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## WAREHOUSE REGULATION SINCE MUNN v. ILLINOIS

J. R. Blomquist\*

OVER EIGHTY YEARS ago, midwestern farmers were driven into organized revolt against their almost complete dependence upon outside markets for the disposal of their produce and upon corporately owned elevators and railroads for its handling. Rates as high as fifty-eight and one-half cents per bushel for the shipping of grain from the Mississippi basin to the Atlantic seaboard, and nearly half as much for the short haul from an Iowa farm to Chicago, brought about rumblings which were heard in the midwestern legislative halls in 1869 as well as in the Illinois Constitutional Convention held during that same period. Those farmers who had bound themselves together in a lodge known as the Patrons of Husbandry, and a host of unaffiliated farmers' clubs, asserted new-found political power while they exhorted their neighbors to elect only those who shared in the view that nothing less than state regulation of railroads and elevators could rid them of the stifling practices of those enterprises.<sup>1</sup>

The success of the Granger Movement was first felt by the warehouse operators when the framers of the Illinois Constitution of 1870 embraced the cause of the grain shippers and inserted in that document a provision denoting grain elevators and storehouses as public warehouses, and directing the General Assembly to pass laws for the protection of producers, shippers, and receivers of grain.<sup>2</sup> In the following year, a comprehensive body

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<sup>1</sup> See Buck, *The Granger Movement* (Harvard University Press, Cambridge, 1933, being a reprint of the 1913 edition).

<sup>2</sup> Ill. Const. 1870, Art. XIV. The Illinois Supreme Court, in *Hannah v. People*, 198 Ill. 77 at 82, 64 N. E. 776 at 777 (1902), adverted to the fact that "the framers of the Constitution deemed the matter of protection of producers and shippers of grain against wrong, fraud, and imposition on the part of those engaged in the business of providing storage for grain of great importance is demonstrated by the fact that they devoted an entire article of the Constitution to that subject." That the framers included such material at all would seem sufficient evidence of the importance they attached to the matter, inasmuch as no other state constitution touches on the subject of warehousing.

of regulation was enacted by the Illinois legislature pursuant to this directive.<sup>3</sup> Maximum rates for grain storage were established and operators of public warehouses were required to obtain licenses and to post bonds. Believing they were engaged in a private business not subject to such regulation, two Chicago elevator operators continued to charge the same storage rates as they had previously done, rates which were in excess of the new maximum imposed by the statute. The Supreme Court of the United States was thereby led to decide the case of *Munn v. Illinois*<sup>4</sup> and to make its first significant pronouncement on the public utility concept.

That the pricing practices of grain storage companies together with the concentrated control of the business in Chicago influenced the court to uphold the Illinois enactment cannot be doubted. Warehouses, the court said, stood "at the very gateway of commerce to take toll from all who passed,"<sup>5</sup> for which reason anyone who devoted his property to such a use in effect granted "to the public an interest in that use, and must submit to be controlled by the public for the common good."<sup>6</sup> Oddly enough, these familiar words taken from the opinion in *Munn v. Illinois*, although spoken with reference to the operation of grain warehouses, have rarely been mentioned since in relation to that activity. Based on an almost forgotten work written two centuries earlier by Chief Justice Hale,<sup>7</sup> the doctrine of property affected with a public interest had never been applied to a statute like this one, but the words became a formula. Warehouses, however, were forgotten except insofar as the warehousing activity had been the incidental vehicle for an important decision. Regulation of warehouses by state legislatures, though, was to continue and to be expanded on all sides for seventy years.

The words of the Supreme Court relating to the suscepti-

<sup>3</sup> Ill. Laws 1871-2, p. 762, Act of April 25, 1871. The statute presently appears in Ill. Rev. Stat. 1949, Vol. 2, Ch. 114, §§ 189-214.

<sup>4</sup> 94 U. S. 113, 24 L. Ed. 77 (1877).

<sup>5</sup> 94 U. S. 113 at 132, 24 L. Ed. 77 at 86.

<sup>6</sup> 94 U. S. 113 at 126, 24 L. Ed. 77 at 84.

<sup>7</sup> *De Portibus Maris*, 1 Harg. L. Tr. 78.

bility of warehouses to governmental control have proved surprisingly durable in the seventy-three years since they were spoken. Few voices have risen to challenge the wisdom of Justice Waite in the interim, despite a lusty prediction at the time that *Munn v. Illinois* would toll the death knell for unregulated individual enterprise in the United States.<sup>8</sup> It is, therefore, not surprising that the next important occasion on which warehouse regulation was brought into focus by the Supreme Court resulted from another conflict based upon other constitutional considerations. Accepting the premise that they must submit to regulation, the warehouse operators turned their attention to the matter of identifying the tormenter, realizing that they might gain if they were free to ignore oppressive state regulation while complying with federal enactments on the subject.

Although warehouse acts were conceived by state legislatures, the court deciding *Munn v. Illinois* had not ignored the relation of elevators to interstate commerce. Indeed, it recognized the possibility that Congress might institute a system of controls when it said:

The warehouses of these plaintiffs in error are situated and their businesses carried on exclusively in Illinois. They are used as instruments by those engaged in State as well as those engaged in interstate commerce, but they are not more necessarily a part of commerce itself than the dray or the car by which, but for them, grain would not be transferred from one railroad station to another. Incidentally they may become connected with interstate commerce, but not necessarily so. Their regulation is a thing of domestic concern, and certainly, until Congress acts in reference to their interstate relations, the State may exercise all the powers of government over them, even though in so doing it may indirectly operate upon commerce outside its immediate jurisdiction.<sup>9</sup>

<sup>8</sup> The august New York Times called the doctrine of *Munn v. Illinois* "mischievous," "meddlesome," and "vexatious." See Clemens, *Economics and Public Utilities* (Appleton-Century-Crofts, Inc., New York, 1950), p. 16.

<sup>9</sup> 94 U. S. 113 at 135, 24 L. Ed. 77 at 87.

But Congress, apparently, was not then ready to take up the subject of regulating interstate commerce, not at least so far as regulating grain warehousing was concerned.

With the impetus provided by the decision in *Munn v. Illinois*, the states got down to serious business. Many of the midwestern and northwestern states, where the Granger Movement had flourished and where the abuses by elevator operators had been felt most acutely, adopted legislation patterned, in varying degree, on the Illinois Warehouse Act.<sup>10</sup> By 1914, some fifteen states required a license for all who engaged in the activities of a public grain warehouse.<sup>11</sup> Seven states allowed the fixing of rates for the storage of grain,<sup>12</sup> and others applied like regulation to the storage of cotton and tobacco.<sup>13</sup> Six states fixed maximum storage rates.<sup>14</sup> In addition to the matters mentioned, many statutes included provisions relating to inspection, weighing, rendering reports, grading, discrimination, and the like.<sup>15</sup> Those states which passed up the opportunity to enact such statutes were, by and large, those which had no extensive grain elevator business within their bounds.

The jurisdiction of states to exercise police powers in this fashion remained unchallenged by Congress for many years and, seemingly, all were content to leave the matter in the hands of

<sup>10</sup> See Mohun, *Warehousemen* (Nickerson & Collins Co., Chicago, 1914).

<sup>11</sup> Ala. Code 1907, § 6124; Ida. Rev. Code 1908, § 1482d; Ill. Rev. Stat. 1916, Ch. 114, § 136; Kan. Gen. Stat. 1909, § 3346; Ky. Stat. 1909, § 4782; Mass. Rev. Laws 1902, Ch. 69, § 1; Minn. Rev. Laws 1905, § 2048; Mo. Rev. Stat. 1909, § 11947; Mont. Laws 1913, Ch. 47, § 19; N. D. Laws 1913, Ch. 239, p. 383; Okla. Rev. Laws 1910, § 8248; Ore. Laws 1910, § 6043; S. D. Rev. Code 1903, § 484; Pierce's Wash. Code 1912, Tit. 211, § 18; Wis. Stat. 1911, § 1747-1.

<sup>12</sup> Ill. Rev. Stat. 1912, Ch. 114, § 147; Kan. Gen. Stat. 1909, § 3360; Mo. Laws 1913, p. 354, § 27; N. Y. Cons. Laws 1909, Vol. 2, Gen. Bus. Law, Ch. 20, Art. 26, § 396; N. D. Rev. Code 1905, § 2252; Okla. Rev. Laws 1910, § 8266; Wis. Stat. 1911, § 1747-18.

<sup>13</sup> The South Carolina Code 1912, § 2332, dealt with cotton. Ohio Gen. Code 1910, § 6058; Tenn. Acts 1909, § 3399; and Pollard Va. Code 1904, § 1821, regulated tobacco storage.

<sup>14</sup> Ill. Rev. Stat. 1912, Ch. 114, § 147; Minn. Rev. Laws 1909, § 2057; Mo. Laws 1913, p. 354, § 27; Mont. Laws 1913, § 33; N. Y. Cons. Laws 1909, Vol. 2, Gen. Bus. Law, Ch. 20, Art. 26, § 396; Okla. Rev. Laws 1910, § 8266.

<sup>15</sup> The statutes referred to in notes 11 to 14 inclusive are those which achieve regulation relating specifically to warehouses. Other statutes, where regulation may be accomplished under powers granted over public utilities generally, are not included in the tabulation.

state agencies for the evils sought to be curbed were felt mostly at the local level. However, no one questioned the power of Congress to act with reference to the interstate relations of the warehousing business<sup>16</sup> and, in 1916, with the enactment of the United States Warehouse Act,<sup>17</sup> Congress asserted that power. That statute authorized the Secretary of Agriculture to license grain warehouse operators, to investigate weighing procedures, to inspect elevators, to require bonds of licensees, to prohibit discrimination, to require standardized reports of licensees, and to impose other miscellaneous restrictions on the freedom of operators.

Three features of this action were significant. In the first place, the act did *not require* a license of any operator whose operations affected interstate commerce, but only permitted the licensing of those operators interested enough to make application for the same and who were willing to comply with the act and the regulations imposed thereunder.<sup>18</sup> Secondly, as originally enacted, the statute set the record straight with regard to the status of existing state laws by declaring that nothing "in this Chapter shall be construed to conflict with or to authorize any conflict with, or in any way impair the effect of operations of the laws of any state relating to warehouses, warehousemen, weighers, graders, or classifiers."<sup>19</sup> Thus it is apparent that state regulation of warehouses had become so important a part of the economic and political fabric that Congress was especially careful not to uproot the extensive network of state controls which had been effectively established following the decision in the *Munn* case. A third factor, useful in evaluating the United States Warehouse Act, is to be found in the purpose of the legislation, for that pur-

<sup>16</sup> In *U. S. v. Darby*, 312 U. S. 100 at 118, 61 S. Ct. 451 at 459, 85 L. Ed. 609 at 619 (1940), the court declared that "power of Congress over interstate commerce is not confined to the regulation of commerce among the states. It extends to those activities which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them an appropriate means to the attainment of a legitimate end, the exercise of the granted powers of Congress to regulate interstate commerce."

<sup>17</sup> 39 Stat. 486, Ch. 313, part C, as amended; 7 U. S. C. A. § 241 et seq., 2 Fed. Code Anno., Tit. 7, § 241 et seq.

<sup>18</sup> 7 U. S. C. A. § 244.

<sup>19</sup> *Ibid.*, § 269.

pose appeared to be one to provide a glorified warehouse receipts law, written with the Uniform Warehouse Receipts Act in mind. It was designed to enhance the value of grain and similar receipts for collateral purposes by assuring bankers and credit men that grain which had been stored in a federally licensed warehouse would be subject to added controls planned for their protection.<sup>20</sup> It would seem clear, as has been stated, that Congress did not undertake any general affirmative regulation of warehouses even remotely comparable to the scope of regulation it has provided for other public utilities.

Co-existing state and federal control seemed to be sanctioned both by the United States Warehouse Act and by federal court decisions for a considerable period of time following 1916. It was held by the Circuit Court of Appeals, in *Independent Gin & Warehouse Company v. Dunwoody*,<sup>21</sup> that Congress did not intend to occupy the whole field of law in relation to the storage of agricultural products moving in interstate commerce, so as to exclude the jurisdiction of the states, even though such regulation should tend to affect interstate commerce, for an Alabama statute which required a license of a cotton warehouseman was there upheld. The Supreme Court itself stated that the purpose of the federal act was not to supersede state law but was intended to provide a form of co-operation with state officials in the control of the activity.<sup>22</sup> In a few years, therefore, twenty-one states had laws requiring licenses of all public warehousemen,<sup>23</sup> and five others had laws with exacted similar compliance from

<sup>20</sup> See the dissenting opinion of Mr. Justice Frankfurter in *Rice v. Santa Fe Elevator Corp.*, 331 U. S. 218 at 242, 67 S. Ct. 1146 at 1158, 91 L. Ed. 1447 at 1465 (1946).

<sup>21</sup> 40 F. (2d) 1 (1930).

<sup>22</sup> See *Merchants Exchange v. Missouri*, 248 U. S. 365, 39 S. Ct. 114, 63 L. Ed. 300 (1919).

<sup>23</sup> *Ida.* Code 1947, Tit. 69, § 2; *Ill.* Rev. Stat. 1949, Vol. 2, Ch. 114, §§ 189-214; *Burn's Ind. Stat. Anno.* 1933, Tit. 67, Ch. 5; *Kan. Gen. Stat. Anno.* 1935, Ch. 34, Art. 2; *Ky. Rev. Stat.* 1948, Ch. 359; *La. Gen. Stat.* 1935, Tit. 68, Ch. 1; *Mass. Anno. Laws*, 1948 Supp., Ch. 105; *Mich. Stat. Anno.*, 1949 Supp., §§ 12.119(1)-12.119(22); *Minn. Stat.* 1949, Ch. 231, 232 and 233; *Mo. Rev. Stat. Anno.*, Ch. 141; *Mont. Rev. Code Anno.* 1947, § 3-201 to § 3-232; *Neb. Rev. Stat.* 1943, § 88-201 to § 88-215; *N. H. Rev. Laws*, 1942, Ch. 205; *N. M. Stat. Anno.* 1941, § 53-901 to § 53-911; *N. D. Rev. Code* 1943, Tit. 60; *Okla. Stat. Anno.* 1938, Tit. 81; *Ore. Comp. Laws Anno.* 1940, § 60-101 to § 60-113; *S. D. Code* 1939, Ch. 60.03; *S. C. Code* 1942, § 1716; *Wash. Rev. Stat. Anno.* 1933, Tit. 83; *Wis. Stat.* 1949, Ch. 126.

operators of cotton, tobacco, or cold storage warehouses.<sup>24</sup> In four additional states, warehousemen could obtain a license if they wished to do so.<sup>25</sup> The number of states controlling storage rates under warehouse acts had increased to eleven,<sup>26</sup> while a number of others exercised the same regulation under powers granted over public utilities generally. Some state statutes contained clauses exempting operators from state regulation if they had secured a license under the federal Warehouse Act.<sup>27</sup> But the complexity of state enactments ranged from extensive regulation of all phases of the pursuit, on the one hand,<sup>28</sup> to toothless acts having to do with little more than fire prevention on the other.

Such diversity in types of control could lead to but one result. Once more the cry was heard that credit transactions were being endangered by such a state of affairs. Bankers admitted that they were unable to keep pace with the laws of forty-eight states, hence were unable properly to estimate the security value of the warehouse receipts with which they dealt.<sup>29</sup> At their insistence, in 1931, Section 269 of the United States Warehouse Act was amended and language was used which made it unmistakable that the intent of Congress was to substitute the federal system for those which had been developed under the various state statutes.<sup>30</sup>

It is difficult to estimate with what degree of enthusiasm state agencies enforced their local controls after the amendment of

<sup>24</sup> Ariz. Code Anno. 1939, § 52-903, applies to cotton and wool storage; Ark. Stat. Anno. 1947, Tit. 77, Ch. 13, deals with co-operatives; Page's Ohio Gen. Code 1945, § 6043, and Tenn. Code Anno. 1942, §§ 6477-8, cover tobacco warehousing; while Va. Code Anno. 1950, Tit. 61-80, regulates cold storage.

<sup>25</sup> Deering Cal. Code Anno. 1950, Agriculture, Div. 6, Ch. 5; Ga. Code Anno. 1937, Tit. 111; Iowa Code Anno. 1949, Ch. 543; N. C. Gen. Stat. 1950, § 66-35

<sup>26</sup> To the statutes mentioned in note 14, ante, there should be added statutes enacted in Arkansas, Nebraska, North Dakota, South Dakota, Utah, Virginia, and Wisconsin. Citations thereto appear in notes 23 and 24, ante.

<sup>27</sup> See, for example, the statutes of Arizona, Idaho, Michigan, New Mexico, and Oklahoma referred to in notes 23 and 24, ante.

<sup>28</sup> Examples of comprehensive regulation may be found in the Minnesota, Montana, North Dakota and South Dakota statutes cited in note 23, ante.

<sup>29</sup> See Sen. Rep. No. 1775, 71st Cong., 3d sess., p. 2; H. R. Rep. No. 4, 71st Cong., 1st sess., and 72 Cong. Rec. 8529.

<sup>30</sup> 46 Stat. 1465, 7 U. S. C. A. § 269, omitted the clause quoted in the text at footnote 19, ante, and added "but the power, jurisdiction, and authority conferred upon the Secretary of Agriculture under this Chapter shall be exclusive with respect to all persons securing a license hereunder so long as said license is in effect."

Section 269. Some indication is to be found, in the few reported cases decided since then, that warehouse operators ignored state regulations when they chose to obtain a federal license. One Illinois company, for example, owning twenty of the forty-one elevators in Chicago and storing approximately 35,000,000 bushels out of the total capacity of 47,757,000 bushels, licensed twelve of its warehouses under the federal act but only three under the Illinois statute, the remaining five not being public warehouses.<sup>31</sup> The Supreme Court of South Dakota seemed to feel that state control had been displaced entirely by the federal act which granted discretionary power to the Secretary of Agriculture to exercise exclusive federal control without co-operation with the states.<sup>32</sup> When a defendant failed to secure a state license, but did possess a federal one, the South Dakota court met the head-on collision by holding that the state must bow out and defer to the United States Warehouse Act.<sup>33</sup>

It might be said to be appropriate, or ironic, that the show-down in the argument of state in contrast to federal regulation of grain warehouses should have its situs in the same state, and concern substantially the same warehouse act, which had been involved in *Munn v. Illinois*. The Granger Movement had long since been forgotten, but the threat of oppressive practices by unregulated, or inadequately regulated, terminal grain elevator operators must have been in the mind of the petitioner, an owner, dealer, and shipper of grain, when, in *Rice v. Santa Fe Elevator Corporation*,<sup>34</sup> he charged the elevator corporation with maintain-

<sup>31</sup> Edward R. Bacon Grain Co. v. City of Chicago, 325 Ill. App. 245, 59 N. E. (2d) 689 (1945).

<sup>32</sup> In re Farmers Co-op Ass'n, 69 S. D. 191, 8 N. W. (2d) 557 (1943).

<sup>33</sup> 69 S. D. 191 at 199, 8 N. W. (2d) 557 at 561. The court held that it was necessary to look to the impact, on the national economy, of the country elevator business as a whole in determining whether its effect on interstate commerce was substantial. The fact that the particular co-operative elevator's own effect was trivial was not enough to remove it from the rule since the contribution of the entire industry would be great. This theory was discussed in *Wickard v. Filburn*, 317 U. S. 111, 63 S. Ct. 82, 87 L. Ed. 122 (1922). See also *Federal Compress Co. v. McClean*, 291 U. S. 17, 54 S. Ct. 267, 78 L. Ed. 622 (1933), a case holding that a non-discriminatory state tax on warehouses was not prohibited by the United States Warehouse Act since that statute had not assumed to tax the business nor had exercised any control over state taxation.

<sup>34</sup> 331 U. S. 218, 67 S. Ct. 1146, 91 L. Ed. 1447 (1946), affirming 156 F. (2d) 33 (1946), in part. Frankfurter, J., with whom Rutledge, J., concurred, wrote a dissenting opinion.

ing excessive rates, engaging in discriminatory practices, operating without a state license, rendering inadequate service, mixing public grain of different grades, as well as perpetrating other violations of the Illinois Warehouse Act. The corporation sought to enjoin further proceedings on the basis that the right of the State of Illinois to enforce its regulations had been superseded by the federal act. The Supreme Court of the United States, on certiorari, affirmed the warehouseman's position and granted the injunction, with the result that the shipper was unable to have his remedy for the alleged violations of the state law.

By that decision, state regulation has now been foreclosed where the warehouseman has elected to obtain a federal license, at least as to those matters which are "in any way regulated by the federal act," and dual regulation has been eliminated. For those operators who do not choose to secure a federal license, and in those aspects of warehousing which the federal act does not "touch," however meagerly and indirectly, state law may continue in force. However, the areas so retained for control by the states appear to be of negligible importance.

In the Rice case, for example, nine aspects of regulation by both agencies were compared. Under the Illinois statute, public utility rates must be just and reasonable and the state commission may fix rates which meet that standard,<sup>35</sup> and maximum storage charges are set by statute.<sup>36</sup> The federal act, in contrast, permits the revocation or suspension of a license if it appears that rates are "unreasonable or exorbitant," but does not permit of rate-fixing nor provide adequate sanction against the charging of excessive rates.<sup>37</sup> Discrimination between persons applying for the use of facilities is forbidden by both acts.<sup>38</sup> The Illinois law prohibits the operator from acting in a dual position by storing his own grain while doing the same thing for the public,<sup>39</sup> but

<sup>35</sup> Ill. Rev. Stat. 1949, Vol. 2, Ch. 111½, §§ 32, 36 and 41.

<sup>36</sup> *Ibid.*, Ch. 114, § 202.

<sup>37</sup> Contrast 7 U. S. C. A. § 246, and the regulations appearing in 7 C. F. R. 102.9, with the statute cited in note 35, *ante*.

<sup>38</sup> Compare 7 U. S. C. A. § 254, with Ill. Rev. Stat. 1949, Vol. 2, Ch. 114, § 202.

<sup>39</sup> Ill. Const. 1870, Art. XIV. See also *Hannah v. People*, 198 Ill. 77, 64 N. E. 776 (1902).

the federal act requires only that receipts issued for such grain must disclose the true relationship when an operator stores his own grain.<sup>40</sup> The mixing of grain of different grades is regulated by both acts, as is the practice of sacrificing or rebating storage charges.<sup>41</sup> Extensive regulation of inadequate, inefficient and unsafe facilities is provided for under both acts.<sup>42</sup> Operation without a state license is, of course, forbidden in Illinois,<sup>43</sup> but no federal license is compulsory.<sup>44</sup> Abandonment of warehouse service is possible, under the state law, only with commission approval,<sup>45</sup> but is spoken of only with reference to "termination" in the federal act, one ground for which is "ceasing to do business."<sup>46</sup> The filing and publishing of rate schedules have been subjected to control under both.<sup>47</sup>

By the test previously stated, each of the nine matters outlined was held, by the Rice case, to be beyond the reach of the Illinois Commerce Commission, since Congress had declared a policy on each of the subjects in the federal Warehouse Act. Yet, the court has not held that an elevator operator is altogether acquitted of responsibility to state law for he must still conform to matters of regulation imposed by the state which are not touched by Congress. State regulation, however, is prohibited as to all matters "touched," even though lightly, by federal law, for the prohibition is not limited to those subjects where there is direct conflict or where there is a precise concurrence in control.<sup>48</sup> The Rice case, then, leaves a little power in the state while serving to wipe out a great deal of the power formerly enjoyed.

<sup>40</sup> 7 U. S. C. A. § 250(1).

<sup>41</sup> The Illinois restriction appears in Ill. Rev. Stat. 1949, Vol. 2, Ch. 114, § 204. The federal view is set out in 7 U. S. C. A. §§ 256, 258 and 262, and in 7 C. F. R. 102.50.

<sup>42</sup> Compare Ill. Rev. Stat. 1949, Vol. 2, Ch. 111½, §§ 32, 49 and 50, with 7 U. S. C. A. § 243, and with 7 C. F. R. §§ 102.7 and 102.47.

<sup>43</sup> Ill. Rev. Stat. 1949, Vol. 2, Ch. 114, § 191.

<sup>44</sup> 7 U. S. C. A. §§ 243-5; 7 C. F. R. §§ 102.3-102.12.

<sup>45</sup> Ill. Rev. Stat. 1949, Vol. 2, Ch. 111½, § 49a.

<sup>46</sup> 7 U. S. C. A. § 246; 7 C. F. R. § 102.9.

<sup>47</sup> The state provisions are set out in Ill. Rev. Stat. 1949, Vol. 2, Ch. 111½, §§ 33 and 35. For the federal stipulations, see 7 C. F. R. § 102.5.

<sup>48</sup> That position was advanced by Mr. Justice Frankfurter in his dissenting opinion in *Rice v. Santa Fe Elevator Corp.*, 331 U. S. 218 at 238, 67 S. Ct. 1146 at 1156, 91 L. Ed. 1447 at 1463 (1946).

The legislative history of the state and federal acts indicates that there existed two distinct purposes to be subserved in the regulation of grain warehouses. The primary objective of federal regulation has been to enhance and stabilize the value of warehouse receipts for use as collateral in financial transactions. The states, by contrast, have intended their acts as a means by which to protect the producer and the public from abuses by warehousemen who occupy a strategic position in the flow of grain from producer to consumer. Notwithstanding this variation in purpose, Congress and the Supreme Court have now wiped out a goodly portion of the accumulation of state legislation which had been permitted to flourish in the train of *Mumm v. Illinois*.

Advocates of uniformity might well seek to justify the more recent development. But the cold truth is that the United States Warehouse Act was not designed to accomplish, nor is it capable, without implementation, of serving, those ends sought by the states. While Congress has "touched" upon certain subjects to the exclusion of the states, it has not seen fit to provide adequate enforcement provisions, nor has it developed an agency equipped with either manpower, funds, or the will to enforce its policies. The abuses which the petitioner in the Rice case complained about probably still persist, the operators having withdrawn to the protection of uniform non-regulation by the Secretary of Agriculture through the simple and convenient expedient of obtaining a federal license. It is true that there is a residue of control left in the states, but the possibility of using such power in an effective manner is absent because of the withdrawal of all the important means by which state law could achieve effective control.<sup>49</sup>

<sup>49</sup> *Rice v. Santa Fe Elevator Corp.*, 331 U. S. 218, 67 S. Ct. 1146, 91 L. Ed. 1447 (1946), also involved three regulatory measures imposed by the Illinois statute designed to prevent an unwarranted drain on utility funds and the creation of unsound financial structures. These provisions required commission approval of all contracts between the utility and its "affiliates," of contracts between the utility and other public utilities, and for the issuance of certain securities. See Ill. Rev. Stat. 1949, Vol. 2, Ch. 111½, §§ 8(a) (3), 21 and 27. It was held that Congress had not excluded state action on these matters since no provision of the United States Warehouse Act related to these subjects. The problem of determining whether other specific state provisions may be valid or not is simply one of examination to see if the federal act, or the regulations thereunder, have touched on the particular subject.

An overworked Secretary of Agriculture has found himself handed the job of regulating grain warehouses in all major particulars by an amendment designed to bring about one thing, that is the strengthening of warehouse receipts. *Laissez faire* has been introduced outside the scope of his very narrow powers. As things now stand, any energetic effort to regulate must be made by the federal government, since an attempt by the state to do so will merely force the operator into the arms of the federal licensing agency and out of the reach of the state. The fact remains, however, that history shows that at no time has Congress deemed it advisable to introduce compulsory uniformity. The obvious suggestion, therefore, is that Congress should repeal the federal law, so as to reinstate local regulation, or provide for an adequately manned and financially able federal agency to take over active enforcement of a law comparable to the ones of which the states have been deprived.

Until that happens, there is not much left for the states to do in the limited opportunities for regulation left to them. It might be wise for the states to avoid conflict entirely by exempting federal licensees from all applications of state law, as has been done in Idaho, New Mexico and Oklahoma. In the four and one-half years since the Rice case was decided, however, no state has made any effort to revise its warehousing laws in the light of that decision. This may be an indication that the need for state regulation has diminished or ceased to exist. Perhaps warehouse regulation has shifted into another phase. But whether or not times have changed as much as the Rice case would imply will be known when, and if, the voices of dissatisfaction heard prior to *Munn v. Illinois* are again raised against the prevailing system of non-regulation of the warehousing business.