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CONSTITUTIONAL LAW.—City ordinance provided that distribution of literature within the city limits without permit from the City Manager constituted a nuisance and could be punished as an offense against the city. Petitioner distributed religious pamphlets within the city limits without the required permit, and was convicted under the ordinance. She claimed the ordinance prevented the free exercise of her religion, free speech and free press, and thus was a violation of the fourteenth amendment. On appeal, reversed. Held: the ordinance was invalid on its face obviating the necessity of obtaining a permit. *Lovell v. City of Griffin* (1938), 303 U. S. 444, 58 S. Ct. 666.

The Constitution of the United States, as well as the Constitutions of the several states, protect free speech, freedom of the press, and freedom of religious worship. However, just as the right of assemblage is protected by the constitutions, yet not made absolute,[1] these constitutional guaranties are not absolute.[2] Where the restriction does not amount to a denial of the right and is a reasonable exercise of the police power, the ordinance will be sustained.[3] Likewise, certain common law limitations existing at the time of the adoption of the Constitution are valid.[4] Thus, nuisances may be abated;[5] certain

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[1] Commonwealth v. Abrahams (1892), 156 Mass. 57, 30 N. E. 79; State v. Frear (1910), 142 Wis. 320, 125 N. W. 961; People v. Young (1934), 136 Cal. App. 699, 29 P. (2d) 440, discussed in 23 California L. Rev. 180.

[2] "Liberty of speech, and of the press, is also not an absolute right . . .," Near v. Minnesota (1930), 283 U. S. 697, 51 S. Ct. 625; Cooley, Constitutional Limitations (8th ed.), 876, 884; Frohwerk v. United States (1919), 249 U. S. 204, 39 S. Ct. 249; State v. McKee (1900), 73 Conn. 18, 46 A. 409, 49 L. R. A. 542; People v. Most (1902), 171 N. Y. 423, 64 N. E. 175.

[3] "The rights (free speech, free press, etc.) . . . are all subject to such reasonable regulations as the governing body of the government may make for the general good . . .," Thomas v. Indianapolis (1924), 195 Ind. 440, 145 N. E. 550, 35 A. L. R. 1194; Schenck v. United States (1919), 249 U. S. 47, 39 S. Ct. 247; Near v. Minnesota (1930), 283 U. S. 697, 51 S. Ct. 625; Abrams v. United States (1919), 250 U. S. 616, 40 S. Ct. 17.

[4] Speaking of common law limitations on free speech, Ch. J. Parker of Massachusetts in Commonwealth v. Blanding (1825), 3 Pick. 304, said: "The common law therefore is left unimpaired by the constitution . . ."; Jones v. Townsend (1885), 21 Fla. 431 (libel); Atwood's Case (1617), 79 Eng. Repr. 359 (blasphemy); Rex v. Wilkes (1770), 98 Eng. Repr. 327 (obscene literature).

[5] "The abatement of a nuisance, though infringing other rights, may be

defamatory publications may be prohibited where a property interest is involved;[6] obscene literature and pictures may be interdicted;[7] and other acts may be forbidden when the safety of the community is concerned,[8] even though the enforcement of these duties tends to limit the freedom of speech, press and worship.

The enactment of ordinances to achieve these objectives is not an unreasonable limitation of religious liberty.[9] It would seem, therefore, that the ordinance in the instant case might have been supported. The petitioner by placing pamphlets on private property was a trespasser, and the pamphlets could have been deemed a nuisance.[10] The removal of the pamphlets would

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justifiable when the interests of society demand." Milwaukee v. Kassan (1931), 203 Wis. 383, 234 N. W. 352 (political and economic handbills); Harwood v. Trembley (1922), 97 N. J. L. 173, 116 A. 430 (speeches in a public street); In re Debs (1895), 158 U. S. 564, 15 S. Ct. 900, 39 L. ed. 1092 (calling strike); Goldblatt v. East Chicago (1936), 211 Ind. 621, 6 N. E. (2d) 331 (distribution of advertising handbills); Dziatkiewicz v. Maplewood Twp. (1935), 115 N. J. L. 37, 178 A. 205 (distribution of religious pamphlets); Hart v. People (1882), 26 (N. Y.) Hun. 396 (publication of gambling information).

[6] "Redress for mere personal slander or libel may perhaps properly be left to the courts of law . . .; but statements and charges intended to frighten away a man's customers, and intimidate them from dealing with him, may wholly break up and ruin him financially, with no adequate remedy if a court of equity cannot afford protection by its restraining writ." Shoemaker v. The South Bend Spark Arrester Co. (1893), 135 Ind. 471, 35 N. E. 280 (claiming patent rights of another); Evenson v. Spaulding (1907), 150 F. 517 (interference in selling customers); Dixon v. Holden (1869), Law Reports, 7 Equity Cases 488 (threatened publication of statements which would injure plaintiff's business); but see Prudential Assurance Co. v. Knott (1875), 10 Chancery Appeals 142 (publication of information about plaintiff's business).

[7] "In excluding various articles from the mail, the object of Congress has not been to interfere with the freedom of the press, or with any other rights of the people, but to refuse its facilities for the distribution of matter deemed injurious to the public morals." In re Jackson (1877), 96 U. S. 727, 24 L. ed. 877; In re Rapier (1891), 143 U. S. 110, 12 S. Ct. 374, 36 L. ed. 93 (lottery matter); Duncan v. United States (1931), 48 F. (2d) 128 (broadcasting profanity); Clark v. United States (1914), 211 F. 916 (obscene publications).

[8] "There is no question but that the state may thus provide for the punishment of those who indulge in utterances which incite to violence and crime and threaten the overthrow of organized government by unlawful means. There is no constitutional immunity for such conduct abhorrent to our institutions." Stromberg v. California (1930), 283 U. S. 359, 51 S. Ct. 532, 73 A. L. R. 1484 (communistic propaganda).

[9] "Congress is deprived of all legislative power over mere religious opinions, but is left free to reach actions which are in violation of social duties or subversive of good order." Reynolds v. United States (1879), 98 U. S. 145 (polygamy); State v. Chandler (1837), 2 Harr. (Del.) 553 (blasphemy); Meuendorff v. Duryea (1877), 69 N. Y. 557 (desecration of the Sabbath); People v. Pierson (1903), 176 N. Y. 201, 68 N. E. 243 (medical aid compulsory); Commonwealth v. Plaisted (1889), 148 Mass. 375, 19 N. E. 224 (beating drums restricted); State v. Neitzel (1912), 69 Wash. 567, 125 P. 939 (communicating with departed spirits); Peterson v. Widule (1914), 157 Wis. 641, 147 N. W. 966 (certificate of freedom from venereal disease required as condition of marriage).

[10] Dziatkiewicz v. Maplewood Twp. (1935), 115 N. J. L. 37, 178 A. 205; Coleman v. Griffin (1936), 55 Ga. App. 123, 189 S. E. 427, appeal dismissed in (1937), 302 U. S. 636, 58 St. Ct. 23; Milwaukee v. Kassen (1931), 203 Wis. 383, 234 N. W. 352; In re Anderson (1903), 69 Neb. 686, 96 N.W. 149, 5 Ann. Cas. 421; Goldblatt v. East Chicago (1936), 211 Ind. 621, 6 N. E. (2d) 331;

burden both the property owners and the city. Both had a duty to prevent fire hazards and to maintain adequate sanitation standards. The ordinance might have been upheld, then, as a reasonable exercise of the police power. Furthermore, one of the main purposes of the religious guaranties in the Constitution was the prevention of religious persecution.[11] Although some restraint was imposed on individual rights, it scarcely seems that there was a denial of them.

Nevertheless, although individual actions must conform to a certain degree to the standards set to govern the conduct of society generally,[12] the Supreme Court evidently felt that ordinances of this kind were too fraught with the possibility of destroying personal liberty. By protecting circulation as well as publication and by including leaflets along with newspapers and periodicals the instant case is a further extension of the great protection accorded by the Constitution to the freedom of religion, speech, and the press. The Court is loathe to recognize a social interest to justify any regulation in the direction of censorship.[13] I. D. B.

MORTGAGES—SUBROGATION—VOLUNTEER.—Plaintiff bank advanced money to discharge a mortgage on certain land at the request of the mortgagor. Such land was also subject to a dower charge, subordinate to the mortgage by prior agreement. A new mortgage was executed to the plaintiff bank, and contemporaneous therewith the mortgagor agreed to procure a quitclaim deed or postponement of the lien of the dower charge in favor of the plaintiff bank. Subsequent attempts by the mortgagor to perform this agreement were unavailing. The holders of the dower charge obtained a judgment on their claim and for the satisfaction of which seek to have the land sold. This is a suit by the plaintiff bank to restrain such sale, and a prayer that it be subrogated to the position of the mortgagee whose lien had been discharged by the plaintiff's .advances. From the lower court's dismissal of the bill, plaintiff appeals. Held: Affirmed. Subrogation will not be decreed for a mere volunteer. *Union Joint Stock Land Bank of Detroit v. Byers* (1939), 100 F. (2d) 82.

Subrogation is said to be a remedial doctrine based on considerations of equity and good conscience applied broadly, as may best serve the purposes of natural reason and justice.[1]

Being a concept of such variable nature, it is obviously futile to attempt a specific enumeration of the instances wherein the doctrine will be invoked. However, the restrictions imposed on its applicability admit of being catalogued.

There must be a full and complete payment of the debt due the creditor to whose position the payor seeks to be subrogated.[2] One primarily obligated

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San Francisco Shopping News Co. v. South San Francisco (1934), 69 F. (2d) 879, writ of certiorari denied in 293 U. S. 606, 55 S. Ct. 122, 79 L. ed. 697.

[11] Willis, Constitutional Law, 502.

[12] Cooley, Constitutional Limitations (8th ed.), 968.

[13] Near v. Minnesota (1930), 283 U. S. 697, 51 S. Ct. 625; Grosjean v. American Press Co. (1936), 297 U. S. 233, 56 S. Ct. 444.

[1] Davis v. Schlemmer (1897), 150 Ind. 472, 50 N. E. 373.

[2] Vert v. Voss (1881), 74 Ind. 565.