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Jones v. City of Opelika Overruled

CONSTITUTIONAL LAW

JONES v. CITY OF OPELIKA OVERRULED

Petitioners, Jehovah's Witnesses, went from door to door soliciting people to purchase religious books and pamphlets. The city of Jeannette, Pennsylvania, filed a complaint charging petitioners with failure to obtain a license as required by an ordinance. The lower court found them guilty and the Pennsylvania court of appeal affirmed the decision. Held, the ordinance is invalid as abridging the freedom of religion. Murdock v. Commonwealth of Pennsylvania, 63 Sup. Ct. 870 (1943). (Justices Jackson [at p. 882], Frankfurter [at p. 899], Roberts [at p. 899], and Reed [at p. 891] dissenting).

The Constitution declares that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." U.S. Const. Amend. I. These religious guaranties are limitations only on the federal government and do not protect the religious liberties of the people against state governments, unless the due process clause of the Fourteenth Amendment includes protection of religious liberty. Willis, "Constitutional Law" (1936) 502. Decisions of the United States Supreme Court hold that such is the case. Cantwell v. Connecticut, 310 U.S. 296, 303 (1940); see Schneider v. State, 308 U.S. 147, 160 (1939); cf. Hamilton v. Regents of University of California, 293 U.S. 245 (1935).

The tax imposed by the Jeannette city ordinance is a flat license tax and is a condition precedent to the exercise of the constitutional privileges. The power to tax the exercise of a privilege is the power to control or suppress its enjoyment. Magnano Co. v. Hamilton, 292 U.S. 40 (1934). Therefore, unless the Jeannette city ordinance can

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1889); Bergam v. Avenue State Bank, 248 Ill. App. 516, 1 N.E. (2d) 432 (1936); Manufacturers Trust Co. v. Harriman National Bank, 237 App. Div. 401, 262 N.Y. Supp. 483 (1932); General Fire Assurance Co. v. State, 177 App. Div. 745, 164 N.Y. Supp. 871 (1917); Oriental Bank v. Gallo, 112 App. Div. 360, 98 N.Y.Supp. 561 (1906). Dean Ames has challenged this theory of recovery, "The Doctrine of Price v. Neal" (1891) 4 Harv. L. Rev. 297. See Kessler, "Forged Instruments" (1938) 47 Yale L.J. 873.

17. Recovery is allowed under this doctrine for mutual mistake of fact as to the genuineness of the signature of the payee. United States National Park Bank of New York, Fed. 852 (S.D. N.Y. 1881); First National Bank of Minnesota v. City National Bank of Holyoke, 182 Mass. 130, 65 N.E. 24 (1902); Welch v. Goodwin, 123 Mass. 71, 25 Am. Rep. 24 (1878); Merchants National Bank v. National Bank of Commonwealth, 139 Mass. 513, 2 N.E. 89 (1885). Some courts use the terms, warranty and quasi-contract, indiscriminately when allowing recovery and are not clear upon which basis recovery is allowed. New York Produce Exchange Bank v. 12th Ward Bank, 135 App. Div. 521, 19 N.Y. Supp. 988 (1909); City Bank v. National Bank, 45 Texas 213 (1876).

18. See note 16 supra.

be justified as a valid exercise of the police power or as a valid regulation of a commercial rather than a religious venture, it is repugnant to the privileges guaranteed by the Fourteenth Amendment of our Constitution.

"The police power is the legal capacity of sovereignty, or one of its agents, to delimit personal liberty for the protection of other more important social interests by means which bear a substantial relation thereto." Willis, "Constitutional Law" (1936) 728. In Great Atlantic & Pacific Tea Co. v. Grosjean, 301 U.S. 412, 426 (1937), the court appears to approve a proper use of the taxing power for police power purposes. Thus, the inquiry resolves itself into the question: Is this a proper exercise of the police power? In Cantwell v. Connecticut, 310 U.S. 296, 304 (1940) (and authorities there cited), the court said, " . . . the Amendment [Fourteenth] embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society." Thus, the court must decide the question by weighing the relative values of the social interest in personal liberty as opposed to the social interests of society as a whole. Therefore, since this ordinance is not an attempt to regulate petitioners for the protection of society, the court seems justified in holding that it is not a proper exercise of the police power.

Whether petitioner's acts constitute a commercial rather than a religious venture is purely a question of fact. It would be a distortion of the facts of record to say that petitioners were engaged in a commercial venture. The Supreme Court of Iowa in State v. Mead, 230 Iowa 1217, 300 N.W. 523 (1941) described the selling activities of members of this same sect as "merely incidental and collateral" to their "main object which was to preach and publicize the doctrines of their order." Accord, State v. Meredith, 197 S.C. 351, 15 S.E. (2d) 678 (1941). Mr. Justice Murphy, dissenting in Jones v. City of Opelika, 316 U.S. 584 (1942) at p. 620 said, "The exercise, without commercial motives of freedom of speech, freedom of press, or freedom of worship are not proper sources of taxation for general revenue purposes." The license tax of seven dollars a week is clearly not a nominal fee imposed as a regulatory measure to defray the expenses of policing the activities in question. Cox v. New Hampshire, 312 U.S. 569, 577 (1941). Also such tax is not levied to safeguard the people against the evils of solicitation. Cantwell v. Connecticut, 310 U.S. 296 (1940). This ordinance levies a tax specifically on the freedoms guaranteed by the Constitution and therefore is unconstitutional. For a discussion of Jones v. City of Opelika, see (1942) 17 Ind. L. J. 555.