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Constitutional Laws

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leasing the children to the custody of the father. One member of the court thought that the Wisconsin court had no power to award custody, due to lack of jurisdiction over the children. However, he concurred in the judgment on the ground that the Ohio court had jurisdiction to determine custody and had made a proper determination thereof.

Suit Against Foreign Administrator

In *Feldman v. Gross*,⁴ the United States District Court, under its interpretation of Ohio law, held that suit may not be maintained against a foreign administrator unless property of the decedent is located in the state. The court also pointed out that a judgment against a foreign administrator is of no effect except with reference to property within the jurisdiction of the court which renders the judgment.

FLETCHER REED ANDREWS

CONSTITUTIONAL LAW

Generally Ohio developments mirrored national problems with traditional due process issues, new questions on loyalty oaths and censorship of films being in the foreground.

In the case of *In re Stewart*,¹ the Ohio Supreme Court held that the Director of Public Welfare may transfer a convicted prisoner from Lima State Hospital for the Criminally Insane to the penitentiary on certification that the prisoner is no longer psychotic. The order is administrative in nature, not judicial, and, therefore, a layman could order the transfer. The court refused to consider alleged errors in the indictment in this habeas corpus action. Appeal, not habeas corpus, was held to be the proper method for such correction.

In *State v. Edwards*,² the court held that a convicted murderer sentenced to death has no appeal as of right unless notice is filed within the time prescribed by statute. Due process does not require appeal but only one hearing on proper notice before a competent tribunal. On the other hand, the failure to give a hearing precluded an administrative body from entering a final order against a railroad restricting train speed in *New York Central R.R. v. Public Utilities Commission of Ohio*.³

The original jurisdiction given the Ohio Supreme Court by the Ohio Constitution cannot be enlarged by statute. This Constitutional rule, fol-

¹ 156 Ohio St. 521, 103 N.E.2d 551 (1952).

² 157 Ohio St. 175, 105 N.E.2d 259, *cert. denied*, 343 U.S. 936, 72 Sup. Ct. 776, *rehearing denied*, 343 U.S. 944, 72 Sup. Ct. 1039 (1952).

³ 157 Ohio St. 257, 105 N.E.2d 410 (1952).

lowed in *Classic Pictures, Inc. v. Department of Education*,⁴ prevented an action in the supreme court to determine the legality of the Department of Education's refusal to license a motion picture.

The equal protection of the law clause of Amendment XIV of the United States Constitution and Article I, Section 2 of the Ohio Constitution were held to deny the City of Youngstown the right to enforce a municipal income tax. The tax rate for individuals was three-tenths of one percent and for corporations one percent. The court in *Youngstown Sheet and Tube Co. v. Youngstown*⁵ held that no reasonable basis for the apparent discrimination between individuals and corporations existed. *Quaker City Cab Co. v. Pennsylvania*⁶ had held invalid under the equal protection clause a gross receipts tax on taxicab corporations but not on individuals operating taxis. The *Quaker City Cab* case followed expressly in the *Youngstown* case presented a tax on a special occupation where classification would appear to demand more care than a general income tax. In *Youngstown Sheet and Tube* the court gave great emphasis to the fact that *Quaker City Cab* had not been overruled in 24 years. If not overruled, certainly its vitality has been sapped by the holdings that a state can tax individuals on income derived outside the state and not tax domestic corporations,⁷ tax common carriers for highway use and not private carriers,⁸ collect back taxes on corporation land and not on individual land⁹—all without violating the equal protection clause of Amendment XIV

A taxpayer's action was denied in *Dworken v. Cleveland Board of Education*.¹⁰ The Board's expenditure of funds on a loyalty oath program was held valid. No threat of penalty for refusing to sign was present. The amount of public expenditure involved \$33.63. No evidence was presented indicating persons were denied employment for failure to sign the oath.

In *State v. Smith*¹¹ a criminal action was dismissed where the defendant theater owner displayed a newsreel without an Ohio license. A violation of the freedom of speech and a lack of due process because of the vagueness of the licensing criteria were the bases of the court's decision. A simple delegation of power issue was considered in *Neuweiler v. Kauer*¹² in which

⁴ 158 Ohio St. 229, 108 N.E.2d 319 (1952)

⁵ 91 Ohio App. 431, 108 N.E.2d 571 (1951)

⁶ 277 U.S. 389, 48 Sup. Ct. 553 (1928)

⁷ *Lawrence v. State Tax Comm'n*, 286 U.S. 276, 52 Sup. Ct. 556 (1932)

⁸ *Bekins Van Lines v. Riley*, 280 U.S. 80, 50 Sup. Ct. 64 (1929).

⁹ *White River Lumber Co. v. Arkansas*, 279 U.S. 692, 49 Sup. Ct. 457 (1929)

¹⁰ 63 Ohio L. Abs. 10, 108 N.E.2d 103 (Ohio App.), *appeal dismissed*, 156 Ohio St. 346, 102 N.E.2d 253 (1951)

¹¹ 108 N.E.2d 582 (Toledo Mun. Ct. 1952) See Note, 4 WEST. RES. L. REV. 148 (1952)

¹² 107 N.E.2d 779 (Sandusky Com. Pl. 1951).