

had been found a lode or vein which, in its natural course and direction, would give the owners thereof a right to all the surface ground within the limits of the location. In other words, if the proofs were undisputed that a discovery of a lode or vein had been found at the northerly end of the Naid Queen location; that from such discovery it clearly appeared that the course of the lode lengthwise was easterly and westerly, and at right angles within the side lines of the Naid Queen,—then, in the eye of the law, the side lines of the location as made upon the ground would become the end lines of the location (*King v. Mining Co.*, 152 U. S. 222, 228, 14 Sup. Ct. 510; *Last Chance Min. Co. v. Tyler Min. Co.*, 157 U. S. 683, 687, 15 Sup. Ct. 733), and the owners of the claim would only be entitled to a patent for 300 feet of surface ground on each side of the middle of the lode; and hence it would not interfere with complainants' rights. There is more or less testimony that tends to support that theory, but the views already expressed are decisive of the case, and render it unnecessary to decide other questions raised by counsel. The defendants are not entitled to a patent for any part or portion of the land claimed and occupied by the complainants. The complainants are entitled to judgment for their costs. Let a decree be entered accordingly.

MUTUAL LIFE INS. CO. OF NEW YORK v. BOYLE, Atty. Gen., et al.

(Circuit Court, D. Kansas, First Division. September 27, 1897.)

1. JURISDICTION OF FEDERAL COURTS—SUITS AGAINST STATE OFFICERS.

The eleventh amendment to the federal constitution does not prevent a federal court from entertaining a suit by an individual or corporation against an executive officer of a state to compel him to perform a plain ministerial duty, as to which the law allows him no discretion, or to enjoin him from performing some official act whereby complainant's rights will be injured.

2. STATE SUPERINTENDENTS OF INSURANCE—EXCLUSION OF INSURANCE COMPANIES OF OTHER STATES.

The Kansas law of 1889 providing, among other things, that the superintendent of insurance shall have no power to refuse an insurance company a certificate of authority to do business in the state if such company is solvent and has fully complied with the state laws, applies to life as well as fire insurance companies, and to both home and foreign corporations. The act is mandatory, and allows no exercise of discretion.

3. SAME—EQUITY JURISDICTION—INJUNCTION.

Where an insurance company has built up a large and successful business in the state, and has valuable property and numerous policies therein, the act of the state superintendent of insurance, who is personally insolvent, in illegally refusing it a license to continue in business, and threatening to institute criminal proceedings against it, warrants a court of equity in interfering to enjoin the threatened injury, but the state officers will not be enjoined from bringing a suit in quo warranto to test the right of the company to do business in the state.

This was a suit in equity brought by the Mutual Life Insurance Company of New York against Louis C. Boyle, as attorney general of the state of Kansas, and Webb McNall, as superintendent of insurance of the same state, to enjoin them from interfering with the transaction of its business in that state, and to procure an adjudication that it was entitled to a certificate authorizing it to carry on business therein.

A. H. Horton, Geo. J. Barker, J. W. Green, and E. F. Ware, for complainant.

L. C. Boyle, David Overmeyer, David Martin, and J. C. Clemens, for defendants.

WILLIAMS, District Judge. The material averments in the bill of complaint filed herein are that the complainant, the Mutual Life Insurance Company of New York, is a corporation duly organized and incorporated under the laws of the state of New York, having been organized and doing business since the year 1842; that its business, as its corporate name suggests, is that of life insurance upon the mutual plan; that it has been doing business in the state of Kansas as a life insurance company since the year 1866; that there are within the state of Kansas 3,300 citizens and residents who have taken out life insurance policies from said company, and that the aggregate of life insurance by said policies exceeds the sum of \$7,000,000; that its assets on the 1st day of March, 1897, amounted to over \$234,000,000, and its surplus over and above all of its liabilities amounted to over \$29,000,000; that it carries on the life insurance business generally in all the states of the United States, and in many foreign countries, and that it has in all the states and countries, including the state of Kansas, fully complied, on its part, with all the requirements of law of said states and countries for the regulation of the business of life insurance as transacted by corporations incorporated under the laws of the state of New York, and has also strictly complied with every act and requirement of the state of Kansas concerning life insurance companies incorporated under the laws of states other than Kansas, and with all the legal rules and regulations prescribed by the insurance department of the state of Kansas; that the business of life insurance depends for its ultimate success upon securing the annual contributions of a large number of patrons, and upon the continued satisfaction of such patrons with the manner in which the corporation transacts said business, and performs its obligations to its policy holders and to the public generally, and that the business of life insurance is peculiarly sensitive to the attacks of persons who appear to be in a position to have peculiar information concerning its proper transaction, and that in order for a successful life insurance corporation to give its members a proper distribution of dividends, thereby decreasing to them individually the cost of their business, it is necessary that the establishment of its business should be permanent, and that there should be situated within reasonable territorial limits general agencies or branches for the proper conduct of the business, and that it has been the successful experience of this company that by reason of its large expenditure of money, time, and skill in the creation of its agency plant, business connections, and good will of the state of Kansas, it has been able to maintain its high standing as a reliable and honorable life insurance company among the citizens of said state, and that the property of the company within the state of Kansas, consisting of its established agency plant, together with its business connections, patronage, and good will, was on the 1st day of March, 1897, of the actual value of more than \$50,000; further, that on February 26, 1897, as has been its in-

variable practice and custom for more than 30 years prior thereto, it presented to Webb McNall, one of the defendants herein, a statement signed by its vice president and secretary, and verified by their oaths, giving in detail, and in strict compliance with the laws of the state of Kansas in relation thereto, the condition of the company on the 1st day of January next preceding, and on the same day presented to Webb McNall, defendant herein, as superintendent of insurance, at his office in the city of Topeka, Kan., a report made under oath by the vice president of the company, a copy of the report required by the laws of the state of New York to be annually made by the company to the superintendent of insurance of the said state, and therewith presented a certificate of authority licensing said company to transact its business of life insurance in the state of New York, issued by the superintendent of insurance of said state on or about the said day, and prior to the 1st day of March, 1897, complainant tendered to said Webb McNall, as superintendent of insurance of the state of Kansas, all of the money and fees required to be paid to the said Webb McNall, as superintendent of insurance, by the provisions of paragraph 3336 of the General Statutes of 1889, and all other statutes and regulations enacted and imposed by the state of Kansas, being conditions prerequisite to the granting of permission by the said state to the complainant to carry on and transact its business of life insurance within the state of Kansas for and during the year 1897, and until the 28th day of February, 1898; that at the time above mentioned the said Webb McNall was the duly appointed, qualified, and acting superintendent of insurance of the state of Kansas, and, under the provisions of the laws of said state in relation to his office, was the duly authorized and constituted officer, and by said statutes and laws was required to issue to life insurance companies incorporated under the laws of other states certificates of authority, evidencing the permission of the state of Kansas that such life insurance companies were and should be entitled to transact their said business within said state for said period of time; and, further, that the said Webb McNall, defendant herein, pretending to act as such superintendent of insurance of the state of Kansas, and as the agent of said state in that behalf, disregarding his plain ministerial duty in the premises, refused and declined, and still refuses and declines to issue and deliver to the said company a certificate of authority, under the seal of the insurance department, evidencing the compliance of said company with all the laws of said state applicable to the defendant as a life insurance corporation incorporated under the laws of the state of New York, and refused and still refuses to accept the tender so made by the company of the money and fees required to be paid and accepted under the laws of the state of Kansas. Charges that said Webb McNall, in his actions in so refusing to issue said permit, was instigated by malicious, wicked, arbitrary, and capricious design on his part to oppress this company and deprive it of its property without due process of law; that the said Webb McNall well knew, and had frequently publicly admitted, that said company was solvent, and had been solvent for a long time prior to said application, and that the said company had complied with all the laws, rules, and regulations enacted and imposed by the state of Kansas concerning said com-

panty, and that the sole cause of said arbitrary, wicked, and malicious assertion of authority on the part of the said Webb McNall was the purpose of compelling said company to pay to one Sallie E. Hillman a claim she pretended to have against said company for a large sum of money, to wit, more than \$20,000, without her first obtaining any judgment of any court for the same. Makes a letter written by the said Webb McNall to the agent of the company a part of said bill, which letter is as follows:

"Topeka, Kansas, March 3, 1897.

"John E. Lord, General Agent Mutual Life Insurance Company of New York, Topeka, Kansas—Dear Sir: Replying to your request for license to do business in this state for the ensuing year after you had filed your annual statement, and after your check in the sum of \$100 in payment of fees had been tendered to this department, I will say that, on evidence satisfactory to this department, I am satisfied that your company has not dealt fairly with the plaintiff, Mrs. Sallie E. Hillman, in refusing to pay the death loss, and in the litigation of the same, pertaining to her deceased husband. Hence this department refuses to issue to the Mutual Life Insurance Company of New York a license to do business in this state for the ensuing year. Your check in the sum of \$100 is herewith returned.

"Very respectfully,

Webb McNall, Superintendent."

Complainant further states, in relation to said claim of said Sallie E. Hillman, that there was presented to the complainant a claim by the said Sallie E. Hillman demanding payment by said company to her of the sum of more than \$10,000, which it was claimed by said Sallie E. Hillman this company owed her on account of the issuance by the company to one John W. Hillman of a certain policy of life insurance. It alleges that the claim of the said Sallie E. Hillman, being false and fraudulent, was denied and refused, and thereafter, and during the year 1879, the said Sallie E. Hillman commenced an action at law in the circuit court of the United States for the district of Kansas against said company, to recover a judgment for said sum of more than \$10,000; and it alleges that ever since said action at law was commenced the company has been in the orderly and peaceful litigation in said court of said claim, and that the said Sallie E. Hillman has never recovered a final judgment against this company for any part of said sum, and that her claim is at this time, and has been for more than 15 years, a disputed claim in the course of an orderly and proper litigation in said court, which said litigation is still pending and undetermined. It charges further that the damage and injury to the company will be irreparable, and that for such damage the company has no adequate remedy at law; it alleging, upon information and belief, that the said Webb McNall is wholly insolvent. It further states that by the laws of the state of Kansas the said insurance commissioner, whenever, in his judgment, it is necessary, may call upon the attorney general of the state to bring actions or to prosecute criminally any insurance company doing business in said state without a license, and that this may be done in any county in the state where the said insurance company has an agency or an agent; and as against the said Louis C. Boyle, the attorney general of said state, it charges him with upholding and encouraging the defendant Webb McNall in the assertion by the said Webb McNall of the right to deny to the plaintiff the equal protection of the laws within the state of Kansas, and of the right to deprive it

of its property without due process of law, and that, acting in concert with the defendant Webb McNall, and for the purpose of harassing and intimidating the agents and employes of the complainant, he has threatened to, and will, unless restrained by the court, commence proceedings against complainant, its agents and employes, and compel it to defend a multiplicity of suits in actions instigated by said McNall and said Louis C. Boyle for the purpose of preventing complainant from peaceably transacting its business of life insurance within the state of Kansas, and designed by the defendants, McNall and Boyle, to deny to complainant the equal protection of the laws, and deprive it of its property within the state of Kansas without due process of law. The prayer of the bill is for a decree adjudging that it is the duty of said Webb McNall, as superintendent of insurance, to forthwith issue and deliver to the complainant a certificate of authority to do business within the state of Kansas, and also that the court grant a temporary injunction against the said Webb McNall, as superintendent of insurance of the state of Kansas, his agents and employes, and against the said Louis C. Boyle, as attorney general of the state of Kansas, enjoining and restraining each of said defendants, and all persons acting under them, from in any manner whatever interfering with the transactions by the complainant in the state of Kansas of its said business of life insurance, and for all other relief.

This petition and application for restraining order were presented to one of the United States district judges who was assigned to hold court in the district of Kansas, who thereupon granted a restraining order, restraining the defendants, McNall and Boyle, from interfering with said insurance company, in accordance substantially with the prayer of the petition; said restraining order to remain in force only until the next term of court to be holden where the said action was commenced. At the hearing the defendants interposed a demurrer to said complaint, and all questions involved and raised by the demurrer are submitted to the court for final determination.

There are two questions of law involved in this case. The first is as to the power of the court to grant the relief prayed for, taking into consideration the provisions of the eleventh amendment to the constitution of the United States, which, it is urged by the defendants, prohibit the court from proceeding in any manner against the defendants, because they are officers of the sovereign state of Kansas, and they are within the prohibition, and are protected by the provisions of said amendment from being required to answer, or restrained from acting, in any manner, as officers of said state. That the question involved is one of importance need not be asserted, and this court desires to express at the very threshold of the investigation a lifelong conviction and adherence to the doctrine that the rights of the states under our form of government should at all times receive proper protection, especially at the hands of the judicial department of the general government; and while it will, in the discharge of its duty, endeavor to enforce all laws of the United States, it will also, under all circumstances, "render unto Cæsar the things that are Cæsar's," and abstain from encroaching in any manner upon the rights of any sovereign state or the officers thereof.