

Wade Vs. Walnut

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Court : US Supreme Court

Decided On : 1881

Appeal No. : 105 U.S. 1

Appellant : Wade

Respondent : Walnut

Judgement :

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Wade v. Walnut

105 U.S. 1

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

SYLLABUS

The court adheres to the decision of the Supreme Court of Illinois declaring that the provision in the existing constitution of that state, entitled "Municipal subscriptions to railroads or private corporations," took effect July 2, 1870.

This was an action brought by Wade against the Town of Walnut upon coupons cut from bonds purporting to be issued by the defendant, under the style of Township of Walnut, in the County of Bureau and Illinois. The declaration avers that each of the bonds contains, among other recitals, the following:

"This bond is issued under and by virtue of the charter of said Illinois Grand Trunk Railway Company, and amendments thereto and other laws of the Illinois, and in accordance with the vote of the electors of said township at the special election held August 6, 1870, in accordance with said charter and amendments and laws."

The defendant demurred to the declaration, and judgment was rendered in its favor. It is unnecessary to state the remaining facts, as the only question upon which this Court passed was as to whether, at the foregoing date, there was in

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force an article of the Constitution of Illinois which is as follows:

"No county, city, town, township, or other municipality shall ever become subscriber to the capital stock of any railroad or private corporation, or make donation to, or loan its credit in aid of such corporation, *provided, however,* that the adoption of this article shall not be construed as affecting the right of any such municipality to make such subscriptions where the same have been authorized, under existing laws, by a vote of the people of such municipalities prior to such adoption."

Wade sued out this writ of error.

MR. CHIEF JUSTICE WAITE delivered the opinion of the Court.

The only question we have to decide in this case is whether the section of the Illinois Constitution adopted in 1870 relating to "municipal subscriptions to railroads or private corporations" was in force on the 6th of August, 1870. This question came before the supreme court of the state at the January Term, 1872, only eighteen months after the constitution was adopted, in *Schall v. Bowman*, 62 Ill. 321, and it was then decided that this section took effect on the 2d of July, the

day the people voted for its adoption. The opinion in the case was written by Mr. Justice Breese, two justices dissenting. At the September Term in the same year, the same questions came again before the court in *Richards v. Donagho*, 66 Ill. 73, and the opinion was then delivered by Mr. Justice Thornton in the following words:

"The only question presented by this record was, after mature deliberation, settled by the opinion in *Schall v. Bowman*. . . . Notwithstanding the able and plausible argument made in this case, the majority of the court adhere to the opinion in the case referred to above."

Afterwards at the January Term, 1878, in *Wright v. Bishop*, 88 Ill. 302, the court said:

"Appellants make a very able and

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interesting argument against the rulings in those cases, but we are not convinced they should be overruled."

This Court has never until now been called on to decide the question, but in numerous cases it has assumed that the section took effect on the day fixed by the supreme court of the state. *Town of Concord v. Portsmouth Savings Bank*, [92 U. S. 625](#) ; *County of Moultrie v. Rockingham Ten-cent Savings Bank*, [92 U. S. 631](#) ; *County of Randolph v. Post*, [93 U. S. 502](#) ; *Fairfield v. County of Gallatin*, [100 U. S. 47](#) ; *Walnut v. Wade*, [103 U. S. 683](#) ; *Louisville v. Savings Bank*, [104 U. S. 469](#) . Under these circumstances, we are not inclined to consider the question an open one here while the supreme court of the state adheres to its present rulings.

Judgment affirmed.