

**Corporations--Equal Protection of Laws--Statutory Suspension of  
Fellow Servant Rule (Phillips Petroleum Co. v. Jenkins, 297 U.S.  
629 (1936))**

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rule is unchallenged,<sup>15</sup> the former is opposed by the weight of opinion in other states,<sup>16</sup> the English rule,<sup>17</sup> and the Federal rule, upheld by the United States Supreme Court,<sup>18</sup> to the effect that contracts (continuing, and indefinite as to duration) with the exception of those for personal services<sup>19</sup> cannot be regarded as terminable except by mutual consent.

B. B.

CORPORATIONS — EQUAL PROTECTION OF LAWS — STATUTORY SUSPENSION OF FELLOW SERVANT RULE.—Plaintiff, injured by a fellow employee of defendant company, a foreign corporation organized in Delaware and authorized to do business in Arkansas, is suing in Arkansas to recover damages for injuries suffered by him.<sup>1</sup> The Arkansas statutes provide that all corporations shall be liable for injuries sustained by an employee resulting from negligence of any other employee.<sup>2</sup> They also provide that foreign corporations authorized to do business in the state shall be subject to the same regulations and liabilities as domestic corporations.<sup>3</sup> Defendant petroleum company claims that these statutes violate the equal protection clause<sup>4</sup> because it makes corporations, domestic and foreign, liable for personal injuries sustained by an employee through negligence of any other employee while as to non-corporate employers the common-law rule that every servant assumes the risk of injuries through the negligence of his fellow servants still obtains. *Held*, plaintiff was entitled to recover as the defendant corporation became

<sup>15</sup> *McKell v. Chesapeake*, 175 Fed. 321 (C. C. A. 6th 1910); 13 C. J. 630.

<sup>16</sup> *Pitts. etc. Co. v. Reno*, 123 Ill. 273, 14 N. E. 195 (1887); *Globe Ins. Co. v. Wayne*, 75 Ohio St. 451, 80 N. E. 13 (1907); *Rossmassler v. Spielberger*, 270 Pa. St. 30, 112 Atl. 872 (1921) (where no limitation as to time is expressed in the agreement, neither party can terminate it without the consent of the other); 6 R. C. L. 282; *id.* 895.

<sup>17</sup> *Great Northern Ry. Co. v. Manchester etc. Co.*, 5 D. G. & S. 138; *Llanely etc. Ry. v. London etc. Co.*, L. R. 7 H. L. 550.

<sup>18</sup> *Franklin Tel. Co. v. Harrison*, 145 U. S. 459, 12 Sup. Ct. 884 (1892); *Miss. Logging Co. v. Robinson*, 69 Fed. 773 (C. C. A. 8th, 1895); *Western Union Tel. Co. v. Penn. Co.*, 129 Fed. 849, 68 L. R. A. 968 (C. C. A. 3d, 1904).

<sup>19</sup> *Warden v. Hinds*, 163 Fed. 201 (C. C. A. 4th, 1908).

<sup>1</sup> 297 U. S. 629, 56 Sup. Ct. 611 (1936).

<sup>2</sup> ARK. DIG. STAT. (Crawford & Moses, 1907) § 7137.

<sup>3</sup> ARK. CONST. Art. 12, § 11.

<sup>4</sup> U. S. CONST., Amend. 14, cl. 2: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of the law; nor deny to any person within its jurisdiction the equal protection of the laws." Corporations are persons within the meaning of this amendment. *Covington, etc. Rood Co. v. Landford*, 164 U. S. 578, 592, 17 Sup. Ct. 198 (1896).

subject to state regulations.<sup>5</sup> The Arkansas statutes were not repugnant to the equal protection clause of the Fourteenth Amendment as directing groundless and arbitrary discrimination against corporations. *Phillips Petroleum Co. v. Jenkins*, 297 U. S. 629, 56 Sup. Ct. 611 (1936).

A state may prescribe the conditions under which a foreign corporation shall be permitted to do business within its jurisdiction, if said conditions are not repugnant to the Federal Constitution.<sup>6</sup> The reservation of power to amend is a part of the contract between the state and the corporation.<sup>7</sup> The reserved power is not unlimited and cannot be exerted so as to defeat the purpose for which the corporate powers were granted, or to take property without compensation, or arbitrarily to make alterations that are inconsistent with the scope and object of the charter or to destroy or impair any vested property right.<sup>8</sup> As the state may not surrender, or bind itself to restrain the use of its police power to guard the safety of workers, the common-law fellow servant rule may be abrogated by statute even though included in the charter of a corporation when public welfare so demands.<sup>9</sup> The court decided the case on the state's reserved power to amend charters and on the basis that the distinction made by the statute was not a groundless and arbitrary discrimination against corporations<sup>10</sup> and was not repugnant to the equal protection clause of the Fourteenth Amendment.<sup>11</sup>

M. S.

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<sup>5</sup> 297 U. S. 629, 56 Sup. Ct. 611 (1936).

<sup>6</sup> *Western Union Telegraph Co. v. State of Kansas ex rel. Attorney General Coleman*, 216 U. S. 1, 27, 33, 30 Sup. Ct. 190 (1910). The court said "that a State may exclude foreign corporations from its limits, or impose such terms and conditions on their doing business therein as it deems consistent with public policy does not apply to foreign corporations engaged in interstate commerce." *United States et al. v. Chicago, Milwaukee, St. Paul and Pacific Railroad Co.*, 282 U. S. 311, 328, 51 Sup. Ct. 159 (1931).

<sup>7</sup> *Trustees of Dartmouth College v. Woodward*, 4 Wheat. 518 (U. S. 1819); *Lord v. Equitable Life Insurance Co.*, 194 N. Y. 212, 87 N. E. 443 (1909).

<sup>8</sup> *Sears v. City of Akron*, 246 U. S. 242, 248, 38 Sup. Ct. 245 (1918); *Coombes v. Getz*, 285 U. S. 434, 441, 52 Sup. Ct. 435 (1932). The so-called reserved power of a state over corporations and their shareholders cannot be used to destroy the vested rights of third persons or impair the obligations of their contracts. *Public Service Commission of Puerto Rico v. Havemeyer*, 296 U. S. 506, 56 Sup. Ct. 360 (1936).

<sup>9</sup> *Texas & New Orleans Railroad Co. v. Miller*, 221 U. S. 408, 414, 31 Sup. Ct. 534 (1911).

<sup>10</sup> See note 4. Court finds classification reasonable because of facts existing as a basis for state legislative action.

<sup>11</sup> *O. Gorman & Young Inc. v. Hartford Fire Ins. Co.*, 282 U. S. 251, 257, 51 Sup. Ct. 130 (1931); *Concordia Ins. Co. v. Illinois*, 292 U. S. 535, 547, 54 Sup. Ct. 830 (1934).