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Recent Decisions

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RECENT DECISIONS

CRIMINAL LAW—CONSTITUTIONAL LAW—DUE PROCESS OF LAW—COURSE AND CONDUCT OF TRIAL—COUNSEL FOR ACCUSED.—The interesting case of *Powell v. State of Alabama,* 53 S. Ct. 55, decided by the Supreme Court of the United States on November 7, 1932, well illustrates the present vitality of the "due process clause" common to the Fifth and Fourteenth Amendments to the Constitution of the United States. As everyone knows, that clause is to the general effect that "no person shall be deprived of life, liberty or property without due process of law." It is suggested, that this case goes farther toward examining into the legality of criminal proceedings in state courts by the United States Supreme Court than any decision that has preceded it. This Alabama case was one in which nine men were prosecuted and convicted of the crime of rape and sentenced to be hanged, and in which the Supreme Court of Alabama, in elaborate opinions, affirmed the convictions of all the nine defendants except one, in which there was doubt of the defendant's age being 16 years, and so whether he should suffer death or be committed to a juvenile reformatory. There was a severance and four trials, the defendants having been tried in groups. After the affirmance of the several convictions by the Supreme Court of Alabama, the defendants prosecuted *certiorari* to the Supreme Court of the United States, which reversed all the convictions on the sole ground that the defendants were practically denied the right to the assistance of counsel in their behalf. The trials were brief and took place within six days of the time of the alleged commission of the crimes, and counsel for defendants did appear for them and cross-examined the chief witnesses for the State at some length, in addition to moving for a change of venue on account of local prejudice and hostility. Still such counsel were not definitely appointed until the day the first trial began, and obviously had not sufficient time to prepare. If the witnesses for the State were to be believed, there was no doubt at all of the guilt of the defendants, but of course, the court does not review the evidence for the purpose of determining whether the evidence was sufficient to sustain the verdict. The defendants were under the escort and protection of soldiers from the time of their arrest until after their conviction, and the arrest was made on the same day of the offense, and the court finds that there was an atmosphere of hostility toward them. In the course of the majority opinion, the court uses this language: "It will thus be seen that until the very morning of the trial no lawyer had been named or definitely designated to represent the defendants. Prior to that time the trial judge had 'appointed all the members of the bar' for the limited purpose of 'arraigning the defendants.' Whether they would represent the defendants thereafter, if no counsel appeared in their behalf, was a matter of speculation only, or, as the judge indicated, of mere anticipation on the part of the court. Such a designation, even if made for all purposes, would, in our opinion, have fallen far short of meeting, in any proper sense, a requirement for the appointment of counsel. How many lawyers were members of the bar does not appear; but, in the very nature of things, whether many or few, they would not, thus collectively named, have been given that clear appreciation of responsibility or impressed with that individual sense of duty which should and naturally would accompany the appointment of a selected member of the bar, specifically named and assigned.

"That this action of the trial judge with respect to the appointment of counsel was little more than an expansive gesture, imposing no substantial or definite

obligation upon anyone, is borne out by the fact that prior to calling the case for trial on April 6, a leading member of the local bar accepted employment on the side of the prosecution and actively participated in the trial."

It is noteworthy in this case that though counsel for the State of Alabama made two arguments to the jury, the counsel for the defendants made none. which fact contributed to the court's conclusion that the appearance of counsel for defendants was *pro forma* only.

There is an interesting dissenting opinion by Mr. Justice Butler, which is concurred in by Mr. Justice McReynolds, in which, conceding as a matter of law that if defendants were in fact deprived of counsel it would be a sufficient cause for the Supreme Court of the United States to reverse the convictions, goes on to declare that there is no evidence of such deprivation.

The decisions of the Alabama Supreme Court in these cases will be found in 141 So. 195, 201, 215. The Chief Justice of the Alabama court dissented.

It is gratifying to reflect that all members of the highest court in our land agreed to the legal proposition that no state may deprive one of his constitutional rights by merely going through the form of a fair trial in pretended conformity to the due process clause of the Federal Constitution.

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LIBEL AND SLANDER—ACTIONS—PERSONS LIABLE—RADIO BROADCASTING COMPANY WITHOUT POWER FOR CENSORSHIP OVER MATERIAL BROADCAST.—The case of *Sorenson v. Wood and the KFAB Broadcasting Company,* 243 N. W. 82 (Neb. 1932), is thought to be a pioneer upon the question of the liability of a radio broadcasting company for a libelous speech made by a candidate in the course of a campaign. The plaintiff, C. A. Sorenson, was a candidate for re-nomination for the office of Attorney General of Nebraska upon the Republican ticket, and the defendant Richard F. Wood was opposing him and made the speech containing the libel on April 11, 1930, at Omaha, the evening before the election. There seemed to be no question but that the speech was libelous; and Sorenson sued Wood and the broadcasting company. The company, in its separate answer, set up the following defenses: Admitted its corporate existence, equipment, functions and nature of its service; pleaded that it was a common carrier of intelligence by wire and wireless under the Inter-State Commerce Act (49 USCA § 1, *et seq.*) duly licensed and subject to the regulation of the federal trade commission; pleaded general order No. 31 of the commission, dated May 11, 1928, providing that, in broadcasting material for candidates for public office, "such licensee shall have no power for censorship over the material," and that equal opportunities must be afforded legally qualified candidates for any public office in the use of such broadcasting station. The trial court had directed a verdict in favor of the broadcasting company, and the Supreme Court reversed the judgment upon that ground, holding the company liable for the libel. Speaking of the provision relating to the power of censorship and in holding that the absence of such power did not relieve the company from liability, the court said: "We are of the opinion that the prohibition of censorship of material broadcast over the radio station of a licensee merely prevents the licensee from censoring the words as to their political and partisan trend but does not give a licensee any privilege to join and assist in the publication of a libel nor grant any immunity from the consequences of such action. The federal radio act confers no privilege to broadcasting stations to publish defamatory utterances."

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