Indiana Law Journal

Volume 8 | Issue 4 Article 7

1-1933

Constitutional Law-Due Process Clause

CONSTITUTIONAL LAW—DUE PROCESS CLAUSE—Appellant is a Wisconsin corporation licensed to carry on the business of writing fire insurance in Minnesota. A fire insurance policy was issued to appellee's assignor by appellant which was in the standard form as required by a Minnesota statute, which provided that all insurance policies issued by fire insurance companies licensed to do business in Minnesota should contain a provision for determining by arbitration the amount of any loss (except total loss of building) when the parties fail to agree as to the amount. The statute provided for the method of selecting appraisors and an umpire by both parties and also made a provision applicable to the selection in case one party refused to take part. The decision by this board, unless grossly excessive, or inadequate, or procured by fraud, was by this statute made conclusive as to the amount of the loss but not as to the liability under the policy.[1] The insured's property was damaged by fire and a demand was made on appellant to have the amount of the loss determined by arbitration as provided for in the policy. Appellant refused to participate in the arbitration and appellee proceeded to have the arbitrators selected and the amount determined by the statutory method provided for in such a case. This suit was brought to recover the amount of the award. The appellant contends, and it is the single point relied upon, that so much of the statute as requires appellant to use the arbitration provision of the policy and makes the award thus found conclusive is a violation of the due process and equal protection of laws clauses of the 14th Amendment of the Constitution of the United States. This contention was rejected by the Minnesota Supreme Court[2] and an appeal was taken to the United States Supreme Court. *Held,* affirmed.[2a]

The Supreme Court of the United States has never attempted a precise definition of the term "due process of law" although the term has often

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[14] Burns' Ann. Stat. 1926, Sec. 14050.

[15] *Croop v. Walton* (1927), 199 Ind. 262, 157 N. E. 275 (wherein Martin, J., has made a comprehensive discussion of the problem of domicile and residence).

[16] Burns' R. S. 1894, Sec. 1988.

[17] *Wallace v. State* (1890), 147 Ind. 621, 47 N. E. 13.

[1] Mason's Minn. Stat. 1927, Secs. 3314, 3366, 3512, 3515, 3711.

[2] *Glidden Company v. Retail Hardware Mut. Fire Ins. Co. of Minnesota* (1930), 181 Minn. 518, 233 N. W. 310.

[2a] *Hardware Dealers Mutual Fire Insurance Company v. Glidden Company* (1931), 284 U. S. 151, 62 Sup. Ct. 69.

been generally defined. As to what is due process of law Mr. Justice Field has said: "The clause in question means therefore, that there can be no proceeding against life, liberty, or property which may result in the deprivation of either, without the observance of those general rules established in our system of jurisprudence for the security of private rights."[3] Many cases have set down such a general definition,[4] but for the most part due process is interpreted without strict definition in the light of the peculiarities of each individual case. In the ordinary case however, due process as to procedure may be said to require four important elements; namely, notice to the parties,[5] an opportunity to be heard,[6] an orderly procedure,[7] and an impartial tribunal.[8] It is submitted that there is only one element set out above as necessary to procedural due process that is questionable under the statute involved here. Was an impartial tribunal given the parties? It has been repeatedly held that such contracts voluntarily made do not oust the courts of jurisdiction.[9] Commercial Arbitration Acts have also been upheld as not contrary to due process of law.[10] The tribunal here was surely impartial and a judicial tribunal is not guaranteed in all cases.

The due process clause also protects as to substance but our liberty and property are subject to the police power of the state which subjects industries to reasonable classification and regulation by the Legislature. It is the exercise of this police power which makes regulations of some types of business valid when the regulations are reasonable and a social interest is involved. Therefore, just as there is no absolute freedom of contract,[11] also there is no absolute right to a jury trial.[12] *Munn v. Illinois*[13] introduced the doctrine that an industry not in itself public in nature may be-

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[3] *Hagar v. Reclamation District* (1884), 111 U. S. 701, 708, 4 Sup. Ct. 663, 28 L. Ed. 568. Citing, *Hurtado v. California* (1884), 110 U. S. 516, 4 Sup. Ct. 111, 28 L. Ed. 232.

[4] *Board of Education v. Bakewell* (1887), 8 West. Rep. 52, 122 Ill. 339; *Ex. parte Wall* (1882), 107 U. S. 265, 27 L. Ed. 552; *Bartlett v. Wilson* (1887), 4 New Eng. Rep. 119, 59 Vt. 23; *Davidson v. New Orleans* (1877), 96 U. S. 104, 24 L. Ed. 616; *Pennoyer v. Neff* (1877), 95 U. S. 714, 24 L. Ed. 565; *Hennard v. Louisiana* (1875), 92 U. S. 480, 23 L. Ed. 478; *Hagar v. Reclamation District* (1884), 111 U. S. 701, 708, 4 Sup. Ct. 663, 28 L. Ed. 569; *Murray v. Hoboken L. & I. Co.* (1855), 18 How. (U. S.) 272, 15 L. Ed. 372.

[5] *Kuntz v. Sumption* (1889), 117 Ind. 1, 2 L. R. A. 655; *Peerce v. Kitzmiller* (1882), 19 W. Va. 564, Sec. 6, R. C. L., Sec. 433.

[6] *Kuntz v. Sumption* (1889), 117 Ind. 1, 2 L. R. A. 655; *People v. Essex Co.* (1877), 70 N. Y. 229; *Re Michael Gannon* (1889), 16 R. I. 537, 5 L. R. A. 359; *Stuart v. Palmer* (1878), 74 N. Y. 190; *People v. O'Brien* (1888), 111 N. Y. 1, 2 L. R. A. 268.

[7] *Ex Parte Wall* (1882), 107 U. S. 265, 27 L. Ed. 552; *Davidson v. New Orleans* (1877), 96 U. S. 104, 24 L. Ed. 616.

[8] *Tumey v. Ohio* (1927), 273 U. S. 510, 47 Sup. Ct. 437; *Hagar v. Reclamation District* (1884), 111 U. S. 701, 708, 4 Sup. Ct. 663, 28 L. Ed. 569.

[9] See collection of cases in 47 L. R. A. (N. S.) 337.

[10] *White Eagle Laundry Co. v. Shewek* (1921), 296 Ill. 240, 129 N. E. 753; *Itaska Paper Co. v. Niagara Fire Ins. Co.* (1928), 220 N. W. 425.

[11] *Muller v. Oregon* (1908), 208 U. S. 412, 28 Sup. Ct. 324; *Frisbie v. United States* (1895), 153 U. S. 160, 15 Sup. Ct. 586; *McLean v. Arkansas* (1908), 211 U. S. 539, 29 Sup. Ct. 206; *Jacobson v. Mass.* (1905), 197 U. S. 11, 25 Sup. Ct. 358.

[12] *Ex Parte Wall* (1882), 107 U. S. 265, 27 L. Ed. 552; *Bartlett v. Wilson* (1887), 4 New Eng. Rep. 119, 59 Vt. 23; *Walker v. Sauvinet* (1875), 92 U. S. 90, 23 L. Ed. 678; *Hallinger v. Davis* (1892), 146 U. S. 314, 13 Sup. Ct. 105.

[13] *Munn v. Illinois* (1876), 94 U. S. 113, 24 L. Ed. 77.

come affected with a public interest because of the nature of the business and the position it occupies in the economic and industrial life of the people. In *Wolff Packing Company v. The Court of Industrial Relations*,[14] the court classified industries affected with a public interest as follows: (a) those which are carried on under authority of public grant which imposes a duty to render public service, (b) certain exceptional occupations which have from earliest times been regarded as subject to regulation, and (c) businesses which, though not public in inception, may be said to have become such and have thus become subject to regulation (because of virtual monopoly and indispensable service). It would appear then, and it was so conceded by the appellant in the instant case, that fire insurance companies are affected with a public interest and subject to regulation by the state under its police power.

The United States Supreme Court in the instant case took judicial notice of the following: that arbitration clauses have long been inserted voluntarily in insurance policies, that the amount of the loss is fruitful and often the only subject of controversy, that speedy determination of such liability is a matter of wide concern, and that for such appraisal expert knowledge and prompt inspection of the property is more easily available by arbitration method than "in the more deliberate processes of a judicial proceeding."

There can be no doubt that such a regulation in the case of a public calling provides for due process of law both as to procedure and substance,[15] and, with the above consideration in mind, perhaps such a social interest has been found as to render such a regulation reasonable and not arbitrary and therefore providing for procedural and substantive due process of law even as to a business not in a class of public calling.[16]

J. S. H.

PUBLIC CALLINGS—WHEN IS A BUSINESS A PUBLIC CALLING—REGULATION TO WHICH THEY MAY BE SUBJECTED—The Plaintiff, a duly licensed manufacturer and distributor of ice, brought this suit to enjoin the defendant from manufacturing and distributing that product without procuring a license as required by statute.[1] This statute made it a misdemeanor to manufacture, sell or distribute ice except when one had been granted a license to do so by the Corporation Commission. Sec. 3 of the act provided that a hearing should be held before issuing a license and that the commission might refuse to grant it unless necessity for the business were

[14] *Wolff Packing Co. v. Court of Industrial Relations* (1923), 262 U. S. 522, 43 Sup. Ct. 630.

[15] *Munn v. Illinois* (1876), 94 U. S. 113, 24 L. Ed. 77; *People v. Budd* (1892), 117 N. Y. 1, 22 N. E. 670; *German Alliance Ins. Co. v. Lewis* (1914), 233 U. S. 389, 34 Sup. Ct. 612; *National Union Fire Ins. Co. v. Wamberg* (1922), 260 U. S. 71; *In re Opinion of Justice* (1903), 55 Atl. 828.

[16] *Bunting v. Oregon* (1917), 243 U. S. 426, 37 Sup. Ct. 435; *Holder v. Hardy* (1898), 169 U. S. 366, 18 Sup. Ct. 383; *Knoxville Loan Co. v. Harbison* (1901), 183 U. S. 13, 22 Sup. Ct. 1; *Mutual Loan Co. v. Martell* (1911), 222 U. S. 225, 32 Sup. Ct. 74; *Atkins v. Kansas* (1903), 191 U. S. 207, 24 Sup. Ct. 124; *McLean v. Arkansas* (1909), 211 U. S. 539, 29 Sup. Ct. 206; *Schmidinger v. City of Chicago* (1913), 226 U. S. 578.

[1] Oklahoma Session Laws of 1925, Chap. 147.