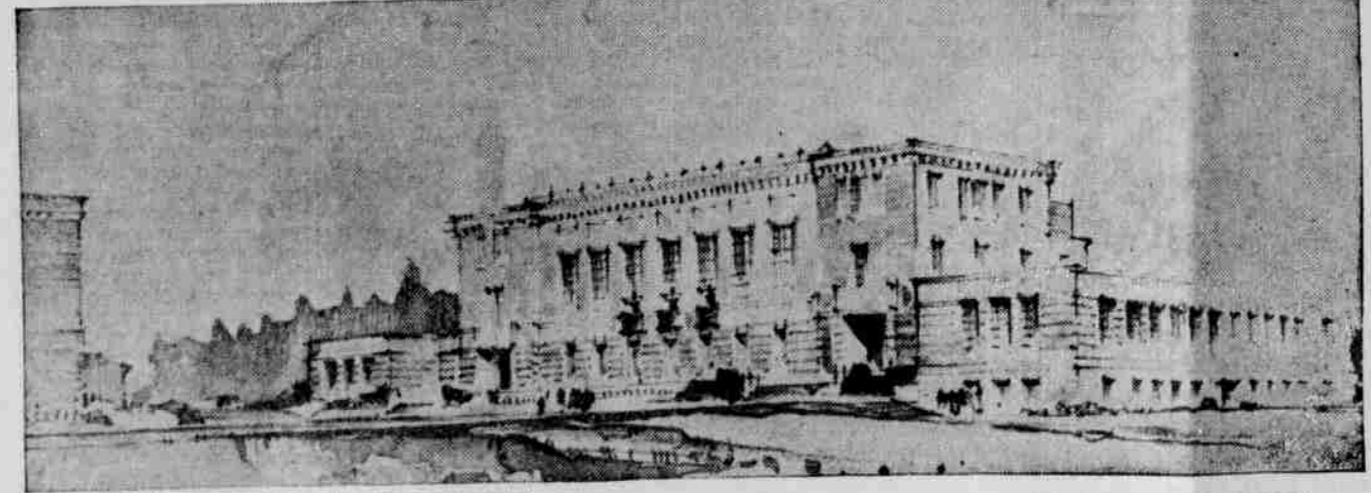
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