Aspinwall Vs. Commissioners of Daviess County

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Appeal No. : 63 U.S. 364

Appellant : Aspinwall

Respondent : Commissioners of Daviess County

Judgement :

Aspinwall v. Commissioners of Daviess County - 63 U.S. 364 (1859)
U.S. Supreme Court Aspinwall v. Commissioners of Daviess County, 63 U.S. 22 How. 364 364 (1859)

Aspinwall v. Commissioners of Daviess County

63 U.S. (22 How.) 364

ON DIVISION OF OPINION BETWEEN THE JUDGES OF THE CIRCUIT

COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA

SYLLABUS

The charter of the Ohio & Mississippi Railroad Company, passed by the Legislature of Indiana in 1848, and a supplement in 1849, authorized the county

Page 63 U. S. 365

commissioners of a county through which the road passed to subscribe for stock and issue bonds provided a majority of the qualified voters of the county voted, on the 1st of March, 1849, that this should be done.

The election was held on the appointed day, and a majority of the voters voted that the subscription should be made.

But before the subscription was made, the state adopted a new constitution, which went into effect on the 1st November, 1851. One of the articles prohibited such subscriptions unless paid for in cash, and prohibited also a county from loaning its credit or borrowing money to pay such subscriptions.

In 1852, the County Commissioners of Daviess County subscribed for stock in the railroad company, and issued their bonds for the amount.

The provisions of the railroad charter authorizing the commissioners to subscribe conferred a power upon a public corporation or civil institution of government which could be modified, changed, enlarged, or restrained, by the legislative authority, the charter not importing a contract within the meaning of the clause of the Constitution prohibiting a state from passing a law impairing the obligation of contracts.

The mere vote to subscribe did not of itself form such a contract with the railroad company as would be protected by the 10th section of the 1st article of the Constitution of the United States. Until the subscription was actually made, the contract was unexecuted.

The bonds were issued in violation of the Constitution of Indiana, and are therefore void.

The nature of the case and the certificate of division in opinion are stated in the opinion of the Court.

Page 63 U. S. 374

MR. JUSTICE NELSON delivered the opinion of the Court.

The suit was brought by the plaintiffs against the Board of Commissioners of the County of Daviess to recover two installments of interest accruing upon certain bonds issued by the board for stock subscribed to the Ohio & Mississippi Railroad Company, and on the hearing, the following questions arose, upon which the judges of the court divided in opinion:

1. Whether, by the said act of incorporation of the said railroad company, and the amendment thereto of January 15, 1849, any such right to county subscriptions vested in said company as would exclude the operation of the new Constitution

Page 63 U. S. 375

of Indiana, which took effect on the 1st day of November, 1851.

2. Whether, by virtue of the said acts and of the said election in the declaration set forth, the Ohio & Mississippi Railroad Company acquired any such right to the subscription of the defendants as would be protected by the Constitution of the United States against the new Constitution of Indiana, which took effect on the 1st day of November, 1851.

The charter of the railroad company, passed February 14, 1848, provides that it should be lawful for the county commissioners through which the road passed to subscribe for stock on behalf of the county, at any time within five years after the opening of the books of subscription, if a majority of the qualified voters of said county, at an annual election, shall vote for the same.

The amended Act of January 15, 1849, made the holding of the election in the county peremptory on the first Monday of March then next, to determine the question of subscription or not to the stock.

The election was held in pursuance of this law, and a majority of the votes of the county cast in favor of the subscription. This was on the first Monday of March, 1849, and on the 10th September, 1852, the board of commissioners, in pursuance of the acts and of election aforesaid, subscribed for six hundred shares of the stock of the railroad company, of the value of $50 per share, in the whole amounting to $30,000, and in payment of said stock issued thirty bonds, of $1,000 each, duly signed and sealed by the president of the board of commissioners and attested by the auditor of the county, and delivered the same to the president and directors of the railroad company. By the terms of the obligations, they were made payable at the North River Bank in the City of New York, twenty-five years from date, to the railroad company or bearer, with interest at the rate of six percent per annum, payable annually on the 1st March, at the bank aforesaid, upon the presentation and delivery of the proper coupons attached, signed by the auditor of the said county. The plaintiffs are the holders and owners of sixty of these coupons.

Page 63 U. S. 376

The new Constitution of the State of Indiana contains the following provision:

"No county shall subscribe for stock in any incorporated company unless the same be paid for at the time of such subscription, nor shall any county loan its credit to any incorporated company, nor borrow money for the purpose of taking stock in any such company."

Sec. 6, art. 10, Constitution of Indiana.

This Constitution took effect on the 1st November, 1851. The subscription was not made nor bonds issued by the board of commissioners of the county, as we have seen, until the 10th September, 1852. The question therefore arises whether the subscription and bonds, thus made and issued after the Constitution went into effect, were not forbidden by the 6th section of the 10th article above cited, and therefore null and void.

The precise question first presented by the court below, upon which the judges divided, is as follows:

Whether, by the said act of incorporation of said railroad company, and the amendment thereto of January 15, 1849, any such right to county subscriptions vested in said company as would exclude the operation of the new Constitution of Indiana, which took effect on the 1st November, 1851.

The question admits, at least by implication, that this sixth section of the Constitution applies to the acts of the board of commissioners in making the subscription and issuing the bonds, but presents the question whether, at the time it went into effect, there was not such a right to the subscription and bonds vested in the railroad company as could be upheld notwithstanding the constitutional prohibition?

This view is sought to be sustained by force of the 10th section of the 1st article of the Constitution of the United States, which provides that no state shall pass any law "impairing the obligation of contracts."

The argument is that the provisions in the railroad charter and amendment, conferring power upon the board of commissioners of the county and making it their duty to subscribe for stock and issue bonds therefor if a majority of the qualified

Page 63 U. S. 377

voters of the county should determine at an election in favor of the same, import a contract with the railroad company on behalf of the state which is protected by the clause referred to in the Constitution of the United States, and hence the state constitutional prohibition is inoperative to annul the subscription or the bonds. That this right to the subscription and bonds, resting upon a contract in the charter, is unaffected by any subsequent statute or organic law of the state.

Without stopping to inquire whether or not the power conferred upon the board of commissioners in the charter and amendments of the railroad company, in the form and with the conditions therein mentioned, constitutes a contract, the Court is of opinion that in view of the body upon which the power is conferred and of the nature of the power itself, no such contract existed, if any, as is contemplated by this clause of the federal Constitution. The power or authority contained in the charter, and out of which the right in question is claimed to arise, is conferred upon the county, a public corporation or civil institution of government, and upon public officers employed in administering its laws, and the power or authority itself concerns this body in its public political capacity.

Chief Justice Marshall observed, in *Dartmouth College v. Woodward,* 4 Wheat. 627, that the word "contract," in its broadest sense, would comprehend the political relations between the government and its citizens; would extend to offices held within a state for state purposes and to many of those laws concerning civil institutions which must change with circumstances and be modified by ordinary legislation, which deeply concern the public, and which, to preserve good government, the public judgment must control. But, he observes, the framers of the Constitution did not intend to restrain the states in the regulation of their civil institutions adopted for internal government, and that the instrument they have given us is not to be so construed, p. 17 U. S. 629 . And Mr. Justice Washington observed, in the same case, p. 17 U. S. 663 , in respect to public corporations, which exist only for public purposes, such as towns, cities &c.;, the legislature may, under proper limitations,

Page 63 U. S. 378

change, modify, enlarge, or restrain them, securing, however, the property for the use of those for whom and at whose expense it was purchased. *See also* pages 17 U. S. 693 -694

It would be difficult to mention a subject of legislation of more public concern or in a greater degree affecting the good government of the county than that involved in the present inquiry. The power conferred upon the board of commissioners by the provisions in the charter, among other things, embraced the power of taxation, this being the ultimate resort of paying both the principal and interest of the debt to be incurred in the subscription and issuing of the bonds.

The second question presented upon which the judges differed is as follows:

Whether, by virtue of said acts, and of the said election in the declaration set forth, the Ohio & Mississippi Railroad Company acquired any such right to the subscription of the defendants as would be protected by the Constitution of the United States against the new Constitution of Indiana, which took effect the 1st November, 1851.

The acts of 1848 and 1849, already referred to, made it the duty of the board of commissioners to subscribe for the stock if a majority of the qualified voters at an election determined in favor of the subscription.

The election took place on the first Monday of March, 1849, when a majority of the votes was cast for the subscription. The Constitution of Indiana took effect 1 November, 1851. But the subscription was not made till the 10th September, 1852, and the bonds were issued after this date. It is insisted that the contract of subscription became complete when, at the election, a majority of the votes was cast in its favor, and did not require the form of a subscription on the books for the stock of the railroad company to make it obligatory upon the parties, and which, if true, it is agreed the contract would be protected within the Constitution of the United States, as it would then have been complete before the constitutional prohibition of Indiana. But the Court is unable to concur in this view. It holds that a subscription was necessary to create a contract binding upon the county, on one side, to take the

Page 63 U. S. 379

stock and pay in the bonds, and upon the other to transfer the stock and receive the bonds for the same. Until the subscription is made, the contract is unexecuted, and obligatory upon neither party.

We have arrived at the conclusion that both of the questions presented to us by the court below must be answered in the negative with some reluctance, as for aught that appears in the case, the subscription to the stock by the board of commissioners was made and the bonds issued in good faith to the railroad company, and also sold by it, and purchased by the plaintiff in confidence of their validity; but after the best consideration the Court has been able to give the case it has been compelled to hold, for the reasons above stated, that the subscription was made and the bonds issued in violation of the Constitution of Indiana, and therefore without authority and void.

We have not been able to find that the courts of Indiana have passed upon this clause of their constitution, and have therefore been obliged to expound it with the best lights before us. We should have felt very much relieved if a construction had been given to it by the judicial authorities of the state, and have readily followed it.

ORDER

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Indiana, and on the points or questions on which the judges of the said circuit court were opposed in opinion, and which were certified to this Court for its opinion agreeably to the act of Congress in such case made and provided, and was argued by counsel. On consideration whereof, it is the opinion of this Court:

1. That by the act of incorporation of the Ohio & Mississippi Railroad Company of the 14th February, 1848, and the amendment thereto of January 15, 1849, no such right to county subscriptions vested in said company as excluded the operation of the new Constitution of Indiana, which took effect on the 1st day of November, 1851.

Page 63 U. S. 380

2. That by the virtue of the said acts and of the said election in the declaration set forth, the Ohio & Mississippi Railroad Company acquired no such right to the subscription of the defendants as would be protected by the Constitution of the United States against the new Constitution of Indiana, which took effect on the 1st day of November, 1851. Whereupon it is now here ordered and adjudged by this Court, that it be so certified to the said circuit court.