Bridge Proprietors Vs. Hoboken Company

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Appellant : Bridge Proprietors

Respondent : Hoboken Company

Judgement :

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Bridge Proprietors v. Hoboken Company

68 U.S. (1 Wall.) 116

APPEAL FROM THE COURT OF ERRORS

AND APPEALS OF NEW JERSEY

SYLLABUS

1. Where a statute of a state creates a contract, and a subsequent statute is alleged to impair the obligation of that contract, and the highest court of law or

equity in the state *construes* the *first* statute in such a manner as that the second statute does *not* impair it, whereby the second statute remains valid under the Constitution of the United States, the validity of the second statute is "drawn in question" and the decision is "in favor" of its validity within the meaning of the 25th section of the Judiciary Act of 1789. This Court may accordingly, under the said section, reexamine and reverse the judgment or decree of the state court given as before said. The case distinguished from *Commercial Bank v. Buckingham's Executors,* 5 How. 317, GRIER, J., dissenting.

2. A party relying on this Court for reexamination and reversal of the decree or judgment of the highest state court under the 25th section of the Judiciary Act of 1789 need not set forth specially the clause of the Constitution of the United States on which he relies. If the pleadings make a case which necessarily comes within the provisions of the Constitution, it is enough.

3. The statute of the Legislature of New Jersey, passed A.D. 1790, by which that state gave power to certain commissioners to contract with any persons for the building of a bridge over the Hackensack River, and by the same statute enacted that the "said contract should be valid on the parties contracting as well as on the *State of New Jersey,* " and that it should not be "lawful" for any person or persons whatsoever to erect "any other bridge over or across the said river for *ninety-nine years,* " is a contract whose obligation the state can pass no law to impair.

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4. A railway viaduct, if nothing but a structure made so as to lay iron rails thereon, upon which engines and cars may be moved and propelled by steam, not to be connected with the shore on either side of said river except by a piece of timber under each rail and in such a manner as near as may be so as to make it impossible for man or beast to cross said river upon said structure except in railway cars [the only roadway between said shores and said structure being two or more iron rails two and a quarter inches wide, four and a half inches high, laid and fastened upon said timber four feet ten inches asunder], is not a "bridge"

within the meaning of the act of New Jersey, passed A.D. 1790, and just mentioned, CATRON, J., dissenting. And the act of assembly of that same state, passed A.D. 1860, authorizing a company to build a railway, with the necessary viaduct, over the Hackensack does not impair the obligation of the contract made by the aforesaid act of 1700.

The Judiciary Act (25) provides that a final decree in the highest court of equity in a state

"where *is drawn in question the validity of a statute of . . . any state on the ground of its being repugnant to the Constitution of the United States, and the decision is in favor of such validity,* may be reexamined and reversed"

in this Court. And the Constitution of the United States provides that "No state shall pass any . . . law impairing the obligation of contracts."

With these provisions in force, the State of New Jersey passed, A.D. 1790, an act creating a turnpike company from Newark to Powles Hook (near New York), and authorizing commissioners to fix suitable sites for building bridges over the Rivers Passaic and Hackensack and to cause to be erected a bridge over each river, with a right to take toll from classes of persons and things enumerated in the act, and which may be summed up shortly as persons on foot, animals and *vehicles crossing the bridge.* The statute enacted,

"That it should be lawful for the commissioners to contract with persons who would undertake the same for such toll, or for so many years, and upon such conditions, as in their discretion should appear expedient,"

and further

"That the said *contract* should be valid and binding *on the parties contracting as well as on the State of New Jersey,* and as effectual, to *all intents and purposes whatever* as if the same and *every part, covenant, and condition therein contained had been particularly and expressly set forth* and enacted in this law."

It was further

enacted

"That it should not *be lawful* for any person or persons whatsoever to erect or cause to be erected [within certain limits specified] *any other bridge or bridges* over or across the said river, *provided always* that if the said commissioners shall refuse or neglect for the space of four years to cause to be erected the said bridges, in pursuance of this act, or when erected, to maintain and support them, *then it shall and may be lawful* for the legislature of this state to repeal or alter this act and to enact such other law or laws touching or concerning the premises herein enacted, as to them, in their wisdom, shall appear equitable and expedient."

In 1793, the commissioners contracted with one Ogden and others his associates for the erection of the bridges authorized, and demised them the said Ogden and his associates until November 24, A.D. 1889, with a right to levy tolls as fixed in the contract. In 1797, the Legislature of New Jersey created the said Ogden and his associates a corporation, which corporation the complainants below, the present plaintiffs in error, now were.

In 1860, the Legislature of New Jersey, by statute, authorized another company altogether, to-wit, the Hoboken Land & Improvement Company, the defendants in this case, to construct a railroad from the same town, Newark, to Hoboken (opposite New York), and to build the necessary "viaducts" over these same Passaic and Hackensack Rivers. And the statute enacted that if unable to agree with the parties owning or claiming them, it should be lawful for the company to

" *take and appropriate,* use, and exercise, or cause to be taken and appropriated and exercised, so much of all *rights, privileges, franchises, property, and bridges or viaducts,* or such parts thereof as may be necessary to enable the said company to construct said railroad and branches, *first making or causing to be made compensation therefor as hereinafter provided. Provided* that nothing in this act shall authorize or empower the said company to construct more than one *bridge* over each of the Rivers Hackensack or Passaic, and the *bridge*

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over the Hackensack to be twelve hundred feet, river measure, from any other *bridge.* [Footnote 1]"

Under the authority of the act of 1860, the Hoboken Company now began to erect their "structure" for carrying their railway across the Hackensack River, and inside of those limits within which the bridge proprietors considered that the act of 1790 gave them exclusive privilege of bridges.

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This was done without the consent of the bridge proprietors and without condemning the value of their right of franchise.

The proprietors of the bridges over the rivers &c.;, hereupon filed a bill in the Court of Chancery praying an injunction and general relief. The bill set out the act of 1790, authorizing the commissioners to lease out the privilege of building, and the bridge when built, for a term of years, and that it enacted that no person, during 99 years, should erect any other bridge over the river within the limits in question; that the commissioners had leased their privilege for 99 years to Ogden and his associates, who had built the bridges, the incorporation &c.; It then proceeded to insist thus:

"That the said act and said lease, and all the stipulations and provisions and enactments in them and either of them contained, became a *contract* between the state and said party of the second part to said lease, who are now represented by your orators, and by the same the state became *held and bound to and contracted* with said party of the second part, and are now, by force *of such contract,* held and bound to *your orators,* as provided in the act, that no persons whatever should erect *any other bridge* or bridges than that erected by laid lessees and now belonging to your orators. And your orators insist *that the state cannot by any law violate, void or impair said contract, even upon providing and making compensation for the damages sustained thereby.* "

It next set out several statutes which it charged recognized these rights, and then the act of 1860, and alleged that thereby the defendants were authorized to construct a railroad and to erect viaducts or bridges over the Hackensack River and to take and appropriate property, rights, franchises &c.;, necessary to construct the railroad. It further set out the sections providing compensation for the franchises taken (*see ante,* p. <68 U.S. 119|>119, note), and that one section of the act, the first, *recognized the complainants' right as still existing.* The bill set forth further that the defendants had commenced to build a bridge within the prohibited limits and that the complainants had not given their consent to

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this; nor the defendants tendered any compensation for the violation of their contract with the state.

It *insisted*

"that there exists no such public necessity for building a bridge within the prohibited limits as warrants or requires the violation of the contract -- even had the state the power to pass a law impairing the obligation of a contract; that there exists no public necessity for the construction of the defendants' railroad such as to authorize the taking of the property and franchises of other persons or corporations."

It *submitted*

"that there does not exist that kind of public necessity which requires or justifies taking *private property for public use* or the abrogation of a contract."

As respected the *contract,* the bill charged on the defendants as follows:

"And they sometimes give out and pretend that the state is not held and bound *by any contract to or with your orators* that no other bridge shall be erected within said limits, *whereas your orators charge the contrary to be true, and that the state is held and firmly bound to your orators by their contract* that no bridge shall be erected within said limits before the 24th day of November, 1889."

The bill prayed the defendants might be restrained from building the bridge commenced, and for general relief and injunction.

The answer, admitting that "of course the obligation of no contract can be impaired," declared "that the defendant *does not pretend* that any public necessity requires the violation of any contract," and it set up several defenses.

1. That by the act of 1790, the state did " *not* contract," and therefore the defendant "denied" the allegation that it had done so, adding an admission, "that the said *lease* was a contract by which the state was bound," and an allegation that

"this defendant is advised and insists, that it is the only contract between the state and the said lessees, or their alienees (if any), and was by said law declared to be the contract by which the state was to be bound. "

2. That the prohibitory language, "it shall not be lawful for any persons to erect any other bridge," &c.;, in the act of 1790, was not in restraint of the legislature.

3. That any contract in the act of 1790 was discharged by a nonperformance of the *conditions precedent* contained in the act.

4. That the structure of the defendant is not a *bridge* in the sense that the word "bridge" is used in the act of 1790; that it would differ from a bridge in these particulars:

a. "It will not," the answer averred,

"be connected with the shore on either side of the river except by a piece of timber under each rail, and must necessarily be made so as to make it *impossible for man or beast to cross said river upon the viaduct except in defendant's cars.* "

b. "The only *roadway,* " it was further asserted,

"between said shores and said structure, will be two or more *iron rails,* each of the width of two and one-quarter inches, and of the height of about four and one-half inches, laid and fastened upon timber, said rails *being at a distance of four feet asunder.* "

c. "It will be *impossible,* " it was finally said,

" *for any vehicle or animal which can cross the river upon the bridge of complainants to cross the same upon the railroad of defendant,* and no foot passenger can cross the same with safety; nor is it intended that any foot passenger shall, but on the contrary, the said railroad across the said river shall and will be so constructed, and this defendant intends to construct the same in such manner that no vehicle can cross the said river on the said road or viaduct of the defendant, *except locomotive engines and railroad cars resting, and which must necessarily move, upon iron rails, and cannot move upon any bridge which was known or used in the year 1790 or up to the time of the incorporation of the complainants* and long after, and in such manner that no foot passenger or animal can cross said river on the railroad viaduct of the defendant."

5. The answer asserted, that any contract in the act of 1790 was discharged by the nonperformance of *conditions subsequent.*

6. That the complainants had no assignment of the lease,

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i.e., had not a particular evidence of the right to claim the benefit of the act of 1790.

7. That the exclusive franchise conferred by the prohibition contained in the act of 1790 had been destroyed by the complainants' own acts, admitted in the bill, in consenting to other bridges within the prohibited limits.

8. That a court of equity would not restrain by injunction the making of a bridge like that which the Hoboken Company proposed to make, and *on which railroad cars alone* could pass, if the complainants had an exclusive right and would not

exercise it.

The case was argued below, as it was here also, on bill and answer only.

The *opinion* of the chancellor below, which, however, was no part of the record nor strictly in evidence here, was given at length. In stating what he considered the points before him to be, he said,

"The material issues are:"

"1. Whether the complainants have, *by virtue of a contract* with the state, the exclusive franchise of maintaining a bridge across the Hackensack River &c.;?"

"2. Whether the structure which the defendants are engaged in erecting is a *violation of the complainants' franchise?* "

After an argument on the first point, he concluded:

"I am of opinion, therefore, that the proprietors of the bridges over the Rivers Passaic and Hackensack have, *by contract* with the state, the *exclusive franchise* of maintaining said bridges, and taking tolls thereon, and that such contract is within the protection of that provision of the Constitution, which declares that no law shall be passed impairing the obligation of contracts."

And he adds:

"The remaining inquiry is whether the structure which the defendants are erecting is a violation of the complainants' right?"

After an argument on this, the second point, to show that a viaduct such as the defendants proposed to construct was

not a "bridge" within the meaning of the act of 1790, he concludes:

"Applying to this contract the ordinary rules of interpretation, having regard to the subject matter of the contract itself, considering that it related solely to the travel upon ordinary highways by methods then known and used, and that the complainants' franchise extended only to such travel, *the construction of a railroad bridge for the sole accommodation of railroad travel cannot be deemed an infringement of the complainants' right.* "

In the Court of Errors and Appeals, where only one or two of the judges spoke, the course of argument was much the same as with the chancellor.

The *decree* in the Court of Chancery was a simple dismissal, thus: "The chancellor being of opinion that the complainants are not entitled to restrain the defendants from building the bridge *or structure* complained of," therefore it is ordered &c.;, that the bill be dismissed.

The *decree* in the Court of Errors and Appeals was a simple affirmance, the language being that

"The cause coming on to be heard, and the matter having been debated &c.;, and the court having advised &c.;, it is hereby ordered, adjudged, and decreed, that the decree of the chancellor be in all things affirmed, with costs."

On appeal to this Court from the Court of Errors and Appeals of New Jersey -- "the highest court of equity" in that "state," -- the questions were:

I. Whether this Court had jurisdiction? -- that is to say whether there had been drawn in question in the state courts of New Jersey the validity of a statute of that state on the ground that it violated the obligation of a contract, the decision being in favor of the statute.

II. If the Court had jurisdiction, and so could reexamine and reverse the decision below, whether there was any ground for the reversal of the same, the points raised under the second being,

1. Whether there was ever meant to be any contract at all? If so,

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2. Whether it was a contract such as bound legislatures of this day? If so,

3. Whether a "viaduct," such as was here proposed, was a "bridge" within the meaning of that contract?

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MR. JUSTICE MILLER delivered the opinion of the Court:

The first point arising in the case is that which relates to the jurisdiction of this Court, to review the decision of the state court of New Jersey. This is a question which this Court has always looked into in this class of cases, whether the point be raised by counsel or not, but here it is much pressed, and we proceed to examine it.

It is asserted by the plaintiffs in error that the validity of the act of the New Jersey Legislature of 1860 is drawn in question as being contrary to that provision of the Constitution of the United States which declares that no state shall pass any law impairing the obligation of a contract and that the decision of the state court was in favor of its validity, and the case is therefore embraced by the 25th section of the Judiciary Act.

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It is objected, however, by the defendants that the pleadings do not in words say that the statute is void because it conflicts with the Constitution of the United States and do not point out the special clause of the Constitution supposed to render the act invalid.

It would be a new rule of pleading, and one altogether superfluous, to require a party to set out specially the provision of the Constitution of the United States, on which he relies for the action of the court in the protection of his rights. If the courts

of this country, and especially this Court, can be supposed to take judicial notice of anything without pleading it specially, it is the Constitution of the United States. And if the plaintiff and defendant in their pleadings make a case which necessarily comes within some of the provisions of that instrument, this Court surely can recognize the fact without requiring the pleader to say in words "This paragraph of the Constitution is the one involved in this case."

Very few questions have been as often before this Court as those which relate to the circumstances under which it will review the decision of the state courts, and the very objection now raised by defendants has more than once been considered and decided.

In the case of *Crowell v. Randell,* [Footnote 2] the motion to dismiss for want of jurisdiction was argued at much length by Mr. Webster, Mr. Sergeant, and Mr. Clayton, whose names are a sufficient guarantee that the matter was well considered. The opinion was delivered by Mr. Justice Story. He reviews all the cases reported up to that time, and lays down these four propositions as necessary to bring a case within the 25th section of the Judiciary Act.

"1st. That someone of the questions stated in that section did arise in the state court. 2d. That the question was decided by the state court, as required in the same section. 3d. That it is not necessary that the question should appear on the record to have been raised and the decision made in direct and positive terms, *ipsissimis verbis,* but that it is sufficient

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if it appears by clear and necessary intendment that the question must have been raised and must have been decided in order to have induced the judgment. 4th. That it is not sufficient to show that the question might have arisen or been applicable to the case unless it is further shown in the record that it did arise, and was applied by the state court to the case."

In the case of *Armstrong v. Treasurer of Athens County,* [Footnote 3] Judge Catron, in delivering the opinion of the Court, said that the question of jurisdiction

under the 25th section of the act of 1789 had so often arisen, and parties had been subject to so much unnecessary expense, that the Court thought it a fit occasion to state the principles on which it acted in such cases. Referring especially to the manner in which the question on which the jurisdiction must rest shall be made to appear, he lays down six different modes in which that may be done. The first of these is "either by express averment or by necessary intendment in the pleadings in the case." The sixth is

"that it must appear from the record that the question was necessarily involved in the decision, and that the state court could not have given the judgment or decree which they passed, without deciding it."

Now although there are other decisions in which it is said that the point raised must appear on the record and that the particular act of Congress, or part of the Constitution supposed to be infringed by the state law ought to be pointed out, it has never been held that this should be done in express words. But the true and rational rule is that the Court must be able to see clearly, from the whole record that a certain provision of the Constitution or act of Congress was relied on by the party who brings the writ of error and that the right thus claimed by him was denied.

Looking at the record before us and applying to it these principles, we find no difficulty in the matter. The defendants claim, under the act of 1860 of the New Jersey legislature, a right to build their railroad bridge, or viaduct, over the Hackensack

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River inside the limits prohibited by the act of 1790. The plaintiffs say that to permit this is to violate the contract which they have with the State of New Jersey, and therefore the act of 1860, so far as it confers such authority on the defendants, is made void by the Constitution of the United States because it impairs the obligation of a contract. The state court dismissed the bill on these pleadings alone. In could not have done this without holding the act of 1860 to be valid, as it

was the only authority on which defendants rested their right to build any structure whatever over the Hackensack River. In holding that act to be valid notwithstanding plaintiffs claim that it was void as impairing the obligation of their contract with the State of New Jersey, a decision was made within the very terms of the 25th section of the act of Congress of 1789.

It is said, however, that it is not the validity of the act of 1860 which is complained of by plaintiffs, but the construction placed upon that act by the state court. If this construction is one which violates the plaintiffs' contract and is the one on which the defendants are acting, it is clear that the plaintiffs have no relief except in this Court, and that this Court will not be discharging its duty to see that no state legislature shall pass a law impairing the obligation of a contract unless it takes jurisdiction of such cases.

The case of the *Commercial Bank v. Buckingham's Executors* [Footnote 4] does not conflict with this view, because that was a case in which the prior and the subsequent statutes were both admitted to be valid under any construction of them, and therefore no construction placed by the state court on either of them could draw in question its validity as being repugnant to the Constitution of the United States or any act of Congress.

But there is a misconception as to what was construed in this case by the state court. It is very obvious that the statute of 1860 was not construed. No doubt is entertained by this Court, none could have been entertained by the state

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court that it was intended by the framers of that act to authorize the defendants to build the railroad bridge which they were building, and which plaintiffs sought to enjoin. The act which was really the subject of construction was the act of 1790, under which plaintiffs claim. For if that act and the proceedings under it amounted to a contract, and that contract prohibited the kind of structure which the defendants were about to erect under the act of 1860, then the latter act must be void as impairing that contract. If on the other hand the first act and the agreement

under it was not a contract, or if being a contract it did not prohibit the erection of such a structure as that authorized by the act of 1860, the latter act was valid, because it did not impair the obligation of a contract. It was then the act of 1790 which required construction, and not that of 1860, in order to determine whether the latter was valid or invalid.

In the case of the *Jefferson Branch Bank v. Skelly,* [Footnote 5] this Court said:

"Of what use would the appellate power of this Court be to the litigant who feels himself aggrieved by some particular state legislation if this Court could not decide independently of all adjudication by the supreme court of a state whether or not the instrument in controversy was expressive of a contract and within the protection of the Constitution of the United States and that its obligation should be enforced notwithstanding a contrary conclusion by the supreme court of a state? It never was intended, and cannot be sustained by any course of reasoning, that this Court should or could, with fidelity to the Constitution of the United States, follow the supreme court of a state in such matters when it entertains a different opinion."

We are therefore of opinion that the record before us presents a case for the revisory power of this Court over the state courts under the 25th section of the act of Congress of 1789.

Approaching the merits of the case, the first question that presents itself for solution is whether the act of 1790, and the agreement made under it by the commissioners with the

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bridge builders, constitute a contract that no bridge shall be built within the designated limits but the two which that statute authorized. This we think to be so very clear as not to need argument or illustration. The parties who built the bridges had the positive enactment of the legislature, in the very statute which authorized the contract with them, that no other bridge should be built. They had a grant of tolls on their bridges for ninety-nine years, and the prohibition against the erection of other bridges was the necessary and only means of securing to them the

monopoly of those tolls. Without this they would not have invested their money in building the bridges, which were then much needed and which could not have been built without some such security for a permanent and sufficient return for the capital so expended. On the faith of this enactment they invested the money necessary to erect the bridges. These acts and promises, on the one side and the other, are wanting in no element necessary to constitute a contract. Such legislative provisions of the states have so often been held to be contracts that a reference to authorities is superfluous.

We are next led, in the natural order of the investigation, to inquire if the contract of the state forbid the erection of such a structure as the defendants were authorized to erect and which they proposed to erect under the act of 1860.

This question, upon the decision of which the whole case must turn, we approach with some degree of hesitation. It is now over seventy years since the contract was made. A period of time equal to three generations of the human race has elapsed. During that time, the progress of the world in arts and sciences has been rapid. In no department of human enterprise have more radical changes been made than in that which relates to the means of transportation of persons and property from one point to another, including the means of crossing watercourses, large and small. The application of steam to these purposes, on water and on land, has produced a total revolution in the modes in which men and property are carried from one place to another. Perhaps the most remarkable invention of modern times, in the influence

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which it has had, and is yet to have, on the affairs of the world, as well as in its total change of all the elements on which land transportation formerly depended, is the railroad system. It is not strange, then, that when we are called to construe a statute relating to this class of subjects, passed before a steam engine or a railroad was thought of, in its application to this modern system, we should be met by difficulties of the gravest character.

On the one hand, we are told that the structure about to be erected by defendants is a bridge -- simply that and nothing more or less; that such is the name by which it is now called, and that it is therefore within the literal terms of the act, and that it performs the functions of a bridge, and is therefore, within the spirit of the act. On the other hand it is denied that the structure is a bridge, even in the modern sense of that word, since it is urged that the word is never applied to such a structure without the use of the word "railroad," prefixed or implied, and that it performs none of the functions of a real bridge as that term was understood in the year 1790.

In all the departments of knowledge, it has been a constant source of perplexity to those who have attempted to reduce discoveries and inventions to scientific rules and classifications that old terms with well defined meanings have been applied so often to things totally new, either in their essence or in their combination. It is to avoid the danger of being misled by the use of a term well understood before, but which is a very poor representative of the new idea desired to be conveyed that our modern science is enriched with so many terms compounded of Greek and Latin words or parts of words. It does not follow that when a newly invented or discovered thing is called by some familiar word, which comes nearest to expressing the new idea, that the thing so styled is really the thing formerly meant by the familiar word. Matters most intimately connected with the immediate subject of our discussion may well illustrate this. The track on which the steam cars now transport the traveler or his property is called a road, sometimes, perhaps generally,

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a railroad. The term "road" is applied to it, no doubt, because in some sense it is used for the same purpose that roads had been used. But until the thing was made and seen, no imagination, even the most fertile, could have pictured it from any previous use of the word road. So we call the enclosure in which passengers travel on a railroad a "coach," but it is more like a house than a coach, and is less like a coach than are several other vehicles which are rarely if ever called coaches. It does not, therefore, follow, that when a word was used in a statute or a

contract seventy years since, that it must be held to include everything to which the same word is applied at the present day. For instance, if a Philadelphia manufacturer had agreed with a company seventy years ago to furnish all the coaches which might be necessary to transport passengers between that city and Baltimore for a hundred years, would he now be required by his contract to build railroad coaches? Or if a company had then contracted with the government to build and keep up good and sufficient roads to accommodate mails and passengers between those points for the same time, would that company be bound to build railroads under that contract? Yet the structure which the defendants propose to build over the Hackensack is not more like a bridge of the olden time than a railroad is like one of its roads or a railroad coach is like one of its coaches. It is not, then, a necessary inference that because the word "bridge" may now be applied by common usage to the structure of the defendants that it was therefore the thing intended by the act of 1790.

Let us see what kind of structure the defendants proposed to build.

It is an extension of the iron rails, which compose the material part of their road, over the Hackensack River, together with such substructure as is necessary to keep them in place and enable them to support the cars which cross on them. There is no planked bottom, no roadway or path, nothing on which man, or beast or vehicle can pass, save as it is carried over in the cars of the defendants. Was this

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kind of thing in the minds of the framers of the act of 1790 or of the commissioners who let the contract? Or would the term "bridge," as then used by them or by common usage, have included such a thing? We have no hesitation in answering both these questions in the negative. We are therefore quite clear that the adoption of that word to express the modern invention does not bring it within the terms of the act if it is not within the intent of it. We will inquire, therefore, a moment if it is within the spirit of the act and the accompanying contract with the commissioners.

There is no doubt that it was the intention of those who framed those two documents to confer on the persons now represented by the plaintiffs some exclusive privilege for ninety-nine years. If we can arrive at a clear and precise idea what that privilege is, we shall perhaps be enabled to decide whether the erection proposed by defendants will infringe it.

In the first place, it is not an exclusive right to transport passengers and property over the Hackensack and Passaic Rivers within the prescribed limits, for there is no prohibition of ferries, nor is it pretended that they would violate the contract. In the next place, it is not a monopoly of the right to build bridges within the prescribed limits, because they were only authorized to build one bridge over each river, and the statute enacted expressly that it was unlawful to build any other bridge, by any person or persons, without excepting them. Besides, the building of a bridge was not the privilege, but the duty, of those who had the contract -- a duty which constituted the consideration for the privilege which was granted to them.

The right to collect toll of persons and things passing over their bridges is the privilege or franchise which they have, and that right is rendered valuable by the prohibition to build other bridges within the limits designated. This prohibition of other bridges is so far a part of the contract, and only so far, as it is necessary to enable plaintiffs to reap the benefit of their right to collect toll for the use of their bridges. The

extent to which tolls may be levied by the bridge owners and the classes of persons and things on which they may be levied are enumerated distinctly and fixed by the contract. They may be summed up shortly as persons on foot, animals, and vehicles passing over the bridges. If the proposed structure is essentially calculated to interfere with or impair the right of plaintiffs to collect these tolls, we are unable to see it. No animal can pass over it on foot. No vehicle which can pass over the bridge of plaintiffs can by any possibility pass over that of defendants. No class of persons or things of which plaintiffs can exact toll can evade that toll by using the structure of defendants.

It may be said that passengers and property now transported by that railroad would be compelled to use the bridge of plaintiffs if there were no such road and no such viaduct. This might be true to a very limited extent if plaintiffs could annihilate all railroads running in the direction of the road which passes over their bridge. But this they cannot do. And as to the road of the defendants, if they are not permitted to pass the Hackensack within the limits claimed by plaintiffs, they can with more expense cross it somewhere else. That being done, it is not believed that the number of passengers or the amount of freight carried in wagons which would cross on the bridges of plaintiffs in consequence of this change in the location of the railroad viaduct is appreciable.

As the plaintiffs have no right to build any more bridges, and as the viaduct of defendants does not impair that which is really their exclusive franchise, we do not perceive how the law which authorizes such a structure can impair the obligation of the contract made in 1790 by the state with the bridge owners.

These views are not without the support of adjudged cases, which, if not in all respects precisely such as the one before us, are sufficiently so to show that they were considered, and entered largely into the reasoning upon which the judgments of the courts were founded.

In the *Mohawk Bridge Company v. Utica & Schenectady*

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Railroad Company, [Footnote 6] the plaintiffs claimed an exclusive franchise, similar to that held by plaintiffs in this case, which the defendants, as they alleged, were about to violate by erecting a structure for the use of the railroad, over the same stream within the prescribed limits. The chancellor refused the injunction upon the ground that the grant to plaintiffs was not exclusive, which was at that time a very doubtful question in New York, and also upon the ground that the exclusive right to the toll bridge would not be infringed by the erection of a railroad bridge within the limits over which the exclusive right extended.

In the case of *Thompson v. New York & Harlem Railroad Company,* [Footnote 7] where the contest was again between a bridge owner, claiming exclusive rights, and a railroad company seeking to cross the stream within the bounds of plaintiff's claim, the assistant vice-chancellor refers to the case above mentioned, and says that he refuses the relief on both the grounds therein mentioned.

The case of *McRee v. Wilmington & Raleigh Railroad Company,* [Footnote 8] was an action at law by the owner of a bridge who set up an exclusive franchise against a railroad company whose track crossed the stream within the limits of his franchise, for a penalty allowed by statute for any violation of his right of toll. It is true that the court rests its decision mainly on the ground that by the bill of rights of the State of North Carolina, no such monopoly as that claimed by plaintiff can exist. But they argue very forcibly that a railroad bridge is no violation of a franchise for an ordinary toll bridge, and intimate strongly that they would so hold if the case required the decision of the point.

The case of *Enfield Toll Bridge Company v. Hartford & New Haven Railroad Company* [Footnote 9] has been cited by counsel and much relied on as deciding the principle in question the other way. And perhaps a fair consideration of the case, and the line of argument of the learned judge who delivered the opinion, justifies counsel in claiming that

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it is in conflict with the views we have here expressed. In that case, however, it was found by special verdict, as one of the facts on which the action of the court was asked, that the defendants' road and bridge would to a certain extent diminish the tolls of plaintiff, a fact which is not found in the case before us and which, as we have already shown, we cannot infer from its record. What influence this fact may have had in the minds of that court we cannot say. We are, however, satisfied that sound principle and the weight of authority are to be found on the side of the judgment rendered by the New Jersey Court of Errors and Appeals in this case and accordingly that

Judgment is affirmed.

[Footnote 1]

As respected "compensation" for rights &c.;, used, a matter relied on in the dissenting opinion of one member of the Court, GRIER, J., in this case, the statute provided that in case the Hoboken Company could not agree with the corporation owning the right &c.;, application should be made by the company to the Chief Justice of New Jersey for the appointment of commissioners in the matter. Notice of the intended application for them of not less than ten days was to be given to the parties interested. A particular time was to be assigned for the appointment, and the appointment made only after the Chief Justice had satisfactory evidence of the service or publication of the notice. The statute then proceeded to say that the Chief Justice should appoint three disinterested freeholders commissioners, and they, having first taken oath impartially to examine the matter and to make a true report, should meet at a time and place to be appointed by said judge and proceed to examine the matter and the route of the railroad, so far as the same should be located, and report in writing what rights &c.;, were necessary to be taken and appropriated for the purposes of the act, and should make a just appraisement of the value of the said rights &c.;, and an assessment of such damages as should be paid by the company for them, which report, it was enacted -- or in case of appeal, the verdict of the jury and judgment of the supreme court thereon -- shall (the damages being first paid to, or if they refuse the same, or are unknown,

"or labor under any disability, then deposited for the owner or owners in the supreme court) at all times be considered as plenary evidence of the right of the said company to take, have, hold, use, occupy, possess, exercise, appropriate, and enjoy so much and such parts of said rights &c.;, so necessary to be taken, appropriated &c.;"

It was further enacted in substance that in case either the company or the claimants of the said rights &c.; should be dissatisfied with the report, either might appeal to the supreme court of the state by petition, the filing of which should give

the court power to direct an issue, and to order a jury and a view of the road, and that the jury should assess the value of the rights. There was an enactment giving a right to collect by execution the amount awarded, with a proviso that the appeal from the commissioners to the supreme court

"shall not prevent the company from taking and appropriating, exercising, using, and enjoying the said rights, privileges, franchises, and property, or so much thereof as said commissioners shall assess and appraise, upon the filing of the aforesaid report, and paying the assessment and appraisement aforesaid, or making tender thereof, and depositing the same in the said supreme court for the owner or owners thereof."

[Footnote 2]

35 U. S. 10 Pet. 368.

[Footnote 3]

41 U. S. 16 Pet. 281.

[Footnote 4]

46 U. S. 5 How. 317.

[Footnote 5]

66 U. S. 1 Black 436.

[Footnote 6]

6 Paige 564.

[Footnote 7]

3 Sanford 625.

[Footnote 8]

2 Jones Law 186.

[Footnote 9]

17 Conn. 56.

MR. JUSTICE CATRON, after stating the case:

1st. I think this Court has jurisdiction. In the court below the question was whether the monopoly granted to the turnpike company bound the state not to allow another bridge to be built within certain limits. Such is the claim of the bill. The state court held that the contract claimed to have secured the monopoly was not violated. The contract was construed, and the correctness of that construction we are called on to examine.

2d. The state contracted with the turnpike company not to grant to others the privilege of erecting another bridge within the limits covered by the monopoly, and the contract was violated if the railroad bridge would be a structure within the meaning of the charter of the turnpike company. The main question presented is whether the Legislature of New Jersey has the power to convey by contract, binding their successors (for ninety-nine years, or forever) not to exercise the sovereign right of improving the state by additional roads and bridges. If so, then the left bank of the Delaware and the right bank of the Hudson could be granted by an irrevocable contract whose obligation was beyond the reach of future legislation.

3d. That the bridge being erected by the railroad company is within the meaning of the grant to the turnpike

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company, and violates it, is to my mind free from doubt. The object was to confer a monopoly of crossing the river by the turnpike bridge only, and that this railroad bridge can and probably will engross the carrying of passengers and freight, to the injury and probable ruin of the value of the turnpike bridge, is evident. The legislature, in the railroad charter, has made careful provision that just

compensation shall be made for private property taken for the purposes of the road, and as the bridge and abutments are part of the road, it is assumed by the railroad company that the contract set up by the bill can be compensated in money. If the turnpike bridge had been taken by the railroad company, then it is conceded that a right to compensate existed. But the difficulty of dealing with a sovereign right as private property, which is claimed by the old corporation, presents the difficulty lying at the foundation of this controversy. Here are the proprietors of the land on each side of the river, whose right to just compensation is not open to controversy if their lands are taken; their claim is for private property, and the land is taken by the sovereign right claimed by the turnpike company. It can only come in to be compensated for public property, which the eminent domain clearly is. For the private property taken on either bank of the river, underlying the eminent domain, the new company has already paid. But for this public sovereign right no second compensation is provided by any constitution; it is only in cases of "private property taken for public use" that just compensation is secured to the owner.

If, however, I am in error in this assumption, then there is a provision, plain and simple, in the railroad charter, securing compensation, which obviates all objection to the erection of the railroad bridge, and on this ground I think it very clear that the bill was properly dismissed.

MR. JUSTICE GRIER, dissenting:

I do not concur in the opinion just read by my brother MILLER, not that I question the correctness of the judgment of the Court of Appeals of New Jersey; but this Court, by

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affirming their judgment as to the true construction of the act of 1790, have demonstrated that they have no jurisdiction of the case.

The act of 1860, it is clear, is not repugnant to the Constitution or laws of the United States. The proposition that one legislature can restrain the power of future

legislatures from erecting a bridge for ninety (and if ninety, a thousand) years, for a distance of ten miles (and if ten, a hundred) will hardly be asserted by anyone.

That a state may, in its exercise of eminent domain, condemn a franchise as it might lands cannot now be disputed.

Now the act of 1860 protects carefully all the rights of the defendants under the act of 1790, and requires compensation to be made them if they are injured. [Footnote 2/1]

The complaint is not that the legislature have passed any act impairing the obligation of the contract, but that the courts of New Jersey have misconstrued the act of 1790, which gives them their franchise. Now it cannot be pretended that the validity of this act is drawn in question on the ground of repugnancy to the Constitution. Their own courts have decided that a railroad viaduct is not a "bridge," and the aim of the plaintiffs in error, by this writ of error, is to have this Court to give a different construction to their charter. If, besides the plain words and intention of the act of Congress conferring jurisdiction on this Court under the 25th section, a decision of this point were necessary to demonstrate the unwarranted assumption of jurisdiction in this case, it will be found in the unanimous opinion of this Court in *Commercial Bank of Cincinnati v. Buckingham.* [Footnote 2/2] That case was decided after very full argument by able counsel. It was the unanimous judgment of this Court. It is precisely in point, and it may be said in this case as in that,

"If this Court were to assume jurisdiction of this case, it is evident that the question submitted for our decision would be not whether the statute of Ohio is repugnant to the Constitution of the United States, but whether the supreme

court of that state has erred in its construction of it. It is the peculiar province and privilege of the state courts to construe their own statutes, and it is no part of the functions of this Court to review their decisions or assume jurisdiction over them on the pretense that their judgments have impaired the obligation of contracts."

I therefore protest against this decision of the Court as usurpation of jurisdiction not given to us by the Constitution or the acts of Congress. It disregards the plain words of the statute and the unanimous ruling of this Court. If it be received as a precedent, it will draw to the examination of this Court the construction of every act of incorporation or grant of a franchise by a state legislature. The clause of the Constitution which forbids a state to pass any act impairing the obligation of contracts will have to be construed as a general power given to the courts of the United States to restrain the courts of a state from making mistakes in the construction of their own statutes.

The opinion of may brethren of the majority, in order to sustain this assumption of jurisdiction, takes it for granted that as a franchise is a contract, a state, in the exercise of its right of eminent domain, cannot condemn a franchise by paying its value as well as the land of an individual. This is directly contrary to frequent decisions of this Court. Yet such is the act of 1860. As I have said, it carefully saves the rights of plaintiffs, and directs compensation to be made in case of any injury to the same. I cannot give my assent to a decision founded on such an assumption or which may hereafter be quoted to establish such a doctrine.

[Footnote 2/1]

See ante, p. <68 U.S. 119|>119 note -- REP.

[Footnote 2/2]

46 U. S. 5 How. 342.