

or condition of citizens. In support of this view of the subject I cite the *County of San Mateo v. Southern Pac. R. R.* 8 Amer. & Eng. Ry. Cas. 17, 18; [S. C. 13 FED. REP. 145, 722.]

Much is said in the brief of the counsel for the defendant on this point of the inequality of the contest between a sovereign state and a citizen, and the law of the state may be a severe one; but this is aside from the real question, for though the law may be subject to the strictures made upon it, yet so long as it applies to all citizens alike, and does not discriminate against any class of persons, it cannot be said to deny the equal protection of the laws within the meaning of the fourteenth amendment to the constitution of the United States. But it is claimed that it does deny due process of law; though this is not insisted upon so much as the other proposition, that the defendant is denied the equal protection of the laws. It is true, as a general proposition, that when a state or a government becomes a party to a suit in its own courts, it stands upon the same footing with individuals, and must submit to the law as it is administered between man and man; but this proposition has its limitations, and by the common-law doctrines upon this subject the government may go into its own courts with all the legal remedies that one person may have against another, and is exempt from the necessity of giving bond and affidavit; and it would be impossible to hold that legislation to that effect on the part of a state is a denial to a defendant of due process of law.

On the question of what is due process of law see *Davidson v. New Orleans*, 96 U. S. 97.

The result of these views is that the case at bar is not one for removal, and the motion to remand to state court is granted.

NEW ORLEANS NAT. BANK v. MERCHANT.¹

(Circuit Court, E. D. Louisiana. January 5, 1884.)

1. JURISDICTION—REMOVAL OF CAUSES—ACT OF MARCH 3, 1875—REV. ST. § 3833.

Section 3833 of the Revised Statutes confers jurisdiction upon the courts of the state, in certain instances, as courts of the state, but does not thereby make them federal courts; and cases instituted in the state courts, under the authority of section 3833, are removable to the circuit courts of the United States under the provisions of the second section of the act of March 3, 1875.

2. REGISTERED LETTERS AND MONEY ORDERS—REV. ST. §§ 3926, 4027, 3929, 4041.

The effects of the provisions of sections 3926, 4027, 3929, and 4041 of the Revised Statutes is, that when the postmaster general is satisfied that any one is engaged in one of the schemes or enterprises described in the statutes, the person so engaged (while ordinary mail is open to him, as to all others, for the receipt or transmission of ordinary mail matter) shall not be entitled to receive through the mail either the registered letters or money orders provided for in the law; and that as long as the postmaster general is not satisfied that any one is engaged in one of the schemes or enterprises described in the statutes, so

¹Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

long the use of the registered-letter and money-order systems cannot be refused. The fair import of the law is that a deprivation of the registered-letter and money-order systems shall only continue while the offending party is engaged in one of the schemes or enterprises described in the statutes, and while the postmaster general is satisfied such party is so engaged.

3. JURISDICTION TO CONTROL ACTS OF EXECUTIVE OFFICER.

Where the act of the officer is one of mere ministerial duty, it may be controlled or compelled by the courts; where the act involves the exercise of judgment or discretion, the courts cannot interfere to compel or prevent.

4. POWERS OF POSTMASTER GENERAL.

The postmaster general may, upon evidence satisfactory to him that any person is engaged in conducting any fraudulent lottery, gift enterprise, or scheme, for the distribution of money or of any real or personal property, by lot, chance, or drawing of any kind, or in conducting any other scheme or device for obtaining money through the mails by means of false or fraudulent pretenses, representations, or promises, lawfully forbid to such person so engaged the use of the registered-letter and money-order systems; but he may not lawfully forbid such use on any other grounds, either of motive or conduct.

On Motions to Remand and to Dissolve the Injunction.

This suit was instituted in the civil district court of the parish of Orleans, on a petition, verified by affidavit, setting forth, in substance, that the complainant is chartered and carrying on a large banking business under the national-banking laws of the United States, and has important connections with other banking institutions and persons throughout the United States, with whom it is necessary to maintain communication, which can only be done through the United States mail; that a large part of its business consists in sending to and receiving from its various correspondents, sums of money, bonds and securities, and valuable papers, and which can only be transacted safely by and through the United States mails, by means of registered letters and money orders; that it has been and is constantly in receipt of postal money orders and registered letters through the mails at the New Orleans post-office; and that to deprive it of the use of the registered-letter and money-order system at that office would work it irreparable injury, and damage it to the extent of many thousand dollars. Also, that the defendant is postmaster at New Orleans, and as such is in charge of all the mails, and the contents thereof, arriving at the New Orleans post-office, including all mail matter addressed to complainant, and all money orders and registered letters, large numbers of which are now on the way in the said mails, addressed to complainant, and large numbers thereof will continue to be sent; that without any charge having been made anywhere against complainant, and without any formal or other notice, and without hearing, or opportunity to be heard, anywhere, by counsel or otherwise, said defendant intends to, and has threatened to, and will, unless prevented, in defiance of all law, without any just or legal cause, without warrant or authority, or any process of law, whatever, detain by force, and refuse to deliver to petitioner, such registered letters as may be received for petitioner through the mails, and refuse to pay such money orders as may be received by petitioner,

payable at the New Orleans post-office, to the great damage, etc.; and that a writ of injunction is necessary; that complainant has the right, under the constitution and laws of the United States, to the use of the mails to send and receive mail matter, and to be protected in its papers, property, and effects, while the same are in course of transportation through the mails, from illegal and unreasonable searches and seizures, without warrant; and that complainant cannot be deprived of its property while the same is in course of transportation in the mails, without due process of law.

A prayer was made for a writ of injunction enjoining and restraining defendant from detaining or refusing to deliver to petitioner the registered letters that may come addressed to petitioner through the mail to the New Orleans post-office, and from refusing to pay such postal money orders as may be presented at said office at New Orleans, drawn in favor of petitioner and made payable at said office, and the usual prayer for citation, due proceedings, that the injunction be perpetuated for general relief, etc. The injunction was granted as prayed for, on a bond for \$1,000. After service on defendant, he appeared in the civil district court and filed his petition and bond for the removal of the cause to this court, and the cause was thereupon removed here, on the ground that the same is one arising under the laws of the United States. In this court the defendant moved to dissolve the injunction on grounds to be filed, and thereafter filed a sworn answer, and the same has been taken as assigning the grounds for the dissolution asked for, in substance, to-wit: Admitting the intention to refuse complainant delivery of registered letters addressed to it, and to refuse to pay to complainant money orders payable to it, setting forth as authority for so refusing, the orders and findings of the postmaster general of the United States, as follows: On the twelfth of November, 1879, the postmaster general issued the following order:

"It having been represented to me that a certain M. A. Dauphin, at New Orleans, La., is engaged in conducting a scheme or device for obtaining money through the mails by means of false and fraudulent pretenses, representations and promises, and being satisfied from the evidence before me that the said M. A. Dauphin is so engaged, I do hereby forbid the payment by the postmaster at New Orleans, La., of any postal money order drawn to the order of said M. A. Dauphin, or M. A. Dauphin, secretary, or M. A. Dauphin, post-office box 692; and the said postmaster is hereby directed to inform the remitter of said postal money order that the payment thereof has been forbidden, and that the sum of said money order will be returned upon the presenting of a duplicate money order, applied for and obtained under the regulations of the department. And, upon the same evidence, the postmaster at New Orleans aforesaid, is hereby instructed to return all registered letters which shall arrive at his office directed to the said M. A. Dauphin, M. A. Dauphin, secretary, or M. A. Dauphin, post-office box 692, to the postmasters at the offices at which they were originally mailed, with the word 'fraudulent' plainly written or stamped upon the outside of such letters."

And on February 27, 1880, the following order:

"POST-OFFICE DEPARTMENT, WASHINGTON, D. C., Feb. 27, 1880.

"SIR: On the thirteenth of November, 1879, I issued an order addressed to you, forbidding the payment of any postal money order to M. A. Dauphin, secretary, or M. A. Dauphin, post-office box 692, and 319 Broadway, New York, and the return of all registered letters addressed to them, to the postmasters at whose office they were mailed.

"This party having brought suit against me to enjoin the performance of this order, and having appealed the same to the supreme court of the United States, and having this day presented the certificate of the governor and state officers of the state of Louisiana that he has complied with all the legal requirements of that state, and other evidence, *and not being satisfied* from the evidence submitted to me that the said M. A. Dauphin is engaged in conducting a scheme or device for obtaining money through the mails by means of false or fraudulent pretenses and promises, I hereby authorize and direct the suspension of said order of November 13, 1879, so far as it relates to said Dauphin, until the case shall have been heard and determined by the supreme court of the United States.

[Signed]

"D. M. KEY, Postmaster General.

"To Postmaster, New Orleans, La., and to Postmaster, New York, N. Y."

And on September 20, 1883, the following order, modifying and enlarging one of the same purport issued on the fourteenth of September, 1883, to wit:

"It appears from the records of the department that on the thirteenth day of November, 1879, Postmaster General Key, upon evidence satisfactory to him, entered a written finding that M. A. Dauphin was engaged in conducting a scheme or device for obtaining money through the mails by means of false and fraudulent representations; and it also further appearing that said Postmaster General Key entered an order, based upon said finding, prohibiting the postmasters at New York and New Orleans from paying money orders drawn to the order of the said Dauphin, and the delivery of registered letters addressed to him; therefore, in pursuance of the finding of Postmaster General Key, which finding remains in full force, it is ordered, that all postmasters be and they are hereby forbidden to pay money orders drawn to the order of M. A. Dauphin, and they are hereby directed to inform the remitters of said postal money orders that the payment thereof has been forbidden, and that the sum of such money orders will be returned upon the presentation of duplicate orders applied for and obtained under the regulations of the department. All postmasters are also forbidden to deliver registered letters arriving at their offices directed to the said M. A. Dauphin, and are instructed to return all such registered letters to the postmasters at the offices at which they were originally mailed, with the word 'fraudulent' plainly written or stamped upon the outside of such letters.

"W. Q. GRESHAM, Postmaster General."

And on the nineteenth of September, 1883, the following letter and order, to wit:

"SIR: Since you were instructed to deliver no registered letters reaching your office addressed to M. A. Dauphin, and to redeem no money orders payable to him, he has directed in an advertisement inserted in certain newspapers that all registered letters intended for him and concerning the Louisiana State Lottery Company be addressed to the New Orleans National Bank at New Orleans, and that all money orders sent to your office for his benefit and concerning the business of said lottery company, be made payable to said bank. I am in possession of trustworthy information that this