Wyoming Law Journal

Volume 1 | Number 3 Article 8

December 2019

Freedom of Speech in a Company-Owned Town

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FREEDOM OF SPEECH IN A COMPANY-OWNED TOWN

The management of Chickasaw, Alabama, a company-owned town, posted notice in the stores which read as follows: "This is Private Property, and Without Written Permission, no Street or House Vendor, Agent or Solicitation of Any Kind Will Be Permitted." Appellant, a Jehovah's Witness, stood in front of a business block on a company-owned sidewalk thirty feet from a public highway and undertook to distribute religious literature. When told that she needed a permit which would not be given and asked to leave the sidewalk and the town, she refused. Appellant was arrested by a town official and charged in the State Court with violation of a section of the State Code which made it a crime to enter or remain on the premises of another after having been warned not to do so. Appellant was convicted and the conviction was affirmed by the Alabama Court of Appeals. The state supreme court denied certiorari and appeal was taken to the United States Supreme Court. *Held,* that in balancing the constitutional rights of owners of property against those of the people to enjoy freedom of press and religion, the latter occupy the preferred position. *Marsh v. State of Alabama,* (1946) 326 U.S. 501, 66 S. Ct. 276, 90 L. Ed. 227.

The instant case presents a perplexing problem which is not entirely clarified by the majority opinion. The actual problem arises from a conflict between an individual's asserted right to exercise freedom of speech and religion and a state statute purporting to prohibit and punish trespass on private property by making it a crime after having been warned. The problem is complicated in two ways, (1) that the property involved is that of a company-owned town which is partly licensed to the public use, and (2) that the company-owned town had a no-solicitation rule.

In resolving this problem the majority of the Supreme Court preferred the right of free speech in spite of decisions holding that civil liberties are not absolute, but must be exercised in an orderly manner.[1]

In the dissenting opinion Reed, J. joined by Stone, C.J. and Burton, J. expressed fear that the majority opinion stated a bad principle, and that, if the decision be not restricted to the facts of the instant case, the result may lead to allowing any trespasser to defeat the rights of a property owner by justifying his presence on the ground that he is engaged in religious activity.[2] It is hard to see how these fears are justified, since the constitution does not protect free speech

1. Reynolds v. United States, (1879) 98 U.S. 145, 25 L. Ed. 244; Coleman v. City of Griffen, (1937) 302 U.S. 636, 58 Sup. Ct. 23, 82 L. Ed. 495; Schenck v. United States, (1919) 249 U.S. 47, 39 Sup. Ct. 247, 63 L. Ed. 470; Cox v. New Hampshire, (1941) 312 U.S. 569, 61 Sup. Ct. 762, 85 L. Ed. 1049, 133 A.L.R. 1396. Compare Hamilton v. Regents, (1934) 293 U. S. 245, 55 Sup. Ct. 197, 79 L. Ed. 343 with Board of Education v. Barnette, (1943) 319 U.S. 624, 63 Sup. Ct. 1178, 87 L. Ed. 1628, 147 A.L.R. 674. In Cantwell v. Connecticut, (1939) 310 U.S. 269, 303, 304, 60 Sup. Ct. 900, 903, 84 L. Ed. 1213, 128 A.L.R. 1352, the Court said speaking of the fourteenth amendment: ". . . The amendment 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. . . ."

2. See Marsh v. State of Alabama, (1946) 326 U.S. 501, 512, 66 Sup. Ct. 276, 281, 90 L. Ed. 227.

except against government action.[3] Thus it is impossible to see how the rule of this case can be applied in favor of a trespasser preaching the gospel and against a private property owner who has not in any way allowed the public a use on his property. In view of the number of Jehovah's Witnesses asserting their right to free speech, however, the necessity for the Supreme Court to decide this point may arise in the near future.

In the case of *State v. Martin,* where a Louisiana statute forbade trespass on the property of another, a member of the Jehovah's Witness sect entered upon a plantation and refused to leave upon request of the owner. The Supreme Court of Louisiana upheld a conviction under the statute saying ". . . These guaranties of freedom of religious worship, and freedom of speech and of the press, do not sanction trespass in the name of freedom. We must remember that personal liberty ends where the rights of others begin . . ." Thus the State of Louisiana has disposed of the problem by holding that the constitutional protection of religous freedom is not paramount to the rights of a freeholder who has ordered a trespasser preaching the Gospel from his land.[4]

Free speech means more than the mere right to speak, it includes the right of people to hear what the speaker has to say. To allow a man to speak, but to forbid anyone to hear him, has the same effect as to forbid him to speak. With this point in mind, what is the real basis for the holding of the principle case? Does it depend upon the rights of the people to listen if they wish, and thus leave the final determination to the individual listener? The fears of the dissent may be that the principle of the instant case would be extended to affect any establishment, such as a large plantation or ranch, where many people are employed and live on strictly private property, or even in the case of a freeholder employing a single servant. In such cases, there being no license for strangers to come onto the land, will the owner be justified in prohibiting or removing itinerant speakers from his land? If the answer be no, the owner is deprived of the right to a quiet and peaceful enjoyment of his property. On the other hand if the answer is yes, the owner has the power to deprive the employes of the right to hear whatever the speaker has to say. The line must be drawn somewhere. Perhaps the line can be drawn where a number of people are involved, constituting a group comprising a community like a company-owned town. In any event it is a distinction of degree to be judicially drawn rather than one to be fixed by legislative action.[5]

The license feature may be the real basis. This is perhaps the sound view, not leading to such an arbitrary dividing line, mainly because it will not destroy the peaceful enjoyment of a freehold totally void of any license thereon by sanctioning trespass in the name of religious liberty.

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3. U. S. Const. Amend. I; U.S. Const. Amend. XIV.
4. State v. Martin, (1941) 199 La. 39, 5 So. (2d) 377.
5. See Marsh v. State of Alabama, (1946) 326 U. S. 501, 512, 66 Sup. Ct. 276, 282, 90, L. Ed. 227. Reed, J., dissenting: ". . . of course such principle may subsequently be restricted by this court to the precise facts of this case—that is to private property in a company-owned town where the owner . . . has permitted a restricted public use by his licensees and invitees . . ."

Cases dealing with the scope of the power of a municipal corporation to regulate religious solicitation by ordinance, *(as an agent of the State),* for the protection of the citizens living within the municipality, have held that neither arbitrary nor absolute suppression of views is valid.[6] On the other hand, where an ordinance of a municipal corporation merely requires one to have a permit to solicit, sell or distribute literature, such ordinance is valid if the permit is issued as a matter of course upon application without any discretion on the part of a city official.[7]

The majority opinion in the principle case recognizes the fact that, had Chickasaw been a municipal corporation, the conviction by the Alabama Court must surely be reversed;[8] but Chickasaw *is* a company-owned town and in that sense is private property. But what about the citizens living there? They are just like citizens living elsewhere and entitled to hear whatever they wish without having arbitrary rules made for them by their immediate government. The majority opinion recognizes these points and follows the decisions restricting the States and their agencies of local government from infringing on freedom of religion, of the press, and of speech.[9]

It would seem that management of a company-owned town is a governmental function, therefore it is unnecessary to balance property rights against the rights of free speech. And since the protection of civil liberties is of great concern and the desirable result for this case, it would have been better to have said that a company-owned town is a quasi-municipal corporation and as such must be limited in its powers of regulation, instead of saying that the rights of a property owner are subordinate to the individual's right of free speech and religion. Ostensibly, this is the only justification for the holding of the majority opinion. Thus the Supreme Court would have protected the civil liberty involved and at the same time avoided the seemingly dangerous principle of subordinating property rights to individual civil liberty.

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RECOUPMENT AND THE STATUTE OF LIMITATIONS IN TAX CASES

From 1919 to 1926 plaintiff erroneously paid an excise tax on the sale of batteries. In 1935 plaintiff sued and recovered from the Collector refund of those taxes not barred by the Statute of Limitations, i.e. back to 1922. During the years that the excise tax was collected, plaintiff deducted it from income

6. Lovell v. City of Griffen, (1938) 303 U.S. 444, 58 Sup. Ct. 666, 82 L. Ed. 949; Hague v. C.I.O., (1939) 307 U.S. 496, 59 Sup. Ct. 954, 83 L. Ed. 1423; Schneider v. State of New Jersey, (1939) 308 U.S. 147, 60 Sup. Ct. 146, 84 L. Ed. 155.
7. City of Manchester v. Leiby, (C.C.A. 1st. Cir. 1941) 117 F. (2d) 661, Cert. denied (1941) 313 U.S. 562, 61 Sup. Ct. 838, 85 L. Ed. 1522.
8. See Marsh v. State of Alabama, (1946) 326 U.S. 501, 504, 66 Sup. Ct. 276, 277, 90 L. Ed. 227.
9. Near v. Minnesota, (1931) 283 U.S. 697, 51 Sup. Ct. 625, 75 L. Ed. 1357; Martin v. City of Struthers, (1943) 319 U. S. 141, 63 Sup. Ct. 862, 87 L. Ed. 1313; Murdock v. Pennsylvania, (1943) 319 U.S. 105, 63 Sup. Ct. 870, 87 L. Ed. 1292, 146 A.L.R. 81; dissent of Stone, C.J., in Jones v. Opelika, (1942) 316 U.S. 584, 62 Sup. Ct. 1231, 86 L. Ed. 1691, 141 A.L.R. 514, adopted as the opinion of the Court (1943) 319 U.S. 103, 63 Sup. Ct. 890, 87 L. Ed. 1290.