IN THE
SUPREME COURT OF UNITED STATES

OCTOBER TERM, 1896

No. 446

ALLGEYER AND COMPANY, PLAINTIFFS IN ERROR,

—VS.—

THE STATE OF LOUISIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

The Constitution of the State of Louisiana provides, Articles 235 and 236, that:

> The exercise of the police power of the State shall never be abridged, nor so construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals or the general well-being of the State.
>
> No foreign corporation shall do any business in this State without having one or more known places of business, and an authorized agent or agents in the State, upon whom process may be served.

Under the provisions of these articles the General Assembly of the State of Louisiana enacted Act 66 of 1894, which reads as follows:

> Be it enacted by the General Assembly of the State of Louisiana, That any person, firm or corporation who shall fill up, sign or issue

> in this State any certificate of insurance under an open marine policy, or who in any manner whatever does any act in this State to effect for himself or for another insurance on property, then in this State, in any marine insurance company which has not complied with all respects with the laws of this State, shall be subject to a fine of one thousand dollars for each offense, which shall be sued for in any competent court, by the Attorney General, for the use and benefit of the Charity Hospitals in New Orleans and Shreveport.

The plaintiffs in error, assert that this act is in violation of the Constitution of the United States,

> . . . in that in deprives them of their property without due process of law, and denied to them the equal protection of the laws; that the business concerning which the penalty was sought to be enforced, and the contract made in reference thereto, were beyond the jurisdiction of the State of Louisiana, and not amenable to any penalties imposed by its laws; that the contracts of insurance were made in the State of New York where the premiums were paid, and where the losses, if any, were also to be paid; that they were New York contracts, and that under the Federal Constitution, the defendants had the right to do and perform any acts in the State of Louisiana, which were necessary and proper for the execution of its contracts made elsewhere, and so far as Act No. 66 of 1894 might be construed so as to prevent or interfere with the execution of such contract, it was violative of the Federal Constitution.

The statement of facts sets forth that the defendants entered into a contract of marine insurance under an open policy with the Atlantic Mutual Insurance Company, indemnifying them in case of loss on shipments of cotton in transit between the ports of New Orleans and elsewhere. This contract (marked Exhibit "A") was entered into at New York city, and contained the stipulation that,

> Shipments applicable to this policy to be reported to this company by mail or telegraph on day of purchase.* * * A new and separate policy to be issued for each risk, the premium on which is to be paid in cash upon the delivery of such policy in New York to E. Allgeyer & Co.

> Risks endorsed hereon and subsequently taken off, and new and separate policies issued, are not to exhaust this policy. * * *
>
> The said goods and merchandise, hereby insured, are valued, including premiums, at the sums expressed in the letter of advise as provided for herein, not to exceed the invoice cost and 15 percent. * * *
>
> In cases of loss prior to issue of certificate or policy and negotiations of exchange for purchase of cotton, the liability under this insurance is not to exceed the costs of the cotton and charges added. * * *
>
> The company are entitled to premium on all shipments reported as provided for above. The rate of premium shall be fixed by the president or vice president of the company, when the vessel and nature of the risks are known and understood, charges and expenses in currency to be reduced to the standard of gold. * * *
>
> If the voyage aforesaid shall have been begun, and shall have terminated before the date of this policy, then there shall be no return of premium on account of such termination of the voyage.
>
> In all cases of return of premium, in whole or in part, one-half percent upon the sum insured, is to be retained by assurers.

It is admitted that:

> The Atlantic Mutual Insurance Company is engaged in the business of marine insurance, has appointed no agent in the State of Louisiana, and has not complied with the conditions required by the laws of this State for the doing of business within the same, by insurance companies incorporated and domiciled out of the State. (See also Act 76 of the State of Louisiana of 1886.)

On October 3, 1894, Allgeyer shipped one hundred bales of cotton, and at the time of shipment notified the company, under the terms of the policy, by mailing a letter of advice, commonly called a binder, and at the time of mailing the said binder, the cotton referred to by it, to-wit: one hundred bales, was within the State of Louisiana.

We therefore conclude, that from the terms of the policy and the note of evidence, that Allgeyer & Co., at the time, being in the

city of New Orleans, State of Louisiana, affected insurance on cotton in transit from New Orleans to Havre by mailing a binder, and that:

> The rate of premium was to have been fixed by the president or vice president of the insurance company when the vessel and nature of the risks are known and understood.

In other words, the contract was completed within the confines of the State of Louisiana.

It is pretended that this contract was performed outside the territorial limits of Louisiana and beyond its jurisdiction. We think the open policy makes a special provision concerning each risk, because it is written that:

> Shipments applicable to this policy to be reported to this company by mail or telegraph on day of purchase. The said goods and merchandise hereby insured are valued, including premiums, at the sums expressed in the letter of advice, as provided for herein, not to exceed the invoice cost and fifteen percent.

Can it be seriously claimed that this contract is consummated and executed outside of the port of New Orleans? The only essential necessary to the completion of the contract, the *aggregatio mentium*, is complied with by the act of mailing and issuing such a binder under the terms of the open policy, and constitutes a provisional insurance on the cotton until the issuance of the new policy in New York, either by defendant's agent or the holder of the bill of exchange.

In our argument in the Supreme Court of Louisiana we said:

> Pending this shipment, the communication or telegram is a separate insurance under the open policy, and upon the arrival of the draft or bill of exchange, the purchaser, or defendant's agent, receives a new policy in New York, and the *delivery* of this new policy operates as a *substitution and cancellation* of the insurance on the shipment under the terms of the original open policy and the notice or telegram. It will not be denied that under the general law, there is no insurance upon the cotton until the mailing of the application or "*binder*" nor will it be denied that until the arrival of the bill of lading this notice or binder *represents the insurance on the cotton in transition from New Orleans to New York, subject to the terms of the open policy.*

Certainly, upon the delivery of a new policy to the holder of the bill of exchange, the insurance under the open policy *ipso facto* falls, and the insurance on the shipment is entirely covered by this new policy. The premium adjustment is made between Allgeyer and the company, in so far as Allgeyer is concerned, because as he parts with the property his dominion over it ceases, and the new insurance is held by the purchaser of the bill who can do with it as he pleases.

It is serious error to assume that the binder is subject to acceptance or rejection by the Atlantic Mutual Insurance Company, because, in case of loss, under an open marine policy, proof of the mailing of the communication, or binder, is sufficient to obtain payment; it, therefore, logically follows that failure on the part of assured to mail or telegraph his "binder," or communication to the company is such a failure so as to operate a complete bar to recovery. In other words, no insurance is effected without the mailing of said communication. By applying these facts to the Act of 1894, it is plain that the law has been violated by the defendant. (See, also, *State* vs. *Allgeyer,* 4S La. An. p. 104.)

The "general welfare" clause of the Federal Constitution and of our State Constitution is based upon the maxim: *Salus populi suprema lex.* For the proper enforcement of its police power, a State may enact laws prohibiting a foreign corporation from doing any act within its confines. This right, however, is restricted only in cases where such corporation is engaged in a business necessarily federal in its nature.

Having the power to exclude and prohibit, the right to pass any and all laws to enforce that prohibition by proper legislation is unquestioned.

Bank vs. *Earle,* 13 Pet. 510;
Insurance Co. vs. *French,* 18 How. 404;
Society vs. *Colte,* 6 Wall. 594;
Provident Institution vs. *Massachusetts,* Id. 611;
Hamilton Company vs. *Massachusetts,* Id. 632;
Paul vs. *Virginia,* 8 Wall. 168;
State Tax on Railway Gross Receipts, 15 Wall. 284;
Railroad Co. vs. *Peniston,* 18 Wall. 5;
Delaware Railroad Tax Case, Id. 206;
State Railroad Tax Cases, 92 U.S. 575;
Philadelphia & S. S. S. Co. vs. *Pennsylvania,* 122 U.S. 325; 7 Sup. Ct. 1116;
California vs. *Southern Pacific R. R. Co.,* 127 U.S. 1; 8 Sup. Ct. 1073;

Home Ins. Co. vs. *New York*, 134 U.S. 594; 10 Supt. Ct. 593;

Maine vs. *Grand Trunk R. R. Co.*, 142 U.S. 217; 12 Supt. Ct. 121, 163;

Ashley vs. *Ryan*, 153 U.S. 445; 14 Supt. Ct. 865;

The Act of 1894 is attacked by defendant on the ground that it deprives it of its property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States. We fail to perceive the application of this clause to the case at bar.

> The statute provided for a trial, for bringing the party before the Court, notifying him of the case he is required to meet, for giving him a hearing, for the deliberation and judgment of the Court, for an appeal to the highest Court, and for a hearing and judgment there. (*Pearson* vs. *Yewdall*, 95 U.S. 294.)

It will, therefore, be conceded that the State derives its right to exclude foreign corporations by virtue of the police power inherent in it as sovereign. Thus it has been held in *Barbier* vs. *Connolly* (113 United States, p. 27), that, "The Fourteenth Amendment of the Constitution does not impair the police power of a State."

Mr. Justice Field, in delivering the opinion of the Court, said:

> But neither the amendment—broad and comprehensive as it is—nor any other amendment was designed to interfere with the power of the State, sometimes termed its police 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. * * * In the execution of admitted powers unnecessary proceedings are often required which are cumbersome, dilatory and expensive, yet, if no discrimination against any one be made, and no substantial right be impaired by them, they are not obnoxious to any constitutional objection. The inconveniences arising in the administration of the laws from this cause are matters entirely for the consideration of the State; they can be remedied only by the State.

But the defenses herein presented are not *res nova*. They have been ably disposed of by this Court in the matter of *Hooper* vs. *State of California* (155 U.S., p. 648), and further argument on our part would be superfluous. The California Statute and the Louisiana statute are identical, save and except that the former imposed a penalty upon the insurance broker, while the latter specially includes the resident owner who insures his property in an unauthorized foreign insurance company.

Thus, it has been held in *Commonwealth* vs. *Biddle* (139 Pa. State, 609), that

> . . . beyond the limitations imposed by the Constitution, the power of the Legislature to declare any act done within the territory of the State, unlawful or criminal, cannot be questioned; and all considerations of wisdom or policy, of hardship, of difficulty, or even impossibility of general enforcement, must be addressed to the law-making branch of the Government.
>
> We entertain, therefore, no doubt of the power of the Legislature to make the insurance of his property in an unauthorized foreign company by an owner criminal, if done in this State. (See also *State of Louisiana* vs. *Williams,* 46 An. 922; 13 Gratt. [Va.], 767; 3 S. Rep. 140; 106 Ill. 11; Supreme Court Reporter, Vol. 15, p. 207; *State* vs. *Allgeyer,* 48 An. 104.)

And this Court has further declared in the case of *Hooper* vs. *State of California, ibid.*, that the "Fourteenth Amendment does not guarantee to a citizen the right to contract by himself, or his agents, within his State in violation of its laws."

We, therefore, respectfully submit that the judgment of the Supreme Court of the State of Louisiana should be affirmed.

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