United States Vs. Amedy

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Decided On : 1826

Appeal No. : 24 U.S. 392

Appellant : United States

Respondent : Amedy

Judgement :

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U.S. Supreme Court United States v. Amedy, 24 U.S. 11 Wheat. 392 392 (1826)

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SYLLABUS

Under the act of 26 May 1790, ch. 38, copies of the legislative acts of the several states, authenticated by having the seal of the state affixed thereto, are conclusive evidence of such acts in the courts of other states, and of the union. No other formality is required than the annexation of the seal, and in the absence of all contrary proof, it must be presumed to have been done by an officer having the custody thereof, and competent authority to do the act.

Under the Crimes Act of 26 March, 1804, ch. 393, v. 2, on an indictment for destroying a vessel with intent to prejudice the underwriters, it is sufficient to show the existence of an association actually carrying on the business of insurance by whose known officers *de facto* the policy was executed, and to prejudice whom the vessel insured was destroyed, without proving the existence of a legal corporation authorized to insure or a compliance on the part of such corporation with the terms of its charter or the validity of the policy of insurance.

The terms "any person or persons" in the act extend to corporations and bodies politic as well as to natural persons.

The prisoner, John B. Amedy, was indicted in the Circuit Court of Virginia under the Act

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of Congress of 26 March, 1804, c. 393, for destroying a vessel with intent to prejudice the underwriters, and after a verdict of guilty, his counsel moved the court for a new trial upon the following grounds:

1. That the exemplification of the acts of the Legislature of the State of Massachusetts incorporating the Boston Insurance Company (who was the underwriters) given at the trial was not admissible in evidence as a sufficient verification thereof. The papers given in evidence were printed copies of the acts, with certain erasures and interlineations in writing, and to the copy of each act was annexed a separate attestation in the following words: "A true copy,

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attest, Edward D. Bangs, secretary." The copies were attached together and exemplified under the great seal of the State of Massachusetts, with the following certificate annexed:

"Commonwealth of Massachusetts, Secretary's Department, November 12, 1825. I certify that the printed copies of the following acts, *viz.,* 'An act to define the Powers, Duties, and Restrictions of Insurance Companies'; 'An act authorizing the

several Insurance Companies in this Commonwealth to insure against Fire'; 'An act to incorporate the Boston Insurance Company'; 'An act to incorporate the Commonwealth Insurance Company', and 'An act in addition to an act entitled An act to incorporate the Commonwealth Insurance Company,' to which printed copies this certificate is annexed, have been by me compared with the original acts on file in this office, and that the same are now true copies of the said original acts, except the usual attestation of enactment, and signatures subjoined to each act. In testimony whereof I hereunto set my hand and have affixed the seal of said Commonwealth, the day and year above mentioned. [Signed] EDWARD D. BANGS, Secretary of the Commonwealth."

2. That before the policy of insurance underwritten by the Boston Insurance Company could be given in evidence, it was necessary to prove that the subscription to the stock and the payment of such subscription as required by the act of incorporation had actually been made. The policy of insurance was admitted

in evidence by the court below without proof that the subscription to the stock had actually been made, it being proved that there was a company in Boston called the Boston Insurance Company doing the business of insurance and paying losses when incurred, and that the paper produced was executed after the manner in which they usually made their policies of insurance.

3. That the policy ought to have been proved to be executed by the authority of the company in such manner as to be legally binding on them.

4. That the court instructed the jury

"That it was not material whether the company was incorporated or not, and it was not material whether the policy were valid in law or not; that the prisoner's guilt did not depend upon the legal obligation of the policy, but upon the question whether he had willfully and corruptly cast away the vessel, as charged in the indictment, with intent to injure the underwriters."

The judges of the court below having been divided in opinion upon the motion for a new trial, the case was brought before this Court upon a certificate of that division.

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MR. JUSTICE STORY delivered the opinion of the Court.

The first question for consideration is whether the evidence of the act of incorporation of the Boston Insurance Company, disclosed upon the record, was admissible as a sufficient verification thereof. It is matter of most serious regret that an exemplification so loose and irregular should have been permitted to have found its way into any court of justice. As it has, it is our duty to decide upon its legal sufficiency. It

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is under the seal of the state and verified by the signature of its secretary.

It is said that this is not enough, and that it ought to be shown that the secretary had authority to do such acts. This objection must be decided by an examination of the Act of Congress of 26 May, 1790, prescribing the mode in which the public acts, records, and judicial proceedings of each state shall be authenticated so as to take effect in every other state. That act provides "That the acts of the legislatures of the several states shall be authenticated by having the seal of their respective states affixed thereto." No other of further formality is required, and the seal itself is supposed to import absolute verity. The annexation must, in the absence of all contrary evidence, always be presumed to be by a person having the custody thereof and competent authority to do the act. We know, in point of fact, that the Constitution of Massachusetts has declared "That the records of the Commonwealth shall be kept in the office of the secretary." But our opinion proceeds upon the ground that the act of Congress requires no other authentication than the seal of the state.

The other objections to the exemplification are that the acts are printed copies, with erasures and written interlineations, not so annexed as to afford perfect

certainty that they are the identical copies to which the secretary's certificate was originally annexed. We think these objections cannot be maintained in point of law.

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The copies must be presumed to be the original copies in the same state in which they were originally annexed. Any subsequent alteration or subtraction would be a public crime of high enormity, and the commission of a crime is not to be presumed. The certificate of the secretary, taken together, shows that he did not mean to state that the printed copies had not been varied by writing so as to be true copies, for he adds the phrase "they are now true copies of the original acts." The original print is still visible throughout, and the alterations in writing are mere verbal alterations, not in the slightest degree varying the sense or effect of any single clause in which they occur, and, to afford additional proof of identity, the secretary has on each copy annexed his own signature, with an attestation of its being a true copy. There is therefore no presumption, from the face of the papers or otherwise, of any alteration or addition since the seal of the state was annexed. The annexation of the usual attestation of the enactment and signatures to the acts was not necessary. It is sufficient that their existence and time of legal enactment is shown.

Our opinion, therefore, upon this question is that the papers were properly admitted in evidence.

The next question is whether before the policy of insurance, underwritten by the Boston Insurance Company, could be given in evidence, it was necessary to prove that the subscription to the stock and the payment of such subscription

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as required by the act of incorporation had been made. In our opinion it was not. This is not the case where a suit is brought by the corporation to enforce its rights, where, if the fact of its legal existence is put in controversy upon the issue, the corporation may be called upon to establish its existence. The case of *Henriques & Van Moyses v. Dutch West India Company,* cited in 2 Lord Raym. 1535, as

decided before Lord King, whatever may be its authority, was of that sort, and therefore carries with it an obvious distinction; nor is this the case of a *quo warranto,* where the government calls upon the company to establish its legal corporate powers and organization. The case here is of a public prosecution for a crime, where the corporation is no party and is merely collaterally introduced as being intended to be prejudiced by the commission of the crime. Under such circumstances, we think, nothing more was necessary for the government to prove than that the company was *de facto* organized and acting as an insurance company and corporation. The very procurement of a policy by the prisoner to be executed by the company was of itself *prima facie* evidence for such a purpose. In cases of the murder of officers, it is not necessary to prove that they are officers by producing their commissions. It is sufficient to show that they act *de facto* as such. In cases of piracy, it has been held sufficient to establish the proprietary title to the ship by evidence of actual possession of the party claiming to be owner.

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These are analogous cases, and furnish strong illustrations of the general principle.

The same answer may be given to another objection, and that is that the policy ought to have been proved to be executed by the authority of the company in such manner as to be binding on it. The actual execution of the policy by the known officers of the company *de facto* is sufficient.

The next question arises upon the instruction of the court

"That it was not material whether the company was incorporated or not, and it was not material whether the policy were valid in law or not; that the prisoner's guilt did not depend upon the legal obligation of the policy, but upon the question whether he had willfully and corruptly cast away the vessel, as charged in the indictment, with intent to injure the actual underwriters."

We think this opinion correct. The act of Congress of 26 March, 1801, ch. 40. on which this indictment is framed, declares

"That if any person shall, on the high seas, willfully and corruptly cast away, &c.;, any ship or vessel, of which he is owner, &c.;, with intent or design to prejudice any person or persons that hath underwritten, or shall underwrite, any policy or policies of insurance thereon, &c.;, the person or persons offending therein, &c.;, shall suffer death. The law punishes the act when done with an intent to prejudice; it does not require that there should be an actual prejudice. The prejudice intended is to be to a person who has underwritten or shall underwrite a policy thereon which, for aught the prisoner

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knows, is valid, and does not prescribe that the policy should be valid so that a recovery could be had thereon. It points to the intended prejudice of an underwriter *de facto.* The case of *King v. Gillson,* 1 Taunt. 95, 2 Leach 1007, did not turn upon this point. That was an indictment for maliciously setting fire to a house with intent to defraud the London Assurance Company of houses and goods from fire. It was necessary to prove that the household goods in the house had been actually insured for the prisoner by the company. A policy had been executed by the company on these goods in another house, and subsequently, upon the removal of the prisoner to the house set on fire, a memorandum was endorsed on the policy agreeing that the removal of the goods should be allowed. This memorandum was unstamped, and by statute was not admissible in evidence. Six judges against five held the evidence inadmissible upon the ground that the prohibition was intended to be universal. The existence, therefore, of the insurance itself could not be established. If there had been proof that the policy was executed, the question might have arisen whether it was necessary further to prove its legal validity in all other respects. The argument at the bar, drawn from the known law as to forgeries, is, we think, pertinent. In those cases, when they depend on the common law, actual prejudice is not necessary to be proved, and of course the validity of the instrument is entirely waived. "

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Another question, not raised in the court below, has been argued here, and upon which, as it is vital to the prosecution, we feel ourselves called upon to express an opinion. It is that a corporation is not a "person" within the meaning of the act of Congress. If there had been any settled course of decisions on this subject in criminal cases, we should certainly, in a prosecution of this nature, yield to such a construction of the act. But there is no such course of decisions. The mischief intended to be reached by the statute is the same whether it respects private or corporate persons. That corporations are, in law, for civil purposes, deemed persons is unquestionable. And the citation from 2 Inst. 736 establishes that they are so deemed within the purview of penal statutes. Lord Coke there, in commenting on the statute of 31 Eliz. ch. 7., respecting the erection of cottages, where the word used is "no person shall," &c.;, says, "this extends as well to persons politic and incorporate as to natural persons whatsoever." In the case of *King v. Harrison,* 1 Leach 180, 2 East Pl.Cro. 927, 988, it may perhaps be matter of some doubt whether the point was actually decided by the court. But, if it was, it mainly rested upon a peculiarity of construction which grew out of the statute of 31 Geo II, ch. 22, s. 78, which professed to cure doubts of the meaning of these words in other antecedent statutes upon similar subjects, leaving that on which the indictment was framed untouched. Finding, therefore, no authority at

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common law which overthrows the doctrine of Lord Coke, we do not think that we are entitled to engraft any such constructive exception upon the text of the statute.

Upon the whole it is to be certified to the Circuit Court of Virginia that the decisions of that court upon the points of law arising at the trial were correctly decided.

CERTIFICATE. This cause came on to be heard on the certificate of division of opinions of the judges of the circuit court, &c.;, on consideration whereof it is ADJUDGED by the Court that it be certified to the said circuit court that the points of law ruled by the said circuit court at the trial of the cause, and upon which the same court, upon a motion for a new trial, was divided in opinion were in all respects correctly decided by the said court at the said trial.