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Constitutional Law—Police Power—Business Affected with a Public Interest—Regulating Fire Insurance Rates

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BILLS AND NOTES—DRAWER BOUND TO KNOW HIS OWN CHECK.—This is a suit brought by the United States to recover the difference between the amount to which a check paid by it had been fraudulently raised and the amount for which the check was drawn. *Held*, That a check by a government disbursing clerk upon the Treasurer of the United States is a check by the United States upon themselves, within the rule that the drawer can not recover for an overpayment to an innocent payee. *United States of America v. The National Exchange Bank of Baltimore* (U. S., May, 1926) 70 L. Ed., 427.

The principle that a drawee of a bill is bound to know the drawer's signature, and that in the event that the drawee pays a forged instrument he can not recover from an innocent payee is fundamental in the law of Bills and Notes. *United States v. Chase National Bank*, 252 U. S. 485, 64 L. Ed., 675. The government plaintiff does not dispute this principle, but insists that, although acceptance of a check or draft does vouch for the signature of the drawer, it does not vouch for the body of the instrument. *Espy v. First National Bank*, 18 Wall., 604, 21 L. Ed., 947; *White v. Continental Nat. Bank*, 64 N. Y. 316; *National City Bank v. Westcott Express Co.*, 6 N. Y. St. Rep., 726. The government further contends that the drawer and drawee of a check were not the same in such sense as to charge the drawee with knowledge of the amount of the check. In this event the right of a party, paying money to another under a *bona fide* forgetfulness or ignorance of facts, to recover it back from one who is not entitled to receive it, is well established. The equitable action for money had and received will lie against one who has received money which in conscience does not belong to him. *Kelly v. Solari*, 9 M. & W., 54; *Bank of Orleans v. Smith*, 3 Hill, 560. It is, however, well established that if the drawer and drawee are the same the drawee can not recover for an over-payment to an innocent payee, for he is bound to know his own checks. *United States Bank v. Georgia Bank*, 23 U. S. (10 Wheaton), 333, 6 L. Ed., 334; *National Park Bank v. Fourth National Bank*, 7 Abb. Prac. (N. S.), 138. In the case of a check drawn by the government upon itself, as in this case, there is no doubt that the drawer is also the drawee. *U. S. Bank v. Georgia Bank*, *Supra*. Another view taken by the government in an attempt to escape being both the drawer and drawee is that the hand that drew and the hand that was to pay were not the same. Such a theory can not be well entertained for the government in its multitude of business dealings through its various agents must be held to the same responsibility as other principles.

E. C. F. '27.

CONSTITUTIONAL LAW—POLICE POWER—BUSINESS AFFECTED WITH A PUBLIC INTEREST—REGULATING FIRE INSURANCE RATES.—The case under discussion involves the constitutionality of two Missouri statutes—Sections 6283 and 6284 of Revised Statutes of Missouri, 1919. These acts vest the State Insurance Commissioner with authority to effect such reductions on fire insurance premiums, subject to review by the state courts, as will permit reasonable profits to those fire indemnity companies operating within this state. The portion of section 6283 pertinent to this case follows: "The superintendent of insurance upon written complaint of any citizen, or upon his own motion, is hereby empowered to investigate the necessity of a reduction of rates, and if upon such investigation it appears that the result of such earnings in this state of the stock fire insurance companies for five years next preceding such investigation shows there has been an aggregate profit therein in excess of what is reasonable, he shall order such reduction of rates as shall be necessary to limit the aggregate collections by insurance companies in this state to no more than a reasonable profit." The respondent, State Insurance Commissioner, in pursuance of this statute ordered a ten per cent reduction on all fire insurance rates, alleging exorbitant profits. The petitioners then filed their petition praying the court

to set aside the order of the commissioner. The circuit court upheld the order of the respondent, and upon appeal the Supreme Court of Missouri *sustained* the decision of the lower court, thereby upholding the validity of the statute. *Aetna Insurance Company v. Hyde*, (Mo. 1926), 285 S. W. 65.

The fact that the case by writ of certiorari is now pending before the Supreme Court of the United States renders a discussion at this time very appropriate. In substance, the issue involved is whether a state statute that delegated to a public official authority to regulate fire insurance rates is repugnant to the "due process" clause of the Fourteenth Amendment. It is a well settled principle that to deprive a person, artificial or natural, of its "good will," its "going concern value," or to injure one's established business, is sufficient to constitute a confiscation of private property within the meaning of the Fourteenth Amendment. That the "due process" clause is deemed also to embrace freedom of contract to all persons is held in *C. B. & Q. R. R. Co. v. McGuine*, 219 U. S., 566; *Wulff Packing Company v. Industrial Court*, 262 U. S., 534. Ever since *Munn v. Illinois*, 94 U. S., 113, it has been held by the Supreme Court of the United States that any business "affected with a public interest" is subject to legislative regulation. The following businesses have been held to be "clothed with a public interest" and therefore subject to regulation: warehouses and grain elevators, *Munn v. Illinois*, *supra*, stockyards, *Cotting v. Kansas City Stock Yards*, 183 U. S., 79, tenement and apartment houses, *Marcus Brown Holding Co. v. Feldman*, 269 Fed., 306, transportation of freight and passengers, *C. B. & Q. R. R. Co. v. Iowa*, 94 U. S., 155. In *American Surety Co. v. Shalzenberger*, 183 Fed., 636, it was held that the insurance business consists of personal contracts of indemnity against certain contingencies only, and that whether such contracts should be made at all is a matter of private negotiation, demanding exclusive freedom in fixing the terms. But, says Dean Pound, "The law of insurance is so far regarded as a business in which the public has an interest that within recent years the insurance business has been taken out of the category of contracts." (POUND, SPIRIT OF THE COMMON LAW, p. 29.) That the business of fire insurance is one in which the public has such an interest as to justify legislative regulation of its rates has been repeatedly held. *Orient Fire Insurance v. Daggs*, 172 U. S., 565; *Farmers' & Merchants' Insurance Company v. Dohney*, 189 U. S., 301; *Bashier v. Connally*, 113 U. S., 27; and particularly, *German Alliance Insurance Co. v. Lewis*, 233 U. S., 389. It is quite probable that in the instant case the Supreme Court will adhere to the principle laid down in the last named case, wherein the Court said, "The contracts of insurance may be said to be interdependent. They can not be regarded singly, or isolatedly, and the effect of their relation is to create a fund of assurance and credit, the companies becoming the depositories of the money of the insured, possessing great power thereby and charged with great responsibility. How necessary their solvency is, is manifest. On the other hand to the insured, insurance is an asset, a basis of credit. It is practically a necessity to business activity and enterprise. It is, therefore, essentially different from ordinary commercial transactions, and, as we have seen, according to the sense of the world from the earliest times—certainly the sense of the modern world—is of the greatest public concern." J. R. B. '28.

CONSTITUTIONAL LAW—POWER OF THE PRESIDENT TO REMOVE APPOINTIVE OFFICIALS.—Where the President removed a postmaster under an Act of Congress which required the Senate to consent to the appointment and removal of such officer, *held*, that this statute was invalid, and the President had the sole power of removal of all officers appointed by him. *Myers v. United States*, (U. S.) 71 L. Ed., 27; 47 S. Ct. Rep., 21.

The Court bases its opinion on two general grounds; first, that the general