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Constitutional Law--National Firearms Act--The Right to Bear Arms (United States v. Miller, 307 U.S. 174 (1939))

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cisions [15] make it seem probable that our courts are attempting to turn away from that doctrine.

Consideration of policy may be advanced both for and against the acceptance of jurisdiction by the Supreme Court in this case. This court seems an inappropriate forum to litigate such a matter as domicile, and the Supreme Court's jurisdiction should be exercised only when absolutely necessary and when the case is in itself absolutely justiciable.[16] However, under our system of jurisprudence the Supreme Court must apparently be the final arbiter if two state courts reach conflicting decisions, and the court can and will protect itself against feigned controversies. In the principal case, Mr. Justice Stone in writing the court's opinion is careful to point out the exceptional circumstances of this case and the fact that the court was taking jurisdiction only because of the possibility that the total taxes might exceed the value of the estate. However, in view of the straining of the court to find a justiciable case in this action, it is extremely probable that even in cases presenting different circumstances, the court would attempt to acquire jurisdiction so as to determine the domicile—unless, as Mr. Justice Frankfurter suggests, it abandons entirely the single-state domicile doctrine.

A. A.

CONSTITUTIONAL LAW—NATIONAL FIREARMS ACT—THE RIGHT TO BEAR ARMS.—Defendants were indicted for transporting in interstate commerce, a certain firearm subject to registration and taxation under the National Firearms Act,[1] without having complied with the provisions of the Act.[2] On appeal by the United States from a judgment sustaining the demurrer, *held,* reversed. The Act in question is not unconstitutional since it does not interfere with the right of the people to keep and bear arms as guaranteed by the Second Amendment [3] nor does it usurp the police power reserved to the states.[4] *United States* v. *Miller,* 307 U. S. 174, 59 Sup. Ct. 817 (1939).

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[15] Curry v. McCanless, 307 U. S. 350, 59 Sup. Ct. 900 (1939); Graves *et al.* v. Elliott *et al.,* 302 U. S. 357, 59 Sup. Ct. 913 (1939); see (1939) 14 ST. JOHN'S L. REV. 195.

[16] Louisiana v. Texas, 176 U. S. 1, 15, 20 Sup. Ct. 251 (1900).

[1] 48 STAT. 1236, 26 U. S. C. §§ 1132–1132q (1934) ("An Act to provide for the taxation of manufacturers, importers and dealers in certain firearms and machine guns, to tax the sale or other disposal of such weapons, and to restrict importation and regulate interstate commerce thereof").

[2] *Id.* at 1239, 26 U. S. C. § 1132j (1934) ("It shall be unlawful for any person who is required to register * * * or has not in his possession a stamp-affixed order * * * to ship, carry or deliver any firearm in interstate commerce").

[3] U. S. CONST. Amend. II ("* * * the right of the people to keep and bear arms shall not be infringed").

[4] Sonzinsky v. United States, 300 U. S. 506, 57 Sup. Ct. 554 (1937).

The right to bear arms was formerly considered as one of the essential features of a democracy.[5] It is not granted by the Constitution [6] but merely guaranteed by it.[7] The right has been recognized so as to make effectual the common defense, for which purpose the citizenry were to be banded into the militia.[8] But this view has since given way to legislative enactments prohibiting the carrying of concealed weapons and the courts have held that such regulation is no impairment of a constitutional immunity.[9] Such regulation must be held reasonable because it is conducive to a better order in society, and further, the function of the militia is not hindered thereby.[10] Thus it is not an invasion of the right to make it unlawful for any person to carry a dirk, sword cane, stiletto, slungshot or similar weapon [11] since they are not the common weapons of warfare.

The instant case decided that a sawed-off shotgun is not, within judicial notice, part of the ordinary military equipment; nor could its use contribute to national defense. The Amendment will not be construed so as to permit unauthorized bodies of men to drill with firearms [12] even though the weapons be incapable of firing.[13] It should be noted that any attempt to contravene the Amendment by regulation which amounts to a destruction of the right would undoubtedly be unconstitutional.[14]

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[5] 2 STORY, CONSTITUTION (2d ed. 1851) 1896 ("The right of the people to keep and bear arms has justly been considered as the palladium of the liberty of a republic").

[6] United States v. Cruishank, 92 U. S. 542 (1875); *Ex parte* Rameriz, 193 Cal. 633, 226 Pac. 914 (1924); State v. Workman, 35 W. Va. 367, 14 S. E. 9 (1891); see 11 AM. JUR. (1937) p. 1104, § 313.

[7] COOLEY, CONSTITUTIONAL LIMITATIONS (9th ed. 1927) 529.

[8] U. S. CONST. Art. I, § 8 ("Congress shall have the power * * * to provide for organizing, arming and disciplining the militia"); instant case at 818 ("* * * The signification attributed to the term Militia appears from the debates in the convention, the history and legislation of colonies and states, and the writings of approved commentators. These show plainly that the militia comprised all males physically capable of acting in concert for the common defense"); *Ex parte* Rameriz, 193 Cal. 633, 226 Pac. 914 (1924) (the right of the citizen to bear arms is limited to use in the common defense, not private brawls); 2 STORY, CONSTITUTION (2d ed. 1851) § 1897.

[9] Miller v. Texas, 153 U. S. 535, 14 Sup. Ct. 874 (1894); Wilson v. State, 33 Ark. 557 (1878); People v. Persce, 204 N. Y. 397, 97 N. E. 877 (1912); Salina v. Blakesly, 72 Kan. 230, 83 Pac. 619 (1905); State v. Keet, 269 Mo. 206, 190 S. W. 573 (1916); State v. Workman, 35 W. Va. 367, 14 S. E. 9 (1891). *Contra:* Bliss v. Comm. 2 Litt. 9 (Ky. 1822) (A later constitutional provision expressly gave a general assembly the right to prevent persons from carrying concealed weapons); *In re* Brickley, 8 Idaho 597, 70 Pac. 609 (1902).

[10] McKenna, *The Right to Keep and Bear Arms* (1928) 13 MARQ. L. REV. 138.

[11] People v. Persce, 204 N. Y. 397, 97 N. E. 877 (1912); English v. State, 35 Tex. 473 (1872); State v. Wilburn, 7 Baxt. 57 (Tenn. 1872); Aymette v. State, 21 Tenn. 154 (1840).

[12] Presser v. Illinois, 116 U. S. 252, 6 Sup. Ct. 580 (1886); Comm. v. Murphy, 166 Mass. 171, 44 N. E. 138 (1896).

[13] Comm. v. Murphy, 166 Mass. 171, 44 N. E. 138 (1896).

[14] People v. Zerillo, 219 Mich. 635, 189 N. W. 927 (1922); State v. Wilfort, 74 Mo. 528 (1881).

The Second Amendment is a limitation upon the power of Congress and not upon the states.[15] However, since all citizens capable of bearing arms constitute the reserved military force of the United States, the states cannot prohibit people from bearing arms so as to prevent them from assisting in national defense.[16] The framers of the Constitution could not have intended that their recognition of the right to bear arms was to be perverted by wrongdoers into an aid against societal control of crime. In a previous case upon the Act, the Court stated that " * * * The second amendment to the Constitution * * * has no application to this act. The Constitution does not grant the privilege to racketeers and desperadoes to carry weapons of the character dealt with in the act. It refers to the militia; to the protective force of government; to the collective body and not individual rights." [17]

A. S. V.

COPYRIGHTS—RIGHT TO MAINTAIN INFRINGEMENT SUIT—SUFFICIENCY OF COMPLIANCE WITH SECTION 12, COPYRIGHT ACT 1909.—Petitioner sought an injunction, damages, etc., because of alleged unauthorized use of a magazine article copyrighted under the Copyright Act. Petitioner published a monthly magazine and claimed copyright by printing thereon the required statutory notice.[1] Subsequently, and before [2] petitioner deposited copies and received a certificate of registration,[3] respondents published and offered for general sale a book containing material substantially identical with an article contained in petitioner's magazine. Respondents deposited copies in the copyright office and received a certificate of registration before petitioner did. Its book contained usual notice of claimed-copyright

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[15] United States v. Cruishank, 92 U. S. 542 (1875); Presser v. Illinois, 116 U. S. 252, 6 Sup. Ct. 580 (1886).

[16] Presser v. Illinois, 116 U. S. 252, 6 Sup. Ct. 580 (1886).

[17] United States v. Adams, 11 F. Supp. 216, 218 (D. C. Fla. 1935).

[1] 35 STAT. 1077 (1909), 17 U. S. C. § 9 (1934) ("Any person entitled thereto by this title may secure copyright for his work by publication thereof with the notice of copyright required by this title; and such notice shall be affixed to each copy thereof published or offered for sale in the United States by authority of the copyright proprietor. * * *").

[2] Fourteen months elapsed between the publication and the submission of copies for deposit in the Copyright Office and a certificate of registration obtained * * * the respondents published and offered for sale their book six months before the petitioner's deposit of copies and receipt of certificate of registration.

[3] 35 STAT. 1078 (1909), 17 U. S. C. A. § 10 (1934) ("Such person may obtain registration of his claim to copyright by complying with the provisions of this Act, including the deposit of copies, and upon such compliance the register of copyrights shall issue to him the certificate provided for in section 55 of this title").