This is not an arbitrary rule; it is the declaration of a fundamental principle.

The word "liberty," as used in this provision of the Constitution, has been the subject of discussion by commentators, and by the courts ever since it has existed, and its meaning has been many times clearly defined.

That liberty then, which is the fundamental right of all, and which is further guaranteed by the Constitution of the United States and of the several States, does not mean mere liberty of the person; it does not mean the mere right to go and come without let or hindrance, but it also means the right to follow such calling, to engage in such occupation, to form such combinations and to make such contracts or assume such obligations as one chooses. Any law which restrains or interferes with these rights, trespasses upon the liberties of the people, and thus strikes at the very root of American institutions.

But perhaps it will be said that this law deals with the acts of a corporation, and that the State has the power to restrict the acts of corporations as proposed.

First let us inquire whose powers are to be restricted. To every contract of accident insurance, an individual is a party. This prosposed law, in effect, says that no individual shall have the right to make a contract of accident insurance, unless he inserts in the contract certain provisions, and omits from it certain other provisions. It makes no difference that the individual deems the form of contract which he chooses to make the one best designed to accomplish his purpose. It makes no difference that no one is concerned but himself. It makes no difference that there are no conceivable considerations of public health or public morals at stake. It makes no difference that manifestly he is better qualified to decide for himself what contract he will make than any legislator or body of legislators could possibly be. He will not be allowed make the contract he prefers, but must make such a contract as the legislature prescribes, or go without accident insurance. Test this by the rules laid down in the above-quoted authorities. If it is not an unwarranted and utterly unjust interference with the liberty of the citizen, what is?

Limit Right to Issue.

Perhaps it will be said it is not intended to prevent one individual from making such contract of accident insurance as he pleases with another individual. Such a law would be manifestly unconstitutional. We merely limit the individual's right to contract with an insurance corporation. But is this right? Is there any warrant for it? Concededly, the Legislature has no constitutional nor moral right to take away from the individual the right to contract with another individual in reference to accident insurance. Why is this so? This is a land where the individual is guaranteed the fullest liberty. That guarantee is given him, because it is his fundamental and inherent right, and to take it away from him would be a gross wrong. If it is an unjust infringement of the liberty of the individual to take from him the right to make such contract as he pleases with another individual, is it not equally unjust to take from him the right to make such contract as he pleases with a corporation that has been duly admitted to the State, and authorized to transact its business there? What possible distinction can be suggested between a contract between two individuals and a contract between an individual and a corporation, which indicates that it would be unjust to limit the former and just to limit the latter? We have heard many discussions of this subject, but we are yet to hear one word that gives the slightest justification for such a distinction.

So that when it is said that this law deals with rights and powers of corporations, the statement is not entirely correct. It deals quite as much with the rights and powers of the individual. It tramples upon his fundamental rights as an American citizen.

Let us, however, take the other aspect of the question, namely, the limitation upon the company's power to make contract. A corporation is the creature of the State, and the State doubtless has the right to limit the power of the corporation. If it is a foreign corporation, the State can impose such reasonable conditions upon its admission to the State as it sees fit. But even though the State has such power, are there no limitations of justice and fairness? A corporation is but a collection of individuals acting together as authorized by law. Why should a number of persons acting together as an accident insurance company be prohibited from making and issuing such form of contract as it sees fit to make and as the individual with whom they make the contract desires? The mere fact that the Legislature has the power to curtail and limit the form of contract which the company may make, clearly is not, in itself, the slightest warrant for the exercise of that power. Every one has physical powers, the existence of which no one questions, but the exercise of which would immediately bring upon him the censure of the entire community. As Shakespeare's says: "It is excellent to have a giant's strength; but it is tyrannous to use it like a giant." The State Legislature has the power to limit the form of contract that an insurance company may make, but if it uses that power to do that which it should not do, it violates the liberties of the whole people.

No sufficient reason has been assigned for the passage of such a law. The only reason suggested is that some men are willing to deceive and cheat by misrepresenting the policy they sell and to leave the people free to make such contract as they choose offers a temptation and an opportunity to the dishonest to indulge their dishonest practices. This, we submit, is no reason at all. To take away the rights of honest men who are the great majority because a few are dishonest is gross injustice and a wholly irrational basis for the action proposed. Dishonest men may be found in every class of business. Contracts for the erection of buildings, for the transfer of land, for the selling of agricultural machinery and for innumerable other kinds of operations may be, and undoubtedly are, frequently used by dishonest persons to cheat and defraud the ignorant and the unwary. Would anyone, however, seriously propose that the rights of honest men engaged in these lines of business should be seriously curtailed, because of the practices of the dishonest? Would it not be just as sensible to prohibit the sale of diamonds because some men represent paste as the genuine article, or to forbid the sales of horses because some dealers misrepresent the qualities of the animals they sell? One reason why fraudulent practices of this sort are not restrained in this way is that it makes the honest business men suffer for the wrongs of the dishonest. But there is another reason, and that is that such a method is manifestly ineffectual. One who is willing to misrepresent the character or quality of what he sells can do it no matter what laws you make upon the subject. The dishonest accident insurance underwriter can misrepresent the policy written in accordance with this proposed law just as easily as he can any other form. Nothing that the law can say as to the form of contract can prevent it. The right way to deal with this subject is to make laws prohibiting misrepresentations and to attach proper penalties and enforce them. This places the punishment of the crime where it deserves to be. The law now proposed places the punishment upon the honest man who has done no wrong.

Will Hurt Policyholder.

This law cannot benefit the policyholder. On the contrary, it will be harmful. It may be passed by some States; in some States, it will undoubtedly not be accepted. Among the States where it is accepted it is doubtful if any two legislatures will pass it in the same form. Thus, we will have in each State an entirely different rule, and the form of policy used in each State will be different. This will necessarily cast greater burdens upon the companies, increase the expenses of conducting business, and thus increase the cost of insurance to the policyholder. Every such curtailment, unless warranted by the demands of public welfare, must be harmful to the public interests. As said by Judge O'Brien in the Coler case (supra), "The Government governs best which governs least." That this is a sound proposition cannot be questioned. When any Government undertakes to regulate or limit the rights and privileges of the people, such action if it is not helpful, and does not conserve the public weal, must, of very necessity, be injurious.

We have seen that the interference with the right of contract is an interference with the liberties of the people; that a corporation is nothing but a combination of persons; that one of the parties to each contract of accident insurance is an individual. Even assuming that the Legislature has the power to make such a law, it cannot serve any useful purpose, and, therefore, to the extent that it limits and takes away from the people their fundamental right of contract, it is essentially harmful.

We respectfully insist that this Bill is not only unwarranted and unwise, but is distinctly vicious. It would destroy fundamental rights and liberties not only of those who have engaged in the business of writing accident insurance, and who have placed their money and property at stake, but also of those who seek such insurance.

If the decisions of the courts as to the power of the State Legislature to curtail the rights of the people in respect of making such contracts as they may see fit are sound; if it is wrong for the Legislature to attempt to prescribe the form of contract that shall be made by the citizen, what shall be said of the attempt to delegate to a public official the power to pass upon and prescribe. To repose in a single individual, no matter what position he may occupy, nor how carefully he may have been selected for the office, the right to say what contract shall or shall not be made between an individual and an insurance company is, we submit, without any warrant either of law or of good policy.