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interstate Amusement Co. Vs. Albert

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Court : US Supreme Court

Decided On : Jan-10-1916

Appeal No. : 239 U.S. 560

Appellant : interstate Amusement Co.

Respondent : Albert

Judgement :

Interstate Amusement Co. v. Albert - 239 U.S. 560 (1916)
U.S. Supreme Court Interstate Amusement Co. v. Albert, 239 U.S. 560 (1916)

Interstate Amusement Company v. Albert

No. 69

Argued November 10, 1915

Decided January 10, 1916

239 U.S. 560

ERROR TO THE SUPREME COURT

OF THE STATE OF TENNESSEE

SYLLABUS

An exception to the general rule that findings of fact of the state court in ordinary cases coming to this Court under 237, Judicial Code, other than those arising under the contract clause of the federal Constitution, are binding upon this Court is where a federal right has been denied as the result of a finding without support in the evidence.

In this case, the finding of the state court that a foreign corporation was doing business in the state other than interstate commerce having adequate support in the record, it is binding upon this Court.

A state may restrict the right of a foreign corporation to engage in

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business within its limits or to sue in its courts so long as interstate commerce is not burdened thereby.

A corporation of another state carrying on business in the State of Tennessee other than interstate commerce is not deprived of its property without due process of law, nor is its interstate commerce interfered with, by the statute of Tennessee requiring a foreign corporation to file a copy of its charter and take certain other specified steps before it can maintain an action in the court of the state.

128 Tenn. 417 affirmed.

The facts are stated in the opinion.

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MR. JUSTICE PITNEY delivered the opinion of the Court.

Plaintiff in error recovered a judgment in one of the courts of the State of Tennessee upon a cause of action that arose out of a written contract, dated May 24, 1909, whereby it agreed to "engage and book" for the firm of Catron & Albert,

then operating a theater in Chattanooga, Tennessee, a certain number of "vaudeville acts" each week for certain weeks in each year, during the continuance of the contract, in consideration of the payment weekly of a "booking fee" of $10 and a commission of 5% upon the salary of each performer. It appeared that plaintiff in error was a corporation of the State of Missouri, but had a *situs* in Chicago, Illinois. Upon the ground that it was guilty of noncompliance with the statute of Tennessee relating to foreign corporations doing business in the state, in that it had failed to file a copy of its charter in the office of the secretary of state, the Supreme Court of Tennessee reversed the judgment and dismissed the suit (128 Tenn. 417), and the case comes here upon questions raised under the "commerce clause" of the Constitution of the United States and the "due process of law" and "equal protection" clauses of the Fourteenth Amendment.

Excerpts from the statute are set forth in the margin. *

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It is the insistence of plaintiff in error that it could not, consistently with the cited provisions of the federal Constitution, be required to subject itself to the law of the state unless it was doing business within the state, and that in fact it did no such business, or, if it did any, it was interstate commerce, not subject to state regulation.

Respecting the effect of the written contract under which the cause of action arose, the court held that it created merely the relationship of principal and agent between the parties; that, by it plaintiff in error became the agent of Catron & Albert, bound to render them the personal services called for by the contract in consideration of the specified sums to be paid by them to it, and that this consideration was to be forwarded weekly by Catron & Albert from Chattanooga, Tennessee, to Chicago, Illinois, where the office of plaintiff in error was located; that, by the terms of the agreement, plaintiff in error was not to be responsible for failure on the part of the actors to fulfil their contracts, nor for any accident or delay preventing their arrival in Chattanooga at the times appointed; that, under the

contract and the evidence showing the execution of it, it was not contemplated that plaintiff in error should engage, nor did it, so far as the record shows, engage in the interstate transportation of the troupes of vaudeville actors, and that, while interstate transportation of such actors might or might not become an incident or factor in the execution of the contract, such interstate commerce was only incidental, and not a part of the agreement as made between the parties. It was held that this circumstance did not exempt the business done under the contract from state regulation or control. *Williams v. Fears,* 179 U. S. 270 , 179 U. S. 274 , and *Hooper v. California,* 155 U. S. 648 , 155 U. S. 655 , were cited.

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The court further found as matter of fact that it was the ordinary business of plaintiff in error to send troupes of actors from one theater to another in the State of Tennessee for the purpose of presenting plays to audiences assembled in each separate theater, and from the revenues derived by means of such performances it received an income, and its compensation arose from acts done in Tennessee in the several theaters where the troupes of actors appeared and performed; that the account sued on showed more than fifty different items, each representing plaintiff in error's share of the revenues received from as many separate and distinct performances by troupes of actors which it caused to appear in defendants' theater alone, and that, for the purpose of enlarging and extending its business in Tennessee, plaintiff in error had agents who entered that state and made contracts with other theater owners than Catron & Albert; that its articles of association stated its purpose to be to conduct and operate a general theatrical and amusement business, and this purpose it carried out by the establishment of "circuits" on which were located theaters convenient one to another, and its scheme contemplated the making of contracts with each of these theaters similar to that of Catron & Albert, and the collection of its revenues arising from booking fees and its percentages on actors' salaries; that, in short, it was a middleman, levying tribute from the owners of the houses where amusement was afforded and from the actors whose talents were employed, and that its claim in suit arose out of business thus conducted.

It is settled that such findings of fact, in ordinary cases other than those arising under the "contract clause" of the Constitution, are binding upon this Court. *Waters-Pierce Oil Co. v. Texas,* 212 U. S. 86 , 212 U. S. 97 ; *Rankin v. Emigh,* 218 U. S. 27 , 218 U. S. 32 ; *Miedreich v. Lauenstein,* 232 U. S. 236 , 232 U. S. 243 . But the rule has its exceptions, as, for instance, where there is ground for the insistence that a federal

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right has been denied as the result of a finding that is without support in the evidence. *Southern Pacific Co. v. Schuyler,* 227 U. S. 601 , 227 U. S. 611 ; *North Carolina R. Co. v. Zachary,* 232 U. S. 248 , 232 U. S. 259 ; *Carlson v. Washington,* 234 U. S. 103 , 234 U. S. 106 .

Plaintiff in error makes the point that the findings here are without support in the evidence, but this is not well taken. The evidence is meager, none having been offered by plaintiff in error, but there is evidence tending to show business transacted in the state, and it does not clearly appear to have been interstate business. Reference is made to the form of the contract, and especially its fifth paragraph, which states that plaintiff in error is acting solely in the capacity of agent of the theater owner, and is not responsible for failure of artists to fulfil their contracts, nor for any accident or delay preventing them from arriving in Chattanooga when scheduled; but the same paragraph binds plaintiff in error to "use every precaution to see that artists fulfill their contracts." Moreover, the prohibition of the statute, which, as construed and applied by the courts of Tennessee in a line of cases, renders illegal the contracts of foreign corporations carrying on business without complying with the laws applicable thereto and debars such corporations from suing in the state courts thereon (*Cary-Lombard Lumber Co. v. Thomas,* 92 Tenn. 587, 593; *New Hampshire Insurance Co. v. Kennedy,* 96 Tenn. 711, 714; *Harris v. Water & Light Co.,* 108 Tenn. 245; *Advance Lumber Co. v. Moore,* 126 Tenn. 313), was evidently established as a matter of public policy, not so much for the benefit of parties sued as in the interest of the people at large, and the question is not so much what was agreed to be done as what was done?

There being adequate support in the record for the finding of the supreme court of the state that plaintiff in error was doing business in the state, other than interstate

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commerce, without complying with the statute quoted, the contentions based upon the commerce clause and the due process of law clause alike must fall. For the authority of the state to restrict the right of a foreign corporation to engage in business within its limits or to sue in its courts, so long as interstate commerce be not thereby burdened, is perfectly well settled. *Paul v. Virginia,* 8 Wall. 168, 75 U. S. 181 ; *Hooper v. California,* 155 U. S. 648 , 155 U. S. 655 ; *Bank of Augusta v. Earle,* 13 Pet. 519, 38 U. S. 589 -591; *Anglo-American Provision Co. v. Davis Provision Co.,* 191 U. S. 373 ; *Sioux Remedy Co. v. Cope,* 235 U. S. 197 , 235 U. S. 203 .

The insistence based upon the "equal protection" clause is unsubstantial, and calls for no discussion.

Judgment affirmed.

* Acts of 1877, c. 31; Acts of 1891, c. 122; amended by Acts of 1895, c. 81, to read as follows:

"Section 1. . . . That each and every corporation created or organized under, or by virtue of, any government other than that of the state, for any purpose whatever, desiring to own property, or carry on business in this State of any kind or character, shall first file, in the office of the secretary of state, a copy of its charter. . . ."

"Section 2. . . . That it shall be unlawful for any foreign corporation to do business, or attempt to do business, in this state without first having complied with the provisions of this act, . . ."

"Section 3. . . . That when a corporation complies with the provisions of this act, said corporation may then sue and be sued in the courts of this state, and shall be subject to the jurisdiction of this state as fully as if it were created under the laws of

the State of Tennessee. . . ."

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