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Article 14

Constitutional Law--Fourteenth Amendment--Requirement by Municipal Ordinance of Permit to Canvass (Schneider v. State of New Jersey, 308 U.S. 147 (1939))

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system.[4] It is none the less reasonable to assume that a tax based upon a graduated charge upon such proportion of the outstanding capital stock, as the gross receipts of the Texas business bear to the total gross receipts from its entire business, as here, is justified.[5] The state is due some consideration for the measure of protection it affords the corporation, especially since the privilege granted enables the corporation to successfully exploit the business possibilities within the state. Then, too, the volume of property outside the state may cause intrastate property to fluctuate at random. Financial power, no matter where located, if inherent in the assets, may be applied at any point determined by the managers of the corporation. For this reason, it has been held that an entrance fee may be properly measured by capital wherever located.[6] In *Atlantic & Pacific Tea Company* v. *Grosjean*,[7] where the tax was graduated on the number of chain stores under the same management, whether in the same state or not, the Court said: "The law rates the privilege enjoyed in Louisiana according to the nature and extent of that privilege in the light of the advantages, the capacity, and the competitive ability of the chain stores in Louisiana considered not by themselves, as if they constituted the whole organization, but in their setting as integral parts of a much larger organization."[8] This same rule applies to the case in question.

Foreign corporations are entitled to protection under the "due process" and "equal protection" clauses of the Federal Constitution.[9] This protection does not, however, prohibit the states from enacting tax laws aimed at foreign corporations doing business within the state itself. It is sometimes difficult to determine just what constitutes "interstate commerce". Very thin, indeed, is the line separating the power of the state from the exclusive power of Congress in this regard. Consequently, the particular facts of each case will be the determining factor in reaching the ultimate decision.

E. R. D.

CONSTITUTIONAL LAW—FOURTEENTH AMENDMENT—REQUIREMENT BY MUNICIPAL ORDINANCE OF PERMIT TO CANVASS.—Petitioner, Clara Schneider, is a member of the Watch Tower Bible and Tract Society and is known as one of "Jehovah's Witnesses". She

[4] People of the State of New York v. Gamble Latrobe, Jr., *et al.*, 279 U. S. 421, 49 Sup. Ct. 377 (1929).

[5] See note 1, *supra*.

[6] Atlantic Refining Co. v. Virginia, 302 U. S. 22, 58 Sup. Ct. 75 (1937).

[7] 301 U. S. 412, 57 Sup. Ct. 772 (1937).

[8] Atlantic & Pacific Tea Co. v. Grosjean, 301 U. S. 412, 425, 57 Sup. Ct. 772 (1937).

[9] Quaker City Cab Co. v. Commonwealth of Pennsylvania, 277 U. S. 389, 400, 48 Sup. Ct. 553 (1928).

was convicted in the Town of Irvington for canvassing with pamphlets from door to door without a permit as required by a municipal ordinance.[1] Her refusal to apply for a permit was justified in her mind by her belief that to do so would be an act of disobedience and a violation of a command of the Almighty God. On appeal from conviction, she claimed that the municipal ordinance was a direct abridgement of the freedom of the press guaranteed by the Federal Constitution.[2] The Supreme Court of New Jersey upheld the conviction [3] and this decision was affirmed by the Court of Errors and Appeals.[4] Upon *certiorari* [5] to the United States Supreme Court, *held,* one judge dissenting, the ordinance is unconstitutional under the Fourteenth Amendment. *Schneider* v. *State of New Jersey,* 308 U. S. 147, 60 Sup. Ct. 146 (1939).

A municipality's right to pass laws or ordinances designed to protect the public from fraudulent solicitation [6] or to maintain sanitary conditions [7] is limited only by the guarantees existing in the Federal Constitution and its amendments.[8] The New Jersey courts in this case attempted to justify the ordinance on the theory that it was a valid exercise of the police power of the city as its purpose was the protection of the citizens from false appeals in the name of charity. They denied the applicability of the decision of *Lovell* v. *City of Griffin* [9] cited by the petitioner's counsel, by pointing out that in that case the ordinance was aimed at all types of distribution of any literature at any time and in any place without written permission from the city manager, while in the present ordinance the object of control was only door-to-door canvassing.

The Supreme Court declared this distinction invalid and ruled that the *Lovell* case [10] was in point and cited another case [11] in which the ordinance provided for previous administration or censorship of the exercise of the right of free speech and assembly in appropriate public places. The ordinance now under discussion bans all unlicensed communication of ideas from door to door. Any such attempt

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[1] "No person except as in this ordinance provided shall canvass, solicit, distribute circulars or other matter, or call from house to house in the Town of Irvington without first having reported to and received a written permit from the chief of police or officer in charge of Police Headquarters."

[2] "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." U. S. CONST. Amend. XIV, § 1. Grosjean v. American Press Co., 297 U. S. 233, 56 Sup. Ct. 440 (1936); Gitlow v. New York, 268 U. S. 652, 45 Sup. Ct. 625 (1925).

[3] 120 N. J. L. 460, 200 Atl. 799 (1938).

[4] 121 N. J. L. 542, 3 A. (2d) 609 (1939).

[5] Petition granted, 306 U. S. 628, 59 Sup. Ct. 774 (1939).

[6] See Schneider v. State of New Jersey, 308 U. S. 147, 60 Sup. Ct. 146, 147, 148 (1939).

[7] See Snyder v. City of Milwaukee, 306 U. S. 629, 59 Sup. Ct. 789 (1939); Young v. People of State of California, 306 U. S. 628, 59 Sup. Ct. 775 (1939).

[8] U. S. CONST. Amend. XIV, § 1.

[9] 303 U. S. 444, 58 Sup. Ct. 668 (1938).

[10] Lovell v. City of Griffin, 303 U. S. 444, 58 Sup. Ct. 668 (1938).

[11] C.I.O. v. Hague, 307 U. S. 496, 59 Sup. Ct. 954 (1939).

to disseminate ideas could only be done after a submission to review and on obtaining of the approval of the police in the municipality. In this manner, a direct censorship might be imposed. The power of the city to regulate canvassing is not denied by this decision. The court merely declares that any attempt to control in the manner herein utilized will render the ordinance void and the courts will refuse to convict for a violation. The desire on the part of the municipality to protect its citizens from fraudulent appeals which might be made in the name of charity is in keeping with its function as a governing body and may be exercised in regard to regulation of hours and other details. But it cannot attempt to achieve this end by centering control in its own hands, of the ideas to be spread, even if this control is limited to one type of distribution—in this case canvassing, proven by our own history to be one of the most effective methods.

S. K.

CONTRACT MADE IN VIOLATION OF STATUTE—VALIDITY OF CONTRACT AFTER REPEAL OF PROHIBITORY PROVISION—EIGHTEENTH AMENDMENT—FEDERAL RULE—NEW YORK RULE.—While the Prohibition Amendment was in effect[1] defendant was engaged in the lawful manufacture of near beer. It had been deprived of its license for violating a statute passed pursuant to the Amendment. Plaintiff, a resident of Baltimore, operated the Camden Products Co. of New Jersey, which was engaged in the preparation of malt syrup, one of the essential ingredients in the brewing of beer. He had, with knowledge that defendant had lost its license, sold and delivered syrup to the latter to enable it to continue the manufacture of beer in violation of the statute. After the repeal of this statute and the Prohibition Amendment,[2] he brought an action in the District Court of the United States for the Eastern District of Pennsylvania, for the purpose of recovering the price of the malt syrup previously sold and delivered to the defendant. Judgment was in favor of the latter and plaintiff appealed to the Circuit Court of Appeals. *Held,* judgment affirmed. Where a contract is made in violation of a statute which is subsequently repealed, and the parties are in *pari delicto,* the invalidity of the original contract will not be changed. *Fitzsimons* v. *Eagle Brewing Co.,* 107 F. (2d) 712 (C. C. A. 3d, 1939).

Under the federal and majority rule a contract made in violation of a statutory provision is considered void *ab initio* as being based on an illegal consideration, and the removal of the prohibitory statute

[1] U. S. CONST. Amend. XVIII; 41 STAT. 307, 318 (1919), 27 U. S. C. A. §§ 4, 58 (1925).

[2] U. S. CONST. Amend. XXI, repealing Amend. XVIII.