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opinion does not appear to limit the holding to a situation involving wrongful removal to Texas.[16]

Arkansas. An Arkansas decision, *Pruitt Truck & Implement Company v. Ferguson*,[17] is in accord with the principal case. The court held that a sale to a bona fide purchaser in Arkansas would not cut off a prior legal right which had been obtained in another state.

Randolph E. Scott.

CONSTITUTIONAL LAW

Exclusion of Negroes from Jury

Arkansas. In the case of *Maxwell v. State*[1] defendant, a Negro citizen of Arkansas, was convicted of the felony of rape. On appeal he contended that he had been denied equal protection of the laws in that members of his race had been excluded from service on the jury to his prejudice. The special list of sixty-nine names from which the jury was selected contained eight Negroes, but the list also contained the names of thirteen persons from a previous panel, in the selection of which there admittedly had been exclusion of Negroes. The Supreme Court of Arkansas held that the defendant was entitled to favorable action on the motion to quash the old panel, and granted a new trial.[2]

The court was of the opinion that the local system of grand and petit jury selection resulted in systematic exclusion of Negroes in violation of the Fourteenth Amendment,[3] which guarantees to individuals protection from state laws which deprive them of civil rights granted to other citizens.[4] This holding is in line with the

[16] *Cf.* Shapard v. Haynes, 104 Fed. 449 (8th Cir. 1900).

[17] 216 Ark. 848, 227 S. W. 2d 944 (1950).

[1] .....Ark....., 232 S. W. 2d 982 (1950).

[2] The defendant had previously been convicted of rape, and the court had granted a new trial on the ground that insufficient time had been given the accused to prepare his defense. 216 Ark. 393, 225 S. W. 2d 687 (1950).

[3] U. S. Const. Amend. XIV, § 1.

[4] "The very idea of a jury is a body of men composed of the peers or equals of the person whose rights it is selected or summoned to determine; that is, of his neighbors,

decisions of the United States Supreme Court, which has consistently held that discrimination in the form of systematic exclusion of Negroes from juries constitutes a denial of equal protection of the laws.[5] Such discrimination by means of exclusion is a question of fact in each case, with the burden being placed on the accused to show discrimination.[6] A presumption is raised in the accused's favor, however, if he shows that Negroes have not served on juries for a long period of time.[7]

In the *Maxwell* case the State contended that commingling of the original thirteen jurors with the panel containing Negroes gave the defendant equal protection of the laws—the right to a jury of twelve selected from a list partially composed of members of his race. The court disposed of this contention by saying, "The answer is that we are dealing primarily with the Constitution as distinguished from a particular defendant."[8]

It is submitted that the *Maxwell* case was correctly decided, since it was conceded that for more than a quarter of a century no Negroes had been summoned for trial jury service and that the exclusion had been systematic for racial reasons.

Municipal Control of Peddlers

Louisiana. In the case of *City of Alexandria v. Jones*[9] a photograph salesman was convicted of violating a city ordinance prohibiting peddlers from soliciting at a private residence without invitation or request by the owner or occupants, and the Supreme Court of Louisiana upheld the ordinance as a reasonable exercise of police power.

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fellows, associates, persons having the same legal status in society as that which he holds." Strauder v. West Virginia, 100 U. S. 303, 308 (1879).

[5] *E.g.*, Smith v. Texas, 311 U. S. 128 (1940); Pierre v. Louisiana, 306 U. S. 354 (1939). The criteria of discrimination against Negroes apply equally to discrimination against other races.

[6] Norris v. Alabama, 294 U. S. 587 (1935); Martin v. Texas, 200 U. S. 316 (1906).

[7] Norris v. Alabama, 294 U. S. 587 (1935).

[8] 232 S. W. 2d at 983 (1950).

[9] 216 La. 923, 45 So. 2d 79 (1950). The court also upheld the same ordinance in the case of a magazine salesman in City of Alexandria v. Breard, 217 La. 820, 47 So. 2d 553 (1950). The court had previously held a similar ordinance constitutional in City of Shreveport v. Cunningham, 190 La. 481, 182 So. 649 (1938), and a somewhat similar

The court held that the ordinance was a protective measure designed to give the occupants of the home (particularly the housewife) and their property security against the actions of the lawless who sometimes use the guise of peddling as a means to plan and perpetrate crimes. The court noted that the ordinance made no distinction between resident and nonresident solicitors and was a limited regulation in that it only prohibited solicitation at *residences without invitation.* Solicitation at residences was allowed if permission was first secured by telephone, mail, or other means.

The police power of a state may be regarded as the power "to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity."[10] The police power must be considered with the due process clause of the Federal Constitution,[11] the basic principle of which is the securing of the individual from arbitrary exercise of powers of government unrestrained by established principles of private right and distributive justice.[12]

The proper relationship between due process and the police power has been said to be that a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare and that if the laws passed have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are met.[13]

It was contended that the ordinance deprived the appellant of a property right without due process of law by denying him the right to engage in a lawful private business. It was also contended that the ordinance was obnoxious to liberty of contract,[14] since defendant had a state peddler's license.

The Supreme Court of the United States has held similar ordi-

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earlier ordinance was held constitutional by the United States District Court for the Western District of Louisiana in Breard v. City of Alexandria, 69 F. Supp. 722 (1947).

[10] Barbier v. Connolly, 113 U. S. 27, 31 (1885).

[11] U. S. CONST. AMEND. XIV, § 1.

[12] In re Kemmler, 136 U. S. 436 (1890).

[13] Nebbia v. New York, 291 U. S. 502 (1934).

[14] U. S. CONST. Art. I, § 10, cl. 1.

nances unconstitutional when applied to religious activies,[15] being regarded as a denial of freedom of religion guaranteed by the First Amendment.[16] The Court had not been called upon to pass on the precise question involved in this case until the very recent case of *Breard v. City of Alexandria.*[17] A divided Court held that the ordinance did not violate the due process clause, the commerce clause or the First Amendment. This result could reasonably have been expected in view of expressions in earlier opinions which indicated that the Court might hold valid such ordinances as applied to commercial activities.[18]

As previously stated, police power regulations affecting business must be reasonable and not arbitrary or unfairly discriminatory. It has been said that the local authorities are the best judges of whether or not an ordinance is reasonable.[19] Tested by these standards, the decision in the *Jones* case appears to be correct. The ordinance did not prohibit defendant from engaging in his business, but merely regulated the manner in which he conducted that business. His state license did not confer a right to enter private residences. If the inhabitants of a community, through the medium of regulatory ordinances, choose to reduce the annoyances caused by the constant parade of commercial peddlers, the courts should properly be reluctant to declare their efforts fruitless.

STATE REGULATION OF COMMERCIAL FISHING IN THE MARGINAL SEA

Texas. In *Dobard v. State*[20] Texas brought suit against Chris Dobard and others (all of whom were nonresidents except one) to enjoin them from commercial fishing without holding licenses

[15] Murdock v. Pennsylvania, 319 U. S. 105 (1943); Martin v. City of Struthers, 319 U. S. 141 (1943); Douglas v. City of Jeannette, 319 U. S. 157 (1943).

[16] U. S. CONST. AMEND. I.

[17] 71 S. Ct. 920 (1951).

[18] In Schneider v. State (Town of Irvington), 308 U. S. 147, 165 (1939), the Court said: "We are not to be taken as holding that commercial soliciting and canvassing may not be subjected to such regulation as the ordinance requires." And in Jamison v. Texas, 318 U. S. 413, 417 (1943), the Court said: "The states can prohibit the use of the streets for the distribution of purely commercial leaflets. . . ."

[19] Schmidinger v. Chicago, 226 U. S. 578 (1913).

[20] .....Tex....., 233 S. W. 2d 435 (1950)

for themselves and their boats as required by a conservation statute.[21] The statute repealed a previous law levying an unequal license tax against nonresident commercial fishers. The previous statute had been upheld in *Dodgen v. Depuglio*[22] on the authority of *Toomer v. Witsell*,[23] sustaining a somewhat similar statute of South Carolina. The *Toomer* case was subsequently reversed by the United States Supreme Court,[24] which held that the statute violated the privileges and immunities clause of the Federal Constitution.[25] Thereafter the Texas statute was held unconstitutional in *Steed v. Dodgen*,[26] and the present legislation was passed.

The court, in holding the present statute unconstitutional as unreasonable and a denial of due process, noted that the statute did not impose a discriminatory license fee or tax, but that it obviously favored residents in important respects. Priority was given to the 1450 licensees (only six of whom were nonresidents) under the repealed law. The quota under the present law was fixed at 1550 boats, and licensees were granted an absolute right of renewal.

The question presented was the familiar conflict between reasonable exercise of the police power of a state and the due process guarantees of the Federal Constitution. The present statute clearly did not live up to the standards that police power regulations affecting business must be reasonable and not arbitrary or unfairly discriminatory. The court held that the act did not reasonably accomplish its declared purpose of conservation because the mere limitation of the number of boats could have only a remote connection with the total amount of fish life to be taken, unless the size of the boats and the amount of catch were also regulated. Should the supply of all types of fish decline, conservation was not accomplished under the act because licensees were granted an absolute right of renewal. The law was found arbitrary in applying the same supposed conservation measure indiscriminately to

[21] Tex. Acts 1949, c. 68; TEX. PEN. CODE (Vernon, 1950) art. 934b-2.

[22] 146 Tex. 538, 209 S. W. 2d 588 (1948).

[23] 73 F. Supp. 371 (E. D. S. C. 1947).

[24] 334 U. S. 385 (1948).

[25] "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." Art. IV, § 2, cl. 1.

[26] 85 F. Supp. 956 (W. D. Tex. 1949).

all kinds of fish without reference to the adequacy or inadequacy of the numbers of the various types of edible aquatic life. Finally, the act was unfairly discriminatory because the chance of any substantial number of nonresidents being granted licenses was slight.

In the course of the opinion the court made the cautious statement that their previous view, that fish in the marginal sea are the property of the adjacent state, is "evidently" not now the law.[27] The uncertainty of statement appears justified. The court's previous view was based on the holding in *McCready v. Virginia*[28] that a state, in its sovereign capacity, owns the fish in tidewaters within its jurisdiction and that the citizens of one state are not invested with any interest in the common property of another state. In *Toomer v. Witsell*,[29] however, the United States Supreme Court said: "While *United States v. California*, 332 U. S. 19 (1947) . . . does not preclude all State regulation of activity in the marginal sea, the case does hold that neither the thirteen original colonies nor their successor States separately acquired 'ownership' of the three-mile belt." And in *Takahashi v. Fish and Game Commission*[30] the court said: "To whatever extent the fish in the three-mile belt off California may be 'capable of ownership' by California, we think that 'ownership' is inadequate to justify California in excluding any or all aliens who are lawful residents of the State from making a living by fishing in the ocean off its shores while permitting all others to do so."

Since the littoral state is "evidently" no longer the owner of the fish in the marginal sea, a nonresident has as much right to catch such fish as a resident.

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[27] .....Tex....., 233 S. W. 2d 435, 441 (1950).

[28] 94 U. S. 391 (1876).

[29] 334 U. S. at 402.

[30] 334 U. S. 410, 421 (1948).