

Poverty Law: King v. Smith and "Man-In-The-Home"

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plaintiff to establish the defendant's good faith or must the defendant's insurer intervene²⁹ to prove that defendant changed his residence for forum shopping purposes? What of the effect of the defendant's move on his duty to cooperate with the insurer in the defense of the action? What of the move's effect on the insurer's duty to defend and the conflict of interest problems inherent in the trial of such a case?

Considering the severe hardships occasionally wrought by statutory limitations, it is not surprising that courts sometimes strain to avoid enforcing them. However, the ruling in *Miller* that a post-accident change of domicile is a relevant "contact" to be considered in choice of law deliberations seems to have increased unnecessarily the difficulty of determining prior to litigation what law governs a *Miller*-type case. The court could have avoided the uncertainty likely to arise in future cases by disregarding the post-accident change of domicile, finding Maine law applicable under the *Babcock* test, and by reasserting the validity of the *Kilberg* rule to defeat the statutory limitation.³⁰ Although the substance/procedure characterization is strained at best and simply false at worst, nonetheless, use of the technique would accomplish the same result as that reached in *Miller*, *i.e.*, full compensation, and at the same time it would increase predictability in future choice of law cases. The forum shopping problem discussed in the dissent to *Miller* would not be solved by applying the *Kilberg* doctrine. However, it seems an inescapable fact of life today that, just as there are "good" states in which to domicile a corporation,³¹ so there are "good" states in which to be a personal injury plaintiff. Nothing short of a reversion by all jurisdictions to the pre-*Kilberg* vested rights doctrine will stop forum shopping in multi-state personal injury cases.³²

CHARLES D. CLAUSEN

Poverty Law—King v. Smith and "Man-In-The-Home": The Aid and Services to Needy Families with Children (AFDC) program was established by the Social Security Act of 1935.¹ The program was

²⁹ In a "direct action" state, the insurer would be a party to the action from its inception and would be in a position to present to the court the issue of whether the insured changed his residence in order to expand his insurer's liability.

³⁰ The argument against applying the *Kilberg* rationale to a *Miller* fact situation, made in note 27, *supra*, is useful only if the court should desire to limit liability. Since the court in *Miller* felt that the insurer was the real party in interest, it was interested in extending liability rather than limiting it.

³¹ See Comment, *Law for Sale: A Study of the Delaware Corporation Law of 1967*, 117 U. PA. L. REV. 861 (1969).

³² See La Brum, *The Fruits of Babcock and Seider: Injustice, Uncertainty, and Forum Shopping*, 54 A.B.A.J. 747 (1968).

¹ The original program was known as "Aid to Dependent Children," under Act of Aug. 15, 1935, ch. 531, 49 Stat. 627. This act was amended in 1962 by Act of July 25, 1962, Pub. L. No. 87-543, Title I, § 104(a) (4), (c) (2), 76 Stat. 185-6, and the name was changed to its present form. Hereinafter the program will be referred to as AFDC.

established "For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives[,] . . . to help maintain and strengthen family life and to help . . . parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection" Under this program, welfare assistance is provided for the benefit of a dependent child "[W]ho has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent" and who lives with any one of a number of listed relatives. The Act also provides for aid to dependent children of unemployed parents, although states participating in AFDC generally are not compelled to participate in this specific part of the program.⁴

The program is financed by a matching of federal and state funds. States are eligible to receive federal funds only after the Secretary of Health, Education and Welfare has approved states' plans for the administration of the program.⁵ Alabama participated in the program and its plan was originally approved⁶ by the Secretary, but Alabama and the Department of Health, Education and Welfare carried on a continuing correspondence concerning the conformity of the Alabama plan to federal policies and requirements, starting as early as 1956.⁷ Certain revisions of the Alabama plan were less than enthusiastically received by the Department. In fact, the state was informed that some of its policies were in direct conflict with the Social Security Act. One such policy was in the form of a "substitute father" regulation.

The Social Security Act provides that:

A State plan for aid and services to needy families with children must . . . (7) . . . provide that the State agency shall, *in determining need*, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children . . . as well as any expenses reasonably attributable to the earning of any such income⁸

Alabama had added a "man-in-the-home" (also known as a "substitute father") regulation to its program. The regulation was used to cut off aid to families receiving AFDC payments, on the theory that the requirement of the father's absence from the home was no longer met.

² 42 U.S.C. § 601 (1964).

³ 42 U.S.C. § 606 (a), as amended, (Supp. III, 1968).

⁴ 42 U.S.C. § 607, as amended, (Supp. III, 1968).

⁵ Section 104(b) of Pub. L. 87-543 provided: "Each State plan approved under title IV of the Social Security Act and in effect on the date of the enactment of this Act shall be deemed for purposes of such title, without the necessity of any change in such plan, to have been conformed with the amendments made by subsection (a) of this section."

⁶ *Id.* Alabama's plan was automatically approved by the 1962 amendment.

⁷ *Smith v. King*, 277 F. Supp. 31, 36-38 (D.C. Ala. 1967).

⁸ 42 U.S.C. § 602(a) (7) (1964) (emphasis added).

Under the Alabama regulation, an able-bodied man, married or single, was considered a substitute father of all the applicant mother's children if one of three situations existed: (1) he lived in the mother's home for the purpose of cohabitation; (2) he visited the home frequently for the purpose of cohabitation; or (3) he cohabited with the mother frequently outside the home.⁹ As can readily be seen, need was not a factor to be considered when applying this regulation. A child who was in all other respects eligible for assistance under the AFDC program would no longer receive aid if his mother was having continuing or frequent sexual relations with any man.

Mrs. Sylvester Smith, a widow and mother of four children, was a resident of Dallas County, Alabama. The family had been receiving aid under the AFDC program for several years. In the Fall of 1966 she was informed that, in accordance with the state's substitute father regulation, her name had been stricken from the list of those eligible for assistance under the program. She had been charged with having frequent sexual relations with a Mr. Williams. He was not the father of any of Mrs. Smith's children and did not give any financial assistance to Mrs. Smith or her family. As Mr. Williams was married and living with his wife and eight children, he was in no position to provide the Smith family with any financial aid. He never had been, nor was he at any future time, willing or able to support the Smith family. Mrs. Smith brought an action to have her family's AFDC assistance reinstated. Her action was based on two theories: that Alabama's interpretation of who is a non-absent parent was not consistent with Subchapter IV of the Social Security Act,¹⁰ and that such interpretation was not consistent with the Equal Protection Clause of the Constitution.¹¹

At the outset, it might be questioned why Alabama received federal funds when its plan was not in conformance with federal requirements. The state had been informed as early as 1964 that its substitute father regulation did not conform to the Social Security Act.¹² This regulation had been in effect since 1962¹³ and, although never approved by the Secretary of Health, Education and Welfare, Alabama continued to effectuate it. During this time Alabama continued to receive federal funds in spite of the fact that the Social Security Act specifically provides for the termination of federal payments to a state when its plan is so changed that it no longer conforms to the Act.¹⁴

⁹ *King v. Smith*, 392 U.S. 309, 314 (1968), citing the *Alabama Manual for Administration of Public Assistance*, pt. I, ch. II, § VI.

¹⁰ *King v. Smith*, 392 U.S. 309, 311 (1968).

¹¹ *Id.*

¹² Letter from the Atlanta Regional Director for the Department of Health, Education and Welfare, Aug. 31, 1964. See *Smith v. King*, 277 F. Supp. 31, 37 (D.C. Ala. 1967).

¹³ See Appendix to Opinion of Mr. Justice Douglas, Concurring, *King v. Smith*, 392 U.S. 309, 337 (1968).

¹⁴ 42 U.S.C. § 604(a) (2) (1964).

The author of a recent article in the *New York Times* concluded that the reason for the Department of Health, Education and Welfare's ineffectiveness was its "unwieldy" power. The Department could terminate payments to the states, but, short of this, it was powerless. The blame for the Department's inaction was placed on Congress and its political motivations¹⁵ and while the author appears to have a very cynical outlook as to the effectiveness of the Department of Health, Education and Welfare's ability to control the use of the funds it distributes to the states, it is questionable whether such a sweeping criticism is valid. It fails to take into consideration that the Department, as a federal agency, is somewhat influential. The power of reprisal remains in the Department and, even though not exercised, must bring pressure to bear on the states. This criticism, though, should not be brushed aside without some thought. One must bear in mind that Alabama retained its substitute father regulation for three years after it had been informed of the regulation's inconsistency with the Social Security Act and federal (Department of Health, Education and Welfare) policy.

The lower court found the regulation in violation of the Equal Protection Clause. While Justice Douglas in a concurring opinion agreed with the lower court, the majority of the Supreme Court chose to base its decision on statutory interpretation. Justice Douglas found three reasons that were of such moment to him that he felt that the statutory route did not adequately resolve the question. First, he pointed out that, under the majority's decision, Alabama could simply reject federal funds and reimpose the regulation under its own welfare statutes.¹⁶ Then the constitutional question would again arise under the state's own welfare program. However, an attempt by Alabama to fund such a program on its own would be more than ambitious and, therefore, highly unlikely. An attempt of this nature would result in negligible payments to welfare recipients or no welfare in this area at all.

Secondly, Justice Douglas felt that the only reason for the Department of Health, Education and Welfare's rejection of the regulation was that it extended to all of the mother's non-marital sexual relations, rather than just to those in the home. This argument stems from the so-called Flemming Rule of 1961 of the then Secretary of Health, Education and Welfare:

A state plan [for aid to dependent children] may not impose an eligibility condition that would deny assistance with respect to

¹⁵ Goodman, *The Case of Mrs. Sylvester Smith*, N.Y. Times, Aug. 25, 1968, (Magazine), at 67. "Even after the Smith Case was under way and the court urged it to come forward, H.E.W. played a curiously coy part. The reasons, one may fairly surmise, have to do with politics. In the best of times H.E.W. is not a favored child of the Congress, and these are not the best of times for domestic welfare—or for upsetting Southern legislators." *Id.*

¹⁶ King v. Smith, 392 U.S. 309, 335 & n. 3 (1968).

a needy child on the basis that home conditions in which the child lives are unsuitable, while the child continues to reside in the home. Assistance will therefore be continued during the time efforts are being made either to improve the home conditions or to make arrangements for the child elsewhere.¹⁷

Justice Douglas felt that the Department differentiated between sexual relationships within and without the home. Since he could see no distinction between the two in regard to the suitability of the home, he felt it necessary to decide the question of whether AFDC payments must be continued when the mother was carrying on such a relationship in the home, as well as when this type of relationship existed outside the home. Justice Douglas cites the lower court's opinion for authority that such a distinction was made.¹⁸ At one point, the lower court cited some of the correspondence between the Department of Health, Education and Welfare and the state concerning Alabama's "suitable home" policies. There appears to be scant evidence in the record to support Justice Douglas' conclusion. One letter from the Department to the Alabama authorities states:

[T]his amendment [discussing Alabama's then proposed "substitute father" regulation] goes far beyond your presently approved plan in that it results in ineligibility of all children living in a home with a mother, if she cohabitates with a man who is not her husband, or is illegitimately pregnant, or has given birth to an illegitimate child within the preceding six months, *irrespective of whether the man has any family relationship with the mother and the child or children.*¹⁹

This last clause would appear to lend some credence to Justice Douglas' argument, but there is little more support to be found.

Finally, Justice Douglas argued that the decision should have been based on constitutional grounds because of the "long-standing administrative construction that approves state AFDC plans containing a man-in-the-house provision."²⁰ Such a construction, he argued, should be accorded great weight in determining whether such man-in-the-home regulations were indeed in conflict with federal policy. There seems to be no doubt that this argument is valid if it is determined that all such regulations in all forms are invalid. The majority, unlike Justice Douglas, was apparently not willing to come to this conclusion and, therefore, did not want to lay down principles through which all such regulations could be upset. For one thing, the Social Security Act itself provides

¹⁷ *Id.* at 322-23.

¹⁸ *Id.* at 335. See also *Smith v. King*, 277 F. Supp. 31, 36-38 (D.C. Ala. 1967).

¹⁹ Letter from the Atlanta Regional Director for the Department of Health, Education and Welfare, Aug. 31, 1964 (emphasis added). See *Smith v. King*, 277 F. Supp. 31, 37 (D.C. Ala. 1967).

²⁰ *King v. Smith*, 392 U.S. 309, 334 (1968).

for termination of aid where home conditions are unsuitable if other adequate care and assistance is provided the child.²¹

Assuming for the moment that the majority was wrong and that the regulation was not in violation of the Social Security Act, the question is reached as to whether Justice Douglas was correct in finding the Alabama regulation in violation of the Equal Protection Clause. Justice Douglas pointed out that a child could not be denied a cause of action merely because he was "conceived in sin," since such a disqualification was discriminatory.²² He argued that the present case was analogous, and concluded that the reasons stated in the lower court's opinion were correct and that the lower court was right in basing its decision on constitutional grounds.

The lower court had concluded that the Alabama regulation classified children in determining whether they were eligible for aid under the AFDC program, and held that any "[A]ttempted classification . . . must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis."²³ It further held that the denial of AFDC to otherwise eligible children on the basis of their mother's immorality was "[A] reason . . . wholly unrelated to any purpose of the Aid to Dependent Children statutes."²⁴ The lower court therefore concluded that the regulation did violate the Equal Protection Clause.

As was admitted by Justice Douglas,²⁵ the Court traditionally follows the statutory route, rather than the constitutional one, unless statutory construction makes the prior method impossible. There is in the opinion, however, some indication of the majority's feelings as to whether morality can be a string attached to welfare aid. The majority opinion discussed the evolution of public welfare in regard to needy families deprived of a male breadwinner.²⁶ It was pointed out that the forerunner of AFDC, the mother's pension welfare program, was characterized by a "worthy person" concept. In other words, under this early program those mothers who were considered immoral because of their sexual behavior would have their welfare aid terminated. This policy, the opinion stated, was a "significant characteristic of public welfare programs during the last half of the 19th century in this country."²⁷ Looking to legislative history for authority, the Court then stated:

²¹ 42 U.S.C. § 608 (1964).

²² *King v. Smith*, 392 U.S. 309, 336 (1968).

²³ *Smith v. King*, 277 F. Supp. 31, 38 (D.C. Ala. 1967).

²⁴ *Id.* at 39.

²⁵ See *King v. Smith*, 392 U.S. 309, 344 (1968), citing *Harmon v. Bruckner* 355 U.S. 579, 581 (1957).

²⁶ *King v. Smith*, 392 U.S. 309, 320-27 (1968).

²⁷ *Id.* at 321.

In this social context it is not surprising that both the House and Senate Committee Reports on the Social Security Act of 1935 indicate that States participating in AFDC were free to impose eligibility requirements relating to the "moral character" of applicants.²⁸

The opinion went on to discuss how, in the 1940's and 1950's, such requirements lost favor in the eyes of many people and came under repeated attack. The opinion also described gubernatorial reaction to attempts by several state legislatures to disqualify illegitimate children from AFDC and noted, too, the Department of Health, Education and Welfare's strong disapproval of such a policy. Finally, the Court pointed out that Congress, in 1962, approved the Flemming Ruling in statutory form.²⁹ From these observations it might be surmized that the majority apparently felt that if morality was no longer a valid consideration in the distribution of funds to welfare recipients it was up to Congress to declare it.

In support of its argument that the congressional attitude toward cutting off AFDC under a state regulation so constructed had changed, the majority cited the many congressional amendments to the Social Security Act. Recent amendments to the Act provided for the removal of a child from a home that has been, through a judicial proceeding, declared unsuitable,³⁰ for the termination of AFDC if the child or children are provided with other adequate care by the state,³¹ for programs for improving unsuitable homes,³² for establishment of the paternity of illegitimate children,³³ and for voluntary family planning services.³⁴ The Court therefore concluded that this regulation was not a valid method for discouraging illicit sexual relationships or illegitimate births, both of which purposes the state had argued were valid grounds for the regulation.

Alabama's second argument for the validity of the regulation was that "[T]here is a public interest in a State not undertaking the payment of these funds to families who because of their living arrangements would be in the same situation as if the parents were married, except for the marriage."³⁵ In the latter situation, the children would not be eligible for AFDC because their father lived in the home. In the former, the children would be eligible even though a man lived in the home, the difference between the two situations being only an actual marriage. The majority's response to this argument was simply that,

²⁸ *Id.* at 321.

²⁹ Act of May 8, 1961, Pub. L. No. 87-31, § 64, 75 Stat. 77.

³⁰ 42 U.S.C. § 608(a) (1) (1964).

³¹ 42 U.S.C. § 604(b) *as amended*, (Supp. III, 1968).

³² 42 U.S.C. § 602(a) *as amended*, (Supp. III, 1968).

³³ *Id.*

³⁴ *Id.*

³⁵ *King v. Smith*, 392 U.S. 309, 327 (1968).

where a marriage had taken place, the father was legally obligated to care for his children. In the other case, the man was not under any legal obligation to support the children, unless, of course, a child was in fact his or he had assumed the responsibility for a child's support through adoption. The majority had pointed out earlier³⁶ that, under Alabama statutes, the legal obligation for support was imposed only upon a parent of a child,³⁷ and Alabama case law³⁸ has interpreted such statutes to mean that only a person, not in fact the child's parent, who voluntarily assumes the obligation for support will be required to do so. However, the Alabama court has held that this voluntary assumption "should not be slightly nor hastily inferred."³⁹

The majority contended that the word "parent," as used in section 606(a) of the Act,⁴⁰ meant only a person legally obligated to support the child and that this was what Congress intended when it passed the Act. In support of this interpretation, the majority cited the word's use in other parts of the Act⁴¹ and the legislative history of its passage.⁴² It may appear that the majority ran into a consistency problem at this juncture. Earlier, it was pointed out that Congress, when it passed the Social Security Act in 1935, allowed states to set up plans to deprive certain children of aid under the Act.⁴³ The majority then cited Senate and House committee reports, made at the time of the Act's passage, in support of the proposition that Congress could not have intended to discriminate against a certain group of children in the dispensing of welfare aid. The majority confused the explanation by stating, "By a parity of reasoning, we think that Congress must have intended that the children in such a situation remain eligible for AFDC assistance notwithstanding their mother's impropriety."⁴⁴ This statement seems to be diametrically opposed to the majority's earlier statement that Congress would allow eligibility requirements based on the morality of the applicant. The majority correctly stated that the Act was designed to benefit children who have been deprived of a wage earner, or "breadwinner," because other programs were set up for children who had unemployed parents.⁴⁵ The court was correct in stating that the term "parent," as used in the Act, means a person legally obligated to give support. Whether Congress would allow morality to

³⁶ *Id.* at 326, n.10.

³⁷ ALA. CODE title 34, § 90 (Supp. 1965). Section 89 of this title defines the term "parent" as "[T]he natural legal parent or parents, or other persons who shall have legally acquired the custody of such child or children, and the father of such child or children, though born out of wedlock."

³⁸ *Law v. State*, 238 Ala. 428, 199 So. 803 (1939).

³⁹ *Englehardt v. Yung's Heirs*, 76 Ala. 534, 540 (1884).

⁴⁰ 42 U.S.C. § 606(a) (1964).

⁴¹ *King v. Smith*, 392 U.S. 309 (1968). See the Court's discussion at 331-32.

⁴² *Id.* at 327-29.

⁴³ *King v. Smith*, 392 U.S. 309 (1968). See the Court's discussion at 320-22.

⁴⁴ *Id.* at 329.

⁴⁵ *Id.* at 328-30.

be an eligibility requirement is immaterial. The Act was still intended to benefit children deprived of parental support. The eligibility requirement was after the fact, so to speak. Congress did allow such an eligibility requirement, but, as was pointed out earlier in the opinion, through various amendments to the Act had outlawed such a requirement. The majority's ultimate conclusion was correct, but its reasoning was spurious. However, the majority then went on to cite later congressional amendments to the Act which concern the finding of the child's father and securing support for the child from him in an attempt to buoy its interpretation of the term "parent." Its reasoning in this respect stands on firmer ground. The majority argued that the "parent," as used in these amendments, when dead or missing, was the same "parent" that Congress was interested in when determining whether a child fit into the category eligible for aid under the Act. In sum, what is confusing or illogical is that Congress allowed morality to be an eligibility requirement under the Act in 1935. Such a requirement was a direct contradiction to the system it had set up.

King v. Smith appears to indicate a trend toward a more restrictive viewpoint as to factors other than need and such factors' relation to welfare programs. However, the majority opinion indicated that this is a congressional trend, thereby implying that Congress may attach whatever strings it wishes to welfare aid and that the courts will not interfere. But it should be remembered that the majority did not reach the constitutional issue and did not say that such regulations are not unconstitutional. One possible reason for this could be that the Court may have been trying to stay out of the administrative affairs of the Department of Health, Education and Welfare and to not embarrass it by revealing its ineffectiveness in keeping the states in line with its policies. It remains to be seen how the states with substitute father regulations will react.⁴⁶ It is certain that if these regulations are kept intact, more cases like *King* will arise, but it seems apparent from this

⁴⁶ It should be noted that several points are not covered by this decision. In an article in 14 WELFARE L. BULL. 19 (Sept., 1968) Ronald Pollack, a Staff Lawyer at the Columbia Center on Social Welfare Policy and Law, points out that twelve states have "budgetary rules" rather than man-in-the-home regulations. A rule of this nature is used by a state to establish a "rebuttable presumption of income availability" to a child "based on the presence of a man-in-the-home." 14 WELFARE L. BULL. 19, 21 (Sept., 1968). *King v. Smith* does not concern such rules. However, Mr. Pollack points out that the Department of Health, Education and Welfare has since outlawed budgetary rules, although he expresses some fear that states will continue to implement them until forced to submit to federal policy.

A further problem concerns the retroactive effect of this decision. The Department has ruled that corrective payments will be made retroactively to June 17, 1968, the date of the Supreme Court's decision in *King v. Smith*. State Letter No. 1048 (Sept. 30, 1968). See 14 WELFARE L. BULL. 19, 20 (Sept., 1968). The Department has also agreed in court not to seek overpayments made to persons who received aid while such persons violated man-in-the-house regulations. Matter of Janetta W., No. 872-020.0 (D.C. fair hearing, decided Oct. 7, 1968). See 15 WELFARE L. BULL. 6 (Dec., 1968).

case that any such regulation will have to provide for some method of assisting needy children before it will be allowed. The important point to remember here is that AFDC is intended to benefit children and not the children's mothers. Any regulation which terminates this aid for a reason other than need or act of the individual child himself would be wholly illogical unless the child is provided for in some other manner. The majority opinion is restricted to the issue of a mother's immorality in respect to the termination of aid. Although Justice Douglas' opinion was broader than necessary for a determination of this case, his argument is appealing and may be important in future problems in this area.

WILLIAM CROKE

Torts: Negligence—Policeman In Performance of Duties Allowed Recovery As Invitee: In *Cameron v. Abatiell*¹ a city policeman was injured when steps leading to the back door of a business building collapsed while he was following his usual routine of checking for fires. The Vermont Court, in determining the liability of the owner, was concerned with the status of a policeman rightfully on the premises in the performance of his duties. The court held that the policeman was entitled to recover from the possessor of the premises, since he enjoyed the status of a business invitee. The court stated:

In this case, as in cases of a public employee, the policeman covering the Center Street beat could reasonably be anticipated and expected not only as to time (in the evening after closing hours) but also as to the exact place. Thus, the defendants had a reasonable opportunity to make the premises safe or to warn the plaintiff of any dangerous condition. It was within the reasonable foresight of the defendants of what was likely to happen if the steps leading to the rear door became in disrepair. The plaintiff was not using the stairway to the rear door in an emergency in the discharge of his police duties. His entry on the steps was not to make an arrest or chase a thief or burglar. The circumstances of this case distinguish it from those cases arising in other jurisdictions which deny recovery.

[W]e conclude that the relationship between the plaintiff and defendants is in essence that of a business visitor, or invitee, on the premises. Accordingly, the rules of protection from injury applicable to such class of persons are controlling.²

However, the majority of American courts have classified policemen entering premises in performance of their duties as mere licencees.³

¹ 241 Ad.2d 310 (Vt. 1968).

² *Id.* at 314-15.

³ See *Louisville & N. R.R. Co. v. Griswold*, 241 Ala. 104, 1 So. 2d 393 (1941); *Pincock v. McCoy*, 48 Idaho 227, 281 P. 371 (1929); *Carroll v. Hemenway*, 315 Mass. 45, 51 N.E.2d 952 (1943); *Scheurer v. Trustees of the Open Bible Church*, 175 Ohio St. 163, 192 N.E.2d 38 (1963). See Note, 28 CORNELL L. Q. 232 (1943).