

Fanning Vs. Gregoire

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Court : US Supreme Court

Decided On : 1853

Appeal No. : 57 U.S. 524

Appellant : Fanning

Respondent : Gregoire

Judgement :

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Fanning v. Gregoire

57 U.S. (16 How.) 524

APPEAL FROM THE DISTRICT COURT OF THE

UNITED STATES FOR THE DISTRICT OF IOWA

In 1838, the Legislature of the Territory of Iowa authorized Fanning, his heirs and assigns, to establish and keep a ferry across the Mississippi River, at the Town of Dubuque, for the term of twenty years, and enacted further that no court or board of county commissioners should authorize any person to keep a ferry within the limits of the Town of Dubuque.

In 1840, Fanning was authorized to keep a horse ferry boat instead of a steamboat.

In 1847, the General Assembly of the State of Iowa passed an act to incorporate the City of Dubuque, the fifteenth section of which enacted that the "city council shall have power to license and establish ferries across the Mississippi River, from said city to the opposite shore, and to fix the rates of the same."

In 1851, the Mayor of Dubuque, acting by the authority of the city council, granted a license to Gregoire whose agent Bogg was to keep a ferry for six years from the 1st of April, 1852, upon certain payments and conditions.

The right granted to Fanning was not exclusive of such a license as this. The prohibition to license another ferry did not extend to the legislature, nor to the city council, to whom the legislature had delegated its power.

Nor was it necessary for the city council to act by an ordinance in the case. Corporations can make contracts through their agents without the formalities which the old rules of law required.

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This case originated in the state court, called the District Court of the County of Dubuque, and was transferred to the district court of the United States at the instance of Gregoire and Bogg, the defendants. Gregoire was a citizen and resident of Missouri and Bogg of Illinois.

The facts in the case are stated in the opinion of the Court. The district court dismissed the petition of Fanning, with costs, upon the ground that his ferry franchise was not exclusive, whereupon he appealed to this Court.

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MR. JUSTICE Mc LEAN delivered the opinion of the Court.

The plaintiff filed his petition in the District Court of the County of Dubuque, stating that by an act of the Legislative Assembly of the Territory of Iowa approved the 14th of December, 1838, he was authorized to establish and keep a ferry across the Mississippi at the Town of Dubuque and depart from and land at any place on the public landing of said town for the term of twenty years from the passage of said act, and that the act provided that no court or board of county commissioners should authorize any other person to keep a ferry within the limits of the town; that the petitioner was required, within

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two years from the passage of the act, to use for said ferry a good and sufficient steam ferry boat; that a sufficient number of flatboats were also required to be kept, with a competent number of hands to work them, so as to convey across the River Mississippi persons and property as might be required; that a horse ferry boat, by an amendatory act, was substituted for a steam ferry boat.

And the plaintiff avers that the above acts of the legislature conferred on him the exclusive privilege of ferrying across the river at the above place during the twenty years named in the act. And he avers that in all things he has complied with the requirements of the above acts, and that in doing so he has incurred great expense; that at the commencement, his ferry yielded little or no profit, but he persevered in keeping it up, hoping to be remunerated for his expense in its future profits.

He represents that the defendants, confederating with others to defraud him of his ferry right, have placed upon the ferry at the Town of Dubuque a steam ferry boat for the transportation of passengers &c.;, and charges them for such transportation &c.;, and claim that they have a right to do so, although the twenty years of the plaintiff's grant have not yet expired. He therefore prays for an injunction &c.;

At the appearance term of said court, the defendants represented that one of them was a citizen of the State of Missouri, and the other a citizen of the State of Illinois; that the matter in controversy exceeds five hundred dollars, and they pray that the

said action may be removed to the next district court of the United States to be held in the Northern Division of the District of the State of Iowa, and gave the security required by law, and the cause was removed to the district court.

The defendants, in their answer, admit that the plaintiff has a charter to ferry across the River Mississippi at Dubuque, but they deny that it secures to him an exclusive right. And they say that their steam ferry boat was put on and is run by them in accordance with a contract made with the City of Dubuque authorizing the running of said boat for six years from the first day of April, 1852, and they say that in running said boat they do not interfere with the right of the plaintiff other than such interference as is necessarily the result of a fair competition.

And the defendants say that the City of Dubuque entered into said contract with the said Gregoire by virtue of the power vested in the council by the fifteenth section of an act to incorporate and establish the City of Dubuque, of the 24th of February, 1847.

The act granting the ferry right to the plaintiff bears date the 14th of December, 1838. The first section provides

"That

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Timothy Fanning, his heirs and assigns, be and they are hereby authorized to establish and keep a ferry across the Mississippi River at the Town of Dubuque, in the County of Dubuque, and to depart from and land at any place on the public landing of said town, which was set apart for public purposes by Act of Congress approved the 3d of July, 1836, for the term of twenty years from the passage of the act."

The second section declared

"That no court or board of county commissioners shall authorize any person (unless as herein provided for by this act) to keep a ferry within the limits of the Town of Dubuque. The conditions annexed were that Fanning, his heirs and

assigns, should, within two years from the passage of the act, procure a sufficient steam ferry boat, and shall keep flatboats and a sufficient number of hands for the accommodation of the public. On failure to do so, proof being made to the satisfaction of the county commissioner or the county court, the charter should be declared to be void."

By the Act of July 24, 1840, a horse boat was substituted for the steam ferry boat.

The right of the defendants arises under a contract made between the City of Dubuque and Charles Gregoire the 11th of November, 1851, in which it was agreed by the corporation of the city,

"in consideration of the covenants and stipulations hereinafter enumerated, have granted a license to Gregoire to keep a ferry across the Mississippi River, opposite the City of Dubuque, for six years from the first day of April next, it being understood that the city grant all the right it has and no more, with the privilege to land at any point opposite the city that he may choose."

Gregoire agreed to pay the city the sum of one hundred dollars annually and to provide for said ferry a good and substantial steam ferry boat, of sufficient capacity and dimensions to accommodate the traveling community, and to keep the same in good repair. And if the city should wish to grant the said franchise to any railroad before the expiration of the lease, they reserved the power to do so.

By the fifteenth section of the act incorporating the city, power is given to the city council to license and establish ferries across the Mississippi River from the City of Dubuque to the opposite shore, to fix the rates of the same, and to impose reasonable fines and penalties for the violation of such laws and ordinances. This act was approved the 24th of February, 1847.

It is objected by the plaintiff's counsel that the license set up by the defendants cannot avail them, as there is no ordinance of the council granting a ferry license to them, and that the

council can only act under their corporate powers in that way.

That the council have legislative powers in regard to the police of the city is admitted, but it does not follow that a contract may not be made under their sanction by the mayor, as was done in this case. The contract was in writing, and contained stipulations in regard to the public accommodation, which were important. The old rule was that a corporation can make no contract which shall bind it except under its seal. That doctrine has long since been overruled, and it is now fully established that the agents of a corporation may bind it by parol.

A license having been given which according to its terms must be considered binding on the corporation, it is unnecessary to look into the acts of the council regulating ferries, as they are not important as regards the question of power. If the form of the license had been laid down in the city charter, or the mode of granting it, a conformity to such a regulation would be required, but no such provision is found in the charter. Regulations are made by ordinances, but as to them, beyond the granting of a license in this case, we need not inquire.

The principal question in the case is whether the right granted to Fanning is exclusive.

The language used in the territorial act, it is argued, would seem to authorize an inference that the right was intended to be exclusive. The right was given for twenty years to Fanning and his heirs, subject to the conditions expressed. An ordinary license is not granted to a man and his heirs. But it is said the beginning of the second section is somewhat explicit on this point. It provides

"That no court or board of county commissioners shall authorize any other person unless as hereinafter provided for by this act to keep a ferry within the limits of the Town of Dubuque."

The condition provided for in the act above referred to is any neglect on the part of Fanning or his heirs which shall incur a forfeiture of his right. The prohibition on the court and the board of county commissioners to grant a license for another ferry, it is urged, would seem to show an intent to make the grant exclusive. And that the

reason for this might be found in the alleged fact that when the ferry was first established, a considerable expenditure was required and little or no profit was realized for some years. But all the judges present except one held that the grant was not intended to be exclusive. In their opinion, this view is sustained by the consideration that although the county court and county commissioners were prohibited from granting another license at Dubuque, yet this

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prohibition did not apply to the legislature, and as it had the power to authorize another ferry, the general authority to the council to "license and establish ferries across the Mississippi River at the city" enabled the corporation, in the exercise of its discretion, to grant a license, as the legislature might have done.

This power was clearly given to the city, and it may be exercised unless the grant of Fanning be exclusive.

The board of commissioners has been established, and the legislature has substituted in its place, for the purpose of licensing ferries at Dubuque, the city council, and it is contended that this change of the power ought not to affect the rights of the plaintiff. The restriction on the commissioners of the county does not apply in terms to the city council, and the Court thinks it cannot be made to apply by implication. The license to Gregoire was granted thirteen years after the grant to the plaintiff. And it may well be presumed from the increase of the City at Dubuque and the great increase of the line of trade through it that additional ferry privileges were wanted. Of this the granting power was the proper judge.

The exclusive right set up must be clearly expressed or necessarily inferred, and the Court thinks that neither the one nor the other is found in the grant of the plaintiff nor in the circumstances connected with it.

The argument that the free navigation of the Mississippi River, guaranteed by the ordinance of 1787, or any right which may be supposed to arise from the exercise of the commercial power of Congress, does not apply in this case. Neither of these interferes with the police power of the states in granting ferry licenses. When

navigable rivers within the commercial power of the Union may be obstructed, one or both of these powers may be invoked.

The decree of the district court is

Affirmed with costs.

ORDER

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Iowa and was argued by counsel. On consideration whereof it is now here ordered, adjudged, and decreed by this Court that the decree of the said district court in this cause be and the same is hereby affirmed with costs.

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