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Constitutional Law: Classification: City Ordinances

Al Watson

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NOTES AND COMMENT

Constitutional Law: Classification: City Ordinances.

That perplexing and yet very interesting question of classification which keeps bobbing up and down and in and out, of our courts, has again been in and out, in the case of *Sammarco et al* v. *Boysa.*[1] The City of Milwaukee has an ordinance which provides:[2] automobiles carrying a volatile, inflammable liquid shall not be placed in a wooden building of a certain character, but that nothing therein contained should prevent the owner of any existing garage from keeping not more than two automobiles, for his own use, in a portion of a building. In the above mentioned case plaintiffs were granted a permanent injunction restraining defendants from storing an automobile containing inflammable liquid in a wooden building in the City of Milwaukee. From this judgment defendant appealed, attacking the constitutionality of the ordinance. The defendant, well armed with similar cases,[3] contended that the ordinance is unconstitutional because it denies the equal protection of the law, in that it exempts from its inhibition owners of existing garages. This contention is based on the idea that, in order to constitute equal protection of the law, laws must affect every man, woman and child exactly alike. This is not true. A review of a few of the late cases discloses how completely untenable the defendant's contention was.

The Building Height Case[4] was held to be prospective only, and not to apply to buildings in the course of construction at the time the law was enacted, although the operation of the statute was not so limited in express terms.

The so-called Zoning law cases and ordinances have been held constitutional.[5] The Justices of the Massachusetts Court, in expressing the opinion that a proposed zoning law was constitutional, have this to say, "That there is recognition in Section 7 that rights already acquired by existing use or construction of buildings in general ought not to be interfered with."[6] The Supreme Court of this state, in *Price* v. *State,*[7] declared, "An attempt of the Legislature to suppress or minimize an evil is not to be held innocuous because it does not entirely eradicate it."

The court in the case under discussion, in the words of Justice

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[1] *Sammarco et al.* v. *Boysa* — Wis. —. 215 N.W. 446.

[2] Sec. 307 of Article 25 of City ordinance of the City of Milwaukee.

[3] *Tugman* v. *City of Chicago* 78 Ill. 405. *Chicago* v. *Rumpff* 45 Ill. 90. 92 Am. Dec. 196. *State* v. *Beattie*—16 Mo. App. 131. *People* v. *Reycraft*—156 Mich. 451. 120 N.W. 993. *Ex parte Dondero,* 19 Cal. App. 66. 124 P. 884.

[4] Building Height Cases. 181 Wis. 519, 195 N.W. 544.

[5] *State Ex rel Carter* v. *Harper.* 182 *Wis.* 148, 196 N.W. 451. *Lincoln Trust Co.* v. *Williams Bldg. Corp.* 229 N.Y. 313, 128 N.E. 209. *Ware* v. *Wichita,* 113 Kan. 153, 214 Pac. 99.

[6] Opinion of Justices, 234 Mass. 606, 127 N.E. 529.

[7] *Price* v. *State,* 168 Wis. 603 at 612, 171 N.W. 77.

Owens, says this: "We have no hesitation in holding the exemption contained in the ordinance we are considering as a reasonable and legitimate exercise of legislative power, and in pronouncing the ordinance immune from the assault here made upon it." And again the court says: "To assert that the ordinance here under consideration denies the equal protection of the law would not only defeat the purpose of zoning laws in general, but it would amount to a declaration that society is powerless to prevent the growth and development of an evil without completely stamping out the evil."

AL WATSON, '28

Contracts: Brokers: Right to Recover in Quantum Meruit for Services Rendered Under Oral Contract: Vested Rights.

Closely following the case of *Hale* v. *Kreisel*,[1] the Supreme Court of Wisconsin has again denied, in the recent case of *Nickol* v. *Racine Coat & Cloak Co.*,[2] the right of a broker to recover in quantum meruit for services performed and accepted under oral contract to procure a lessee. In the instant case the plaintiff had procured a lessee for defendant, a satisfactory lease was effected, and the lessee took possession. Plaintiff sued the defendant for services rendered in quantum meruit, as his right to recover on the express contract was clearly barred by section 240.10, R.S. The Supreme Court held that the right to recover on quantum meruit was also barred by the statute and hence plaintiff's action failed.

The statute in question, passed in 1917, albeit it has had but a comparatively short life, has had a very interesting history. The statute reads as follows:

Every contract to pay a commission to a real estate broker or agent or to any other person for selling or buying real estate or negotiating lease therefor for a term or terms exceeding three years shall be void unless such contract or some note or memorandum thereof describing such real estate, expressing the price for which the same may be sold or purchased or term of rental, the commission to be paid and the period during which the agent or broker shall procure a buyer or seller or tenant, be in writing and be subscribed by the person agreeing to pay such commission.

Shortly after its passage, the statute came before the court twice but in each instance the suit was on contract, based on meagre written memoranda.[3] Then, in 1921, in the case of *Seifert* v. *Dirk*,[4] the precise question here in point was brought before the court for adjudication. In a very exhaustive opinion, written after deliberate consideration, the court concluded that although the statute avoided the oral contract, the broker's right to recover in quantum meruit was still available. The court conceded that numerous other states with similar statutes who had passed upon the question had denied the broker's right of recovery for services rendered. However, it felt compelled to reach a contrary conclusion, basing its decision upon the rule that has

[1] 215 N.W. 227; [2] 215 N.W. —.

[3] *Gifford* v. *Straub*, 172 Wis. 396; *Brown* v. *Marty*, 172 Wis. 411.

[4] 175 Wis. 220.