

The Burger Court Opinion Writing Database

Allenberg Cotton Co. v. Pittman
419 U.S. 20 (1974)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



✓
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

✓
142-X

November 14, 1974

Re: No. 73-628 - Allenberg Cotton Co. v. Pittman

Dear Bill:

Please join me.

Regards,

WHD

Mr. Justice Douglas

Copies to the Conference

2nd DRAFT

Mr. Justice ~~White~~
Mr. Justice ~~White~~
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

SUPREME COURT OF THE UNITED STATES

No. 73-628

Circulated: 11-4

Recirculated:

Allenberg Cotton Company,
Inc., Appellant, } On Appeal from the Su-
v. } preme Court of Missis-
Ben E. Pittman. } sippi.

[November —, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is an appeal from a judgment of the Supreme Court of Mississippi, 276 So. 2d 678, which held that appellant might not recover damages for breach of a contract to deliver cotton because of its failure to qualify to do business in the State.¹ Appellant claimed that that Mississippi statute as applied to the facts of this case was repugnant to the Commerce Clause of the Constitution. A motion to dismiss was made on the ground that the Mississippi Supreme Court did not pass on that federal question and that such question was not in fact raised. We accordingly postponed the question of probable jurisdiction to a hearing on the merits, — U. S. —.

¹ Miss. Code 1949 Ann. §§ 309-239 (Supp. 1972) provides in part:
"No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state. Nor shall any action, suit or proceeding be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation in this state."

28, 11-14, and
stylistic changes

5th DRAFT

To: The Chief Justice
Mr. Justice _____
Mr. Justice Rennquist

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 73-628

Recirculated: 11-12

Allenberg Cotton Company,
Inc., Appellant,
v.
Ben E. Pittman. } On Appeal from the Su-
preme Court of Missis-
sippi.

[November —, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is an appeal from a judgment of the Supreme Court of Mississippi. 276 So. 2d 678 (1973), which held that appellant might not recover damages for breach of a contract to deliver cotton because of its failure to qualify to do business in the State.¹ Appellant claims that that Mississippi statute as applied to the facts of this case is repugnant to the Commerce Clause of the Constitution. A motion to dismiss was made on the ground that the Mississippi Supreme Court did not pass on that federal question and that such question was not in fact raised. We accordingly postponed the question of probable jurisdiction to a hearing on the merits. 415 U. S. 988 (1974).

¹ Miss. Code Ann. § 79-3-247 (1972), formerly Miss. Code Ann. § 5309-239 (1942), provides in part

"No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state. Nor shall any action, suit or proceeding be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation in this state."

✓
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 4, 1974

RE: No. 73-628 Allenberg Cotton Co. v. Pittman

Dear Bill:

I agree.

Sincerely,

Bill

Mr. Justice Douglas

cc: The Conference

✓
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

November 4, 1974

Re: No. 73-628, Allenberg Cotton Co. v.
Pittman

Dear Bill,

I am glad to join your opinion for the Court
in this case.

Sincerely yours,

P.S.
✓

Mr. Justice Douglas

Copies to the Conference

✓
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 6, 1974

Re: No. 73-628 - Allenberg Cotton Co. v.
Pittman

Dear Bill:

I have my doubts about this case and I
shall wait for a dissent, if there is one.

Sincerely,



Mr. Justice Douglas

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

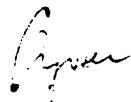
November 14, 1974

Re: No. 73-628 - Allenberg Cotton Co. v. Pittman

Dear Bill:

Although I still have qualms about this result, I acquiesce rather than hold you up longer.

Sincerely,



Mr. Justice Douglas

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 14, 1974

Re: No. 73-628 -- Allenberg Cotton Company, Inc., v.
Ben E. Pittman

Dear Bill:

Please join me in your opinion in this case.

Sincerely,

T.M.

T.M.

Mr. Justice Douglas

cc: The Conference

✓
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 5, 1974

Re: No. 73-628 - Allenberg Cotton Co. v. Pittman

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Douglas

cc: The Conference

✓
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 5, 1974

No. 73-628 Allenberg Cotton Company
v. Pittman

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Douglas

1fp/ss

cc: The Conference

1st DRAFT

Allen
Justice Rehnquist
Justice Powell

SUPREME COURT OF THE UNITED STATES

No. 73-628

11-6-14

Allenberg Cotton Company,
Inc., Appellant,
v.
Ben E. Pittman. } On Appeal from the Supreme Court of Mississippi.

[November —, 1974]

MR. JUSTICE REHNQUIST, dissenting.

The question in this case is whether Mississippi may require appellant, a Tennessee corporation, to qualify as a foreign corporation under Mississippi law before it may sue in the courts of Mississippi to enforce a contract. The Supreme Court of Mississippi summarized the facts of the transaction, which it stated were "without substantial dispute" as follows.

"It is apparent that these transactions of Allenberg in each case, including that with Pittman, took place wholly in Mississippi. The contract was negotiated in Mississippi, executed in Mississippi, the cotton was produced in Mississippi, delivered to Allenberg at the warehouse in Mississippi, and payment was made to the producer in Mississippi. All interest of the producer in the cotton terminated finally upon delivery to Allenberg at the warehouse in Marks. The fact that afterward Allenberg might or might not sell the cotton in interstate commerce is irrelevant to the issue ^{hewy} as the Mississippi transaction had been completed and the cotton then belonging exclusively to Allenberg."

The Supreme Court of Mississippi might have added that through an exclusive agent, who was a Mississippi resident, Allenberg entered into over 20 similar contracts

Changes Pg. 2, 3, 6, 79

2nd DRAFT

Justice Powell

SUPREME COURT OF THE UNITED STATES

No. 73-628

11-6-74

Allenberg Cotton Company, Inc., Appellant,
v.
Ben E. Pittman.

On Appeal from the Supreme Court of Mississippi.

11-13-74

[November —, 1974]

MR. JUSTICE REHNQUIST, dissenting.

The question in this case is whether Mississippi may require appellant, a Tennessee corporation, to qualify as a foreign corporation under Mississippi law before it may sue in the courts of Mississippi to enforce a contract. The Supreme Court of Mississippi summarized the facts of the transaction, which it stated were "without substantial dispute" as follows:

"It is apparent that these transactions of Allenberg in each case, including that with Pittman, took place wholly in Mississippi. The contract was negotiated in Mississippi, executed in Mississippi, the cotton was produced in Mississippi, delivered to Allenberg at the warehouse in Mississippi, and payment was made to the producer in Mississippi. All interest of the producer in the cotton terminated finally upon delivery to Allenberg at the warehouse in Marks. The fact that afterward Allenberg might or might not sell the cotton in interstate commerce is irrelevant to the issue here, as the Mississippi transaction had been completed and the cotton then belonging exclusively to Allenberg. . . ."

The Supreme Court of Mississippi might have added that through an exclusive agent, who was a Mississippi resident, Allenberg entered into over 20 similar contracts.