St. John's Law Review

Volume 18, November 1943, Number 1 Article 7

Constitutional Law--Freedom of Speech and Press--Distribution of Literature (Martin v. City of Struthers, Ohio, 317 U.S. 589 (1943))

St. John's Law Review

early Michigan case held that where the defendant maliciously and without good cause persuaded a potential buyer to reject the machine of the plaintiff, inventor, the defendant was liable for damages sustained.[10] In the principal case the Court of Appeals affirmed the determination reached in *Hornstein v. Podwitz*,[11] to the effect that all parties wrongfully inducing a breach of contract to pay a broker commissions are jointly and severally liable. However, the court by basing the decision on the conspiracy to prevent the plaintiff from earning commissions rather than upon the theory of interference with the payment of commissions already accrued, extended the law to include cases wherein the contractual relationship has not yet matured.

J. L. S.

CONSTITUTIONAL LAW—FREEDOM OF SPEECH AND PRESS—DISTRIBUTION OF LITERATURE.—The appellant, espousing the creed of Jehovah's Witnesses, knocked on doors and rang doorbells in the defendant city for the purpose of distributing leaflets advertising a religious meeting. For delivering a leaflet, she was convicted in the Mayor's Court and fined on a charge of violating a city ordinance.[1] On appeal from conviction, appellant claimed the ordinance was in violation of the right of freedom of press and religion under the Federal Constitution.[2] The Supreme Court of Ohio affirmed the conviction,[3] whereupon appellant appealed to the United States Supreme Court. *Held*, reversed. The ordinance is unconstitutional because it abridges the freedom of speech and press as guaranteed by the First and Fourteenth Amendments of the United States Constitution.[4] *Martin v. City of Struthers, Ohio*, 317 U. S. 589, 63 Sup. Ct. 42, 87 L. ed. 22 (1943).

---

[10] Morgan v. Andrews, 107 Mich. 33, 64 N. W. 869 (1895).

[11] 224 App. Div. 11, 229 N. Y. Supp. 159 (1928), *aff'd*, 254 N. Y. 443, 173 N. E. 674 (1930).

[1] The ordinance reads as follows: "It is unlawful for any person distributing handbills, circulars or other advertisements, to ring the doorbell, sound the door knocker, or otherwise summon the inmate or inmates of any residence to the door for the purpose of receiving such handbills, circulars or other advertisements they or any other person with them may be distributing."

[2] U. S. CONST. AMEND. I. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press."

U. S. CONST. AMEND. XIV. Second sentence reads, in part: ". . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . . ."

[3] 139 Ohio St. 372, 40 N. E. (2d) 154.

[4] See note 2 *supra*.

But see dissenting opinion of Mr. Justice Reed: "No ideas are being suppressed. No censorship is involved. The freedom to teach or preach by word or book is unabridged, save only the right to call a householder to the door of his house to receive the summoner's message. I cannot expand this regulation to a violation of the First Amendment." Martin v. Struthers, 317 U. S. 589, 63 Sup. Ct. 42, 87 L. ed. 22 (1943).

The right of freedom of speech and of the press is zealously guarded by the United States Supreme Court. In upholding this right, the court in the instant case declares that freedom to distribute information to each citizen who desires to receive it is vital to the preservation of a free society. The right of freedom of speech and press embraces the right to distribute literature.[5] Door-to-door canvassing has become a most effective means for many different groups —religious, political and commercial—to bring their ideas and opinions immediately and directly to the individual.[6] In fact, the federal government, at present, is encouraging the distribution of literature in a house-to-house campaign for the purpose of selling war bonds.[7] Since it is the duty of the courts to determine the validity of the laws which are challenged as unconstitutional, the Supreme Court will revoke those enactments which are tantamount to a censorship of opinions or arbitrary sanction by officials.[8] Such an ordinance was declared unconstitutional because the permission of the city manager was required.[9] In the *Schneider* case,[10] the enactment was invalidated because the permission of a police officer was a prerequisite to obtaining a license to disseminate literature. This established the officer as a censor to determine what literature could be distributed and who might do so. In another Jehovah's Witnesses case,[11] the secretary of the public welfare council had the authority to pass on the worthiness of any charitable solicitation. This, too, was declared void. There cannot be an outright prohibition of the distribution of religious literature at all times.[12] Of course, the guarantee of freedom of press and speech is not absolute,[13] and a state, in its exercise of police power, can curb those who abuse this privilege.[14] It is a proper regulation where the restriction is reasonable. However, in the *Struthers* case,[15] the city claimed the ordinance was for the protection of the residents, the majority of whom were engaged in the iron and steel industry. Many were on swing shifts, working nights and sleeping days, and the ordinary canvasser could disrupt their sleep by ringing bells during the daytime. In addition, the ordinance

---

[5] Lovell v. Griffin, 303 U. S. 444, 452, 58 Sup. Ct. 666, 82 L. ed. 949 (1938).

[6] Schneider v. State, 308 U. S. 147, 164, 60 Sup. Ct. 146, 84 L. ed. 155 (1939).

[7] "Women's Handbook", pp. 22 and 63, a publication of the Women's Section of the War Savings Staff of the Department of the Treasury.

[8] Jones v. Opelika, 316 U. S. 584, 595, 62 Sup. Ct. 1231, 86 L. ed. 1691 (1943).

[9] Lovell v. Griffin, 303 U. S. 447, 451. The ordinance forbade the distribution of any literature of any kind without written permission.

[10] Schneider v. State, 308 U. S. 147, 60 Sup. Ct. 146, 84 L. ed. 155 (1939).

[11] Cantwell v. Connecticut, 310 U. S. 296, 60 Sup. Ct. 900, 84 L. ed. 1213 (1940).

[12] Lovell v. Griffin, 303 U. S. 444, 58 Sup. Ct. 666, 82 L. ed. 949 (1938).

[13] Gitlow v. People of State of N. Y., 268 U. S. 652, 666, 45 Sup. Ct. 625 (1925).

[14] *Id.* 268 U. S. 652, 667, 45 Sup. Ct. 625 (1925).

[15] Martin v. Struthers, 317 U. S. 589, 63 Sup. Ct. 42, 87 L. ed. 22 (1943).

was a deterrent to burglars who, posing as canvassers, could ascertain whether the house was empty. The Supreme Court held that this manner of distribution of literature outweighed by far the nuisances which might result.[16] Some means of identification can be required of a stranger, in order to establish his character, authority and purpose.[17] The decision to exclude canvassers should rest with the homeowner alone, and not with the city—unless, of course, the individual specifically requests the city to take over his right of exclusion. There is no criterion by which to measure what is a reasonable restriction, and what is not. Each case rests on its own individual facts. In the long view, the Supreme Court is guided in its decisions by the belief that the right to disseminate religious literature freely is essential to the spiritual guidance and high moral standards of the citizens of a democracy.[18]

P. S. L.

CONSTITUTIONAL LAW—LOCAL LAW PROHIBITING ITINERANT PEDDLING ON STREETS UNCONSTITUTIONAL.—The plaintiff who is engaged in the business of selling ice-cream to consumers in the streets from refrigerated motor cars, tricycles and hand carts, seeks to enjoin the city of New York from enforcing an ordinance [1] which prohibits itinerant peddling except in enumerated circumstances. The plaintiff contended that the law was unconstitutional inasmuch as it was in violation of the Fourteenth Amendment of the United States Constitution and Article I, Sections 1, 6 and 11 of the New York

---

[16] See note 15 *supra*. *Accord*, Schneider v. State, 308 U. S. 147, 162, 60 Sup. Ct. 146, 84 L. ed. 155 (1939); Hague v. C.I.O., 307 U. S. 496.

[17] See note 11 *supra*.

[18] Cantwell v. Conn., 310 U. S. 296, 310, 60 Sup. Ct. 900, 84 L. ed. 1213, 128 A. L. R. 1352.

[1] N. Y. CITY ADMIN. CODE § 435—14.0. Itinerant peddling prohibited. a. It shall be unlawful for any person to peddle, hawk, vend or sell any goods, wares or merchandise on any of the streets of the city. b. The provisions of this section shall not apply to: 1. Any person who operates and maintains a push-cart or other vehicle under an open air market license issued by the commissioner of public markets pursuant to the agriculture and markets law; or to — 2. Any war veteran or any widow of a war veteran who peddles under a license issued pursuant to section thirty-two of the General Business Law; or to — 3. Any adult blind person who operated under a license issued pursuant to section ten of the General City Law or by the commissioner of markets pursuant to section B36-89.0 of the code; or to — 4. Any person who sells newspapers and periodicals; or to — 5. Any person who owns and operates a farm in the city and who sells produce grown on such farm in the streets of the city; 6. Any person who violates this section, upon conviction thereof, shall be fined not more than ten dollars or imprisoned for not more than ten days, or both.