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Constitutional Law: Fourteenth Amendment; Discriminating Legislation; Classification

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ington, and the fact that plaintiff corporation is decidedly not within the confines of the latter state, nor so close as to commingle interstate and intrastate commerce, sharply calls attention to the basic idea of the case, i.e., interstate commerce.

THOMAS W. HAYDEN

Constitutional Law; Fourteenth Amendment; Discriminating Legislation; Classification

A state statute requiring certain associations to file a copy of their constitution, membership oath together with a list of members, and providing for a penalty to its members for not complying, is held not to deny the due process clause of the United States Constitution, in a recent case of *People of State of New York ex rel. Bryant* vs. *Zimmerman et al.* Decided November 19, 1928. A state legislature may also discriminate against a particular class from which evil sought to be remedied is mainly to be feared. A statute requiring oath-bound associations to file their constitution, by-laws, oath, and list of its members which exempted labor unions and certain lodges, was held not to deny equal protection as discriminating against the Ku Klux Klan, because it is based on reasonable classification.

The relative, Bryant, who was held in custody to answer a charge of violating this statute of New York brought a proceeding in habeas corpus in a court of that state to obtain his discharge on the ground, as was stated in the petition, that the warrant under which he was arrested and detained was issued without any jurisdiction, in that the statute which he was charged with violating was unconstitutional, because repugnant to the Fourteenth Amendment to the Constitution which declares:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person, life, liberty, or property, without process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

There are various privileges and immunities which under our dual system of government belong to citizens of the United States solely by reason of such citizenship. It is against their abridgment by state laws that the *privilege and immunity* clause in the Fourteenth Amendment is directed. But no such privilege or immunity is in question here. If to be, and remain a member of a secret, oath-bound association within a state be a privilege arising out of citizenship at all, it is an incident of state rather than United States citizenship; and such protection as is thrown about it by the constitution is in no wise affected

by its possessor being a citizen of the United States. Thus there is no basis here for invoking the *privilege and immunity* clause.[1]

The main contention made under the equal protection clause is that the statute discriminates against the Knights of the Ku Klux Klan and other associations in that it excepts from its requirements several associations having oath-bound membership, such as labor unions, the Masonic fraternity, the Independent Order of Odd Fellows, the Grand Army of the Republic, and the Knights of Columbus—all named in another statute, which provides for their incorporation and requires the names of their officers as elected from time to time to be reported to the secretary of state.

Patsone vs. *Pennsylvania*[2] holds in part that the "discrimination undoubtedly presents a more difficult question. But we start with the general consideration that a *state may classify* with reference to the evil to be prevented, and that if the class discriminated against is or reasonably might be considered to define those from whom the evil mainly is to be feared, it may properly be picked out. A lack of abstract symmetry does not matter. The question is a practical one, dependent upon experience. The demand for symmetry ignores the specific difference that experience is supposed to have shown to mark the class. It is not enough to invalidate the law that others may do the same thing and go unpunished, if, as a matter of fact it is found that the danger is characteristic of the class named."[3]

The courts recognized the principle shown in the cases just cited and reached the conclusion that the classification was justified by a difference between the two classes of associations shown by experience and that the difference consisted (a) in a manifest tendency on the part of one class to make the secrecy surrounding its purposes and membership a cloak for acts and conduct inimical to personal rights and public welfare, and (b) in the absence of such a tendency on the part of the other class[4] in contrarity to the Ku Klux Klan. It is a matter of common knowledge that this organization functions largely at night, its members disguised by hoods and gowns and doing things calculated to strike terror into the minds of the people.

The Ku Klux Klan was a revival of an earlier time, with additional features borrowed from the *Know Nothing* and the *A. P. A.* orders of other periods; that its membership was limited to nativeborn, gentile, protestant whites; that in part of its constitution and printed creed it proclaimed the widest freedom for all and full adherence to the Con-

[1] Slaughterhouse cases 16 Wall. 36, 77 et seq.
[2] 232 U.S. 138.
[3] *Lindsey* v. *Natural Carbonic Gas Co.*, 220 U.S. 61,80.
[4] 206 N.Y. 533.

stitution of the United States, in another exacted of its members an oath to shield and preserve *white supremacy,* and in still another declared any person actively opposing its principles to be *a dangerous ingredient in the body politic of our country and an enemy to the weal of our national commonwealth;* that it was conducting a crusade against Catholics, Jews, and negroes, and stimulating hurtful religious and race prejudice; that it was striving for political power, and assuming a sort of guardianship over the administration of local, state, and national affairs; and that at times it was taking into its own hands the punishment of what some of its members conceived to be crimes.

It is plain that the action of the courts below in holding that there was a real and substantial basis for the distinction made between the two sets of associations or orders was right and should not be disturbed.

Criticism is made of the classification on the further ground that the regulation is confined to associations having a membership of twenty or more persons. Classification based on numbers is not necessarily unreasonable. There are many instances in which it has been sustained. It is not unreasonable in this instance. With good reason the legislature may have thought that an association of less than twenty persons would have only a negligible influence, and be without the capacity for harm that would make regulation needful.

CHAS. S. SHANE

Fraud; State Law Creating Presumption of, as to every Insolvency; Due Process

The United States Supreme Court, in the recent case of *Manley* v. *State of Georgia,* 49 S.Ct. 215, had occasion again to defend the Fourteenth Amendment. The difficulty arose over the interpretation of section 28, art. 20 of the State Banking Act of 1919 (Acts Ga. 1919, p. 219) which is worded:

Every insolvency of a bank shall be deemed fraudulent, and the president and directors shall be severally punished by imprisonment and labor in the penitentiary for not less than one (1) year nor longer than ten (10) years; provided, that the defendant in a case arising under this section, may repel the presumption of fraud by showing that the affairs of the bank have been fairly and legally administered, and generally, with the same care and diligence that agents receiving a commission for their services are required and bound by law to observe; and upon such showing the jury shall acquit the prisoner.

This statute became of peculiar significance because of the adoption of a new definition of insolvency in that year:

A bank shall be deemed to be insolvent, first, when it cannot meet its liabilities as they become due in the regular course of business;