

federal courts) and in several state legislatures. Very probably it will be revived in Michigan. The draft of a Uniform Act is before the Commissioners on Uniform State Laws. The next few years, therefore, are likely to witness a generous recourse to this method of determining legal relations and to afford us an opportunity to establish the efficacy of this reform in the administration of justice.

E. M. B.

HAS AN ALIEN THE PRIVILEGE OF FREE SPEECH?

In the recent case of *State v. Sinchuk* (1921) 96 Conn. 605, 115 Atl. 33, the Supreme Court of Connecticut held that the guaranties of the privileges of free speech and of assembly contained in the Bill of Rights of the State Constitution have no application to aliens, but are privileges conferred upon citizens alone. Under this interpretation of the State Constitution the defendant, an alien, was not permitted to attack the constitutionality of the State Sedition Act,<sup>1</sup> for, not being possessed of any political privileges under the Constitution it would be impossible for him to show that the Statute in question had deprived him of the privilege of free speech.<sup>2</sup> This decision may be open to objection for two reasons: (1) the language of the sixth section of the Connecticut Bill of Rights probably does not justify its restriction to citizens alone; and (2) the decision perhaps deprives the defendant of the equal protection of the laws in violation of the first section of the Fourteenth Amendment to the Federal Constitution.<sup>3</sup>

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3687 m, p. 253; Kansas, Laws, 1921, ch. 168; Florida, Laws, 1919, ch. 7857, No. 75, p. 148.

The Superior Court of Los Angeles County, California, Burnell, J., has just held the California Statute unconstitutional, relying principally on the unsound decision of the Michigan court in the *Anway* case. The Court was not apparently aware of the Kansas decision. The case is, it is understood, now on appeal to the California Supreme Court. *Newberry v. Newberry*, reported in the San Francisco Recorder, Dec. 30, 1921.

<sup>1</sup> Conn. Pub. Acts, 1919, ch. 312, entitled "An Act Concerning Sedition." The act declares a punishment for speaking or publishing any disloyal, scurrilous, or abusive matter concerning the form of government of the United States, its military forces, flag or uniform, or any matter intended to bring them into contempt, or which creates or fosters opposition to organized government. The still more drastic Act (Conn. Pub. Acts, 1919, ch. 191) against advocating in public any doctrine intended to injuriously affect the state or federal government was not involved. See COMMENTS (1919) 29 YALE LAW JOURNAL, 108. The constitutionality of these statutes as to citizens is yet to be determined.

<sup>2</sup> Before any law can be attacked by any person on the ground that it is unconstitutional it must be shown that its enforcement has violated or will violate his constitutional privileges. *Hooker v. Burr* (1904) 194 U. S. 415, 24 Sup. Ct. 706; *Citizens' National Bank v. Kentucky* (1910) 217 U. S. 443, 30 Sup. Ct. 532.

<sup>3</sup> ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U. S. Const. Amendments, art. 14, sec. 1.

There is no doubt that sections two,<sup>4</sup> five,<sup>5</sup> and sixteen<sup>6</sup> of the Connecticut Bill of Rights have no application to aliens, but, as pointed out by Chief Justice Wheeler in his dissenting opinion, the wording of the sixth section is sufficiently broad to afford aliens the privilege of free speech. This section provides that "no law shall ever be passed to curtail the liberty of speech or of the press." It is a cardinal rule of constitutional construction that unless the wording of a particular provision either specifically or by logical intendment restricts its guaranties to a certain class, it will be construed as applying to everyone, whether citizens or not.<sup>7</sup> The majority, in the instant case, read sections five and six together, and limited the broad language of section six by the specific limitations of section five, which applied to citizens alone. This seems a rather strained and unjustifiably narrow construction, quite contrary to the rule of constitutional construction just mentioned. In some cases the courts have held that an alien has no liberty of speech, but these instances can easily be distinguished from the instant case. In *Goldman v. Reyburn*,<sup>8</sup> where this result was reached, the Pennsylvania Constitution specifically limited the guaranty of free speech to citizens, and in *United States v. Williams*,<sup>9</sup> a case often cited as holding that an alien does not possess this privilege, the Court merely decided that the exclusion of alien anarchists from the United States by act of Congress<sup>10</sup> does not constitute a violation of the privilege of free speech, since Congress has the power to exclude aliens and to prescribe the terms and conditions on which they enter. There is apparently no authority to support the Connecticut Court in holding that an alien is not protected by a constitutional guaranty so general in its scope as the sixth section of the Connecticut Bill of Rights.

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<sup>4</sup> Conn. Constitution, art. 1, sec. 2. Referring to this section, Beach, J., in the principal case said: "The right affirmed by this section is the right of the people to alter their form of government. It is because it is their own and instituted by themselves for their own benefit that they have the right to alter it. The proposition that aliens have an undeniable and indefeasible right to alter our form of government will hardly bear statement."

<sup>5</sup> "Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty." Conn. Constitution, art. 1, sec. 5. Aliens can not enjoy the guaranties of this section as they are specifically restricted to citizens.

<sup>6</sup> "The citizens have a right, in a peaceable manner, to assemble for their common good, and apply to those invested with the powers of government, for redress of grievances, or other purposes, by petition, address or remonstrance." Conn. Constitution, art. 1, sec. 16. The guaranties of this section like those of section five are specifically restricted to citizens alone.

<sup>7</sup> *Truax v. Raich* (1915) 239 U. S. 33, 36 Sup. Ct. 7; *Yick Wo v. Hopkins* (1886) 118 U. S. 356, 6 Sup. Ct. 1064; *Ex Parte Case* (1911) 20 Idaho, 128, 116 Pac. 1037.

<sup>8</sup> (1909) 36 Pa. Co. 581.      <sup>9</sup> (1904) 194 U. S. 279, 24 Sup. Ct. 719.

<sup>10</sup> The Alien Immigration Act. Act of March 3, 1903 (32 Stat. at L. 1213).

It is also rather difficult to disagree with the dissenting Chief Justice in his contention that the construction placed upon the Connecticut Constitution by the majority denies the defendant the equal protection of the laws guaranteed by the Fourteenth Amendment. That this is due to aliens as well as citizens seems to be universally recognized.<sup>11</sup> It is not easy to understand how a state, having no power to exclude aliens<sup>12</sup> or to impose burdensome regulations upon their entry,<sup>13</sup> can arbitrarily discriminate<sup>14</sup> against them after they have come within its jurisdiction. That the Connecticut Supreme Court did discriminate between alien and citizen in denying the defendant the privilege of free speech cannot be denied, and in so doing it appears that it may have transgressed one of the limitations placed upon the power of the State by the Fourteenth Amendment.<sup>15</sup>

It should be noted that in the instant case the particular language alleged to have been used by the aliens in violation of the Statute was not before the Court but only the general constitutional question.

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<sup>11</sup> *Truax v. Raich*, *supra* note 7; *Yick Wo v. Hopkins*, *supra* note 7; *Templar v. State Examiners* (1902) 131 Mich. 254, 90 N. W. 1058; *Ex Parte Kotta* (1921, Calif.) 200 Pac. 957; *State v. Montgomery* (1900) 94 Me. 192, 47 Atl. 165. To quote from the opinion in *Yick Wo v. Hopkins*, *supra* note 7; "These provisions (referring to due process and equal protection of the laws) are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality." (Italics ours.)

<sup>12</sup> *State v. The Steamship "Constitution"* (1872) 42 Calif. 578; *Lin Sing v. Washburn* (1862) 20 Calif. 534.

<sup>13</sup> *Passenger Cases* (1849, U. S.) 7 How. 283; *Ex Parte Ah Cue* (1894) 101 Calif. 197, 35 Pac. 556.

<sup>14</sup> A state has the power to discriminate between citizens and aliens in the distribution of its own resources. The common property of a state belongs to the people of the state and citizens may be preferred in its distribution. *McCready v. Virginia* (1876) 94 U. S. 391; *People v. Crane* (1915) 214 N. Y. 154, 108 N. E. 427; *Atkin v. Kansas* (1903) 191 U. S. 207, 24 Sup. Ct. 124; *Ex Parte Gilletti* (1915) 70 Fla. 442, 70 So. 446.

<sup>15</sup> It is undoubtedly true that freedom of speech is one of the so-called "fundamental rights" safeguarded by the first section of the Fourteenth Amendment. "It should be observed of the terms (as used in the Fourteenth Amendment) 'life,' 'liberty,' and 'property' that they are representative terms and are intended and must be understood to cover every right to which a member of the body politic is entitled under the law. . . . The rights thus guaranteed are something more than the mere privileges of locomotion; the guarantee is the negation of arbitrary power in every form which results in the deprivation of right. . . . It would be absurd, for instance, to say that arbitrary arrests were forbidden, but that the freedom of speech, the freedom of religious worship, the right of self defence against unlawful violence, the right freely to buy and sell as others may, or the right in public schools found no protection here." (Italics ours.) 2 Story, *The Constitution* (5th ed. 1891) sec. 1950. Also see, *Marx and Haas Jeans Clothing Company v. Watson* (1902) 168 Mo. 133, 67 S. W. 391; *Gillespie v. People* (1900) 188 Ill. 176, 58 N. E. 1007.