Ducat Vs. Chicago

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SooperKanoon Citation : sooperkanoon.com/81881

Court : US Supreme Court

Decided On : 1869

Appeal No. : 77 U.S. 410

Appellant : Ducat

Respondent : Chicago

Judgement :

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Ducat v. Chicago

77 U.S. (10 Wall.) 410

ERROR TO THE SUPREME COURT

OF THE STATE OF ILLINOIS

SYLLABUS

The case of *Paul v. Virginia,* 8 Wall. 168, affirmed and applied to a case where the state by certain statutes authorized the state officers to grant to foreign insurance companies, upon complying with certain terms, a license to transact the

business of insurance within the state, and then, by other statutes incorporating cities, made it obligatory on such foreign companies transacting business within those cities to pay them a *pro rata* on all their premiums, and declaring it unlawful in the companies otherwise to do business in them, authorized those cities to sue and recover it from the companies for the city's use.

Statutes passed by the Legislature of Illinois in 1853 and 1857, "to regulate the agencies of insurance companies not incorporated by the State of Illinois" required the agents of all such insurance companies, desirous to transact business in the state to take out a license from the auditor of the state; and, before obtaining it, to furnish him with a statement, under the oath of the president or secretary of the company, showing its name and locality, the amount of its capital stock, the portion paid in, the assets of the company, and to furnish also a written instrument, under the company's seal, authorizing the agents to accept service of process, and agreeing that service on them shall be valid. Upon all this being done and $5 paid for filing and examining the statement and $1 for the certificate, a license authorizing the agent applying for it "to transact the business of insurance in this state" is then allowed to be granted from year to year.

By another act passed a few years later (1863) incorporating the City of Chicago, the legislature of the state enacted that all foreign insurance companies engaged in effecting insurances in that city should pay to the city treasurer the sum of $2 upon the $100, and at that rate upon the amount of all premiums which shall have been received; designating the time and mode of payment. The law also,

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in case of default of payment, provided that it should be unlawful for the company to transact any business of insurance in the city until the payment was made and that the rates might be recovered of the company or of its agent in the name and for the use of the city.

With these laws in force, one Ducat, residing in the City of Chicago, and the agent there of several insurance companies chartered in the State of New York, took out

licenses in 1865, authorizing him to carry on the business of insurance as agent of said companies. He paid the state for his license, but refused to pay anything to the *City of Chicago* on the ground chiefly that corporations were citizens within the meaning of that clause of the Constitution which declared that the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states, and the city thereupon brought this suit to recover the rates which he thus refused to pay.

The court below decided in favor of the city, and Ducat brought the case here chiefly for the purpose of having the point above raised decided, the parties and counsel to the present case not knowing of the then pendency of the case of *Paul v. Virginia,* * in which it was soon afterwards decided that corporations were not "citizens" within the above quoted clause of the Constitution, and decided also that each state may prescribe the terms on which corporations created in other states may be allowed to carry on their corporate business, especially when it is that of insurance, within that state.

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MR. JUSTICE NELSON delivered the opinion of the Court.

This case was pending here when that of *Paul v. Virginia* was argued and decided, the decision in which, as is admitted by the learned counsel for the plaintiff in error, has already disposed of all the principal questions involved.

Paul, the agent of the insurance companies in that case, refused to comply with some of the conditions annexed by the law of Virginia to the granting of the license, on the ground 1, that the corporations he represented were entitled to all the privileges and immunities of citizens of the several states, and that the law imposing discriminating conditions against foreign corporations was void as repugnant to this clause of the Constitution, and 2, that it was void as against the commercial power. Both these grounds of defense were overruled for the reasons assigned in the opinion of the Court, which need not be repeated, and the agent held liable to the penalty imposed for a violation of the act. The principle of that

case must govern the one before us. The only difference between the statute of Virginia and that of Illinois is that the latter is more onerous to the companies than the former. The difference is in degree, not in principle.

The power of the state to discriminate between her own domestic corporations and those of other states desirous of transacting business within her jurisdiction is clearly established in the case we have referred to, as it also had been in the previous case of *Augusta v. Earle.* {2} As to the nature or degree of discrimination, it belongs to the state to determine, subject only to such limitations on her sovereignty as may be found in the fundamental law of the Union. We find no such limitations in this case.

Judgment affirmed.

* 13 Pet. 519.