

court room open. *Ex parte Young*, 209 U.S. 123; *Wadley Southern Ry. Co. v. Georgia*, 235 U.S. 651, 661, 662. On the other hand, the penalty may be no more than the fair price of the adventure. *St. Louis, I. M. & S. Ry. Co. v. Williams*, *supra*, p. 66. In that event, the litigant must pay for his experience, like others who have tried and lost.

3. Other objections affecting the merits of the recovery have been put before us by the appellant in briefs and in oral argument.

Our jurisdiction upon appeal from a judgment of a state court does not permit us to review them.

4. To the extent that *Standard Accident Ins. Co. v. Rossi*, 35 F. (2d) 667, and *Inter-Southern Life Ins. Co. v. McElroy*, 38 F. (2d) 557, are inconsistent with this opinion, we are unable to approve or follow them.

The judgment is

Affirmed.

MR. JUSTICE VAN DEVANTER, MR. JUSTICE SUTHERLAND, and MR. JUSTICE BUTLER dissent in respect of the 12% penalty or damages.

LIFE & CASUALTY INSURANCE CO. OF TENNESSEE v. BAREFIELD.

APPEAL FROM THE SUPREME COURT OF ARKANSAS.

No. 509. Argued February 5, 1934.—Decided March 5, 1934.

Decided upon the authority of *Life & Casualty Insurance Co. v. McCray*, *ante*, p. 566.

187 Ark. 676; 61 S.W. (2d) 698, affirmed.

APPEAL from a judgment affirming a recovery on an accident insurance policy together with damages and attorneys' fees.

Mr. Moreau P. Estes, with whom *Messrs. P. M. Estes* and *Myron T. Nailling* were on the brief, for appellant.

No appearance for appellee.

MR. JUSTICE CARDOZO delivered the opinion of the Court.

In a suit upon a policy of accident insurance, the respondent recovered a judgment in accordance with a stipulation declaring the extent of the liability if the insurer was liable at all.

Attorney's fees and twelve per cent damages were added to the recovery in accordance with the statute. Section 6155, Arkansas Digest, Crawford & Moses, 1921.

The case presents the same question as No. 89, *Life & Casualty Ins. Co. of Tennessee v. McCray*, ante, p. 566, and is ruled by that decision.

The judgment is

Affirmed.

TRAVELERS PROTECTIVE ASSOCIATION OF
AMERICA *v.* PRINSEN.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
TENTH CIRCUIT.

No. 429. Argued February 9, 1934.—Decided March 5, 1934.

A certificate of membership in a fraternal benefit association providing benefits for accidental death, exempts the association if death occur "when" a member is "participating" in the transportation of explosives. In this case, the assured, an officer of a powder company, for the purpose of making delivery of a large quantity of dynamite caps ordered by a customer, rode in the customer's truck, driven by the customer's agent, from the company's office to the company's magazine beyond the city limits, where the goods were loaded on the vehicle. On the return trip to the office, where the assured was to be let off, the truck, still driven by the agent, was in collision with a train. There was an