

CONSTITUTIONAL LAW—COURTS—REVIEW OF FEDERAL RADIO COMMISSION.—Appellee sought renewal of license to operate broadcasting station WGY, under the provisions of the Radio Act of 1927, 44 Stat. 1162, 47 U. S. C. sec. 81 *et seq.* On writ of certiorari to the Supreme Court from a decision of the Court of Appeals for the District of Columbia, reversing the Radio Commission and granting an unconditional license, *held*, that powers conferred upon the Commission for the granting or renewal of station licenses are purely administrative, and the provision for review by the Court of Appeals does no more than make that Court a superior and revising agency in the field. There is but one interested party, and hence no justiciable "case or controversy" as required by art. 3 sec. 2 of the Constitution and no jurisdiction vested in the Supreme Court. *Federal Radio Commission v. General Electric Co.* (1930) 281 U. S. 464.

It is notable that this case, which was much commented on when it arose in the Court of Appeals, contains the first Supreme Court decision on a Radio Commission proceeding. (1929) 28 MICH. L. REV. 194; (1929) 42 HARV. L. REV. 948; note (1929) 39 YALE L. J. 245, 249. Three other similar appeals pending were promptly dismissed. The holding was not unexpected in view of like decisions concerning patent and trade-mark issuances. From the time of *Butterworth ex rel. v. Hoe* (1884) 112 U. S. 50, it has been held that the Supreme Court has no jurisdiction to review patent or trade-mark proceedings coming up from the Court of Appeals and governed by statutes somewhat similar to those in the principal case. *U. S. ex rel. v. Ewing* (1915) 237 U. S. 197; *Postum Cereal Co. v. California Fig Nut Co.* (1927) 272 U. S. 693; *Keller v. Potomac Electric Power Co.* (1923) 261 U. S. 428 (public utilities ruling). In the comparatively early case of *Frasch v. Moore* (1908) 211 U. S. 1, concerning a patent application, the Court refused certiorari on the ground that the Court of Appeals' decision was interlocutory and, although binding on the Patent Office, was not binding upon any who chose by litigation in courts of general jurisdiction to question the validity of the patent. The principal case holds that decisions in appeals under sec. 96 of the Radio Act have a similar effect, and are therefore administrative. This is not supported by the language of the section or the nature of a radio license, however, and jurisdictional policy may have influenced the Court. The radio law provides that "the court shall hear, review and determine the appeal . . . and may alter or revise the decision appealed from and enter such judgment as to it may seem just." 44 Stat. 1169 (1927). This tends to authorize finality, and in fact the order appealed from in the principal case was not interlocutory. It granted outright the license in question.

The Supreme Court also pointed out a distinction between the principal case and appeals from the Court of Claims or Board of Tax Appeals, stating that the latter presented what this case did not, namely, a sum or value in dispute and two or more interested parties, the United States on the one hand and the tax-payer on the other. These are essential to a "con-

troversy," *Commonwealth of Virginia v. State of West Virginia* (1918) 246 U. S. 565; *Gordon v. U. S.* (1865) 117 U. S. 697. However, in *Interstate Commerce Commission v. Brimson* (1894) 154 U. S. 447, which was held to involve a judicial controversy, the only issue was the right of citizens to refuse testimony before the Commission.

The constitutionality of the Radio Act has not been passed upon by the Supreme Court, but the obvious need of regulation seems to assure its validity. Questions of due process have arisen, and an Illinois district court has held the rights of the owner of a station not superior to the regulatory power of Congress. *White v. Federal Radio Commission* (D. C. N. D. Ill. 1928) 29 F. (2d) 113. F. R. R., '31.

CONSTITUTIONAL LAW—FREEDOM OF RELIGION—BIBLE READING IN PUBLIC SCHOOLS.—The plaintiff's children, members of the Roman Catholic faith, were expelled from public school for failure to attend the opening exercises at which the King James version of the Bible was read and for refusing to sign a written apology agreeing to give respectful attention in the future to Scripture reading. Held, mandamus lies to compel the school board to readmit the pupils without an apology because its action violated the constitutional guaranty of religious freedom. *State v. Weedman* (S. D. 1929) 226 N. W. 348.

Although questioned, it has never been denied that the legislature has the power to regulate the course of study in public schools, provided, however, it does not infringe upon constitutional immunities. *Scopes v. State* (1926) 154 Tenn. 105, 289 S. W. 363. A number of courts hold that reading the Bible in school is contrary to state constitutional provisions guaranteeing the right of every person to worship according to the dictates of his conscience. *Herold v. Parish Board* (1915) 136 La. 1034, 68 So. 116; *State ex rel. v. Schere* (1902) 65 Neb. 853, 91 N. W. 846. Such reading has a tendency to inculcate sectarian ideas in the pupils. *People ex rel. v. Board of Education* (1910) 245 Ill. 334, 92 N. E. 251. The citizens of a state cannot be compelled to support a school in which the Bible is read, since it becomes a house of God. *State v. Edgerton* (1890) 76 Wis. 177, 44 N. W. 967.

Another line of authorities maintains that reading the King James version without comment does not make the school sectarian, nor does it make it a place of worship. *Witherson v. City of Rome* (1924) 152 Ga. 762, 110 S. E. 895. And it was held that no constitutional provision was infringed where the teacher was required to read, without note or comment, extracts from the Old Testament, but pupils who desired were allowed to retire. *Kaplan v. Independent School District* (1927) 171 Minn. 142, 214 N. W. 18. *Contra: State ex rel. v. District Board* (1890) 76 Wis. 177, 44 N. W. 967. Reading of the Scriptures in public schools does not make them religious institutions unsupportable by taxation. *Church v. Bullock* (1908) 104 Tex. 1, 109 S. W. 115. Where the reading is done chiefly with the aim of laying down a code of morals, such reading is held permissible. *Pfeiffer v. Board of Education* (1898) 118 Mich. 560, 77 N. W. 250. T. L., '32.