Buffalo Law Review

Volume 1 | Number 2 Article 16

12-1-1951

Constitutional Law—Ordinance Restricting Door to Door Sales Held Constitutional

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Recommended Citation

Joseph A. Taddeo, *Constitutional Law—Ordinance Restricting Door to Door Sales Held Constitutional*, 1 Buff. L. Rev. 189 (1951).
Available at: https://digitalcommons.law.buffalo.edu/buffalolawreview/vol1/iss2/16

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to the insurer, that construction will be adopted which favors the liability of the insurer for the act or default in question. 5 Couch, Insurance 4327 (1929). The terms of these bonds have generally been found "unequivocal in their nature" and "unambiguous." *Aetna Casualty & Surety Co. v. First National Bank,* 103 F2d 977 (3rd Cir. 1939); *United States Fidelity & Guaranty Co.* v. *Barber,* 70 F2d 220. (6th Cir. 1934).

It has been argued that in view of the fact that an employee's defalcation in a previous year had exhausted the insurer's liability as to him, premiums were paid in subsequent years with no compensatory return. In answer it is pointed out that the insured is still at an advantage in that it is not necessary for him to prove that the loss took place in any particular year so long as it can be established that it was within the time the bond was in force; and further that the Discovery Period is extended by each annual premium. See *Leonard v. Aetna Casualty & Surety Co.,* 80 F2d 205 (4th Cir. 1935).

The result of the instant case is unfortunate in that an insured may find himself at a distinct disadvantage if he deals with the same company instead of changing insurers each year; and moreover an insurer which receives a given premium over a three year period from one insured accepts only one-third the exposure that it would have if it received the same amount of premium income from three insureds in one year. However the function of the court here was not to create a new contract for the parties, but rather to interpret the existing contract to which the parties had agreed.

Robert J. Blaney

CONSTITUTIONAL LAW—ORDINANCE RESTRICTING DOOR TO DOOR SALES HELD CONSTITUTIONAL

Appellant, engaged in soliciting magazine subscriptions for a Pennsylvania corporation, was convicted for violation of an ordinance of the City of Alexandria, La., which made it a misdemeanor for solicitors, peddlers, hawkers, itinerant merchants or transient vendors of merchandise to go upon private residences without first having been requested to do so. Appellant claimed that the ordinance was invalid in that it violated the Due Process Clause of the Fourteenth Amendment to the Federal Constitution; that it was a burden on interstate commerce; and that it violated the guarantee of the First Amendment of "freedom of press" made applicable to the States by the Fourteenth Amendment. The Supreme Court in affirming the conviction held that the ordinance was not a violation of the Due Process Clause nor did it burden interstate commerce, and that the "freedom of the press" is not absolute, nor does it give one the right to invade the privacy and repose of the inhabitants of a city that has passed an ordinance to give its citizens

protection from the nuisances perpetrated by itinerants. *Breard* v. *City of Alexandria, La.,* 71 S. Ct. 920, (1951).

The business operations of the itinerant merchant are not immune to local regulation because of the Federal Commerce Clause. An absolute prohibition against house to house peddlers of commercial articles (brushes), whether they be from within or without the State, was held a valid exercise of the State police power and not an undue restriction on interstate commerce when its purpose is to protect the privacy of the home dweller from the nuisances perpetrated by such peddlers. *Town of Green River* v. *Fuller Brush Co.,* 65 F. 2d 112 (10th Cir. 1933). However, the itinerant's constitutional guarantees under the First Amendment have been zealously guarded by the Courts from any serious restriction by local ordinance. It has been held that an ordinance, which is designed to protect the home owner from the disturbances created by house to house peddlers, and which provides that such peddlers shall have a license before they can proceed from house to house is unconstitutional and does violate the constitutional rights of "free speech," "free press," and "freedom of religion" as applied to peddlers of religious periodicals. *Jones* v. *City of Opelika,* 319 U. S. 103 (1941); *Murdock* v. *Commonwealth of Pennsylvania,* 319 U. S. 105 (1943).

In 1943, the City of Struthers, Ohio, had in effect an ordinance which flatly prohibited individuals from passing handbills, circulars, or other advertisements from door to door. The ordinance was intended to protect privacy, to secure to the city's citizens freedom from the disturbances created by such peddlers with their door-knocking and bell-ringing. A Jehovah's Witness peddling circulars advertising a religious meeting was arrested and convicted under the provisions of this ordinance. On appeal, the Supreme Court held that the ordinance was invalid in that it violated the rights of "free speech," "free press," and "freedom of religion" as guaranteed by the Federal Constitution. *Martin* v. *City of Struthers, Ohio,* 319 U. S. 141 (1943).

In the instant case, an ordinance to abate the nuisances of house to house peddlers is upheld against the claims of a magazine vendor that his constitutional guarantee of "free press" is violated. The Court has preferred to treat the material distributed as being in the same commercial category as the brushes which were sold in the *Green River* case. This treatment is not too convincing in view of the decisions reached in cases involving newspapers. Newspapers, which for the most part have as their main source of support paid advertisements and which are printed for profit, have not lost the freedom of the press guaranteed them by the First Amendment and protected further by the Fourteenth Amendment. See *The First Freedom,* by Morris Ernst. See *Valentine* v. *Chrestensen,* 316 U. S. 52 (1941) for arguments as to what constitutes a political handbill or an advertising circular. In the past, the Courts have been very suspicious of legislation which

tended to restrict circulation of published matter, whether the legislation was passed under the guise of the state taxing power or the state police power. See *Grosjean* v. *American Press Co.,* 297 U. S. 233 (1936); and *Near* v. *Minnesota,* 283 U. S. 697 (1931).

The First Amendment guarantees the right of the individual to express his views as to current issues and controversies. One of the main organs for such expression is the national magazine. There the reader finds editorial comment, letters to the editors, portraits of men in public office and general political argumentation. See current issues of Newsweek, Colliers, The Atlantic Monthly and Time. The fact that these magazines are printed for profit as well as for the dissemination of political information should not make them any less protected than a pamphlet distributed on religious matters, see *Struthers* case, *supra,* at least where the conflicting right involved is that of the right of the individual's privacy in his own home.

It is submitted that perhaps the decision in the instant case can best be understood if viewed with the Court's extended interest in preserving the privacy of the individual. The Green River type ordinance, although it affects interstate commerce, is upheld as a valid exercise of the state police power when such ordinance is designed to provide to the home owner a privacy uninterrupted by house to house peddlers of varied house-hold articles. *Town of Green River* v. *Fuller Brush Co., supra.* A blanket denial to all of the use of sound amplifying devices on the city's streets does not contravene the rights of "free speech," and "free press" if such denial is intended to protect the citizens from the annoyances of loud noises. *Kovacs* v. *Cooper,* 336 U. S. 77 (1948).

In the instant case, the Court has taken another step in the recognition of the citizen's right of privacy. The Court has now ruled that the constitutional guarantee of "free press" which is not absolute, see *Prince* v. *Massachusetts,* 321 U. S. 158 (1944), must also give way to the right of the citizen to be free from invasions of his privacy.

Joseph A. Taddeo

FEDERAL PRACTICE—DEPENDENT CLAIM DISMISSED ON FAILURE OF FEDERAL CLAIM

A patent was issued on a removable shoulder pad for use in women's dresses. The patentee (plaintiff here) entered into an agreement with the defendant in this action whereby the latter was to have the use of the patent, if valuable, and in return would compensate the patentee for such use. The defendant used the device, but has failed to make payment. The United States Court of Appeals, Second