

IN THE
Supreme Court of the United States.

PAUL ESTABAN AND OTHERS,
PLAINTIFFS IN ERROR,
vs.
THE STATE OF LOUISIANA,
ex rel. BOLDEN, ATTORNEY-GENERAL. } *U. S. Supreme Court,*
No. 479.

In Error to the Supreme Court of the State of Louisiana.

BRIEF OF COUNSEL OF DEFENDANT IN ERROR.

This was a case where the Attorney-General of the State of Louisiana presented, on the 27th July, 1869, to the fifth district court of New Orleans, a petition praying for an injunction to restrain the plaintiffs in error from erecting any docks, ways, wharves, landings, yards, pens, stables, and other inclosures for the landing, receiving, stabling, yarding, keeping, and preserving any beef, cattle, cows, sheep, swine, or other animals designed for food in the parishes of Orleans, Jefferson, and St. Bernard.

See Rec., p. 3.

This application was made in consequence of certain provisions of an act of the legislature of Louisiana, approved March 8, 1869, entitled "An act to protect the health of the city of New Orleans, to locate the stock landings and slaughter-houses, and to incorporate the

Crescent City Live-Stock Landing and Slaughter-House Company.”

See sheet acts of 1869, (La.,) p. 170.

This act gave to the company incorporated by it the exclusive privilege of establishing in three parishes of the State bordering on the lower part of the Mississippi river a stock landing on the bank, and of erecting a slaughter-house, in which, the act provided, all the cattle intended to be used as food in these three parishes should be killed.

The petition of the Attorney-General averred that the incorporators of the Crescent City Live-Stock Landing and Slaughter-House Company, incorporated by the act referred to, had complied with all the requirements of the act, had built the wharves and landing-places for animals intended for slaughter, and had put up slaughter-houses, and that it was unlawful for any person to slaughter any animals outside of the said premises.

See Rec. p. 1.

The petition of the Attorney-General then complained that the defendants were acting in violation of this law, and were about to erect other slaughter-houses and to establish another stock landing whereat to land and slaughter cattle; that this would produce irreparable injury, and rendered an injunction necessary.

Petition Rec., pp. 1 to 3.

A preliminary writ of injunction was granted.

See Rec., p. 3.

The defendants first moved the court to set aside the preliminary injunction on various grounds, alleging mainly a want of interest of the State in the subject-matter, and a want of authority on the part of the Attorney-General to proceed.

See Rec., pp. 14 and 15.

This motion was, on hearing, dismissed.

See Rec., p. 17 at top.

The defendants then put in an exception of *lis pendens*, pretending that a suit involving the same question was then pending in another court in New Orleans, of coordinate jurisdiction.

See Rec., p. 17.

This exception was overruled.

Rec., p. 22.

The defendants then answered, setting up various grounds of defence, of which only one can be noticed here, viz, the 3d, which is as follows: "That the enactment of the 8th of March, 1869, the provisions of which this suit seeks to enforce, creating the Crescent City Live-Stock Landing and Slaughter-house Company, is in violation of the constitution of *this State* and of the United States, and is unconstitutional, null, and void, and is no law."

See Rec., p. 23.

After hearing evidence and argument, the fifth district court of New Orleans gave judgment in favor of the State and made the injunction perpetual

See Rec., p. 24.

The defendants appealed to the supreme court of Louisiana, (see Rec., p. 26,) when the judgment of the fifth district court was affirmed

See Rec., p. 39.

The report of the case in the supreme court of Louisiana may be found in the 22d volume Louisiana Annual Reports, pp. 545 *et seq.*

The defendants in the lower court have brought the case here by writ of error under the 25th section of the judiciary act.

The case was formerly before this court at the close of the December term of 1869, on motion of plaintiffs in error to enforce the *supersedeas* on the writ of error.

See the Slaughter-house Cases, 10 Wallace, p. 273

POINTS.

1. The only question that can arise here is one of those provided for in the 25th section of the act of 29th September, 1789, (1 Statutes at Large, p. 85,) and the 2d section of the act of February 5, 1867, (14 Statutes at Large, pp. 386-7)

2. The plaintiffs in error, in their answer in the fifth district court of New Orleans, declared that the act incorporating the Crescent City Live-Stock and Slaughter-house Company was in violation of the Constitution of the United States, (see Rec., p. 23,) without specifying how or in what particular ; but it is said in the opinion of the supreme court of Louisiana in the case (see Rec., p. 34, paragraph V) that it was urged " that the act is violative of the fourteenth amendment of the Constitution of the United States because it deprives one class of citizens of certain rights of property and freedom of action, not for the good of the community, but for the private gain of other individuals in the community."

See this case reported in 22d Louisiana Annual, p. 551.

And in their petition to Hon. J. P. Bradley for a writ of error the plaintiffs in error say: " That it appears on the face of the said record that your petitioners claimed a right, privilege, and title, under the Constitution of the United States, and *specially under the fourteenth amendment thereof*, to labor in their vocation as butchers and to carry on the trade of the live-stock landing and slaughter-house business on equal terms with other citi-

zens of the United States, wherever and wheresoever the said business was allowed under the laws of the State or of the United States.”

See Rec., p. 44.

3. The only portion of the fourteenth amendment which can be deemed applicable is that part of the first section which says: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, 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.”

This amendment seeks to protect two classes of individuals: First, citizens of the United States; second, all persons whatever, whether citizens or aliens.

The first portion plainly refers to political privileges, and shields only such privileges and immunities as individuals may have in their peculiar character as citizens of the United States, *i. e.*, the *privilege* of voting, holding office, &c., or the immunity from certain public charges and duties, such as jury duty, military service, &c. The second portion of the section contains a prohibitory restraint upon the power of the States; it consists of two paragraphs referring to distinct subjects:

1. “Nor shall any State deprive any person of life, liberty, or property without due process of law.”

2. “Nor deny to any person within its jurisdiction the equal protection of the laws.”

And the plaintiffs in error aver in their petition for the writ (see Rec., p. 44) that they claimed a right, privilege, and title, under the fourteenth amendment, to labor, &c., and carry on business, &c., on equal terms, &c.

4. The “police power of the State extends over *all* sub-

jects within the territorial limits of the State, and has never been conceded to the United States.’’

Prigg vs. Pennsylvania, 16 Peters, p. 625.

It cannot be doubted for a moment that this police power embraces the right to designate the locality where stock-landings and slaughter-houses may exist.

City of New York vs. Milne, 11 Peters, p. 133.

Passenger Cases, 7 Howard, p. 414, § 9.

Owners of Brig James Gray vs. Owners of Ship John Fraser, 21 How., 187.

The act of the Louisiana legislature of March 8, 1869, of which the plaintiffs in error complain, prohibits the establishment of stock landings, &c., and slaughter-houses, &c., ‘‘at any point or place within the city of New Orleans, or the parishes of Orleans, Jefferson, and St. Bernard, or at any point or place on the east bank of the Mississippi river within the corporate limits of the city of New Orleans, or at any point on the west bank of the Mississippi river above the present depot of the New Orleans, Opelousas, and Great Western Railroad Company.’’

Act, sec. 1, p. 170.

The averment of the Attorney-General of Louisiana against the plaintiffs in error was that they were about to establish a stock landing and slaughter-house on a tract of land lying partly in the city of New Orleans and partly in the adjoining parish of St. Brenard.

See Rec., p. 2 at top.

This was on the east bank of the river and in the city, and so the act was unlawful.

5. In order to promote the health and comfort of the people, the State of Louisiana possesses all the power of

sovereignty; the legislature might direct State officers to be appointed to inspect and superintend stock landings and slaughter-houses, as well as direct where such should be established.

Laws of this character have been respected by Congress from the earliest period of the Government.

See the act of May 27, 1799, 1 Stat. at L., p. 474.

See the act of Feb. 25, 1799, 1 Stat. at L., p. 619.

“The constitutionality of such laws has never been denied”—“they are considered as flowing from the acknowledged power of a State to protect the health of its citizens.”

Gibson vs Ogden, 9 Wheaton, 205.

“The removal or destruction of infectious or unsound articles is undoubtedly an exercise of that power, and forms an express exception to the prohibition we are considering.”

Brown vs. The State of Maryland, 12 Wheaton, p. 444, top.

“A State has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits as any foreign nation, where that jurisdiction is not surrendered or restrained by the Constitution of the United States. That by virtue of this it is not only the right but the bounden and solemn duty of a State to advance the safety, happiness, and prosperity of its people, and to provide for its general welfare by any and every act of legislation which it may deem to be conducive to those ends, where the power over the public subject or the manner of its exercise is not surrendered and restrained in the manner just stated. That all these powers which relate to merely municipal legislation, or what may, perhaps, more properly be called *internal*

police, are not thus surrendered or restrained, and that consequently, in relation to these, the power of a State is complete, unqualified, and exclusive.”

City of New York vs. Milne, 11 Peters, p. 139.

And it is further undoubtedly true that “a State may grant acts of incorporation for the attainment of those objects which are essential to the interests of society. This power is incident to sovereignty.”

Briscoe vs. Bank of Com. of Ky., 11 Peters, 317.

Therefore Louisiana had the right to charter a corporation to carry out the wishes of the legislative department in regard to stock landings and slaughter-houses, as these involved the health, comfort, and prosperity of the population.

So the State might have made them direct agencies of the State government, as has been done in the case of a bank, as we see above; and the case of powder-houses, quarantine stations, inspection warehouses, &c.

6. It is manifest that to carry out successfully the policy of the State, as displayed in the act of 8th March, 1869, which included the inspection of the animals to be slaughtered for food, (see act, section 6, p. 172,) no rival establishments could be permitted, for such would defeat the very object and design of the act, which, being lawful in itself, derives no taint from its exclusiveness.

7. If it can be said with truth that any man has a common-law—natural—right to keep a stock landing or a slaughter-house, so it may be equally well said that every man has such a right to build and carry on a railroad, to be a banker, have a ferry, carry letters for pay, &c.; but if the sovereign power judges that the interests of society will be better promoted by making such rights

the exclusive privilege of a few, or of the State itself, this private right must yield to the public good.

See the Binghamton Bridge, 3 Wallace, p. 52.

See *Boston & L. R. R. Co. vs. Salem & L. R. R. Co.*,
2 Gray, p. 2.

See *Costar et al. vs. Brush*, 25 Wendell, p. 628.

See *Veazie et al. vs. Moor*, 14 Howard, p. 568.

7. The discourse of the plaintiffs in error tends to produce the erroneous impression that they are prohibited by the act of the Louisiana legislature from carrying on the trade of butchers; but this is not so, their trade is left free. All they are required to do is to have their animals slaughtered at the place provided by the State, and they, the butchers, may slaughter their animals there themselves.

See act, sec. 7, p. 173.

Respectfully submitted.

THOMAS J. DURANT,

For the State of Louisiana.