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Constitutional Law--Freedom of Press--Restriction by Statute (State v. Evjue, 33 N.W.2d 305 (Wis. 1948))

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the drawer has a double intent: to make the instrument payable to the person before him; and to make it payable to the person whom he believes the impersonator to be. The courts then conclude that the dominant intent is to transfer title to the person standing before the drawer.[4]

The problem then arises as to how to ascertain the intent of a drawer in the type of situation presented in the instant case, that is, where the fraudulent imposter represents that he is an agent for a named principal. In such a case the courts almost unanimously hold that title does not pass to the person standing before the drawer because he intends to transfer title only to the supposed agent's principal.[5] This rule is so whether the principal is an existent or non-existent person, for the mere fact that there was no such person as the purported principal does not change the drawer's intent.[6]

In the New York cases which have arisen upon similar fact situations it has also been held that title does not pass to the bogus agent; the result being that neither a holder in due course nor a drawee-bank acquires any rights in the instrument.[7]

The instant case, therefore, is in accord with the authorities both in other jurisdictions and in New York. The facts clearly showed that the plaintiff intended to deal with the non-existent corporation, and not with the purported agents. For this reason the conclusion in the case was correct, for, as we have seen, the basic test in this type of case is the drawer's intent.

J. M. N.

CONSTITUTIONAL LAW—FREEDOM OF PRESS—RESTRICTION BY STATUTE.—A criminal complaint charged the defendant with unlawfully publishing and causing to be published in a newspaper the identity of a certain female who had been raped. A Wisconsin statute forbade the divulging of such identification.[1] The lower court, up-

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[4] Cohen v. Lincoln Savings Bank of Brooklyn, 275 N. Y. 399, 10 N. E. 2d 457 (1937); Montgomery Garage Co. v. Manufacturers' Liability Ins. Co., 94 N. J. L. 152, 109 Atl. 296 (1920).

[5] Bennett v. First Nat. Bank, 47 Cal. App. 450, 190 Pac. 831 (1920); Moore v. Moultrie Banking Co., 39 Ga. App. 687, 148 S. E. 311 (1929); Dana v. Old Colony Trust Co., 245 Mass. 347, 139 N. E. 541 (1923).

[6] Strang v. Westchester County Nat. Bank, 235 N. Y. 68, 138 N. E. 739 (1923).

[7] Strang v. Westchester, *supra* note 6; United Stores Co. v. American Raw Silk Co., 184 App. Div. 217, 171 N. Y. Supp. 480 (1st Dep't 1918), *aff'd*, 229 N. Y. 532, 129 N. E. 904 (1920).

[1] Wis. Stats. § 348.412 (1945) which provides: "Any person who shall publish or cause to be published in any newspaper, magazine, periodical or circular, except as the same may be necessary in the institution or prosecution of any civil or criminal court proceeding, or in the compilation of the records pertaining thereto, the identity of a female who may have been raped or subjected to any similar criminal assault, shall be punished by imprisonment in the

holding the defendant's contention, declared the statute unconstitutional and invalid and discharged the defendant. *Held,* judgment reversed and cause remanded. The statute is a valid exercise of the police power and does not violate the constitutional guaranties of the freedom of the press. *State v. Evjue,* 253 Wis. 146, 33 N. W. 2nd 305 (1948).

The defendant's arguments proposed three questions for the court's determination: (1) Is the statute ". . . sufficiently definite and certain as not to constitute a denial of due process of law?" (2) Does it ". . . contain unwarranted classification constituting a denial of due process of law?" and (3) "Is it a valid exercise of the police power as against the contention that it violates constitutional guaranties of the freedom of the press?"

The court after a careful examination of the wording of the statute, answered the first question in the affirmative and the second in the negative, disposing of both issues with little difficulty. In discussing the third question, the court, in view of the defendant's contention that such circumstances as described in the statute did not create "a clear and present danger" which would justify the legislature in prescribing the limitation on the freedom of the press, sought to find sufficient cause for granting of the power. The defendant's argument that the protection of the female victim under the circumstances described in the statute is not of sufficient importance to justify restrictive legislation affecting the constitutional right of the press because there is no clear and present danger, is supported by two United States Supreme Court decisions, *Herndon v. Lowry*[2] and *Thomas v. Collins.*[3] It was found in the *Herndon* case that a Georgia statute[4] violated the Fourteenth Amendment in that it prescribed no reasonably ascertainable standard of guilt and thereby set vague and indeterminate boundaries to the freedom of speech and assembly.

In the *Thomas* case, which concerned state regulation of labor union organizing, the Supreme Court, in reversing a decision of the Supreme Court of Texas, declared a Texas statute[5] violated the First Amendment of the United States Constitution.

However, though both of these decisions seem to favor the defendant's case, they are not decisive of the issue in the principal case since the court in both cases did admit that similar though not iden-

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county jail for not more than one year or by fine not exceeding five hundred dollars, or by both such fine and imprisonment."

[2] Herndon v. Lowry, 301 U. S. 242, 81 L. ed. 1066 (1937).

[3] Thomas v. Collins, 323 U. S. 516, 89 L. ed. 430 (1945).

[4] GA. PEN. CODE § 56 (1933): "Any attempt, by persuasion or otherwise, to induce others to join in any combined resistance to the lawful authority of the State shall constitute an attempt to incite insurrection."

[5] Tex. Stat. §§ 5-12 (1943) which require labor organizers to register with and procure an organizer's card from a designated state official before soliciting membership in labor unions.

tical legislation might be upheld as constitutional. The court stating in the *Herndon* opinion that utterances "inimical to the general welfare" and "involving danger of substantive evil" may be penalized in the exercise of the state's police power,[6] and that a state's "police statutes may only be declared unconstitutional where they are *arbitrary* or *unreasonable*[7] attempts to exercise authority vested in the state in the public interest." In the *Thomas* case that part of the Texas court's opinion was upheld which stated that "The State under its police power may enact laws which interfere indirectly and to a limited extent with the right of speech or the liberty of the people where they are reasonably necessary for the protection of the general public."[8]

The court in the principal case supported its holding with the reasoning of a prior Supreme Court decision,[9] and held that the slight restriction of the freedom of the press prescribed by the statute is fully justified when the situation of the victim of the assault and the handicap under which prosecuting officers labor in such cases, is weighed against the benefit of publishing the identity of the victim in connection with the details of the crime. This prior case involved a New Hampshire statute similar to the one in the principal case which was attacked as violating one's right to freedom of speech. The Supreme Court therein said: "It has been well observed that such utterances (those which by their very utterance *inflict injury*[10] or tend to incite an immediate breach of the peace) are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that might be derived from them is clearly outweighed by the social interest in order and morality." The Wisconsin statute was held to have been intended to protect the victim from embarrassment and offensive publicity which, the court felt, had a strong tendency to affect her future standing in society. The legislation was thus justified.

D. S.

CONSTITUTIONAL LAW—SUPPRESSION OF EVIDENCE OBTAINED BY SEARCH AND SEIZURE WITHOUT A WARRANT.—The petitioner McDonald was convicted on charges of carrying on a lottery known as the numbers game based on evidence obtained by a search made without a warrant. Upon trial it appeared that police officers, having kept McDonald under surveillance for several months, raided his quarters after one of them unlawfully entered the building through

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[6] See note 2 *supra.*
[7] Italics ours.
[8] See note 3 *supra.*
[9] Chaplinsky v. New Hampshire, 315 U. S. 568, 86 L. ed. 1031 (1942).
[10] Italics ours.