

then must enforce the title gained in state B or that of state A.<sup>17</sup> The question is usually further complicated by the fact that no new transaction has occurred in state C.<sup>18</sup> Some of the writers have felt this involves a question of due process and full faith and credit under the Federal Constitution.<sup>19</sup> The problem of the action of other states toward the new Ohio title is, therefore, one which Ohio courts should not overlook.<sup>20</sup>

A.B.

## CONSTITUTIONAL LAW

### CONSTITUTIONAL LAW — CIVIL LIBERTIES — PEACEABLE ASSEMBLY — VALIDITY OF ORDINANCE REQUIRING DISPERSAL OF CROWD

Defendant was convicted of violating a village ordinance which provided: "That it shall be unlawful for three or more persons to assemble . . . on any of the sidewalks, streets, avenues, alleys or parks . . . or to refuse or neglect, on being notified by the Marshall or Police Officer to do so, to forthwith quietly disperse." The facts showed that defendant and a few friends had been standing on a sidewalk, ostensibly behaving themselves in a quiet manner, the only basis of conviction being the refusal to "move on" at the police officer's command. The Court of Common Pleas of Hamilton County reversed the conviction and held the ordinance unconstitutional as being repugnant to the guarantee of peaceable assembly found in Article I, Section 3 of the Ohio Constitution and the Fourteenth Amendment.<sup>1</sup>

In the past, although a few jurisdictions have invalidated legislative exertions of similar character on grounds of infringement of state constitutional guaranties,<sup>2</sup> such ordinances have generally been sustained as valid exercises of municipal police power. Thus the municipal power to prevent obstruction of traffic,<sup>3</sup> to abate nuisances,<sup>4</sup> to prevent breaches

<sup>17</sup> *Forgan v. Bainbridge*, 34 Ariz. 408, 274 Pac. 155 (1928) refused to recognize the new title, on the basis of reciprocity; but see *Edgerly v. Bush*, 81 N. Y. 199 (1880). *Contra*: *Fuller v. Webster*, 5 Boyce 538, 95 A. 335, (Del. 1915).

<sup>18</sup> *Leffor, Jurisdiction Over Tangible Chattels*, (1937), 2 U. Mo. L. Rev. 171; also see note 9, *supra*.

<sup>19</sup> *Dodd, Power of the Supreme Court to Review State Decisions in the Field of Conflict of Laws* (1926) 39 HARV. L. REV. 533; *Ross, Has The Conflict of Laws Become a Branch of Constitutional Law?* (1931) 15 MINN. L. REV. 161.

<sup>20</sup> Generally see *Carnahan, Tangibles In The Conflict of Laws*, (1935) 2 U. OF CHI. L. REV. 345.

<sup>1</sup> *Deer Park (Village) v. Schuster*, 30 Ohio L. Abs. 466, 16 Ohio Op. 485 (1940).

<sup>2</sup> *State v. Coleman*, 96 Conn. 190, 113 Atl. 385 (1921); *State v. Hunter*, 106 N.C. 796, 11 S.E. 366, 8 L.R.A. 529 (1890).

<sup>3</sup> *People v. Pierce*, 85 App. Div. 125, 83 N.Y.S. 79 (1903).

<sup>4</sup> *Commonwealth v. Surrridge*, 265 Mass. 425, 164 N.E. 480 (1929).

of the peace,<sup>5</sup> to punish disorderly conduct,<sup>6</sup> and to penalize loitering<sup>7</sup> has overcome defense predicated on the privilege of assembly. Authority for this favorable judicial attitude toward municipal action was always traced to the Massachusetts case of *Commonwealth v. Davis*,<sup>8</sup> an early decision of Holmes, J., affirmed by the Supreme Court of the United States.<sup>9</sup> That decision was significant for its analogization of the municipality, in its control of its streets, parks, and other public places, to the private owner of land; the plenary power of the city there given legal currency bespoke the validity of local legislation, however broad.

The status of the *Davis* case as conditioning precedent was central in the recent but celebrated Jersey City litigation;<sup>10</sup> and the virtual repudiation of the Holmesian viewpoint attests the profound impact upon the scope of municipal power by the finding of the guarantee of free assembly in the Fourteenth Amendment. No longer can the city treat assemblage as the consequence of governmental grace; the right to come together now sets restrictive limits on what a few short years ago was power without effective check. In such a constitutional pattern there is no place for municipal legislation of the coverage pregnant in that litigated here. So much is clear from *Hague v. C.I.O.*;<sup>11</sup> if further proof be needed there lies at hand the recent fate of handbill ordinances drawn in broad, conclusive terms.<sup>12</sup>

These developments together with the logic of the thing make the action of the Court of Common Pleas unquestionably consistent with the philosophy of the national Supreme Court. Nor was the local court judicially out of step because the administrative action taken was scarcely by way of previous restraint. On its facts, it is true, the *Hague* decision but vouchsafed the constitutional right against the governmental censor. Yet judicial signposts have not been lacking for the proposition that the guaranty extends to aftermath as well. Analogies are close from the related rights of speech<sup>13</sup> and circulation;<sup>14</sup> but more than this,

<sup>5</sup> *People v. Sinclair*, 86 Misc. Rep. 426, 149 N.Y.S. 54 (1914), aff'd 167 App. Div. 899, 151 N.Y.S. 1136 (1915).

<sup>6</sup> *State v. Galpern*, 259 N.Y. 279, 181 N.E. 572 (1932).

<sup>7</sup> *State v. Jasmin*, 105 Vt. 531 (1933).

<sup>8</sup> 162 Mass. 510, 39 N.E. 113 (1895).

<sup>9</sup> 167 U.S. 43, 17 Sup. Ct. 731, 42 L. Ed. 71 (1897).

<sup>10</sup> *Hague v. C.I.O.*, 307 U.S. 496, 59 Sup. Ct. 954, 83 L. Ed. 1423 (1939).

<sup>11</sup> Note 10, *supra*.

<sup>12</sup> The effect upon municipal handbill power by the emergence of the right to freely circularize is succinctly summarized in (1940) 6 O.S.L.J. 195.

<sup>13</sup> That the right to speak freely safeguards against subsequent punishment as well as prior restraint, one of the constitutional issues resolved in the 1931 civil liberties cases, has recently been reaffirmed in the anti-picketing decisions. See *Thornhill v. Alabama*, —U.S.—, 60 Sup. Ct. 736, 84 L. Ed. 659 (April 22, 1940); *Carlson v. California*, —U.S.—, 60 Sup. Ct. 746, 84 L. Ed. 668 (April 22, 1940).

<sup>14</sup> That the *Lovell* doctrine was intended to go beyond the facts directly before the Court has been demonstrated beyond all peradventure in the decisions of last fall. See

the issue was necessarily involved in the dispute of *DeJonge v. Oregon*,<sup>15</sup> the initial case to carry the torch of assembly liberty from Amendment I to XIV.

The marked restriction in municipal power effected by this trend of judicial decisions means the case-by-case pricking out of new boundaries for the permissible scope of municipal regulation over assemblies. This process will be the more difficult inasmuch as litigation over the assembly guaranty in the First Amendment, unlike that with respect to freedom of speech and religious liberty, offers no constructive basis on which to build. Indeed, the leading case, *United States v. Cruikshank*,<sup>16</sup> was concerned with the extent of Federal power under Section 5 of the Fourteenth Amendment and yields nothing as to the point of final balance between governmental power and liberty of assembly beyond the general proposition that the right was an inherent one existent before the Constitution's adoption. It is apparent that in order to cope with crime and traffic control, to mention only two instances, a certain measure of discretionary power is needed by local officials. Responsive to this need, a New York court only recently sustained the validity of legislation similar to that under consideration in the principal case, but with respect to a situation involving a definite obstruction to traffic.<sup>17</sup> The *Hague* case was distinguished from the situation presented, the court holding that reasonable discretion in exercising such power must be retained by the city. A much earlier Ohio case,<sup>18</sup> not confronted by the influence of the Jersey City litigation, took a like view. It would appear probable, therefore, that the assembly guaranty may be subordinated to regulation by the city when definitely necessary for control of peace and order, and that under such circumstances legislation of this nature will be upheld. Yet the sweep of the handbill decisions of last fall, which leave to municipalities little power to control the modern pamphleteer, suggests that governmental authority will not be tolerated beyond a narrow range.

How great will be government's retreat in this sector of civil liberty's surging drive will depend in no small part upon the status accorded the assembly guaranty independent of its association with free speech and free press. Although there are few situations conceivable

*Schneider v. State of New Jersey (Town of Irvington)*; *Young v. People of the State of California*; *Snyder v. City of Milwaukee*; *Nichols v. Commonwealth of Massachusetts*, 308 U.S. 147, 60 Sup. Ct. 146 L. Ed. 115 (1939).

<sup>15</sup> 299 U.S. 353, 57 Sup. Ct. 255, 81 L. Ed. 278 (1937).

<sup>16</sup> 92 U.S. 542, 23 L. Ed. 588 (1875).

<sup>17</sup> *People v. Friedman*, 14 N.Y.S. (2d) 389 (1939).

<sup>18</sup> *Canton v. Robertson*, 20 Ohio N.P. (N.S.) 241, 28 Ohio Dec. (N.P.) 66, 62 Ohio L. Bull. 429 (1917).

where the assembly prerogative is itself the most important liberty being protected, the principal case presents as clear-cut an illustration of it standing alone as can be found; but even here it is barely possible that the conversation of the group was a large consideration in the judicial disposition of the case. The *Hague* and *DeJonge* decisions, though ostensibly based solely on the protection of assembly, both involved freedom of speech in quite the same degree. Thus, the greater the importance of the presence of speech or press elements, the greater probably will be the influence imputed to assembly.

Historical analysis of the assembly right shows that the Articles of Confederation contained no provision whatsoever for the exercise of this privilege, while heated debate accompanied its inclusion in the present Constitution.<sup>19</sup> A conflict exists among the authoritative writers as to whether or not this was a right in itself in the English common law.<sup>20</sup> A seeming qualification on the scope of the assembly guaranty, though little has been made of it, is found in both state and national constitutions. "The right of the people peaceably to assemble, and to petition the government for a redress of grievances" is the wording of the final clause in Amendment I of the Federal Constitution, while the Ohio Constitution, by Article I, Section 3, permits assemblage "to consult for the common good; to instruct their Representatives; and to petition the General Assembly for the redress of grievances." The exercise of the assembly right has never been confined specifically to the ends so expressly provided, yet the latitude given the preceding unqualified rights of free speech and press has never been attained. If this be explainable on the basis that assembly is only a necessary prerequisite to the other liberties, then the present decisions add greatly to the importance which may be expected of the assembly guaranty in the future, but do not accord it an independent status.

J.J.F.

#### CONSTITUTIONAL LAW — RECENT INTERPRETATION OF OHIO'S LIMITATION ON INDEBTEDNESS

Constitutional and statutory limitations on the creation of indebtedness by state and municipality,<sup>1</sup> although generally reflecting in their origin a sound and commendable fiscal policy, have in recent years given

<sup>19</sup> 1 Annals of Cong. 759.

<sup>20</sup> Jarret and Mund, *The Right of Assembly* (1931) 9 N.Y.U.L.Q. Rev. 1.

<sup>1</sup> 6 McQUILLIN, *THE LAW OF MUNICIPAL CORPORATIONS* (2d ed. 1937) sec. 2364. "There are . . . constitutional . . . statutory . . . and . . . charter provisions. (Some provisions forbid indebtedness in excess of a certain per cent of the value or assessed value of the taxable property in the municipal area, and (others limit) indebtedness in any one year to the income and revenue provided for such year, and (others contain) both the first and second provisions."