

that "all the words of a law must have effect, rather than that part should perish by construction." *City of St. Louis v. Lane*, 110 Mo. 254, 258, 19 S. W. 533; *Knox Co. v. Morton*, 32 U. S. App. 513, 518, 15 C. C. A. 671, 675, and 68 Fed. 787, 790; *Paving Co. v. Ward*, 55 U. S. App. 730, 741, 28 C. C. A. 667, and 85 Fed. 27, 35. The result is that the real question in the case is whether or not this law of the state of Arkansas is void because it is in contravention of the constitution of the United States. But section 5 of the act of March 3, 1891 (26 Stat. 828, c. 517), declares that appeals may be taken to the supreme court "(6) in any case in which the constitution or law of a state is claimed to be in contravention of the constitution of the United States." Section 6 provides that in cases other than those provided for in section 5 the circuit courts of appeals may exercise appellate jurisdiction unless otherwise provided by law. This is not a case other than those provided for in section 5, and consequently this court has no jurisdiction of it. A careful examination of these sections of the act of congress in *Hastings v. Ames*, 32 U. S. App. 485, 15 C. C. A. 628, and 68 Fed. 726, and in *Pauley Jail Bldg. & Mfg. Co. v. Crawford Co.*, 28 C. C. A. 579, 84 Fed. 942, led us to the conclusion that, if it is claimed that a law of a state is void because it contravenes the constitution of the United States a circuit court of appeals has no jurisdiction of the case, although it may involve the consideration of many other questions. Upon the authority of these cases the writ of error in this case is dismissed for want of jurisdiction.

LEZINSKY v. METROPOLITAN ST. RY. CO.

(Circuit Court of Appeals, Second Circuit. June 24, 1898.)

No. 112.

1. **STREET RAILWAYS—LIABILITY FOR TORT—UNAUTHORIZED ACTS OF EMPLOYEES.**
 In the absence of testimony showing authority from the company, the act of a street-railway conductor in causing the arrest of a former passenger immediately after ejecting him from the car for refusing to pay fare is outside the course of his employment, so that no action will lie against the company for malicious prosecution and false imprisonment.
2. **SAME—RATIFICATION OF UNAUTHORIZED ACT.**
 The action of a clerk in the claims department of a street-railway company, in endeavoring to convince a magistrate that a conductor was right in causing the arrest of a passenger after ejecting him from the car for refusal to pay fare, is not a ratification of the conductor's unauthorized action, where the clerk was merely directed by his superior to go to the police court, "and see what the matter was."

In Error to the Circuit Court of the United States for the Southern District of New York.

This was an action at law by Eugene Lezinsky against the Metropolitan Street-Railway Company for malicious prosecution and false imprisonment. In the circuit court a verdict was directed for defendant, and judgment entered accordingly, to review which the plaintiff sued out this writ of error.

Samuel S. Slater, for plaintiff in error.
Charles F. Brown, for defendant in error.

Before WALLACE and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. This is a writ of error to review a judgment in the circuit court for the Southern district of New York for the defendant, upon a verdict which was directed by the court upon the defendant's motion at the close of the plaintiff's case. The action was against the Metropolitan Street-Railway Company for malicious prosecution and for false imprisonment. The facts were as follows: The plaintiff, on April 3, 1896, at 12:30 p. m., entered at Spring street, in New York City, a car of the defendant, which was going uptown, and paid his fare. The car stopped, on account of a blockade, before it reached Houston street, when the conductor told the passengers that, if they were in haste, they had better walk to Houston street, where cars were being switched back, and take an uptown car, that he had no transfers, but that "it would be all right" if the passengers would explain to the inspector who was in charge of switching the cars. The plaintiff walked to Houston street, but a car had just left. The inspector told him to explain to the conductor of the next northward car the circumstances in regard to the payment of fare, and that a new payment would not be required. The plaintiff, with other passengers from the original car, boarded a car at Bleecker street, a block above Houston street; but its conductor demanded fare from all the passengers, would not recognize the previous payment, stopped the car at Ninth street, and ordered the passengers to pay the fare or to leave the car. The plaintiff refused to obey either direction, was ejected, and thereupon the conductor charged him with disorderly conduct, and requested a policeman to arrest him. He was put under arrest, and made a countercharge against the conductor, who was also arrested, and both were taken to the station house, detained 2½ hours, when the plaintiff was tried and discharged. Upon the way to the station house, the party met the conductor of the first car, who explained the facts to the second conductor, but he persisted in making the charge. At the station house, one Isaacson, a clerk in the defendant's claim department, who was sent there by some one of the defendant's officers to find out what the matter was, endeavored to persuade the plaintiff to withdraw his charge, saying that the conductor would also withdraw; but the plaintiff refused, and the case was heard, Isaacson arguing before the magistrate in support of the charge against the plaintiff.

The complaint was not brought to recover damages for the defendant's unlawful ejection of the plaintiff from the car, but to recover for a malicious prosecution and false imprisonment by the defendant's agent, after the plaintiff left the car. The defendant's liability depends upon the answer to the questions: First. Was the conductor acting in the course of his employment and within the scope of his authority, express or implied, in causing the arrest of the plaintiff, after he left the car, for his prior disobedience?

And, secondly, if the conductor acted without authority, was there any testimony from which a jury could properly infer a ratification by the defendant of the conductor's act in causing the arrest?

The defendant is a common carrier, and it was its duty, upon the payment of fare, to exercise due care in the safe carriage of the defendant to the point upon the line of the road where he wished to go; and for his improper removal from the car it would have been liable in damages, because the carrier's obligation to transport safely "includes the duty of protecting the passenger from any injury cause by the act of any subordinate or third person engaged in any part of the service required by the act of transportation." *Steamship Co. v. Kane* (decided at the present term of this court) 88 Fed. 197. The subsequent act of the conductor in causing the arrest of the passenger was apparently outside of the course of his employment, outside of his service as a conductor, and was his act as an individual. It cannot be inferred, in the absence of testimony, that it is in the course of the employment of a conductor of a street cable car to cause the immediate arrest of a former passenger for his conduct in refusing to pay fare or to leave the car, and thus to take the risk of being compelled to leave his car in the street temporarily unprovided with a conductor. A criminal charge, under the circumstances of this case, was baseless (*Lynch v. Railway Co.*, 90 N. Y. 77); and while it is established that "a corporation is liable civiliter for torts committed by its servants or agents precisely as a natural person, and that it is liable as a natural person for the acts of its agents done by its authority, express or implied," though there be no written appointment or authority (*Railway v. Harris*, 122 U. S. 597, 7 Sup. Ct. 1286; *State v. Morris & E. R. Co.*, 23 N. J. Law, 369; *Rounds v. Railroad Co.*, 64 N. Y. 129; *Mott v. Ice Co.*, 73 N. Y. 543), yet there should be some testimony or some circumstance to show that authority had been conferred for such a manifest apparent departure from the line of the business of a conductor of a street electric car.

It was sought to show ratification of the act by the attendance and conduct of one Isaacson at the hearing before the magistrate, and by the scope of Isaacson's employment. He was a clerk in the defendant's claim department, which had charge of the preparation of accident cases for trial, and was sent by his superior officers to go to the police court, "and see what the matter was." Inasmuch as a conductor had left his car, and been taken to the station house in charge of an officer, the direction was a very natural one to give. Isaacson went, and after ineffectually trying to induce the plaintiff to abandon his charge, and have a dismissal of both cases, he endeavored to show the magistrate that the conductor was in the right, and, in so doing, imitated the conductor in departing from his employment, without authority and with intrusive meddlesomeness. There would have been no propriety in submitting to the jury the question of ratification, based upon Isaacson's act or authority or course of business. The judgment of the circuit court is affirmed, with costs.

ÆTNA LIFE INS. CO. v. SMITH.

(Circuit Court of Appeals, Eighth Circuit. June 27, 1898.)

No. 1,036.

1. LIFE INSURANCE—DELAY IN PAYING PREMIUMS—PREMIUM RECEIPTS.

On the back of a premium receipt was printed, among other things, the following: "Provided satisfactory evidence and guaranty is furnished that the person whose life was insured is in good health and acceptable for new insurance, which guaranty shall be binding upon the insured and beneficiaries under said policy, the agent will receive a premium, and the insurance will be revived by the delivery of this receipt within 60 days from the time said premium became due." *Held*, that (applying the rule that contracts written on forms prepared by the insurer will, when ambiguous, be construed most favorably to the insured) the above provision was a mere direction by the company to its agents, so that the mere acceptance of such a receipt on the payment of an overdue premium would not imply a guaranty of good health on the part of the insured.

2. SAME—VIOLATION OF RULES BY AGENTS — KNOWLEDGE OF THE COMPANY'S OFFICERS.

Where, in violation of the rules of the company, it is the practice of its agents to accept overdue premiums without requiring a guaranty that the insured is in good health, and this course of business is shown to be such that a reasonably prudent man, acting in the capacity of an executive officer, ought to have known of it, this is sufficient to warrant a finding that the executive officer of the company did in fact have knowledge of the practice.

3. SAME—AUTHORITY OF AGENTS—ACQUIESCENCE BY COMPANY.

By knowingly permitting its agents to accept for a considerable period overdue premiums without taking health certificates, the company grants them authority so to do, and cannot avoid the effect thereof by showing that its printed instructions did not authorize the practice.

In Error to the Circuit Court of the United States for the District of Minnesota.

This action was upon two life insurance policies, both dated February 16, 1893,—one for the sum of \$20,000, and the other for \$5,000,—insuring the life of Cassius C. Merritt, who subsequently died on April 27, 1894, at Duluth, Minn. The suit was brought by Hanson E. Smith, the defendant in error, as administrator with the will annexed of said deceased. In his complaint he alleged, among other things, that the deceased paid all the premiums that accrued on both of said policies prior to his death; that the last premiums thereon, which fell due February 16, 1894, were not paid until March 6, 1894, at which time the defendant company accepted said premiums and gave receipts therefor as provided in its policies. The defenses interposed by the defendant company were as follows:

That the premiums on said policies which became due on the 16th day of February, 1894, were not paid, and that said policies, by the terms thereof, became void and inoperative. That on March 6, 1894, one Merrill M. Clark, a friend and agent of Cassius C. Merritt, volunteered to pay to the defendant's agent at Duluth, Minn., the amount of the premiums due on the aforesaid policies on February 16, 1894. That said agent of the defendant company consented to receive the same, and to deliver receipts therefor, upon the express condition that the premiums should not be deemed paid, nor the receipts be deemed delivered, unless said Merritt was at the time in good health; that, if he was not then in good health, the said premium money should be returned and the receipts surrendered upon demand. That at the time in question, March 6, 1894, neither the defendant company nor its agent had any knowledge of the state of health of said Merritt, but that in fact, as the said Merritt and said Clark well knew, the said Merritt was not in good health, but was sick and diseased, and already suffering from the complaint of which