

**United States Vs. Fox**

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**Court :** US Supreme Court

**Decided On :** 1876

**Appeal No. :** 94 U.S. 315

**Appellant :** United States

**Respondent :** Fox

**Judgement :**

United States v. Fox - 94 U.S. 315 (1876)

U.S. Supreme Court United States v. Fox, 94 U.S. 315 (1876)

**United States v. Fox**

**94 U.S. 315**

*ERROR TO THE COURT OF APPEALS*

*OF THE STATE OF NEW YORK*

## **SYLLABUS**

1. By a statute of New York, a devise of lands in that state can only be made to natural persona and to such corporations as are created under the laws of the state and are authorized to take by devise. A devise, therefore, of lands in that

state to the government of the United States is void.

2. The several states of the Union possess the power to regulate the tenure of real property within their respective limits, the modes of its acquisition and transfer, the rules of its descent, and the extent to which a testamentary disposition of it may be exercised by its owners.

In February, 1870, Charles Fox, of the City of New York, died possessed of certain personal and real property situated in the State of New York. By his last will and testament, he devised and bequeathed the whole property, after the payment of his debts, to the government of the United States for the purpose of assisting to discharge the debt created by the war of the Rebellion. By the government of the United States, the body politic, the nation known as the United States was meant. Upon the petition of the District Attorney of the United States, the will was presented for probate before the Surrogate of the City and County of New York. The infant heirs of the deceased contested the will. The surrogate decreed that the will was inoperative and void as a devise of real estate; that the United States could not lawfully take and hold the real estate as devisee under the will, in trust or otherwise, and that it descended to the heirs-at-law. He at the same time decided that the will was valid and operative as to the personal estate of the testator, and that the United States was the sole legatee, and accordingly admitted the testament to probate as a will of personal estate only. On appeal from the surrogate, this decree was affirmed by the supreme court, and afterwards by the Court of Appeals of the state. The case was then brought here.

Page 94 U. S. 320

MR. JUSTICE FIELD, after stating the case, delivered the opinion of the Court.

The sole question for our consideration in this case is the validity of a devise to the United States of real estate situated in the State of New York. The question is to be determined by the laws of that state. It is not pretended that the United States may not acquire and hold real property in the state whenever such property is needed for the use of the government in the execution of any of its powers, as for

instance when needed for arsenals, fortifications, lighthouses, customhouses, courthouses, barracks, hospitals, or for any other of the many public purposes for which such property is used. And when the property cannot be acquired by voluntary arrangement with its owners, it may be taken against their will by the United States in the exercise of their power of eminent domain upon making just compensation -- a power which can be exercised in their own courts, and would always be resorted to if, through caprice of individuals or the hostility of the state legislature or other cause, harassing conditions were attached to the acquisition of the required property in any other way. *Kohl v. United States*, [91 U. S. 367](#) .

The power of the state to regulate the tenure of real property within her limits, and the modes of its acquisition and transfer, and the rules of its descent, and the extent to which a testamentary disposition of it may be exercised by its owners is undoubted. It is an established principle of law, everywhere recognized, arising from the necessity of the case, that the disposition of immovable property, whether by deed, descent, or any other mode, is exclusively subject to the government within whose jurisdiction the property is situated. [McCormick v. Sullivant](#), 10 Wheat. 202. The power of the state in this respect follows from her sovereignty within her limits, as to all matters over which jurisdiction has not been expressly or by necessary implication transferred to the federal government. The title and modes of disposition of real property within the state, whether *inter vivos* or testamentary, are not matters placed

Page 94 U. S. 321

under the control of federal authority. Such control would be foreign to the purposes for which the federal government was created, and would seriously embarrass the landed interests of the state.

Statutes of wills, as is justly observed by the Court of Appeals, are enabling acts, and prior to the statute of 32 Hen. VIII there was no general power at common law to devise lands. The power was opposed to the feudal policy of holding lands inalienable without the consent of the lord. The English Statute of Wills became a part of the law of New York upon the adoption of her Constitution in 1777, and,

with some modifications in its language, remains so at this day. Every person must therefore devise his lands in that state within the limitations of the statute or he cannot devise them at all. His power is bounded by its conditions. That statute provides that a devise of lands may be made

"to any person capable by law of holding real estate, but no devise to a corporation shall be valid unless such corporation be expressly authorized by its charter or by statute to take by devise."

The term "person" as here used applies to natural persons and also to artificial persons -- bodies politic, deriving their existence and powers from legislation -- but cannot be so extended as to include within its meaning the Federal government. It would require an express definition to that effect to give it a sense thus extended. And the term "corporation" in the statute applies only to such corporations as are created under the laws of the state. It was so held by the Court of Appeals in *White v. Howard*, 46 N.Y. 164, 165, and its construction of the statute is conclusive upon us. A devise to the United States of real property situated in that state is therefore void.

*Decree affirmed.*