

Veazie Vs. Moor

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Appeal No. : 55 U.S. 568

Appellant : Veazie

Respondent : Moor

Judgement :

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Veazie v. Moor

55 U.S. (14 How.) 568

ERROR TO THE SUPREME JUDICIAL

COURT OF THE STATE OF MAINE

SYLLABUS

The River Penobscot is entirely within the State of Maine, from its source to its mouth. For the last eight miles of its course, it is not navigable, but crossed by four dams erected for manufacturing purposes. Higher up the stream there was an

imperfect navigation.

A law of the state granting the exclusive navigation of the upper river to a company who were to improve it is not in conflict with the 8th section of the 1st Article of the Constitution of the United States, and a license to carry on the coasting trade did not entitle a vessel to navigate the upper waters of the river.

The facts in the case are stated in the opinion of the Court.

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MR. JUSTICE DANIEL delivered the opinion of the Court.

The questions raised upon this record, however subdivided or varied they may have been in form or number, are essentially and properly restricted to the power and the duty of this Court to inquire into the constitutional obligation of the law of the State of Maine, upon which the decision of the supreme court of that state was founded, for if that law and the privileges conferred thereby be coincident with the eighth section of Article 1st of the Constitution, they can be assailable here upon no just exception.

It is insisted, however, that the statute of the State of Maine is in derogation of the power vested in Congress by the article and section above mentioned, "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." We will examine the character of this objection with reference to the facts disclosed by the record, and with reference also to the provisions of the statute in question, as they have been designed to operate on those facts, and as these last are all agreed by the parties, there can be no need of a comparison of the testimony to ascertain their verity.

The River Penobscot is situated entirely within the State of Maine; having its rise far in the interior of the state, it is not subject to the tides above the City of Bangor, near its mouth. Between the City of Bangor and Old Town, a distance of eight miles, the Penobscot passes over a fall, is crossed by four dams erected for manufacturing purposes, and for the above space is not at this time and never has

been navigable, but there is a railroad from Bangor to the steamboat landing at Old Town. On 30 July, 1846, the Legislature of Maine, by

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law enacted, that William Moor and Daniel Moor, Jr., their associates and assigns, were authorized to improve the navigation of the Penobscot River above Old Town, and for that purpose were authorized to deepen the channel of the river, to cut down and remove any gravel or ledge, bars, rocks, or other obstructions in the bed thereof; to erect in the bed, on the shore or bank of said river, suitable dams and locks, with booms, piers abutments, breakwaters, and other erections to protect the same; to build upon the shore or bank of said river, any canal or canals to connect the navigable parts of said river, or in case it shall be deemed the preferable mode of improvement, any railroads for the like purpose.

After providing the modes of acquiring lands or gravel on the shores or in the bed of the river and for compensating the owners of property used in the prosecution of the contemplated improvement, the act proceeds to limit the time for the completion of the undertaking, within particular termini therein named, to the period of seven years from its date, and further requires that within the period thus limited, the grantees shall build and run a steamboat between those termini, and shall, within the same time make a canal and lock around the falls of the river or a railroad to connect the route above with that below the falls.

Then follows section fourth of the statute, containing the provision objected to. It is in these words:

"If said William Moor and Daniel Moor, Jr., their associates and assigns, shall perform the conditions of this grant as contained in the preceding section, the sole right of navigating said river by boats propelled by steam from said Old Town so far up as they shall render the same navigable is hereby granted to them for the term of twenty years from and after the completion of the improvement as provided in the third section of this act."

The defendant in error, who is assignee of the original grantees from the legislature, having made certain improvements in the river by the removal of rocks and by deepening the channel in other places so as to enable boats to run therein with two and a half feet less of water than was requisite for navigation previously to these improvements, and all within the limit prescribed to him by law, built, and on 27 May, 1847, placed upon the said river the steamboat *Governor Neptune* and ran her from Old Town over the Piscataquis Falls to a place called Nickaton. In the spring of the year 1847, the defendant in error placed on the river the steamboat *Mattanawcook* and ran her to Lincoln till obstructions were removed by him at a place called the Mohawk Rips, above the Piscataquis Falls, and has also built and is now running upon the river another steamboat

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called the *Sam Houston*, in addition to the *Governor Neptune* and the *Mattanawcook*.

The plaintiff in error, Samuel Veazie, built the steamboat *Governor Dana* and, in conjunction with the other plaintiffs, Levi and Warren R. Young, ran her upon the Penobscot River between Old Town and the Piscataquis Falls from 10 May, 1849, until they were arrested by an injunction granted at the suit of the defendant in error. The steamboat *Governor Dana* was enrolled and licensed for the coasting trade at the custom house at Bangor. The Penobscot tribe of Indians own all the islands in the Penobscot River above Old Town Falls, some of which they occupy, and this tribe always have been, and now are, under the jurisdiction and guardianship of the State of Maine.

Upon this state of facts agreed, the Supreme Judicial Court of Maine, after argument and advisement, at its June term, 1850, decreed that the plaintiffs in error be perpetually enjoined to desist and refrain from running and employing the steamboat *Governor Dana*, propelled by steam, for transporting passengers or merchandise on said river or any part thereof above Old Town, and also from building, using, and employing, any other boat propelled by steam on that part of the said river for that purpose without the consent of the said Wyman B. S. Moor

obtained according to law until the said Moor's exclusive right shall expire. The court further decreed to the defendant in error the sum of one thousand and fifty-two dollars and forty-five cents for damages and expenses incurred by him by reason of the interference with his rights on the part of the plaintiffs in error.

Upon a comparison of this decree and of the statute upon which it is founded with the provision of the Constitution already referred to, we are unable to perceive by what rule of interpretation either the statute or the decree can be brought within either of the categories comprised in that provision.

These categories are, 1st, commerce with foreign nations; 2d, commerce amongst the several states; 3d, commerce with the Indian tribes. Taking the term "commerce" in its broadest acceptation, supposing it to embrace not merely traffic, but the means and vehicles by which it is prosecuted, can it properly be made to include objects and purposes such as those contemplated by the law under review? "Commerce with foreign nations" must signify commerce which in some sense is necessarily connected with these nations, transactions which either immediately or at some stage of their progress must be extraterritorial. The phrase can never be applied to transactions wholly internal, between citizens of the same community, or to a polity and laws whose ends and purposes and operations are

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restricted to the territory and soil and jurisdiction of such community. Nor can it be properly concluded, that, because the products of domestic enterprise in agriculture or manufactures, or in the arts, may ultimately become the subjects of foreign commerce, that the control of the means or the encouragements by which enterprise is fostered and protected, is legitimately within the import of the phrase foreign commerce, or fairly implied in any investiture of the power to regulate such commerce. A pretension as far reaching as this, would extend to contracts between citizen and citizen of the same state, would control the pursuits of the planter, the grazier, the manufacturer, the mechanic, the immense operations of the collieries and mines and furnaces of the country; for there is not one of these avocations, the results of which may not become the subjects of foreign

commerce, and be borne either by turnpikes, canals, or railroads, from point to point within the several states, towards an ultimate destination, like the one above mentioned. Such a pretension would effectually prevent or paralyze every effort at internal improvement by the several states, for it cannot be supposed that the states would exhaust their capital and their credit in the construction of turnpikes, canals, and railroads, the remuneration derivable from which, and all control over which, might be immediately wrested from them, because such public works would be facilities for a commerce which, whilst availing itself of those facilities, was unquestionably internal, although intermediately or ultimately it might become foreign.

The rule here given with respect to the regulation of foreign commerce equally excludes from the regulation of commerce between the states and the Indian tribes the control over turnpikes, canals, or railroads, or the clearing and deepening of watercourses exclusively within the states, or the management of the transportation upon and by means of such improvements. In truth, the power vested in Congress by Article 1st, section 8th of the Constitution, was not designed to operate upon matters like those embraced in the statute of the State of Maine, and which are essentially local in their nature and extent. The design and object of that power, as evinced in the history of the Constitution, was to establish a perfect equality amongst the several states as to commercial rights and to prevent unjust and invidious distinctions which local jealousies or local and partial interests might be disposed to introduce and maintain. These were the views pressed upon the public attention by the advocates for the adoption of the Constitution, and in accordance therewith have been the expositions of this instrument propounded by this Court in decisions quoted by counsel on either side of this cause, though differently applied by them.

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Vide The Federalist, Nos. 7 and 11, and the cases of [Gibbons v. Ogden](#), 9 Wheat. 1; [New York v. Milne](#), 11 Pet. 102; [Brown v. State of Maryland](#), 12 Wheat. 419; and [The License Cases](#), 5 How. 504.

The fact of procuring from the collector of the port of Bangor a license to prosecute the coasting trade for the boat placed upon the Penobscot by the plaintiff in error, the *Governor Dana* does not affect, in the slightest degree, the rights or condition of the parties. These remain precisely as they would have stood had no such license been obtained. A license to prosecute the coasting trade is a warrant to traverse the waters washing or bounding the coasts of the United States. Such a license conveys no privilege to use, free of tolls or of any condition whatsoever, the canals constructed by a state or the watercourses partaking of the character of canals exclusively within the interior of a state and made practicable for navigation by the funds of the state or by privileges she may have conferred for the accomplishment of the same end. The attempt to use a coasting license for a purpose like this is in the first place a departure from the obvious meaning of the document itself, and an abuse wholly beyond the object and the power of the government in granting it.

Upon the whole, we are of the opinion that the decision of the Supreme Judicial Court of the State of Maine is in accordance with the Constitution of the United States, and ought to be and is hereby

Affirmed.

ORDER

This cause came on to be heard on the transcript of the record from the Supreme Judicial Court of the State of Maine, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said Supreme Judicial Court in this cause be and the same is hereby affirmed with costs.