LEGISLATION

CHAIN STORE TAXATION—The independent retailer, viewing with alarm the growth of retail distribution through the chain store medium, has turned with increasing frequency to legislation as an effective weapon in what appears to him an unequal battle. The chains in their turn have attempted to wrest this weapon from the independent by attacks upon the constitutionality of its various forms. The resultant litigation has been recently brought before the Supreme Court in three cases.[1] A brief survey of the growth of the chains in recent years demonstrates that the fears of the independent are not entirely groundless. In 1914 there were 2030 chain companies operating 23,893 retail stores. The total annual volume of sales did not exceed one billion dollars. In 1930 there were 7837 companies operating 198,145 units and doing a business of over fifteen billion dollars annually.[2] At present it is estimated that about 18 per cent. of the retail business of the country is transacted by the chains.[3] A study of the distribution of chain stores throughout the country indicates a concentration in the thickly populated urban communities and a correspondingly slight development in the more sparsely settled rural districts.[4]

The conflict has presented a fertile field for the enemies of the demon Big Business and for those who would paint a pathetic picture of the independent merchant, symbol of American democracy, waging unequal battle with the superior forces of capital.[5] The defenders of the chain system argue in reply that this method of retailing has grown to its present strength through sound business methods intelligently applied; that these methods are open to the independent and that when he fails it is not because of competition from the chains, but due to his own inefficiency.[6] An indictment of the chain store frequently employed points out that multiple ownership results in replacing independent owners by wage slaves who have no pride of ownership and no incentive to improvement.[7]

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[1] State Board of Tax Comm'rs of the State of Indiana v. Jackson, 283 U. S. 527, 51 Sup. Ct. 540 (1931); Mitchell v. Penny Stores, Inc., U. S. Sup. Ct., decided Oct. 26, 1931; Great A. & P. Tea Co. v. Maxwell, U. S. Sup. Ct., decided Oct. 26, 1931.

[2] ZIMMERMAN, THE CHALLENGE OF CHAIN STORE DISTRIBUTION (1931) 13; "When reduced to percentages, the chains have increased during the last fifteen years approximately 400 per cent. in number of parent companies, 800 per cent. in number of stores units, and 1500 per cent. in volume of business." *Ibid.* 12.

[3] Wm. B. Nichols, *Chain Stores Fighting Unfair Taxes*, BARRON'S, p. 18, Aug. 3, 1931.

[4] The preliminary Report on Census of Distribution by the Census Bureau (1931) shows that chains are doing the following percentages of the retail business in several of the typical larger cities of the country: Detroit, 31.6% New Orleans, 24.48%; Boston, 24.97%; Philadelphia, 23.5%; Pittsburgh, 34.69%; Kansas City, 20.82%; Tulsa, 27.40%; Chattanooga, 24.20%; New York, 26.58%. The average of these shows 26.36% of the retail business to be done by the chains. Since the total percentage throughout the country is about 18%, the chains are evidently not developed to so great an extent in rural districts. See also, DARBY, THE STORY OF THE CHAIN STORE (1928), map on p. 10, showing approximate distribution of chains in the United States.

[5] "The state looses these birds of prey, and the Federal government by its silence gives them the freedom of the air. A drastic regulation of corporations in interstate commerce is absolutely necessary for any final solution of the chain store problems." Senator Brookhart of Iowa, in a speech before the University of Virginia Institute of Public Affairs, Charlottesville, Va., July 10, 1931.

[6] DARBY, *op. cit. supra* note 4, at p. 4: ". . . according to Bradstreet's analysis, 35% of all business failures are due to incompetence, 33% to lack of capital,—which may be characterized as a form of incompetence—17% to specific conditions, 5% to inexperience, 4% to fraud, and only 1.8% to competition. On the face of these figures it is obvious that competition of any kind is much less a menace to the independent retailer than his own inefficiency."

[7] ZIMMERMAN, *op. cit. supra* note 2, at p. 4.

This is undoubtedly a valid objection to the chain system, yet it loses some of its force when put forth in an age when young men are still advancing but are doing so, except in the professional fields, as salaried employees of large companies. It is also interesting to note that the largest chain in the country was the logical outgrowth of the success of an independent owner of a single store.[8] Perhaps the most serious charge brought against the chains is that they tend towards monopolistic control of the retail trade.[9]

If the last named objection were a valid one there can be little doubt that some steps could be taken to institute direct action against the chain stores under either the Sherman Act or the Clayton Act. However, it seems clear that the chain stores cannot be considered either as monopolies exercising actual restraint of trade or as doing acts which tend towards a monopolistic restraint of trade.[10] That they do not in fact represent a monopoly is evident from the fact that there are 7837 distinct companies which combined are doing approximately only 18 per cent. of the total retail trade. Monopoly under such circumstances is obviously impossible. Nor can it be said that they are tending towards monopoly. The sources of supply in the retail field are so varied and scattered that any effective control for the purpose of monopoly is impossible. The field of retail distribution is necessarily peculiarly susceptible of competition and that competition may be an effective safeguard without legislative action.[11] In this connection it is interesting that some of the methods employed against the chain store have fallen under the censure of the courts as violations of these same federal statutes.[12] Only one attempt has been made by a state legislature to directly prohibit the operation of chain stores and this was declared unconstitutional in a lower court [13] as an arbitrary restriction in violation of the "due process" clause of the Fourteenth Amendment. Attempts have been made to check the growth of the chain in the drug store field by requiring that every owner of such store be a licensed druggist.[14] Although put forth as a measure intended to safeguard public health, it is obvious that such statutes would effectively bar any corporate ownership of a chain of stores, and the United States Supreme Court so interpreted the effect and purpose of the statute.

The opponents of the chain system have found that tax statutes may be designed to bear heavily upon chain operation, while remaining but a light burden on the independent. The popularity of this movement is apparent from the

[8] "In 1859, one George H. Hartford, conducting a hide and leather business in New York, added tea as a side line product of his store. This venture was so successful that in 1864 he organized the Great Atlantic and Pacific Tea Company." Becker and Hess, *The Chain Store License Tax and the Fourteenth Amendment*, (1929) 7 N. C. L. REV. 113. See also, HAYWARD AND WHITE, CHAIN STORE (1928) 70.

[9] ZIMMERMAN, *op. cit. supra* note 2, at p. 4; Brookhart, *op. cit. supra* note 5.

[10] The Sherman Act deals with the problem of existing, completed, restraints of trade, while the Clayton Act prohibits various specific methods by which such restraints might be effected. See THORNTON, COMBINATIONS IN RESTRAINT OF TRADE (1928) 482 and cases there collected.

[11] ZIMMERMAN, *op. cit. supra* note 2, 301 *et seq.*

[12] U. S. v. Southern California Wholesale Grocers' Ass'n et al., 7 F. (2d) 944 (S. D. Cal., 1925) (Holding that attempts by combined wholesale dealers and brokers to induce manufacturers not to sell direct to chain retailers are illegal under the Sherman Act as in restraint of trade).

[13] MD. LAWS, (1927), c. 554 § 1, prohibiting the operation of more than five stores under one ownership in Allegheny Co. Held invalid in an unreported case, Keystone Co. v. Huster, Allegheny Co. Ct., Equity Cases #10922, 1928.

[14] PA. STAT. (West. Supp. 1928), 9377 a-1, a-2. Held unconstitutional in Liggett & Co. v. Balbridge, 278 U. S. 105, 49 Sup. Ct. 57 (1928) (Dissent by Holmes and Brandeis) *contra:* Tucker v. State Board of Pharmacy, 127 Misc. 538, 217 N. Y. Supp. 217 (1926); see (1928) 76 U. OF PA. L. REV. 860 on decision of the Federal court in the Liggett case, 22 F. (2d) 993 (E. D. Pa. 1927).

large number of such measures that have been before the legislatures of the states in recent years.[15] Such tax statutes are of two general classes, those levying a tax upon the gross sales of the retail business of the owner, and those placing a license tax upon the operation of each store unit of retail distribution. There are variations within each of the groups arising from the different methods of classification designed to lay a heavier burden on the chain than upon the independent.

There has never been any question of the right of the state to levy an occupational tax for revenue purposes upon various forms of business enterprises. There have been a number of these statutes which impose a gross sales tax at a fixed rate upon retail merchants.[16] This type of statute is not objectionable, since it treats all those engaging in retail trade upon the same footing. For this reason it did not suit the need of those who wished to attack the chains. The analogy of the graduated income tax was close at hand and the result has been the appearance of gross sales taxes based upon a sliding scale graduated upward with the amount of business done.[17] The Kentucky court has held that such a classification, based on the amount of business is not repugnant to the equal protection clause of the Fourteenth Amendment.[18] This type of statute presents a serious burden for the chains as they suffer in a twofold manner: (1) they are brought into the highest brackets by the aggregation of sales from numerous stores, the business of each of which may be small; (2) they are accustomed, due to a large and rapid turnover, to operate with a narrower margin of profit on gross sales and hence may be seriously crippled by a tax at an apparently small percentage.[19] Unless the rate of taxation becomes so high as to bring in the element of confiscation, however, there can be little question of the constitutionality [20] of this type of statute. In some statutes the basis for an increase in the percentage of the tax on gross sales has been purely on the number of stores operated by one owner, irrespective of the volume of the business.[21] Such a

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[15] "Last year 83 so-called anti-chain store bills were introduced, while so far this year no less than 123 new bills have been proposed." Nichols, *op. cit. supra* note 3.

[16] CONN. GEN. STAT. (1930), c. 75 § 1341; DEL. REV. CODE (1915) § 198; GA. LAWS (1929), #427, §§ 4, 8; PA. STAT. (West 1920) § 14727; W. VA. CODE ANN. (Baines 1923) c. 31A.

[17] KY. LAWS, 1930, c. 149 § 2 (Starting at 1/20 of 1% on sales of $400,000 or under and rising with every additional $100,000 until it reached 1% on all sales over $1,000,000). The following statutes impose a license fee instead of a percentage tax, but as the fee is determind by the amount of gross sales, they give rise to the same questions as the percentage tax and are included in this discussion: N. M. STAT. ANN. (Courtright, 1929) §§ 81-101 ($5.00 for $3,000 or less, rising to $150 for over $100,000); NEV. REV. LAWS (1912) § 3732 (Monthly fee based on sales for each month). This statute has been repealed, NEV. STAT. 1915 § 248.

[18] Moore v. State Board, 40 S. W. (2d) 349 (Ky. 1931).

[19] This is clearly shown, particularly as regards the grocery chain, by the following figures showing the approximate ratio of net profit to sales in several types of chains in 1930: Grocery, 2.53%; Drug, 4.01%; Shoe, 4.22%; Apparel, 3.83%; variety, 4.92%; restaurant, 7.49%. (Figures quoted from NICHOLS, *op. cit. supra* note 3.) The probable reason why the Kentucky type of statute has not been more widely employed is that it will hit the large department store even more heavily than the chains. (See statement in State v. Jackson, *supra* note 1, that a chain operator controlling 225 stores did approximately $2,000,000 business a year, while a department store in the same city did over $8,000,000 worth of business yearly).

[20] Moore v. State Board, *supra* note 18, at 353. The court points out that the tax in question is too slight to involve any question of confiscation. None of this type of statute has been sufficiently severe to bring the question squarely before a court. The careful treatment of the question by the Kentucky court indicates that a too enthusiastic use of this tax device will meet with judicial disapproval.

[21] LAWS, MISS. 1930, c. 90 § 2c. (Levies a tax of ¼ of 1% upon the gross income of all retail merchants and levies an additional tax of ¼ of 1% on the gross incomes of all persons operating more than 5 stores within the state).

classification lays the statute open to the same objections that have been made to the license tax statutes.

The attempt to levy varying tax burdens upon those engaged in the same business, based upon a difference in method of conducting that business, is not new.[22] The judicial decisions upon the validity of such classifications within one trade show clearly that the question is by no means a settled one, and that the courts will continue to consider each case upon its own peculiar factual situation.[23] The recent license taxes directed against the chains are very similar in their method of classification, which is based solely upon the number of stores under one ownership. One type of statute levies a small license fee on the owner of a single store and increases the tax sharply with the number of stores under one ownership.[24] Another type of license statute levies a flat tax per store on owners of more than a certain number of stores, excepting those operating less than the prescribed number of units.[25] The Indiana tax [26] was held invalid as a denial of the equal protection of the laws in the district court [27] on the ground that a classification based solely upon the number of stores was unreasonable and arbitrary. Upon appeal the Supreme Court, by a five-to-four decision,[28] reversed the judgment below. The prevailing opinion found that there were such differences in methods of operation [29] between the chains and independents as to render the classification a reasonable one. The North Carolina Supreme Court held the

[22] Wyatt v. Ashbrook, 15 Mo. 375, 55 S. W. 627 (1900) (Holding unconstitutional as arbitrary a tax sought to be levied on department stores alone.) *Accord,* Chicago v. Netcher, 183 Ill. 104, 55 N. E. 707 (1899). For an interesting note showing the similarity of the agitation against department stores at that date to the present anti-chain movement, see 48 L. R. A. 261 (1900).

[23] Alaska Fish Salting & By-Products Co. v. Smith, 255 U. S. 44, 41 Sup. Ct. 219 (1921) (Holding valid a higher license tax on the manufacture of fertilizer from herring than from salmon); Singer Sewing Machine Co. v. Brickell, 233 U. S. 304, 34 Sup. Ct. 493 (1914) (Holding license tax valid which was imposed on seller of machines through an agent, exempting merchants selling only at regular place of business); Metropolis Theatre Co. v. Chicago, 228 U. S. 61, 33 Sup. Ct. 441 (1912) (Holding valid statute classifying theatres for tax purposes on the basis of the price of admission); Covington v. Dalheim, 126 Ky. 26, 102 S. W. 829 (1907) (Holding invalid a distinction between groceries employing delivery wagons and those not so doing); Danville v. Quaker Maid, Inc., 211 Ky. 677, 278 S. W. 98 (1925) (Holding invalid as arbitrary a distinction between cash and carry grocery stores and those allowing credit).

[24] IND. ACTS 1929, c. 207 § 5: "Every person . . . operating . . . one or more stores . . . , within this state shall pay the license fees hereinafter prescribed . . . . The license fees shall be as follows: 1) upon one store the annual license fee shall be three dollars for each such store; 2) Upon two stores or more, but not to exceed five stores, the annual license fee shall be ten dollars for each such additional store; 3) Upon each store in excess of five but not to exceed ten, . . . fifteen dollars . . .; 4) Upon each store in excess of ten, but not to exceed twenty . . . twenty dollars . . .; 5) Upon each store in excess of twenty . . . twenty-five dollars . . . "; S. C. ACTS (1930), No. 829 § 1; ALA. GEN. ACTS (1931) No. 369.

[25] GA. LAWS (1929) p. 71 § 109 ($50 upon every store when more than 5 under one ownership); N. C. LAWS (1927), c. 80 § 162 ($50 on every store when 6 or more under one ownership). A later North Carolina Statute changed the dividing line to all those owning more than one store, and levied the tax only upon all the stores in excess of one, N. C. LAWS (1929), c. 345 § 162. The most recent North Carolina statute, N. C. LAWS (1931) c. 427 §§ 162, 164, not yet passed upon by the courts, levies the same tax as the 1929 statute and in addition imposes a license fee based on gross sales, similar to that of New Mexico, *supra* note 17.

[26] *Supra* note 24.

[27] Jackson v. State Board, 38 F. (2d) 652 (S. D. Ind. 1930).

[28] State Board v. Jackson, supra note 1. Mr. Justices Butler, Sutherland, VanDevanter and McReynolds dissented.

[29] Quantity-buying, cash buying enabling discounts; warehousing and distribution from a single warehouse; abundant capital; a different pricing and sales policy; greater turnover; unified, and thus better and cheaper advertising; standard forms of display; superior management and methods; special lines of goods; special accounting methods; standardization of management, sales policy and goods handled.

first statute in that state [30] invalid on the ground that the distinction between the owner of five stores and the owner of six was "unreasonable and arbitrary".[31] It was also pointed out that the statute was retroactive in that while five stores were not taxed, yet if another store was added the tax fell not only on the sixth, but on the original five stores as well. A new statute [32] was then passed, designed to meet these objections. The supreme court of the state held this statute to be valid,[33] reconciling this decision with the prior one on the doubtful ground that the distinction between the owner of one and two stores was not arbitrary, as was that between the owners of five and six. It was also pointed out that the new statute was not retroactive, since the tax was only upon each store in excess of one. This decision was affirmed by he Supreme Court [34] without an opinion, on the basis of the ruling in the *Jackson case.*[35] The District Court for the Southern District of Mississippi granted an interlocutory injunction in a suit brought to enforce the statute of that state.[36] On appeal, the Supreme Court [37] held that there had been no abuse of discretion by the District Court, noting that the injunction had been granted prior to the decision in the *Jackson case.* The future history of the litigation centering upon the Mississippi statute will be interesting, since it will be noted that the basis of distinction is the line between five and six stores, and that when the sixth store is added, the tax will fall upon the sales of the original five stores; both of these elements forming the basis of the rejection of the Georgia and North Carolina statutes.[38] The fact that the Court pointed out that the District Court granted the interlocutory injunction before the decision in the *Jackson case* would seem to intimate that it will consider that decision as binding.

In *Quaker City Cab Co. v. Commonwealth* [39] the Supreme Court held unconstitutional a statute taxing corporations engaged in the taxicab business, while not taxing independents or partnerships engaged in the same business. The Court held that the distinction based solely on corporate ownership was unreasonable and arbitrary so as to constitute a denial of the equal protection of the laws. The dissent [40] by Justices Holmes, Brandeis and Stone was of the opinion that the different advantages and methods of business enjoyed by a corporation formed a sufficient ground for the distinction. If the Pennsylvania legislature believed it to be good policy to place burdens upon corporations engaged in the taxicab business, its decision was not, in the opinion of the minority, subject to judicial review. The Fourteenth Amendment is not violated if there is a distinction upon which the classification is based and if the classification has relation to the object

[30] *Supra* note 25.

[31] Great A. & P. Tea Co. v. Doughton, 196 N. C. 145, 144 S. E. 701 (1928). The similar Georgia Statute (*supra* note 25) was held invalid in Woolworth Co. v. Harrison, 172 Ga. 179, 156 S. E. 904 (1931) (one justice dissenting). This decision is interesting since the statute expressly stated that the tax was imposed in the exercise of the police power of the state to prevent monopolies.

[32] *Supra* note 25.

[33] Great A. & P. Tea Co. v. Maxwell, 199 N. C. 433, 154 S. E. 838 (1930).

[34] Great A. & P. Tea Co. v. Maxwell, *supra* note 1.

[35] *Supra* note 1.

[36] *Supra* note 21.

[37] Mitchell v. Penny Stores, Inc., *supra* note 1.

[38] *Supra* note 31.

[39] 277 U. S. 389, 48 Sup. Ct. 553 (1928), Note (1928) 77 U. OF PA. L. REV. 120. *Cf.* Louisville Gas & Electric Co. v. Coleman, 277 U. S. 32, 48 Sup. Ct. 423 (1928) (holding invalid a tax on mortgages which do not mature within five years as an arbitrary discrimination. Dissent by Holmes, Brandeis, Stone and Sanford); Crescent Oil Co. v. Miss., 257 U. S. 129, 42 Sup. Ct. 42 (1921) (Holding that a statute, prohibiting a corporation from operating a cotton gin when such corporation is interested in the manufacture of cottonseed oil or meal, was valid as an exercise of the police power of the state against monopolies). See also dissent in Liggett v. Balbridge, *supra* note 14.

[40] 277 U. S. 389, 403 *et seq.*, 48 Sup. Ct. 553, 555 *et seq.*

of the statute. It is interesting to see these same three justices, their number swelled by the two most recent members of the Court, Mr. Chief Justice Hughes, and Mr. Justice Roberts, forming a majority of the court which expresses the prior minority viewpoint with reference to the statute in the *Jackson case*. Mr. Justice Holmes' view of a restricted interpretation of the "equal protection" clause of the Fourteenth Amendment has been vindicated, as it has been with regard to "due process".[41]

The decision in the *Jackson case* is based on the converse of the well-established doctrine that a distinction by the legislature cannot be arbitrary, but must be based on a real and substantial difference having a reasonable relation to the subject of the particular legislation.[42] The converse, that if there is such a difference having relation to the subject of the legislation, there is no denial of "equal protection", is no more open to attack than the original doctrine. That the principle has been applied to sustain as well as overthrow legislation is evidenced by many cases.[43] It has been said that classification in law, as in other departments of knowledge or practice, "is the grouping of things in speculation or practice because they 'agree with one another in certain particulars, and differ from other things in those same particulars'." [44] It is therefore evident that the decision upon the Indiana statute can be attacked, if at all, only upon the application of the principle to the statute, not upon the principle itself. The differences in the methods of the chains and the independent in carrying on the retail trade cited by the Court [45] as the basis for the distinction made by the legislature undoubtedly exist. However, the statute makes the number of stores the sole ground for classification and unless these differences are a necessary and peculiar attribute of ownership of more than one unit of distribution the classification should not be supported on the basis of these differences. An examination of these differences show them to be the result of the efficiency in managment to be found in any large business. The growth of the organization of independent retailers into co-operative unions [46] has shown that by this method the independent may avail himself of these same improved methods of retailing and thereby compete with the chain on an equal basis. As this demonstrates that the differences relied upon by the Court are not peculiar to the mere ownership of multiple units it would appear that a classification based thereon should not be valid under the "equal protection" clause of the Fourteenth Amendment, since a classification based on ownership alone, without more to support it, would be "arbitrary and unreasonable".

A third type of statute has been evolved in two states.[47] This type effectively bears upon the chains by imposing a tax upon the operation of warehouses in connection with a retail business. The Virginia Court [48] held the statute valid,

[41] FRANKFURTER AND LANDIS, THE BUSINESS OF THE SUPREME COURT (1927) 192, 195.

[42] Power Co. v. Saunders, 274 U. S. 490, 493, 47 Sup. Ct. 678, 679 (1927); Atchison, T. & S. F. R. Co. v. Vosburg, 238 U. S. 56, 35 Sup. Ct. 675 (1914).

[43] See cases *supra* note 23.

[44] Tanner v. Little, 240 U. S. 369, 36 Sup. Ct. 379 (1915); Billings v. Illinois, 188 U. S. 97, 102, 23 Sup. Ct. 272, 273 (1902).

[45] *Supra* note 29.

[46] Orchard, *How Food Stores Cooperative Functions in Wisconsin*, U. S. Daily, July 2, 1931, at 1032; ZIMMERMAN, *op. cit. supra* note 2, 84 *et seq.*

[47] VA. CODE ANN. 1930, p. 2177. The act prescribes a license tax on retail merchants based on purchases. In addition, a license tax is levied, for revenue, for the operation of a distributing house or place in the state, (other than the house or place of manufacture), operated by any merchant in the state for the purpose of distributing goods to his retail stores, and providing that the goods distributed through such houses be regarded as purchases for the purpose of measuring the amount of the license tax. The Tennessee act is similar in its provisions to that of Virginia—TENN. ANN. CODE (Shawn. Supp. 1926) § 712.

[48] Com. v. Bibee Grocery Co., 153 Va. 935, 151 S. E. 293 (1930). Another suit has been started in the district court to enjoin enforcement of the tax, and the supreme Court

pointing out that the tax was not levied on a particular form of the retail trade, but was merely a license tax for the privilege of operating a warehouse. This form of taxation effectively reaches the chains, since the use of a warehouse is an essential part of all chain store operation. Such a statute is also much less vulnerable than either of the two general types discussed, and there can be little doubt that its validity will be upheld by the Supreme Court.

The Mississippi type of statute,[49] if altered so as to increase the tax upon two or more stores, would, however, be the most effective weapon against the chains. It possesses all the possibilities for severity that are inherent in the Kentucky statute,[50] while employing a means of classification which will not affect large independents and which has the sanction of the Supreme Court, as declared in the decision upon the North Carolina statute.[51] The door has undoubtedly been opened for a flood of state legislation [52] directed against the chains. The wisdom of this policy may be doubted,[53] but the legislative power so to act is no longer open to question.

Though there has been no concerted movement toward Federal legislation on the subject, the same considerations would seem to obtain there as in the case of state legislation. The primary question would be as to the reasonableness of the classification employed. There has been agitation for such action [54] but at the present time the possibility of a Federal sales or license tax on chain stores seems remote.

R. G.

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will shortly hear an appeal, Great A. & P. Tea Co. v. Morrissett, #184, placed on summary docket for Nov. 23, 1931 by Sup. Ct. order Nov. 2, 1931.

[49] *Supra* note 21.

[50] *Supra* note 19.

[51] Great A. & P. Co. v. Maxwell, *supra* note 1.

[52] Some idea of the size of this taxation movement may be gathered from an inspection of the number of bills introduced at the last session of the various state legislatures: Arkansas, S. 124, H. 193; California, A. 178 (license tax), A. 885; Colorado, S. 93 (license tax), S. 162 (concerning monopolies, combinations, chain stores, etc.); Connecticut, S. 431; Illinois, S. 49, H. 199 (license tax), H. 1909 (amended and later tabled in the Senate); Iowa (The Governor announced his intention to recommend such legislation, U. S. Daily, Aug. 26, 1931); Kansas, H. 360; Mass., S. 278; Minn., H. 208 (license tax), H. 429; Montana, H. 383 (license tax); New Hampshire (Commission authorized to study feasibility of tax); New Jersey (tax bill sponsored by Assemblyman Stein); New York (tax bill sponsored by Representative Celler); Ohio, H. 313 (license tax), H. 541 (chain drug store tax); Oregon, S. 128 (Passed Senate); Pennsylvania, H. 239; Tennessee, S. 35; Texas, H. 152; Virginia, H. 180 (gross receipts tax; bill died as conferees disagreed); West Virginia, S. 122, H. 231, H. 246 (all three providing for license tax); Wisconsin (Att'y General requested to draft a bill which he considered constitutional).

[53] In this connection it may be mentioned that the consumer will probably bear the burden of such legislation in the form of higher prices by both chains and independents, since the latter will always raise his prices as the chains are forced to raise theirs. See NICHOLS, *op. cit. supra* note 3; ZIMMERMAN, *op. cit. supra* note 2, p. 275 *et seq.* For a full citation of authorities for and against the chain, see Becker and Hess, *op. cit. supra* note 8, at 124.

[54] *Supra* note 5.