Buffalo Law Review

Volume 7 | Number 1 Article 28

10-1-1957

Constitutional Law—Civil Rights—Discrimination in Public Places

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Recommended Citation

Diane Gaylord, *Constitutional Law—Civil Rights—Discrimination in Public Places*, 7 Buff. L. Rev. 90 (1957).
Available at: https://digitalcommons.law.buffalo.edu/buffalolawreview/vol7/iss1/28

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worthiness. In the *Slochower* opinion, the Supreme Court asserted that the "invocation of the privilege . . . would be reduced to a hollow mockery if its exercise would be taken as equivalent either to a confession of guilt or conclusive presumption of perjury." The Court of Appeals, declared that the raising of the privilege is evidence of doubtful trust which is the basis of discharge, and *not* the invocation of the fourteenth amendment. The validity of this semantic distinction will soon be tested, since this decision now rests on the docket of the Supreme Court. Dismissal based solely upon the invocation of the privilege against self-incrimination presents a grave constitutional problem involving the scope and reach of the due process clause.

Civil Rights—Discrimination In Public Places

Under section 40 of the Civil Rights Law, no person can be excluded from places of public accommodation, resort, or amusement because of race, color, creed, or place of national origin. This restriction does not apply, however, to institutions, clubs, or places of accommodation that are distinctly private. Two questions thus arise when an individual is denied access to a certain establishment. Was such access refused because of the individual's race, color, creed, or place of national origin? Was the establishment public as distinguished from private? Affirmative answers to these questions in a certain situation clearly demonstrate a violation of the Civil Rights Act. Such a conclusion was reached by the Court of Appeals in *Castle Hill Beach Club v. Arbury*[55] in affirming the order of the Appellate Division.

In this case, the Castle Hill Beach Club, a membership corporation, refused to sell to Mrs. Brown, a negro, season locker rights which would have entitled her to use beach facilities. The Court of Appeals easily determined that the denial of access to Mrs. Brown was solely because of her color. The real problem was determining whether the Beach Club was a private or public amusement.

The Court's conclusion that the Beach Club was public leaves us with the problem of how to distinguish between public and private establishments. Generally it can be stated that public and private characteristics of a place of amusement will be considered in their overall effect giving greater weight to those features to which the public attention has been drawn. Whichever features are predominant will determine the nature of the amusement facilities.[56] Moreover, if the predominant purpose of creating private characteristics is to avoid the effect of the Civil Rights Act, the court will probably feel more prone to label the facilities public. This distinction is not entirely satisfactory as it leaves much to

55. 2 N.Y.2d 596, 162 N.Y.S.2d 1 (1957).

56. *Cf.* Delaney v. Central Valley Golf Club, 28 N.Y.S.2d 932 (1941), *aff'd*, 263 App. Div. 710, 31 N.Y.S.2d 834 (1st Dep't 1941), *appeal denied* 263 App. Div. 870, 32 N.Y.S.2d 1016 (1st Dep't 1942), *aff'd*, 289 N.Y. 577, 43 N.E.2d 716 (1942).

guesswork.[57] However, the law on the subject is clear, statutorily[58] and judicially.[59] The guesswork lies in interpreting each case by its particular facts. This disadvantage, if it is one, can only be explained as another cost of our democratic legal system.

Jurisdiction Of State Court Not Pre-Empted By National Housing Act

Promoters of a corporation are liable to the corporation, when they perform a transaction out of which they obtain a profit, if at the time of the transaction, it is definitely intended or contemplated by the promoters that stock will be sold to the uninformed public.[60]

Plaintiffs in *Northridge Cooperative v. 32nd Avenue Construction Corporation*,[61] brought actions in behalf of corporations of which they were shareholders, against the promoters of the enterprises for an accounting to the corporations of profits made by the promoters before the plaintiffs subscribed to the stock of the corporations. The basic issue was whether the National Housing Act[62] precluded the prosecution of an action of this nature in the state courts.

The federal government is supreme when it is acting within the limits set by the Constitution.[63] States are sovereign in our system of government except where Congress takes away their authority in the exercise of its delegated powers.[64] "If the congressional enactment occupies the field, its control by the Supremacy Clause supersedes or in the current phrase, pre-empts state power."[65] Congress may occupy only a limited portion of the field if it wishes.[66]

In the absence of specific congressional indication that federal legislation is to be exclusive,[67] the courts, in a case of this nature, have to determine what the

57. A golf club's characteristics were compared with its public characteristics, the court deciding that the club was private. See Delaney v. Central Valley Golf Club, *supra* note 56.
58. N.Y. CIVIL RIGHTS LAW §40.
59. Norman v. City Island Beach Co., 126 Misc. 335, 213 N.Y.S. 379 (Sup. Ct. 1926); People v. King, 10 N.Y. 418, 18 N.E. 245 (1888); Camp of the Pines v. New York Times Co., 184 Misc. 389, 53 N.Y.S.2d 475 (Sup. Ct. 1945); Pickett v. Kuchan, 323 Ill. 138, 153 N.E. 667 (1926); Balden v. Grand Rapids Operating Corp., 239 Mich. 318, 214 N.W. 241 (1927).
60. The leading case is *Erlanger v. New Sombrero Phosphates Company*, 3 App. Cas. 1218 (1878); 1 FLETCHER'S CYCLOPEDIA CORPORATION, §§192, 196 (Revised and permanent edition, 1931).
61. Northridge Cooperative v. 32nd Avenue Construction Corporation, 2 N.Y.2d 514, 161 N.Y.S.2d 404 (1957).
62. National Housing Act, 48 STAT. 1246 (1934), as amended 12 U.S.C. §§1713(b) (2), 1715(e).
63. U.S. CONST. art. VI.
64. Parker v. Brown, 317 U.S. 341 (1943).
65. Auto Workers v. Wisconsin Board, 351 U.S. 266, 271 (1956).
66. Kelly v. Washington, 302 U.S. 1 (1937).
67. Andreance v. Lorentzen, 60 N.Y.S.2d 834 (Sup. Ct. 1946).