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W. O. Cooke

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rental from the purchaser,³⁹ or unreasonable delay such as to constitute laches,⁴⁰ may preclude the mortgagor from getting his equitable relief, he would do well to assiduously avoid any conduct or inactivity which might work an estoppel on him in his attempt to have the sale set aside. This would seem true in some measure of this case. The mortgagor, so far as appears, made no attempt to warn prospective buyers, and waited five years after the sale to bring this bill to account and redeem. On the other hand, instances of hardship are quite conceivable in cases where, through absence, mistake, or ignorance, the mortgagor may not have actually known of the sale, and hence have given no notice or indication that the sale was wrongful before an innocent purchaser for value bought. If, in addition, the mortgagee who has perpetrated the wrong prove insolvent, under North Carolina law as it has been shown to be, it would seem that an innocent mortgagor would have no remedy. Albeit this may work hardships in isolated cases, it is submitted that from the standpoint of logic as well as of social policy, the North Carolina court is entirely consistent in upholding the rights of an entirely innocent purchaser without notice, as against those of an innocent mortgagor who through some inadvertence has failed to make use of the safeguards afforded him in his character of landowner.

A. H. GRAHAM, JR.

Municipal Corporations—Power to Exercise Previous Restraint on Freedom of Speech and Assembly.

An ordinance forbade public parades or public assemblage in or upon the public streets, highways, public parks or public buildings of Jersey City without a permit from the Director of Public Safety, who could only refuse a permit for the purpose of preventing a riot, disturbances, or disorderly assemblage. The circuit court of appeals,¹ modifying and affirming the district court,² held the ordinance unconstitutional on the ground that it permitted previous restraint upon the right of freedom of speech in a public place and forbade peaceable assemblage except upon terms repugnant to free speech, contrary to the provisions of the Fourteenth Amendment. On certiorari the United States Supreme Court affirmed this decision, with modifications.³

³⁹ *Flake v. High Point Perpetual Bldg. & Loan Ass'n.*, 204 N. C. 650, 169 S. E. 223 (1933).

⁴⁰ *Schwartz v. Loftus*, 216 Fed. 320 (C. C. A. 8th, 1914); see *First Nat. Bank of Opp v. Wise*, 235 Ala. 124, 128, 177 So. 636, 639 (1937); *Walker v. Schultz*, 175 Mich. 280, 292, 141 N. W. 543, 548 (1913).

¹ *Hague v. Committee for Industrial Organization*, 101 F. (2d) 774 (C. C. A. 3rd, 1939).

² *Committee for Industrial Organization v. Hague*, 25 F. Supp. 127 (D. N. J. 1938).

³ *Hague v. Committee for Industrial Organization*, — U. S. —, 59 Sup. Ct. 954, 83 L. ed. Adv. Ops. 928 (1939).

Freedom of assembly was recognized in the English Bill of Rights⁴ and has become firmly fixed in the English legal tradition. The colonists brought it with them to America, where it has been secured to the people against encroachment by the states in at least forty-four state constitutions.⁵ In the beginning it was secured against encroachment by the National Congress under the First Amendment to the Federal Constitution.⁶ In recent years, United States Supreme Court decisions have secured it against encroachment by the states under the Fourteenth Amendment to the Federal Constitution.⁷

In England and America freedom of speech and assembly have been limited by the common law prohibitions against riot, rout, unlawful assembly, and breach of the peace.⁸ However, the fear that an assembly may lead to such consequences does not in itself justify its prevention.⁹ Blackstone said, "The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraints upon publications, and not in freedom from censure from criminal matter when published."¹⁰ This doctrine of previous restraint has been uniformly adopted by the United States Supreme Court.¹¹

Under the doctrine, the Supreme Court has held unconstitutional a statute which authorized the courts to restrain any publication which regularly produced scandalous, malicious or defamatory matter,¹² a statute taxing newspaper advertisement receipts according to whether or not the paper had a circulation of twenty thousand,¹³ and a city ordinance prohibiting distribution of literature on the streets without a permit from the city manager.¹⁴ It has also been indicated that the fact that publication of certain materials would lead to public disturbances and breaches of the peace would not justify imposing previous restraint on the publication.¹⁵ In the instant case the court declared invalid on

⁴ Bill of Rights, 1688, 1 WILL. & M., sess. 2, c. 2.

⁵ Jarrett and Mund, *The Right of Assembly* (1931) 9 N. Y. U. L. Q. REV. 1. The North Carolina constitutional provision is found in N. C. CONST. art. 1, §25.

⁶ U. S. CONST. Amend. I.

⁷ *Gitlow v. New York*, 268 U. S. 652, 45 Sup. Ct. 625, 69 L. ed. 1138 (1925); *Fiske v. Kansas*, 274 U. S. 380, 47 Sup. Ct. 655, 71 L. ed. 1108 (1927); *Near v. Minnesota*, 283 U. S. 697, 51 Sup. Ct. 625, 75 L. ed. 1357 (1931); *DeJonge v. Oregon*, 299 U. S. 353, 57 Sup. Ct. 255, 81 L. ed. 278 (1937); *Lovell v. Griffin*, 303 U. S. 444, 58 Sup. Ct. 666, 82 L. ed. 949 (1938).

⁸ Jarrett and Mund, *loc. cit. supra* note 5.

⁹ *Hague v. Committee for Industrial Organization*, 101 F. (2d) 774 (C. C. A. 3rd, 1939).

¹⁰ 4 BL. COMM. *152.

¹¹ Walsh, *Freedom of Speech and Press* (1933) 21 GEO. L. J. 161.

¹² *Near v. Minnesota*, 283 U. S. 697, 51 Sup. Ct. 625, 75 L. ed. 1357 (1931).

¹³ *Grosjean v. American Press Co.*, 297 U. S. 233, 56 Sup. Ct. 444, 80 L. ed. 660 (1936).

¹⁴ *Lovell v. Griffin*, 303 U. S. 444, 58 Sup. Ct. 666, 82 L. ed. 949 (1938).

¹⁵ See *Dearborn Publishing Co. v. Fitzgerald*, 271 Fed. 479, 482 (N. D. Ohio 1921).

its face an ordinance authorizing the Director of Public Safety in Jersey City to refuse permits for public assemblies "for the purpose of preventing riots, disturbances, or disorderly assemblages". The court said as to this ordinance: ". . . it permits the imposition of previous restraint upon the right of the individual to speak before an assembly of his fellows in a public place. The ordinance therefore prohibits peaceable assemblage except upon terms repugnant to free speech".¹⁶ The theory of these cases seems to be that the risks of suppression are greater than the risks of riot.

In relation to disorderly assembly, state statutes, which, generally, make it unlawful to be a member of any organization which advocates industrial or political change by force or violence, have been upheld by the Supreme Court.¹⁷ The Court has taken the view that such statutes are presumed to be constitutional unless proved to be an unreasonable and arbitrary exercise of the police power. Where the indictment is for the language used advocating such changes by violence, the Court, after finding the validity of the statute, looks only to find if the language came within the prohibition.¹⁸ However, it has been suggested that the language ought to be tested as to whether it has a clear and present danger to bring about the substantive evils which the state has a right to prevent.¹⁹

Public authorities thus required to run the risk of riot in the effort to give life and meaning to the constitutional guaranties of free speech and assembly may, nevertheless, take legal measures to reduce the risk. The great majority of cases take the view that a permit may be required in order to use public property for lawful assemblies,²⁰ but the standards which should govern the issuance of these permits are not clearly defined. The courts agree that a city may require a permit to protect its streets and parks from congestion and interference with normal use when this is the primary consideration of the ordinance.²¹ Most of the

¹⁶ *Hague v. Committee for Industrial Organization*, 101 F. (2d) 774, 782 (C. C. A. 3rd, 1939).

¹⁷ *Gitlow v. New York*, 268 U. S. 652, 45 Sup. Ct. 625, 69 L. ed. 1138 (1925); *Whitney v. California*, 274 U. S. 357, 47 Sup. Ct. 641, 71 L. ed. 1095 (1927); *Fiske v. Kansas*, 274 U. S. 380, 47 Sup. Ct. 655, 71 L. ed. 1108 (1927).

¹⁸ *Gitlow v. New York*, 268 U. S. 652, 45 Sup. Ct. 625, 69 L. ed. 1138 (1925).

¹⁹ See dissenting opinion in *Gitlow v. New York*, 268 U. S. 652, 672, 45 Sup. Ct. 625, 632, 69 L. ed. 1138, 1148 (1925); concurring opinion in *Whitney v. California*, 274 U. S. 357, 372, 47 Sup. Ct. 641, 647, 71 L. ed. 1095, 1104 (1927).

²⁰ *Davis v. Massachusetts*, 167 U. S. 43, 17 Sup. Ct. 731, 42 L. ed. 71 (1897); *Fitts v. Atlanta*, 121 Ga. 567, 49 S. E. 793 (1905); *Commonwealth v. Abrahams*, 156 Mass. 57, 30 N. E. 79 (1892); *Love v. Phelan*, 128 Mich. 545, 87 N. W. 785 (1901); *People ex rel. Doyle v. Atwell*, 232 N. Y. 96, 133 N. E. 364 (1921); note, *The Hague Injunction Proceedings* (1938) 48 *YALE L. J.* 257.

²¹ *Sullivan v. Shaw*, 6 F. Supp. 112 (S. D. Cal. 1934) (ordinance requiring permit from city council to parade on certain streets); *In re Flaherty*, 105 Cal. 558, 38 Pac. 981 (1895) (ordinance prohibiting beating of drums and certain other loud noises on the streets without permission of the police); *State v. Coleman*,

ordinances requiring permits leave the granting and denying thereof to certain officials without laying down any rules for guidance. A number of cases have held such ordinances unconstitutional since they leave the issuance of permits to the arbitrary discretion of one person or group.²² The majority view, however, is that these ordinances are constitutional.²³ It has been suggested, however, that limitations on the exercise of discretion are to be implied, the discretion being confined to considerations of the normal use of the streets and parks or other reasonable considerations.²⁴ It has also been held that the exercise of discretion is subject to review by the courts,²⁵ so that it would seem that, even under this view, the issuing official may not act merely from whim or caprice. Such ordinances must be uniform and apply equally to all persons similarly situated,²⁶ so various ordinances excepting

96 Conn. 190, 113 Atl. 385 (1921) (ordinance prohibiting making of speeches on the streets except by permission of the chief of police); *Fitts v. Atlanta*, 121 Ga. 567, 49 S. E. 793 (1905) (ordinance forbidding public meetings in the streets without consent from the mayor and council or mayor and chairman of board of police commissioners); *Burkitt v. Beggans*, 103 N. J. Eq. 7, 142 Atl. 181 (1928) (ordinance requiring permit to speak on streets); *Buffalo v. Till*, 192 App. Div. 99, 182 N. Y. Supp. 418 (4th Dep't. 1920) (ordinance prohibiting participation in any parade or assembly which had not been authorized by written permit from mayor); *People ex rel. Doyle v. Atwell*, 232 N. Y. 96, 133 N. E. 364 (1921) (ordinance requiring permit from mayor to hold public meetings in the street); *Duquesne v. Fincke*, 269 Pa. 112, 112 Atl. 130 (1920) (ordinance requiring permit from mayor to make speeches on the streets); see *Anderson v. Tedford*, 80 Fla. 376, 379, 85 So. 673, 674 (1920) (ordinance prohibiting public meetings on streets without consent of mayor or majority of city councilmen); *Commonwealth v. Abrahams*, 156 Mass. 57, 60, 30 N. E. 79 (1892) (rule of park board that there could be no orations in the park without their prior consent).

²² *State v. Coleman*, 96 Conn. 190, 113 Atl. 385 (1921); *Chicago v. Trotter*, 136 Ill. 430, 26 N. E. 359 (1891); *Anderson v. Wellington*, 40 Kan. 173, 19 Pac. 719 (1888); *In re Frazee*, 63 Mich. 396, 30 N. W. 72 (1886); *In re Garrabad*, 84 Wis. 585, 54 N. W. 1104 (1893).

²³ *Davis v. Massachusetts*, 167 U. S. 43, 17 Sup. Ct. 731, 42 L. ed. 71 (1897) (ordinance requiring permit to use Boston Common to make speeches, etc.); *In re Flaherty*, 105 Cal. 558, 38 Pac. 981 (1895); *Coughlin v. Chicago Park Dist.*, 364 Ill. 90, 4 N. E. (2d) 1 (1936) (ordinance prohibiting public speeches and meetings in Soldiers' Field without permit, and forbidding use to speak on controversial political and economic subject); *Love v. Phelan*, 128 Mich. 545, 87 N. W. 785 (1901) (ordinance prohibiting public addresses within a half mile radius of the city hall except by permission of mayor); *People ex rel. Doyle v. Atwell*, 232 N. Y. 96, 133 N. E. 364 (1921); note, *The Hague Injunction Proceedings* (1938) 48 YALE L. J. 257. In a number of cases no mention is made of the fact that issuance of permits was left to the discretion of one or more officials, the courts apparently assuming the ordinance to be valid on this point. *Fitts v. Atlanta*, 121 Ga. 567, 49 S. E. 793 (1905); *Burkitt v. Beggans*, 103 N. J. Eq. 7, 142 Atl. 181 (1928); *Roderick v. Whitson*, 51 Hun. 620, 4 N. Y. Supp. 112 (1889).

²⁴ See *Coughlin v. Chicago Park Dist.*, 364 Ill. 90, 111, 4 N. E. (2d) 1, 10 (1936); *Love v. Phelan*, 128 Mich. 545, 551, 87 N. W. 785, 788 (1901); *People ex rel. Doyle v. Atwell*, 232 N. Y. 96, 102, 133 N. E. 364, 366 (1921).

²⁵ *People ex rel. Doyle v. Atwell*, 232 N. Y. 96, 133 N. E. 364 (1921).

²⁶ *Fitts v. Atlanta*, 121 Ga. 567, 49 S. E. 793 (1905); *Anderson v. Wellington*, 40 Kan. 173, 19 Pac. 719 (1888); *In re Frazee*, 63 Mich. 396, 30 N. W. 72 (1886); *People v. Garabed*, 20 Misc. 127, 45 N. Y. Supp. 827 (1897); *Commonwealth v. Mervis*, 55 Pa. Super. 178 (1913); *Commonwealth v. Curtis*, 55 Pa. Super. 184 (1913); *In re Garrabad*, 84 Wis. 585, 54 N. W. 1104 (1893).

named groups from their operation have been held invalid.²⁷ However, it has been suggested that this does not necessarily preclude classification of different types of assemblies and the requiring of permits only for certain types if the classification is reasonable.²⁸ In two cases where permits were refused because of the fear of riot or disorder, the action of the issuing authority was upheld,²⁹ and the ordinance in the instant case was upheld in a state court mandamus proceeding.³⁰ However, in the light of the other permit cases, these three cases appear to be out of line.

W. O. COOKE.

Torts—Debtor and Creditor—Intentional Infliction of Fright— Liability for Resulting Mental and Physical Injury.

A creditor gave to the defendant, a credit reporting agency, a debt for collection which was owed the creditor by the plaintiff, the operator of a dry-cleaning establishment. The plaintiff was suffering from high blood pressure, due to which he had lost, but was slowly recovering, his sight; to effect a recovery it was necessary that he be free from worry and excitement. The defendant sent the debtor three letters containing threats of action which would be taken by the defendant and the creditor if the debt were not paid; namely, the reporting by the defendant of the plaintiff's "poor pay" record to the members of its credit association, and the institution by the creditor of some of the various legal proceedings open to creditors. The plaintiff suffered a relapse upon receipt of the letters, and sued for damages, alleging malicious intent on the part of the defendant. The defendant's demurrer was sustained in the lower court, but overruled in the circuit court, on the ground that to indulge in conduct intended or likely to

²⁷ *Anderson v. Wellington*, 40 Kan. 173, 19 Pac. 719 (1888) (ordinance forbidding parades and assemblages on the streets without consent of mayor except funerals, fire companies, state militia, and United States troops); *In re Frazee*, 63 Mich. 396, 30 N. W. 72 (1886) (ordinance requiring a permit from mayor and councilmen to hold a parade with the exception of funeral and military processions); *Commonwealth v. Mervis*, 55 Pa. Super. 178 (1913) (ordinances forbidding parades and assemblages on the streets without notifying the police, except the National Guard, fire and police departments, and Grand Army of the Republic); *In re Garrabad*, 84 Wis. 585, 54 N. W. 1104 (1893) (ordinance forbidding marching on certain streets without written consent of the mayor except fire companies, state militia, and funeral processions, and providing that no permit could be refused to any political party having a regular state organization).

²⁸ *People ex rel. O'Connor v. Smith*, 263 N. Y. 255, 188 N. E. 745 (1934) (ordinance requiring permit only for public worship on the streets and not for other types of assemblages).

²⁹ *Sullivan v. Shaw*, 6 F. Supp. 112 (S. D. Cal. 1934) (however, this decision was based also on the fact that the parade for which the permit was requested might congest traffic); *Coughlin v. Chicago Park Dist.*, 364 Ill. 90, 4 N. E. (2d) 1 (1936) (this decision was based partly on the ground that all parties were not properly before the court).

³⁰ *Thomas v. Casey*, 121 N. J. L. 185, 1 A. (2d) 866 (Sup. Ct. 1938).