Ritchie Vs. FranklIn County

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Decided On : 1874

Appeal No. : 89 U.S. 67

Appellant : Ritchie

Respondent : FranklIn County

Judgement :

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U.S. Supreme Court Ritchie v. Franklin County, 89 U.S. 22 Wall. 67 67 (1874)

Ritchie v. Franklin County

89 U.S. (22 Wall.) 67

APPEAL FROM THE CIRCUIT COURT FOR

THE EASTERN DISTRICT OF MISSOURI

SYLLABUS

l. Where a constitution of a state forbids special legislation, an act, demanded by considerations of high justice and by the fact that carelessness in the language of previous statutes has worked the necessity for the act, may be presumed to have

been meant as a curative act, and as

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applicable to a particular case as well as to all others similar, and this is true though the new act be couched in general words only.

2. In a state where, though a statute may require that no bonds be issued by counties to make roads unless the voters have approved the expenditure, there is nothing in the state constitution which forbids the legislature from conferring on counties the authority to borrow money for the purpose named without such approval, the legislature can confer on counties the power to borrow money to pay debts already contracted for this purpose without such consent.

3. The act of the Legislature of Missouri of March 21, 1868, to authorize county courts to issue bonds for the purpose of paying for the building of bridges and macadamized roads theretofore contracted to be built is valid under the constitution of the state whether the act be considered as an original act or as one merely curative.

Appeal from the Circuit Court for the Eastern District of Missouri, in which court one Ritchie filed a bill against Franklin County, in the said state, and various persons, holders of its bonds, such as are hereinafter described, to enjoin the county from collecting a special tax levied to pay the interest on the said bonds and to compel the holders of them to surrender them for cancellation, he, Ritchie, the complainant, alleging that by the Constitution of Missouri the same were unconstitutional and void.

The case was thus: the Constitution of Missouri ordains,

" *Article* 1. No law *retrospective in its operation* can be passed."

" *Article* 4. The General Assembly shall not pass special laws, . . . establishing, locating, altering the course *or affecting the construction of roads or the repairing or building of bridges* or legalizing, except as against the state, the unauthorized or invalid acts of any officer."

"The General Assembly shall pass no special law for any case for which provision can be made by a general law, but shall pass general laws providing so far as it may deem necessary for the cases enumerated in this section and for all other cases where a general law can be made applicable."

"Inferior tribunals, to be known as county courts, shall be established in every county for the transaction of all county business."

These provisions of the state constitution being in force as fundamental law, the general assembly, February 16,

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1865, passed an act empowering and authorizing the County Courts, for the purpose of opening and keeping in repair roads, and in order to raise the necessary funds to pay the expenses of any or all of said improvements, to borrow money on the credit of the county and to issue bonds of the same, "but," said the act,

"the said bonds shall not bear interest at a higher rate than six percent *unless by agreement between the parties,* nor shall said bonds, or any of them, be sold or disposed of at less than par value -- that is to say the amount called for on their face."

The act proceeded:

"SECTION 3. The said bonds may be made transferable in such a manner as the county court by its order may direct, and the courts shall be authorized to levy a sufficient amount of revenue annually to pay the accruing interest on said bonds, and for that purpose may, if it should be necessary, levy a special tax."

"SECTION 4. Before any expenditure shall be made by the county courts for the purposes contemplated by this act, the county courts may, for the purpose of information, submit the amount of the proposed expenditure to the voters of the respective counties, and if a majority of the voters shall approve of such proposed appropriation, then the court may proceed and improve the roads as herein

contemplated. If a majority shall vote against such an appropriation, then nothing further shall be done therein within twelve months,"

&c.; [Footnote 1]

Another act having provisions in words of the same effect was passed in 1866. In consequence of the act of 1865 declaring that the submission to the people of the amount of the proposed expenditure was "for the purpose of information," the County Court of Franklin construed the provision as leaving it to their discretion whether they would submit any such question to the people. And being now engaged in a general scheme for macadamizing the roads of the county and bridging the streams in it, the county court issued a quantity of bonds without submitting the matter to

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the people in any way. The validity of the bonds being denied, the question whether they were valid or not came before the Supreme Court of Missouri in the case of *Leavenworth & Des Moines Railroad Company v. County Court of Platte,* [Footnote 2] where it was decided that the bonds were void.

Thereupon, the road having been now built, the assembly, on the 21st of March, 1868, passed a new act to authorize county courts to issue bonds for the purpose of paying for the building of bridges and macadamized roads heretofore contracted for and built.

This act thus enacted:

"SECTION 1. In all cases where county courts have heretofore laid out, surveyed, and commenced the building, and have built macadamized or other roads, or have . . . built bridges, or other necessary work in their respective counties, the county courts are hereby authorized to borrow money on the credit of the county and to issue bonds of the county with coupons attached &c.; but said bonds shall not . . . bear interest at a higher rate than ten percent for the purpose of paying for the work done and contracted for in their respective counties."

"SECTION 2. Said bonds may be made transferable in such manner as the county court may direct, and the courts shall be authorized to levy a sufficient amount of revenue annually to pay the accruing interest on bonds authorized by this act, and for that purpose may, if it be necessary, levy a special tax."

"SECTION 3. All acts or parts of acts inconsistent with this act are hereby repealed."

And on the 23d of March of the same year, it passed a new road law, in the main like the old one but with some modifications and making it plainly peremptory on the county courts to take a vote of the people before issuing bonds.

After the passage of the Act of March 21, 1868, the County Court of Franklin County entered an order on its records to issue bonds to the contractors to pay for the work

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done on the road in question, and thereupon the former bonds were surrendered and cancelled, and a like number issued and purchased by the defendants in due course of business. These new bonds were made payable to the bearer, and purported on their face to have been issued by the County Court of Franklin County in pursuance of the act last above mentioned. Roads similar to the one for which these bonds were issued were building by the contractors who were building it, at the same time for the same county, and the defendants had no means of knowing whether the bonds they held were issued to pay for the particular road in controversy. They bought them in good faith for value without notice of any infirmity of title. The court below, holding the Act of 21st of March constitutional, dismissed the bill.

The question of the constitutionality of the act, it may be here added, had been before the Supreme Court of Missouri in a case between other parties, and that court held that the act conferred "original power" to issue the bonds without reference to previous or contemporary laws, and also that it was "curative" and legalized the unauthorized action of the county court and validated the new bonds

issued.

The case came here on exceptions to the answer, and the question to be passed on was whether there was authority to issue the bonds in controversy. [Footnote 3]

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MR. JUSTICE DAVIS delivered the opinion of the Court.

The acts of the General Assembly of Missouri of 1865 and 1866 gave authority to the county courts to borrow money and issue bonds for road purposes where "the amount of proposed expenditure had been submitted to a vote of the people." The County Court of Franklin County construed the provision on the subject of this submission as discretionary, and not mandatory. Although this construction was wrong, the language used by the legislature gave color to it.

To declare that a court "may, for the purpose of information," submit its proposed action to the people, is not the best nor the usual way of instructing the court not to do the thing proposed unless the taxpayers approved it. Such language is well calculated to mislead anyone unaccustomed to the construction of statutes, and it cannot be a matter of surprise that this county court treated the provision requiring a vote for information as discretionary. In doing this, it doubtless acted as other county courts in the state had done under like circumstances. That this election clause should cause litigation was natural enough, and we therefore find it presented for adjudication in the case of *Leavenworth & Des Moines Railroad Company v. County Court of Platte County.*

In that case, it was held that the power conferred upon the county courts could not be exercised unless the proposed expenditure was approved by the voters. This decision of necessity alarmed contractors who had in good faith constructed

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roads and equally so the holders of bonds issued for the purpose of paying the contractors for their work.

To relieve these persons from the predicament in which they were placed, the legislature passed a curative act. This act, on account of special legislation's being forbidden by the constitution of the state, had to be general in its language and without reference to any particular county. It was eminently just that it should be passed. The value of good roads for the common use of everyone can hardly be over-estimated. As a general thing, in this country, they are within the control and supervision of the township, county, or other local authorities. Ordinarily they are improved and kept in repair by means of local taxation, but this mode will not suffice when the wants of the community require that they should be macadamized. Especially is this true of a new state like Missouri. It seems that the County Court of Franklin engaged in a general scheme for macadamizing the roads of the county and bridging the streams in it. It is fair to presume that this enterprise was undertaken in obedience to a public sentiment on the subject, although the sense of the voters was not actually taken in conformity with the directions of the statute. This is the more probable on account of the well known mania of the people to run in debt for public improvements. The taxpayers saw the large expenditures that were being made, and yet they took no steps to arrest them. Not until the works were completed and the securities had passed into the hands of *bona fide* purchasers did they move in the matter. If they had been incited to action as soon as the contract was made, they would have been saved a heavy debt, and innocent persons would not have suffered. In this state of the case, the legislature interposed and passed an act to authorize county courts to issue bonds for the purpose of paying for the building of bridges and macadamized roads which had been contracted for and built. This act refers to past transactions, and two days after its passage, a new road law was passed couched in such language that no one could mistake the character of the powers conferred.

Thus it will be seen the legislature intended to cure past errors, but left no room for future ones. In this way it was enabled to relieve the hardship caused by the construction placed on the imperfect language of a former legislature, and at the same time to put an end to expenditures like those made by Franklin County unless a majority of the voters should approve of them. In many cases, retroactive laws, although intended to effect a good purpose, have features of injustice about them. This is not that case. The bonds here were issued under a supposed authority, and no one interposed an objection. The taxpayers rested until the mischief was done and then tried to get relief. It is certainly not unjust to them that the legislature should say, "you must pay for an expenditure which you saw incurred and could have prevented, but did not." If the county court had acted wholly outside of its duties, the aspect of the case might have been different. But the most that can be said is that the court mistook the nature of the powers conferred upon it, and that this mistake would never have occurred if the legislature had used language appropriate to the purpose.

There is no provision in the Constitution of Missouri restraining the general assembly from conferring on counties the authority to borrow money to improve their roads without asking the consent of the voters. If so, why cannot the legislature confer on counties the power to borrow money to pay for debts already contracted for this purpose?

We agree with the Supreme Court of Missouri that the act in question, being an authority to do a particular thing, may be construed as an original power. But whether it be treated as an original power or as curative and confirmatory legislation, it is equally valid, and this is the view taken of the subject by that court. [Footnote 4]

If the act was valid, the court had the power to take up the bonds and issue others in lieu thereof.

These bonds purport on their face to have been issued

under the order of the County Court of Franklin County, made in pursuance of the authority conferred on the court by the Act of Assembly in question, and as the defendants claim to be innocent holders, and this is true for the purpose of the exception, the complainant has no standing in a court of equity.

Decree affirmed.

[Footnote 1]

Laws of Missouri, A.D. 1865, p. 171.

[Footnote 2]

42 Mo. 171.

[Footnote 3]

A question was also raised at the bar as to whether the judgment of the Supreme Court of Missouri in the case referred to in the text was a bar to this action, but the view taken by this Court of the authority to issue the bonds rendered it unnecessary to consider this other question.

[Footnote 4]

Steines v. Franklin Co., 48 Mo, 175.