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U.S. Supreme Court
Paul v. Virginia, 75 U.S. 7 Wall. (1869)
Paul v. Virginia
75 U.S. (7 Wall.) 168

ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA

Syllabus

1. A state statute which enacts that no insurance company not incorporated under the laws of the State passing the statute shall carry on its business within the State without previously obtaining a license for that purpose, and that it shall not receive such license until it has deposited with the Treasurer of the State bonds of a specified character to an amount varying from thirty to fifty thousand dollars, according to the extent of the capital employed, is not in conflict with that clause of the Constitution of the United States which declares that “the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States,” nor with the clause which declares that Congress shall have power “to regulate commerce with foreign nations and among the several States.”
2. Corporations are not citizens within the meaning of the first of these clauses. They are creatures of local law, and have not even an absolute right of recognition in other States, but depend for that and for the enforcement of their contracts upon the assent of those States, which may be given accordingly on such terms as they please.
3. The privileges and immunities secured to citizens of each State in the several States by this clause are those privileges and immunities which are common to the citizens in the latter States under their constitution and laws by virtue of their being citizens. Special privileges enjoyed by citizens in their own States are not secured by it in other States.
4. The issuing of a policy of insurance is not a transaction of commerce within the meaning of the latter of the two clauses, even though the parties be domiciled in different States, but is a simple contract of indemnity against loss.

The case was thus:

An act of the legislature of Virginia, passed on the 3d of February, 1866, provided that no insurance company not incorporated under the laws of the State should carry on its business within the State without previously obtaining a license for that purpose, and that it should not receive such license until it had deposited with the treasurer of the State bonds of a specified character, to an amount varying from thirty to fifty thousand dollars, according to the extent of the capital employed. The bonds to be deposited were to consist of six percent bonds of the State, or other bonds of public corporations guaranteed by the State, or bonds of **Page 75 U. S. 169** individuals, residents of the State, executed for money lent or debts contracted after the passage of the act, bearing not less than six percent per annum interest.

A subsequent act passed during the same month declared that no person should, “without a license authorized by law, act as agent for any foreign insurance company” under a penalty of not less than \$50 nor exceeding \$500 for each offence; and that every person offering to issue, or making any contract or policy of insurance for any company created or incorporated elsewhere than in the State should be regarded as an agent of a foreign insurance company.

In May, 1866, Samuel Paul, a resident of the State of Virginia, was appointed the agent of several insurance companies, incorporated in the State of New York, to carry on the general business of insurance against fire, and, in pursuance of the law of Virginia, he filed with the auditor of public accounts of the State his authority from the companies to act as their agent. He then applied to the proper officer of the district for a license to act as such agent within the State, offering at the time to comply with all the requirements of the statute respecting foreign insurance companies, including a tender of the license tax, excepting the provisions requiring a deposit of bonds with the treasurer of the State, and the production to the officer of the treasurer's receipt. With these provisions neither he nor the companies represented by him complied, and, on that ground alone, the license was refused. Notwithstanding this refusal, he undertook to act in the State as agent for the New York companies without any license, and offered to issue policies of insurance in their behalf, and in one instance did issue a policy in their name to a citizen of Virginia. For this violation of the statute, he was indicted, and convicted in the Circuit Court of the City of Petersburg, and was sentenced to pay a fine of fifty dollars. On error to the Supreme Court of Appeals of the State, this judgment was affirmed, and the case was brought to this Court under the 25th section of the Judiciary Act, the ground of the writ of error being that the judgment below was against a right set up under that clause **Page 75 U. S. 170** of the Constitution of the United States [[Footnote 1](#)] which provides that "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States," and that clause [[Footnote 2](#)] giving to Congress power "to regulate commerce with foreign nations, and among the several States."

The corporators of the several insurance companies were at the time, and still are, citizens of New York, or of some one of the States of the Union other than Virginia. And the business of insurance was then, and still is, a lawful business in Virginia, and might then, and still may, be carried on by all resident citizens of the State, and by insurance companies incorporated by the State, without a deposit of bonds, or a deposit of any kind with any officer of the commonwealth. **Page 75 U. S. 177**

MR. JUSTICE FIELD, after stating the case, delivered the opinion of the court, as follows:

On the trial in the court below, the validity of the discriminating provisions of the statute of Virginia between her own corporations and corporations of other States was assailed. It was contended that the statute in this particular was in conflict with that clause of the Constitution which declares that "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States," and the clause which declares that Congress shall have power "to regulate commerce with foreign nations and among the several States." The same grounds are urged in this Court for the reversal of the judgment.

The answer which readily occurs to the objection founded upon the first clause consists in the fact that corporations are not citizens within its meaning. The term citizens as there used applies only to natural persons, members of the body politic, owing allegiance to the State, not to artificial persons created by the legislature, and possessing only the attributes which the legislature has prescribed. It is true that it has been held that, where contracts or rights of property are to be enforced by or against corporations, the courts of **Page 75 U. S. 178** the United States will, for the purpose of maintaining jurisdiction, consider the corporation as representing citizens of the State under the laws of which it is created, and to this extent will treat a corporation as a citizen within the clause of the Constitution extending the judicial power of the United States to controversies between citizens of different States. In the early cases, when this question of the right of corporations to litigate in the courts of the United States was considered, it was held that the right depended upon the citizenship of the members of the corporation, and its proper averment in the pleadings. Thus, in the case of *The Hope Insurance Company v. Boardman*, [[Footnote 3](#)] where the company was described in the declaration as "a company legally incorporated by the legislature of the State of Rhode Island and Providence Plantations, and established at Providence," the judgment was reversed because there was no averment that the members of the corporation were citizens of Rhode Island, the court holding that an aggregate corporation as such was not a citizen within the meaning of the Constitution.

In later cases, this ruling was modified, and it was held that the members of a corporation would be presumed to be citizens of the State in which the corporation was created, and where alone it had any legal existence, without any special averment of such citizenship, the averment of the place of creation and business of the corporation being sufficient, and that such presumption could not be controverted for the purpose of defeating the jurisdiction of the court. [Footnote 4]

But in no case which has come under our observation, either in the State or Federal courts, has a corporation been considered a citizen within the meaning of that provision of the Constitution which declares that the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States. In *Bank of Augusta v. Page* 75 U. S. 179 Earle, [Footnote 5] the question arose whether a bank, incorporated by the laws of Georgia, with a power, among other things, to purchase bills of exchange, could lawfully exercise that power in the State of Alabama; and it was contended, as in the case at bar, that a corporation composed of citizens of other States was entitled to the benefit of that provision, and that the court should look beyond the act of incorporation and see who were its members for the purpose of affording them its protection if found to be citizens of other States, reference being made to an early decision upon the right of corporations to litigate in the Federal courts in support of the position. But the court, after expressing approval of the decision referred to, [Footnote 6] observed that the decision was confined in express terms to a question of jurisdiction, that the principle had never been carried further, and that it had never been supposed to extend to contracts made by a corporation, especially in another sovereignty from that of its creation; that, if the principle were held to embrace contracts, and the members of a corporation were to be regarded as individuals carrying on business in the corporate name, and therefore entitled to the privileges of citizens, they must at the same time take upon themselves the liabilities of citizens, and be bound by their contracts in like manner; that the result would be to make the corporation a mere partnership in business with the individual liability of each stockholder for all the debts of the corporation; that the clause of the Constitution could never have intended to give citizens of each State the privileges of citizens in the several States, and at the same time to exempt them from the liabilities attendant upon the exercise of such privileges in those States; that this would be to give the citizens of other States higher and greater privileges than are enjoyed by citizens of the State itself, and would deprive each State of all control over the extent of corporate franchises proper to be granted therein. "It is impossible," continued the court,

"upon any sound principle, to give such a construction to the article in question. Page 75 U. S. 180

Whenever a corporation makes a contract it is the contract of the legal entity, the artificial being created by the charter, and not the contract of the individual members. The only rights it can claim are the rights which are given to it in that character, and not the rights which belong to its members as citizens of a State."

It was undoubtedly the object of the clause in question to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned. It relieves them from the disabilities of alienage in other States; it inhibits discriminating legislation against them by other States; it gives them the right of free ingress into other States, and egress from them; it insures to them in other States the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other States the equal protection of their laws. It has been justly said that no provision in the Constitution has tended so strongly to constitute the citizens of the United States one people as this. [Footnote 7]

Indeed, without some provision of the kind removing from the citizens of each State the disabilities of alienage in the other States, and giving them equality of privilege with citizens of those States, the Republic would have constituted little more than a league of States; it would not have constituted the Union which now exists.

But the privileges and immunities secured to citizens of each State in the several States by the provision in question are those privileges and immunities which are common to the citizens in the latter States under their constitution and laws by virtue of their being citizens. Special privileges enjoyed by citizens in their own States are not secured in other States by this provision. It was not intended by the provision to give to the laws of one State any operation in other States. They can have no such operation, except by the permission, express or implied, of those States. The **Page 75 U. S. 181** special privileges which they confer must, therefore, be enjoyed at home, unless the assent of other States to their enjoyment therein be given.

Now a grant of corporate existence is a grant of special privileges to the corporators, enabling them to act for certain designated purposes as a single individual, and exempting them (unless otherwise specially provided) from individual liability. The corporation being the mere creation of local law, can have no legal existence beyond the limits of the sovereignty where created. As said by this Court in *Bank of Augusta v. Earle*, "It must dwell in the place of its creation, and cannot migrate to another sovereignty." The recognition of its existence even by other States, and the enforcement of its contracts made therein, depend purely upon the comity of those States -- a comity which is never extended where the existence of the corporation or the exercise of its powers are prejudicial to their interests or repugnant to their policy. Having no absolute right of recognition in other States, but depending for such recognition and the enforcement of its contracts upon their assent, it follows as a matter of course that such assent may be granted upon such terms and conditions as those States may think proper to impose. They may exclude the foreign corporation entirely; they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest. The whole matter rests in their discretion.

If, on the other hand, the provision of the Constitution could be construed to secure to citizens of each State in other States the peculiar privileges conferred by their laws, an extraterritorial operation would be given to local legislation utterly destructive of the independence and the harmony of the States. At the present day, corporations are multiplied to an almost indefinite extent. There is scarcely a business pursued requiring the expenditure of large capital, or the union of large numbers, that is not carried on by corporations. It is not too much to say that the wealth and **Page 75 U. S. 182** business of the country are to a great extent controlled by them. And if, when composed of citizens of one State, their corporate powers and franchises could be exercised in other States without restriction, it is easy to see that, with the advantages thus possessed, the most important business of those States would soon pass into their hands. The principal business of every State would, in fact, be controlled by corporations created by other States.

If the right asserted of the foreign corporation, when composed of citizens of one State, to transact business in other States were even restricted to such business as corporations of those States were authorized to transact, it would still follow that those States would be unable to limit the number of corporations doing business therein. They could not charter a company for any purpose, however restricted, without at once opening the door to a flood of corporations from other States to engage in the same pursuits. They could not repel an intruding corporation, except on the condition of refusing incorporation for a similar purpose to their own citizens; and yet it might be of the highest public interest that the number of corporations in the State should be limited; that they should be required to give publicity to their transactions; to submit their affairs to proper examination; to be subject to forfeiture of their corporate rights in case of mismanagement, and that their officers should be held to a strict accountability for the manner in which the business of the corporations is managed, and be liable to summary removal.

"It is impossible," to repeat the language of this Court in *Bank of Augusta v. Earle*, "upon any sound principle, to give such a construction to the article in question" -- a construction which would lead to results like these.

We proceed to the second objection urged to the validity of the Virginia statute, which is founded upon the commerce clause of the Constitution. It is undoubtedly true, as stated by counsel, that the power conferred upon Congress to regulate commerce includes as well commerce carried on by corporations as commerce carried on by individuals. At **Page 75 U. S. 183** the time of the formation of the Constitution, a large part of the commerce of the world was carried on by corporations. The East India Company, the Hudson's Bay Company, the Hamburg Company, the Levant Company, and the Virginia Company, may be named among the many corporations then in existence which acquired, from the extent of their operations, celebrity throughout the commercial world. This state of facts forbids the supposition that it was intended in the grant of power to Congress to exclude from its control the commerce of corporations. The language of the grant makes no reference to the instrumentalities by which commerce may be carried on; it is general, and includes alike commerce by individuals, partnerships, associations, and corporations.

There is, therefore, nothing in the fact that the insurance companies of New York are corporations to impair the force of the argument of counsel. The defect of the argument lies in the character of their business. Issuing a policy of insurance is not a transaction of commerce. The policies are simple contracts of indemnity against loss by fire, entered into between the corporations and the assured, for a consideration paid by the latter. These contracts are not articles of commerce in any proper meaning of the word. They are not subjects of trade and barter offered in the market as something having an existence and value independent of the parties to them. They are not commodities to be shipped or forwarded from one State to another, and then put up for sale. They are like other personal contracts between parties which are completed by their signature and the transfer of the consideration. Such contracts are not interstate transactions, though the parties may be domiciled in different States. The policies do not take effect -- are not executed contracts -- until delivered by the agent in Virginia. They are, then, local transactions, and are governed by the local law. They do not constitute a part of the commerce between the States any more than a contract for the purchase and sale of goods in Virginia by a citizen of New York whilst in Virginia would constitute a portion of such commerce. **Page 75 U. S. 184**

In *Nathan v. Louisiana*, [**Footnote 8**] this Court held that a law of that State imposing a tax on money and exchange brokers, who dealt entirely in the purchase and sale of foreign bills of exchange, was not in conflict with the constitutional power of Congress to regulate commerce. The individual thus using his money and credit, said the court,

“is not engaged in commerce, but in supplying an instrument of commerce. He is less connected with it than the shipbuilder, without whose labor foreign commerce could not be carried on.”

And the opinion shows that, although instruments of commerce, they are the subjects of State regulation, and, inferentially, that they may be subjects of direct State taxation.

“In determining,” said the Court, “on the nature and effect of a contract, we look to the *lex loci* where it was made, or where it was to be performed. And bills of exchange, foreign or domestic, constitute, it would seem, no exception to this rule. Some of the States have adopted the law merchant, others have not. The time within which a demand must be made on a bill, a protest entered, and notice given, and the damages to be recovered, vary with the usages and legal enactments of the different States. These laws, in various forms and in numerous cases, have been sanctioned by this Court.”

And again:

“For the purposes of revenue, the Federal government has taxed bills of exchange, foreign and domestic, and promissory notes, whether issued by individuals or banks. Now the Federal government can no more regulate the commerce of a State than a State can regulate the commerce of the Federal government, and domestic bills or promissory notes are as necessary to the commerce of a State as foreign bills to the commerce of the

Union. And if a tax on an exchange broker who deals in foreign bills be a regulation of foreign commerce, or commerce among the States, much more would a tax upon State paper, by Congress, be a tax on the commerce of a State.”

If foreign bills of exchange may thus be the subject of **Page 75 U. S. 185** State regulation, much more so may contracts of insurance against loss by fire.

We perceive nothing in the statute of Virginia which conflicts with the Constitution of the United States, and the judgment of the Supreme Court of Appeals of that State must therefore be AFFIRMED.

[Footnote 1]

Art. IV, § 2.

[Footnote 2]

Art. I, § 8.

[Footnote 3]

5 Cranch 57.

[Footnote 4]

Louisville Railroad Co. v. Letson, 2 How. 497; *Marshall v. Baltimore & Ohio Railroad Co.*, 16 How. 314; *Covington Drawbridge Co. v. Shepherd*, 20 How. 233; and *Ohio & Mississippi Railroad Co. v. Wheeler*, 1 Black 297.

[Footnote 5]

38 U. S. 13 Peters 586.

[Footnote 6]

Bank of the United States v. Deveaux, 5 Cranch 61.

[Footnote 7]

Lemmon v. People, 20 New York 607.

[Footnote 8]

8 How. 73.