Constitutional Law - Bible Reading in Public Schools

Lawrence Binder

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A New York case involving fraud upon a third person allowed the admission of parol evidence, "to show that the writing which purported to be an agreement was not, in fact, intended by the plaintiff and defendant as such." This case was reversed on appeal, but on the ground that the parol agreement was void under the statute of frauds. The New York court in an earlier decision said:

"This is in avoidance of the instrument and not to change it, and I do not see why the testimony was not as competent in this case as it would be to show that a written instrument was obtained fraudulently, by duress or in an improper manner. Such evidence does not come within the ordinary rule of introducing parol evidence to contradict written testimony. . ."  

In the majority of cases the parties to the oral and written contracts are identical. In the instant case, however, the beneficiary of the oral agreement contracted in writing with one of the parties to the oral agreement. The Michigan court indicates that this would not change the rule. With this result the Texas court is in accord, although the court did not consider the change of parties as affecting the rule. In the instant case the court places a limitation upon the rule, however, asserting that if one of the parties had been an innocent purchaser for value if would be inequitable to hold the written contract a sham.

JOHN J. WITTAK

Constitutional Law — Bible Reading in Public Schools — A New Jersey statute requiring daily reading of five verses of the Old Testament of the Holy Bible without comment, and permitting repetition of the Lord's Prayer in each public school classroom, was challenged as to its constitutionality under the First and Fourteenth Amendments of the United States Constitution. Held: The statute did not contravene the "establishment of religion" clause of the First Amendment nor the "privileges and immunities" clause of the Fourteenth Amendment, since such reading was not designed to inculcate any particular dogma, creed, belief, or mode of worship. Doremus et al v. Board of Education of Borough of Hawthorne et al., 5 N.J. 435, 75 A. (2d) 880 (1950).

The court distinguished this case from the Everson and McCollum cases in its facts and then proceeded to an interpretation of the First

9 Grierson v. Mason, 60 N.Y. 394, 397 (1875); See also Coffman v. Malone, 98 Neb. 819, 154 N.W. 726 (1915); 1917 B.L.R.A. 263.
Amendment. The court considers the meaning and impact of many of the institutions of our land, such as, the Sunday holiday, the oath of office, and the National Anthem, as well as the debate in the First Congress which proposed the Bill of Rights, and many of the other provisions of the Constitution, to show that it was not the intent of the First Amendment "that the existence of a Supreme Being should be negatived and that the government recognition of God should be suppressed."  

Having accepted the above premise, the court states that it cannot see how a mere reading of the Old Testament without comment would tend to an establishment of religion. The Old Testament and the Lord's Prayer are accepted by the three great religions, the Roman Catholic, the Protestant, and the Jewish, and while there are other religions in addition to these, the court feels that they are numerically small and of negligible impact upon our national life.

The Supreme Court concluded that the Old Testament, because of its antiquity, its content, and its wide acceptance is not a sectarian book when read without comment. The statute makes no distinction as to which of the recognized translations of the Bible is to be used and the court apparently feels they are substantially the same and that the various sects base their differing beliefs on varying interpretations of the same passage.

Although the majority of the State Supreme Courts adopt the view that the mere reading of the Bible without comment is non-sectarian, Wisconsin takes a contrary stand. In a leading case the Wisconsin Supreme Court has held that the reading of the Bible without comment, must need be sectarian. In practice, either the Douay or the King James version must be used. And it must be conceded as a matter of common knowledge that these editions vary in material matters and that therefore the use of the one or the other must necessarily be in preference of one religion over another. Additional grounds are found in the fact that there is a basic point of difference among Christian sects as between subjective and authoritative interpretation of the Bible. The reading

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4 Principal Case—cited in text.

5 New Jersey Stats. 18:14-77.

6 Cases collected and discussed in 5 A.L.R. 866, 141 A.L.R. 1144.

7 State ex rel. Weiss and others v. the District Board of School District No. Eight of the City of Edgerton, 76 Wis. 177, 44 N.W. 967 (1890).
of passages without comment necessarily leaves the interpretation to the pupil and is prejudicial therefore to those believing in an authoritative interpretation.

In its opinion the New Jersey Court seems to imply, as other courts have held,⁸ that this is a Christian country and that Christianity is incorporated in our law. The court said:

"The application is that some of our national incidents are developments from the almost universal belief in God which so strongly shaped and nurtured our people during the colonial period and the formative years of our Constitutional government, with the result that we accept as a commendable part of our public life certain conditions and practices which in a country of different origins would be rejected."

Although, as previously stated, the Doremus case can quite readily be distinguished on its facts from the decisions in the Everson⁹ and McCollum¹⁰ cases, it is felt that the above quoted language is in conflict with the language in those two recent decisions to wit:

"Neither (a State or the Federal Government) can pass laws which aid one religion, aid all religions, or prefer one religion over another."

It would seem that the most fundamental issue in these cases has yet to be decided. Just what is the scope of the word "religion" in the "establishment of religion" clause of the First Amendment? It is recognized that one Christian sect cannot be supported or favored over another Christian sect. But Christians of course hold much in common which in turn is not held by non-Christian sects and the question restated is, does the Constitution protect these religious minorities from discriminatory legislation favorable to Christians? From the language in the two recent United States Supreme Court decisions it is believed that Court would probably say it does.

Therefore, to summarize, it would seem Bible reading without comment in public school classrooms is in fact sectarian upon at least three grounds. It is a matter of common knowledge that the Holy Bible is not accepted by all religious groups in this country, and legislation ordering its reading in order to recognize the existence of a Creator and to teach of Him is, therefore, necessarily prejudicial to those who do not accept the Bible. Moreover, there are only two widely known editions of the Holy Bible in use today, the King James, or "Protestant version," and

⁸ Supra, Note 5.
See B. H. Hartogensis, Denial of equal rights to religious minorities and non-believers in the United States, 39 Yale Law Review 659 (1930) for a discussion of the rights of non-Christian religious minorities and the cases cited in support of the proposition.
the Douay, or "Catholic version." Use of one or the other would necessarily appear to be in preference of one religion over another. And if both editions should be held to be substantially objective (as might be true in the case of the Old Testament alone), yet the reading thereof without comment and without interpretation is certainly detrimental to those who believe the Bible is not to be interpreted by each in his own way but is to be authoritatively interpreted.

From the above it follows that the New Jersey decision cannot be reconciled with the McCollum and Everson cases nor with the Edgerton case decided by the Supreme Court of Wisconsin.

Lawrence Binder