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Constitutional Law--Fourteenth Amendment--Due Process--Freedom of Speech and Right of Assembly--Federal Jurisdiction (Hague et al. v. Committee for Industrial Organization et al., 59 Sup. Ct. 954 (1939))

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The statute is constitutional;[15] it is neither vague nor uncertain in failing to fix a definite standard of guilt nor in informing the accused ones of the nature and cause of the accusation. If the restraint upon the doctors was the direct result of the activity of the defendants, any indirect effect it may have had upon the association or hospitals would not suffice to support the charges as to them.[16]

There is no doubt of the persuasive influence of this decision on the law of those states where similar provisions against combinations for restraint of trade exist.[17] It is also interesting to consider the effect of this decision upon the practice of law, in the light of the analogous relationship between medical society and physician, in the one instance, and bar association and attorney, in the other. Although the influence of the bar associations has manifested itself in the maintenance of an ideal standard of ethics for the bar, such influence is not incapable of abuse. It remains to be seen whether or not bar associations might be engaged in restraint of "trade" in the enforcement of their requirements upon the legal profession. However, in view of the decision in the instant case, it is most improbable that the practice of law would be considered a trade.

This decision, based as it is on a technical definition of the word "trade", is to be regretted as it may impede the development of group health associations and the furnishing of medical relief to the low-income group who cannot otherwise afford to obtain complete and adequate medical care. However, the door is left open for tort liability in cases of this sort which may or may not act as a deterrent to the alleged restrictive activities of the defendant medical societies.[18]

C. B. D.

CONSTITUTIONAL LAW — FOURTEENTH AMENDMENT — DUE PROCESS—FREEDOM OF SPEECH AND RIGHT OF ASSEMBLY—FEDERAL JURISDICTION.—The Committee for Industrial Organization[1] and

doctors suffered in the restraint of their profession, the court does not infer, however, that the practice of medicine is a *trade*.

[15] Nash v. United States, 229 U. S. 373, 33 Sup. Ct. 780 (1913).

[16] Standard Oil Co. v. United States, 283 U. S. 163, 179, 51 Sup. Ct. 421 (1931).

[17] N. Y. STOCK CORP. LAW § 23 prohibits corporations doing business in New York State from combining "with any other corporation or person for the creation of a monopoly or for the unlawful restraint of trade or for the prevention of competition in any necessary of life." N. Y. GENERAL BUSINESS LAW § 340 (Donnelly Anti-Trust Act) declares void and illegal agreements for monopoly and "every contract, agreement, arrangement or combination whereby * * * competition or the free exercise of any activity in this state in * * * *trade* practice is or may be restrained or prevented * * *".

[18] In the present case, the group practitioners undoubtedly had a cause of action in *tort* for damages to their livelihood if they had been injured by the alleged wrongful acts of the defendants.

[1] Now called Congress of Industrial Organizations. The purpose of this body is to organize into labor unions unorganized workers and to cause such

others [2] instituted suit in the United States District Court in New Jersey against Frank Hague, individually and as Mayor of Jersey City, and others,[3] to enjoin interference with the plaintiff's rights of freedom of speech and of assembly, in refusing to permit them to make public addresses or distribute printed matter in Jersey City concerning the National Labor Relations Act and its operation. Defendants based their justification for refusing to grant such a permit upon a local ordinance [4] which gave the Director of Public Safety of Jersey City the discretion to refuse permits for assembly and public speaking on the ground that the same might lead to rioting and public disorder. The Circuit Court of Appeals [5] modified and affirmed the District Court's judgment [6] in favor of the plaintiffs. Upon *certiorari* to the Supreme Court, *held,* two judges dissenting, the ordinance is unconstitutional under the due process clause of the Fourteenth Amendment and the Court had jurisdiction under Judicial Code § 24(14) to declare it void as against the individual plaintiffs regardless of their citizenship or of the amount in controversy, but having decreed the ordinance void, the Court should not have enjoined the defendants as to the manner in which they should administer it. *Hague et al.* v. *Committee for Industrial Organization et al.,* — U. S. —, 59 Sup. Ct. 954 (1939).

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labor unions to function as collective bargaining agencies for the betterment of terms and conditions of employment. Hague v. C. I. O., 101 F. (2d) 774, 779 (C. C. A. 3d, 1939).

[2] The plaintiffs are the C. I. O., labor organizations affiliated with the C. I. O., individual representatives of such organizations, and the American Civil Liberties Union, a membership corporation whose work consists of taking measures deemed by it to be essential for the enforcement of the rights secured by the First and Fourteenth Amendments to the United States Constitution.

[3] The defendants are the Mayor of Jersey City, the Director of Public Safety, the Chief of Police, and the Board of Commissioners of Jersey City.

[4] "The Board of Commissioners of Jersey City Do Ordain:

"1. From and after the passage of this ordinance, no public parades or public assembly in or upon the public streets, highways, public parks or public buildings of Jersey City shall take place or be conducted until a permit shall be obtained from the Director of Public Safety.

"2. The Director of Public Safety is hereby authorized and empowered to grant permits for parades and public assembly, upon application made to him at least three days prior to the proposed parade or public assembly.

"3. The Director of Public Safety is hereby authorized to refuse to issue said permit when, after investigation of all of the facts and circumstances pertinent to said application, he believes it to be proper to refuse the issuance thereof; provided, however, that said permit shall only be refused for the purpose of preventing riots, disturbances or disorderly assemblage.

"4. Any person or persons violating any of the provisions of this ordinance shall upon conviction before a police magistrate of the City of Jersey City be punished by a fine not exceeding two hundred dollars or imprisonment in the Hudson County jail for a period not exceeding ninety days or both."

[5] 101 F. (2d) 774 (C. C. A. 3d, 1939).

[6] 25 F. Supp. 127 (D. C. N. J. 1938).

There was no proof or finding of fact that any of the plaintiffs were citizens of the United States. That, however, was not necessary for the maintenance of this action because the Fourteenth Amendment prohibits the states from depriving *any* person of life, liberty, or property without due process of law.[7] And under Section 1979 of the Revised Statutes any person within the jurisdiction of the United States, whether a citizen or not, may bring an action at law, suit in equity, or other proper proceeding for redress, for the deprivation of any rights, privileges, or immunities secured by the United States Constitution or federal statutes.[8] The individual plaintiffs and not the corporate plaintiff, the American Civil Liberties Union, can get relief because the liberty guaranteed by the "due process clause" of the Fourteenth Amendment is the liberty of natural, not artificial persons.[9]

The federal courts are given jurisdiction in suits under the United States Constitution and statutes by the Judicial Code § 24(1)[10] which confers authority over action in which the amount in controversy exceeds a specified value, and by the Judicial Code § 24(14)[11] which gives the Court jurisdiction of suits regardless of the amount in controversy. The acts are not contradictory and are to be exercised in harmony.[12] The civil rights, contested by the suit at bar, are such that are incapable of possessing a pecuniary valuation and are therefore subject to the jurisdiction conferred by the Judicial Code § 24(14).[13]

The prohibition against states in the Fourteenth Amendment is not limited to legislative enactments,[14] but may be extended to em-

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[7] Gitlow v. New York, 268 U. S. 652, 45 Sup. Ct. 625 (1925); Whitney v. California, 274 U. S. 357, 47 Sup. Ct. 641 (1927); Fiske v. Kansas, 274 U. S. 380, 47 Sup. Ct. 655 (1927); Near v. Minnesota, 283 U. S. 697, 51 Sup. Ct. 625 (1931); Grojean v. American Press Co., 297 U. S. 233, 56 Sup. Ct. 444 (1936); DeJonge v. Oregon, 299 U. S. 353, 57 Sup. Ct. 255 (1937); Herdon v. Lowery, 301 U. S. 242, 57 Sup. Ct. 732 (1937); Lovell v. City of Griffin, 303 U. S. 444, 58 Sup. Ct. 666 (1938).

[8] 17 STAT. 13 (1871), 8 U. S. C. § 43 (1934) ("Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of U. S. or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress").

[9] Orient Ins. Co. v. Daggs, 172 U. S. 557, 19 Sup. Ct. 281 (1869); Western Turf Ass'n v. Greenberg, 204 U. S. 359, 27 Sup. Ct. 384 (1907); see Northwestern Life Ins. Co. v. Riggs, 203 U. S. 243, 27 Sup. Ct. 126 (1906).

[10] 18 STAT. 470 (1887), 28 U. S. C. § 41(1) (1934).

[11] 36 STAT. 1092(1911), 28 U. S. C. § 41(14) (1934).

[12] Board of Com'rs of Seward County v. Aetna Life Ins. Co., 90 Fed. 222 (C. C. A. 8th, 1897); Hemmer v. United States, 204 Fed. 898 (C. C. A. 8th, 1912); Chase v. United States, 238 Fed. 887 (C. C. A. 8th, 1916).

[13] Kurtz v. Moffet, 115 U. S. 487, 6 Sup. Ct. 148 (1885); Holt v. Indiana Manufacturing Co., 176 U. S. 68, 20 Sup. Ct. 272 (1900); Horn v. Mitchell, 243 U. S. 247, 37 Sup. Ct. 293 (1917).

[14] Nashville C. & St. L. Ry. v. Taylor, 86 Fed. 168 (D. C. Tenn. 1898).

brace acts performed under the authority of a municipal ordinance.[15] Although these fundamental rights are not absolute,[16] they may not be curtailed by the police power of the state because of previous restraint [17] or because the state authorities believe that the exercise of these rights may lead to riots or disorder.[18] Consequently, the streets and parks, held by the city in trust for the people, must be open for the use of the people in order that they may exercise their rights of free speech and assembly.[19]

Although an ordinance is valid on its face, the fact that it is carried out in illegal and discriminatory manner, as was true in this case, renders it unconstitutional under the "equal protection clause" of the Fourteenth Amendment.[20] The purpose of this clause is to protect the people against intentional and arbitrary discrimination [21] or oppressive inequality either under an illegal statute or by improper execution by the officers acting under it.[22]

The very nature of a democracy implies a right on the part of its residents to peaceably assemble for the discussion of public affairs and to petition for a redress of grievances and this should be upheld at all times and at all costs.

C. G.

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[15] Chy Lung v. Freeman, 92 U. S. 275 (1875).

[16] Gitlow v. New York, 268 U. S. 652, 45 Sup. Ct. 625 (1925) ("Freedom of speech and of the press which is secured by the Constitution does not confer an absolute right to speak or publish * * *"); Shaefer v. United States, 251 U. S. 466, 40 Sup. Ct. 259 (1920); Whitney v. California, 274 U. S. 357, 47 Sup. Ct. 641 (1927); Near v. Minnesota, 283 U. S. 697, 51 Sup. Ct. 625 (1931).

[17] Near v. Minnesota, 283 U. S. 697, 51 Sup. Ct. 625 (1931).

[18] In his concurring opinion in Whitney v. California, 247 U. S. 357, 378, 47 Sup. Ct. 641, 649 (1927), Justice Brandeis stated: "The fact that speech is likely to result in some violence or in destruction of property is not enough to justify its suppression." See New Yorker Staats-Zeitung v. Nolan, 89 N. J. Eq. 387, 388, 105 Atl. 78 (1918).

[19] Knickerbocker Ice Co. v. Forty-second St. and Grand St. Ferry R. R., 176 N. Y. 408, 68 N. E. 864 (1903); City of New York v. New York Ry., 217 N. Y. 310, 112 N. E. 49 (1916).

[20] Chy Lung v. Freeman, 92 U. S. 275 (1875); Baily v. Alabama, 219 U. S. 219, 31 Sup. Ct. 145 (1911).

[21] Truax v. Corrigan, 257 U. S. 312, 42 Sup. Ct. 124 (1921); Joseph S. Finch & Co. v. McKitrick, 23 F. Supp. 244 (D. C. Mo. 1938).

[22] Yick Wo v. Hopkins, 118 U. S. 356, 6 Sup. Ct. 1064 (1886). In Sunday Lake Iron Co. v. Township of Wakefield, 247 U. S. 350, 352, 38 Sup. Ct. 495 (1918), Justice McReynolds said: "The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the state's jurisdiction against arbitrary and intentional discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." In People *ex rel.* Doyle v. Atwell, 232 N. Y. 96, 103, 13 N. E. 364, 367 (1920), Cardozo, J., said: "The Mayor refused a permit, it is said, because the applicants were Socialists. If that is so he was guilty of a grave abuse of power."