for the repeal of Section 938 and for the substitution therefor of a new provision which would make it discretionary with the trial judge to grant a continuance. Under such a statute, the court could weigh all the circumstances of the particular case before passing upon the motion for a continuance. The value of this discretion, particularly in cases in which there is a suggestion of bad faith, is evident.

Although it is difficult to see how this bill might adversely affect honest lawyers, it was killed in the House Judiciary Committee, and a motion by its sponsor that it be placed on the House Calendar for perfection failed to pass.[5] Apparently the chief objection urged to the bill was that it applied only to lawyers retained by defendants. This objection hardly explains the defeat of the entire measure, as the defect pointed out could have been cured by amendment either in committee or by the House.

B. W. T.

CONSTITUTIONAL LAW—CRIMINAL SYNDICALISM LAWS—DUE PROCESS OF LAW: FREEDOM OF SPEECH AND OF ASSEMBLY—[United States].—The enforcement of the now increasingly important criminal syndicalism laws, an outgrowth of post-war problems,[1] was given a setback by a recent decision of the United States Supreme Court.[2] The defendant was indicted for violation of the Criminal Syndicalism Law of Oregon.[3] The indictment did not charge the defendant with advocating the doctrine of criminal vandalism, but did charge him with having assisted in the conduct of a meeting held under the auspices of the Communist Party, which party, it was proven, advocated the outlawed doctrine. The meeting, which had been called for the purpose of discussing the treatment accorded the maritime strikers, was conducted in an orderly manner, and the majority of those attending it were not members of the Communist Party. The state court affirmed the conviction.[4] On appeal: *Reversed.* Chief Justice Hughes, delivering the opinion of the court, added to his already impressive pronouncements protecting freedom of speech and of the press,[5] by holding that the act as

---

shall set a hearing on the affidavit, not earlier than 10 days after the filing of such affidavit by the plaintiff, and upon the presentation of substantial evidence supporting the said affidavit, the court may direct that the trial proceed."

5. St. Louis Post-Dispatch, Feb. 18, 1937.

1. Note, Criminal Syndicalism Statutes Before the Supreme Court (1928) 76 U. of Pa. L. Rev. 198.

2. De Jonge v. State of Oregon, 57 S. Ct. 255 (Jan. 4, 1937).

3. Oregon Code 1930, secs. 14-3, 110 to 14-3, 112, as amended by chap. 459, p. 868, secs. 1 to 3, Oregon Laws 1933. Section 14-3, 110 reads: "Criminal syndicalism hereby is defined to be the doctrine which advocates crime, physical violence, sabotage, or any unlawful acts or methods as a means of accomplishing or effecting industrial or political change or revolution."

4. State v. De Jonge, 152 Ore. 315, 51 P. (2d) 674 (1935).

5. See Chief Justice Hughes' opinions in the following cases: Stromberg v. California, 283 U. S. 359, 51 S. Ct. 532, 75 L. ed. 1117, 73 A. L. R. 1484

applied to the defendant violated the right of freedom of speech and assembly guaranteed by due process of law.

Freedom of speech, which is secured by the Constitution,[6] does not confer an unrestricted license to speak whatever one may choose, nor does it grant immunity from punishment for every use of language.[7] A state may, therefore, enact measures designed to protect itself against the use of force and violence, in lieu of political action, in order to effect changes in government, even though such measures impose restrictions on free speech.[8] The states have sought to secure this protection through legislation commonly called "Sedition Acts."[9] These acts prohibit the teaching, advocating, and publishing of disloyal and abusive matter concerning the form of government of the United States. The state courts have been inclined to uphold these acts against the charge of their infringing upon the constitutional guarantees of freedom of speech and of assembly.[10]

Generally the state courts have accepted as conclusive the legislative declaration that certain practices are a source of danger to established order[11] and may be outlawed without violation of the fourteenth amendment. Under the federal legislation it has been necessary to show that there was a "clear and present danger" that the practices outlawed would foster evils which the government could prevent.[12] In reviewing decisions involving state laws the Supreme Court, not without dissent,[13] has, however,

---

(1931); Near v. Minnesota, 283 U. S. 697, 51 S. Ct. 625, 75 L. ed. 1357 (1931); Gosjean v. Associate Press, 297 U. S. 233, 56 S. Ct. 444, 80 L. ed. 660 (1936).

6. U. S. Const. Amend. I. This applies only to the federal government.

7. Patterson v. Colorado, 205 U. S. 454, 462; Debs v. United States, 249 U. S. 211, 213; People v. Ruthenberg, 229 Mich. 315, 201 N. W. 358 (1925).

8. Gitlow v. United States, 268 U. S. 652, 666, 45 S. Ct. 625, 69 L. ed. 1138 (1925); Whitney v. California, 274 U. S. 357, 47 S. Ct. 641, 71 L. ed. 1095 (1927); Burns v. United States, 274 U. S. 328, 47 S. Ct. 650, 71 L. ed. 1077 (1927); Cathcart, Constitutional Freedom of Speech and of the Press (1935) 21 A. B. A. Journal 595. The Constitution does not guarantee the "right of revolution." Comment, 22 Ill. L. Rev. 541, 542 (1928).

9. The United States has had such an act in a limited form since 1798. 1 Stat. 596; cf. Espionage Act, c. 30, sec. 3, 40 Stat. 217, 219 (1917).

10. People v. Lloyd, 304 Ill. 23, 136 N. E. 505 (1922); State v. Sinchuk, 96 Conn. 605, 115 Atl. 33, 20 A. L. R. 1515 (1921); Commonwealth v. Widovich, 295 Pa. 311, 145 Atl. 295 (1929), cert. denied 280 U. S. 518 (1929); Berg v. State, 29 Okla. Crim. Rep. 112, 233 Pac. 497 (1925); State v. Gibson, 189 Iowa 1212, 174 N. W. 34 (1919); State v. Quinlan, 86 N. J. L. 120, 91 Atl. 111, aff'd 87 N. J. L. 333, 93 Atl. 1086 (1915); State v. Moilen, 140 Minn. 112, 167 N. W. 345 (1918); State v. Hennessy, 114 Wash. 351, 195 Pac. 211 (1921); People v. Immonen, 271 Mich. 384, 261 N. W. 59 (1935); Dalton v. State, 176 Ga. 645, 169 S. E. 198 (1933).

11. People v. Lloyd, 403 Ill. 23, 136 N. E. 505 (1922); Commonwealth v. Lazar, 103 Pa. Super. 417, 157 Atl. 701 (1931); Lowry v. Herndon, 182 Ga. 582, 186 S. E. 429 (1935).

12. Schenck v. United States, 249 U. S. 47, 52, 39 S. Ct. 247, 63 L. ed. 470 (1919). See for discussion, Note, The Present Status of Freedom of Speech Under the Federal Constitution (1928) 41 Harv. L. Rev. 525, 528.

13. See Holmes J., dissenting in Gitlow v. United States at p. 673 of 268 U. S.; Brandeis and Holmes, J. J., concurring in Whitney v. California at p. 372 of 274 U. S.

generally accepted the legislative declaration.[14] This rule has now been abandoned and the "clear and present danger" test is controlling in the reviewing of state decisions.[15]

The principal case represents the second time that the due process clause of the Fourteenth Amendment has been applied to condemn such state action.[16] It was not until 1925[17] that the Supreme Court announced that the due process of law provision of the Fourteenth Amendment imposed a prohibition similar to that imposed by the First Amendment in regard to freedom of speech and of peaceable assembly.[18]

The instant decision gives no intimation that the Supreme Court will declare criminal syndicalism acts invalid. Its decisions in two prior cases,[19] where the evidence showed the commission of criminal acts, still stand unshaken. The decision in the instant case, however, was not without precedent. In 1927, in *Fiske v. Kansas*,[20] the Supreme Court held that the Kansas law, as applied in that instance, violated due process. In that case there was no evidence that the defendant or his organization advocated the overthrow of the present economic system by unlawful violence.

---

14. Gitlow v. New York, 268 U. S. 652, 45 S. Ct. 625, 69 L. ed. 1138 (1925); Whitney v. California, 274 U. S. 357, 47 S. Ct. 641, 71 L. ed. 1095 (1927).

15. Fiske v. Kansas, 274 U. S. 380, 47 S. Ct. 655, 71 L. ed. 1108 (1927). The test itself is still in need of definition. See Brandeis, J. at p. 648 of 47 S. Ct.: "This court has not yet fixed the standard by which to determine when a danger shall be deemed clear; how remote the danger may be, deemed present; and what degree of evil shall be deemed sufficiently substantial to justify resort to abridgment of free speech . . . as the means of protection . . . Fear of serious injury cannot alone justify suppression of free speech . . . even advocacy of violation [of existing law], however reprehensible morally, is not a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that the advocacy would be immediately acted on. The wide difference between advocacy and incitement . . . must be borne in mind."

16. Fiske v. Kansas, supra, note 15, and the instant case, supra, note 2. Cf. Stromberg v. California, 283 U. S. 359, 51 S. Ct. 532, 75 L. ed. 1117, 73 A. L. R. 1484 (1931).

17. Gitlow v. New York, supra, note 14. Prior to this decision the only authority for this statement was two minority opinions. Harlan J., in Patterson v. Colorado, 205 U. S. 454 (1907) at p. 464, and Brandeis J., in Gilbert v. Minnesota, 254 U. S. 325 (1920) at p. 343. See for discussion, Warren, The New "Liberty" Under the Fourteenth Amendment (1926) 39 Harv. L. Rev. 431, 455 et seq. That this judicial legislation has been approved by legal commentators see Willis, *Constitutional Law* (1936) 500.

18. That the right of peaceable assembly is as fundamental as free speech and free press see United States v. Cruikshank, 92 U. S. 542, 23 L. ed. 588 (1896).

19. Gitlow v. New York, supra, note 14, where the defendant was found to be responsible for a "Manifesto" advocating the overthrow of the government by force. Whitney v. California, supra, note 14, where the defendant had formed an organization for the purpose of carrying on a revolutionary class struggle by criminal methods. Her acts were tantamount to a conspiracy to commit serious crimes. See instant case at p. 259 of 57 S. Ct.

20. 274 U. S. 380, 47 S. Ct. 655, 71 L. ed. 1108 (1927).

The principal case gives assurance that the Constitution protects one's right to attend meetings of societies advocating policies opposed to the present form of government, and there express his opinions on all economic, social and political questions, so long as immediate violence is not urged and no public disturbance is created. The greater the importance of protecting our institutions from overthrow by force and violence, the greater is the need of preserving the constitutional rights of free speech, free press, and free assembly. Changes by peaceful means can be assured only by preserving the channels for free political discussion.[21] This freedom, which lies at the foundation of the Republic, has been zealously guarded by public opinion.[22]

W. F.

CONSTITUTIONAL LAW: FULL FAITH AND CREDIT—CONFLICT OF LAWS—SUPREME COURT REVIEW OF ERRONEOUS CHOICE OF LAW—[United States].—In an action in Georgia on an insurance policy issued in New York, misstatements had been made in the application for the policy although the true facts had been disclosed orally to the agent. Under a New York statute, such misstatements amount to material misrepresentation which voids the policy. In Georgia it is a jury question whether such facts constitute a material misrepresentation. The trial court, applying the Georgia law, submitted the case to the jury. There resulted a judgment for plaintiff which was affirmed by the Court of Appeals and Supreme Court of Georgia. On certiorari to the United States Supreme Court; *reversed*, because the Georgia courts had refused to give full faith and credit to the public acts of New York.[1]

The question of the extent to which the Supreme Court will review erroneous state decisions on choice of law in conflicts situations is not as yet clearly defined. At times various clauses of the Federal Constitution have been used as grounds for such review; for instance, full faith and credit,[2] due process,[3] liberty of contract,[4] commerce,[5] control over the District of

---

21. 57 S. Ct. 260.

22. See editorials on principal case. St. Louis Post-Dispatch, Jan. 5, 1937, p. 2C:3; St. Louis Star-Times, Jan. 5, 1937, p. 14: 2; New York Times, Jan. 6, 1937, p. 22: 1. Chafee, *Freedom of Speech* (1920) 24-39, 207-221; Laski, *Grammar of Politics* (1925) 120, 121.

1. John Hancock Mut. Life Ins. Co. v. Yates, 57 S. Ct. 129, 81 L. ed. 110 (1936).

2. Converse v. Hamilton, 224 U. S. 243, 32 S. Ct. 415, 56 L. ed. 749 (1912); Royal Arcanum v. Green, 237 U. S. 531, 35 S. Ct. 724, 59 L. ed. 1089 (1915); Modern Woodmen of America v. Mixer, 267 U. S. 544, 45 S. Ct. 389, 69 L. ed. 783 (1925); Aetna Life Ins. Co. v. Dunken, 266 U. S. 389, 45 S. Ct. 129, 69 L. ed. 342 (1924), where court took jurisdiction under full faith and credit clause but decided case on merits under due process clause.

3. Aetna Life Ins. Co. v. Dunken, supra, note 2; Home Ins. Co. v. Dick, 281 U. S. 397, 50 St. Ct. 338, 74 L. ed. 926 (1930).

4. New York Life Ins. Co. v. Head, 234 U. S. 149, 34 S. Ct. 879, 58 L. ed.