

**Coosaw Mining Co. Vs. South Carolina**

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**Court :** US Supreme Court

**Decided On :** Apr-04-1892

**Appeal No. :** 144 U.S. 550

**Appellant :** Coosaw Mining Co.

**Respondent :** South Carolina

**Judgement :**

Coosaw Mining Co. v. South Carolina - 144 U.S. 550 (1892)

U.S. Supreme Court Coosaw Mining Co. v. South Carolina, 144 U.S. 550 (1892)

**Coosaw Mining Company v. South Carolina**

**No. 1448**

**Argued March 14-15, 1892**

**Decided April 4, 1892**

**144 U.S. 550**

*APPEAL FROM THE CIRCUIT COURT OF THE UNITED*

*STATES FOR THE DISTRICT OF SOUTH CAROLINA*

## SYLLABUS

The statute of the South Carolina, passed March 2H, 1876, acts of 1875-6, p. 198, is capable of being construed either, when taken by itself, as conferring upon the Coosaw Mining Company the exclusive right of

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digging, mining and removing phosphate rocks for an unlimited period, so long as it should comply with the terms of the statute, or, when taken in connection with the Act of March 1, 1870, 14 Gen.Stats.So.Car. 381, as conferring such a right only for "the full term of 21 years" named in the latter act, and as the interpretation should be adopted which is most favorable to the state, it is *held* that such exclusive right expired on the termination of the 21 years named in the act of 1870.

Only that which is granted in clear and explicit terms passes by a legislative grant of property, franchises or privileges in which the government or the public has an interest.

A court of equity has jurisdiction over a bill filed by a state to prevent illegal interference with its control of the digging, mining, and removing phosphate rock and phosphate deposits in the bed of a navigable river within its territories.

The Court stated the case as follows:

This suit was brought by the appellees March 23, 1891, in one of the courts of South Carolina, and subsequently, on the petition of the appellant, the defendant below, was removed into the circuit court of the United States. 45 F. 804. Its object was to obtain a decree enjoining the Coosaw Mining Company, its servants, agents, and employees, from claiming any right, title, interest, or grant in or to the phosphate rock and phosphatic deposits in Coosaw River in that state; from digging, mining, or removing such rock and deposits in the bed of that river, and from obstructing, by suit or otherwise, any agent or other person acting by authority of the state board of phosphate commissioners from digging, mining, and

removing the same.

The appellant claimed in its answer to have a contract with the state by which it acquired an exclusive right for an indefinite period to occupy, dig, mine, and remove such rocks and deposits in Coosaw River, and that in violation of the Constitution of the United States, the obligation of its contract had been impaired by a subsequent act of the legislature.

The decree below, rendered September 16, 1891 -- the Chief Justice and Judge Simonton concurring -- proceeded upon the ground that the appellant did have at one time, and for a limited period, a contract with the state of the kind mentioned, but that such period had expired before the institution

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of this suit. *South Carolina v. Coosaw Mining Co.*, 47 F. 225. The relief asked was therefore granted.

The principal question to be considered depends upon certain legislative enactments relating to phosphate rocks and phosphatic deposits in the navigable waters of South Carolina. It is necessary to ascertain the scope of those enactments.

By an act which took effect March 1, 1870, the state granted to certain named persons and their associates the right, for the full term of twenty-one years, to dig, mine, and remove phosphate rocks and phosphatic deposits from the beds of the navigable streams and waters within the jurisdiction of the State of South Carolina. This grant was made upon the express condition that the grantees pay the state one dollar per ton for every ton of phosphate rock and phosphatic deposits so dug, mined, and removed, and five hundred dollars as a license fee before commencing business under the grant.

The act further provided that before commencing operations under authority of the act, the grantees and their associates should file or cause to be filed in the office of the state auditor a bond in the sum of \$50,000 conditioned that they would

make true and faithful returns to that officer annually on or before the first day of October, and oftener if required, of the number of tons of phosphate rocks and phosphatic deposits dug, mined, and removed by them, and punctually pay to the state treasurer annually, on the first day of October, one dollar per ton for every ton of rocks and deposits by them so dug, mined and removed during the year preceding, such bond to be renewed annually and approved by the Attorney General. 14 Gen.Stats.S.C. p. 381.

The Coosaw Mining Company, it is admitted, succeeded to all the rights given by this act.

On March 28, 1876, another act was passed entitled

"An act to settle definitely the period at which returns shall be made of phosphate rocks and phosphatic deposits dug and mined in the beds of the navigable streams and waters of the State of South Carolina and the royalty shall be paid thereon, and also to fix the terms on which this act may be accepted by the parties named therein."

This act is the foundation of

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the appellant's claim of an exclusive right, for an indefinite period, to dig, mine, and remove phosphate rocks and phosphatic deposits in that part of Coosaw River which it occupies. Its provisions are therefore given in full as follows:

"Whereas differences have arisen between the Coosaw Mining Company and the Comptroller General as to the times and manner in which the said company shall make their returns of the number of tons of phosphate rocks and phosphatic deposits dug, mined, and removed by them from the beds of the navigable streams and waters of the state, and also as to the times when the royalty thereon shall be paid therefore for remedy thereof."

"Section 1. *Be it enacted*, etc., that the said Coosaw Mining Company, and all other companies and persons engaged in digging, mining, and removing

phosphate rocks and phosphatic deposits from the bed of the navigable streams and waters of the state shall be and they are hereby required, from and after the passage of this act, to make to the Comptroller General true and faithful returns of the number of tons of phosphate rocks and phosphatic deposits they have so dug, mined, and removed, and shipped, or otherwise sent to market at the end of every month, and shall punctually pay to the state treasurer the royalty already provided by law to be paid thereon at the end of every quarter or three months, the first quarter to commence to run on the first day of March in the present year."

"SEC. 2. That the said Coosaw Mining Company, and all other companies and persons mentioned in the preceding section, shall, within ten days from the passage of this act, enter into new bonds in the penal sums and in the manner and form already provided by law, but conforming in their conditions to the terms set forth in the said preceding section, and also pay to the state treasurer the royalty accrued up to the said first day of March of the present year. And whereas it is desirable that the said Coosaw Mining Company and all other companies and persons engaged in digging, mining, and removing phosphate rock and phosphatic deposits as aforesaid shall accept the terms of this act in order to make it binding on

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them respectively, and whereas the said Coosaw Mining Company have already occupied so much of the Coosaw River as lies opposite to and south of Chisolm's Island, whereon their works are located, and to the marshes thereof, and have expended large sums of money in establishing themselves thereon with sufficient mining plant for mining and preparing for market the phosphate rocks and phosphatic deposits of that part of the said Coosaw River; therefore, in consideration thereof,"

"SEC. 3. That the said Coosaw Mining Company, on accepting the terms of this act within ten days from the passage thereof, shall thenceforth have the exclusive right to occupy and dig, mine, and remove phosphate rock and phosphatic deposits from all that part of the said Coosaw River above mentioned so long as,

and no longer than, they shall make true and faithful returns of the number of tons thereof they shall so dig, mine, and remove, and ship or otherwise send to market, and punctually pay the royalty thereon, as provided in the first section of this act."

"SEC. 4. That all other companies and persons engaged in digging, mining, and removing phosphate rocks and phosphatic deposits as aforesaid under gift and grant of the State of South Carolina, or by authority thereof, who shall accept the terms of this act within ten days from the passage thereof, shall thenceforth have the same exclusive right where they have respectively occupied and established themselves for mining purposes, and on the same limitations as are prescribed in the preceding section of this act."

"SEC. 5. That all acts and parts of acts inconsistent with this act be, and they are hereby, for the purpose of this act, repealed."

Acts of South Carolina, 1875-1876, p. 198.

The appellant accepted the terms of that act, and thereby, it is contended, acquired the exclusive right in question. The act which is supposed to have impaired the obligation of its contract with the state was that of December 23, 1890, creating a board of phosphate commissioners consisting of the Governor, Attorney General, Comptroller General, and two individual citizens, charged with the exclusive control and protection

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of the rights and interest of the state in the phosphate rocks and phosphatic deposits in its navigable streams and marshes. The latter act empowered the board -- if, upon full investigation and examination, they deemed it advisable -- to require all persons or corporations digging or mining phosphate rock or phosphatic deposits in the navigable streams and marshes of the state to pay a royalty not to exceed two dollars per ton for all or any phosphate rock so dug or mined, six months' notice being given before raising the royalty above one dollar.

It also authorized and directed the board, after the first day of March, 1891, "to take possession and control of the Coosaw River phosphate territory heretofore occupied by the Coosaw Mining Company," and to issue licenses to mine and remove therefrom phosphate rock and phosphatic deposits, in like manner as was then provided by law for the other navigable streams and waters of the state, each ton of phosphate rock or phosphatic deposits, the product of such mining operations, to be deemed the property of the state until the said parties paid thereon a royalty, to be fixed by the board at not exceeding two dollars per ton on each ton of phosphate rock or phosphatic deposits dug, mined, and removed, and six months notice to be given before raising the royalty above one dollar.

It was further provided that if any person interfered with, obstructed, molested, or attempted to interfere with, obstruct, or molest the board or anyone by them authorized or licensed in the peaceable possession and occupation for mining purposes of any of the marshes and navigable streams and waters of the state, it was authorized, in the name and on behalf of the State of South Carolina,

"to take such measures or proceedings as they may be advised are proper to enjoin and terminate any such molestation, interference, or obstruction, and place the state, through its agents, the said board of phosphate commissioners, or anyone under them authorized, in absolute and practicable possession and occupation of the same."

Other sections of the act made it an offense punishable by fine or imprisonment, or both at the discretion of the court,

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for any person or persons to willfully interfere with, molest, or obstruct, or attempt to interfere with, molest, or obstruct, the state or the board of phosphate commissioners, or anyone by them authorized or licensed, in the peaceable possession and occupation of any of the said marshes and navigable streams and waters of the state, "including the said Coosaw-River phosphate territory," or who shall dig or mine, or attempt to dig or mine, any of the phosphate rock or

phosphatic deposits of this state without a license so to do by the board. The board were authorized and empowered to inquire into and protect the interests of the state in and to any phosphate deposits or mines, whether in the navigable waters of the state or in land, marshes, or other territory owned or claimed by other parties, and in the proceeds of any such mines, and to take such action for or in behalf of the state in regard thereto as they might find necessary or deem proper. All acts or parts of acts inconsistent with the provisions of the act of 1890 were repealed. Acts of South Carolina, 1890, p. 691.

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MR. JUSTICE HARLAN delivered the opinion of the Court.

The Coosaw Mining Company undoubtedly acquired by the act of 1870, and upon the conditions therein prescribed, the right, for the full term of twenty-one years, to dig, mine, and remove phosphate rocks and phosphatic deposits in the navigable waters of South Carolina. But the right thus acquired was not made an exclusive one. The state was at liberty, so far as that act was concerned, to grant similar rights to other associations, corporations, or persons. This is not disputed.

Did the appellant, by its acceptance of the act of 1876, acquire

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an exclusive right with respect to that part of Coosaw River then occupied for the purposes of its business? If this question be answered in the affirmative -- as, in view of the express language of the act, it must be -- the state is nevertheless entitled to a decree upon the issue as to the impairment of the obligation of the alleged contract unless it be held that that act gave an exclusive right to the Coosaw Mining Company *in perpetuity*, conditioned only upon its meeting the terms prescribed by the third section -- namely that it would make true and faithful returns of the number of tons of phosphate rock and phosphatic deposits dug, mined, removed, shipped, or otherwise sent to market, and pay the royalty as provided for in the first section of that act. It cannot be denied that the third

section, if it be construed literally and without reference to other sections or to the act of 1870, will bear this interpretation. But the act of 1876, if interpreted as it ought to be in connection with that of 1870, will, to say the least, bear equally another construction -- namely that the right granted by the original act for the term of twenty-one years was made, by the act of 1876, exclusive *only during the remainder of that term* as to the part of Coosaw River occupied by the appellant's works, "so long as and no longer than" it made the returns and paid the royalty prescribed by the latter act. Under the latter construction, the right of the appellant, by the acts of 1870 and 1876, to dig, mine, and remove phosphate rocks and phosphatic deposits in the navigable waters of the state ceased altogether after the expiration of twenty-one years from March 1, 1870. If the act of 1876 materially altered that of 1870 in respect to the times and manner of making returns or the royalty to be paid, the Coosaw Mining Company received in consideration therefor what it did not previously have -- that is, an exclusive right for a limited period in the particular part of Coosaw River which it occupied when the act of 1876 was passed.

If the act of 1876 is fairly susceptible of either of the constructions we have indicated, as we think it is, the interpretation must be adopted which is most favorable to the state.

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The doctrine is firmly established that only that which is granted in clear and explicit terms passes by a grant of property, franchises, or privileges in which the government or the public has an interest. [\*Rice v. Railroad Co.\*, 1 Black 358, 66 U. S. 380](#) ; *Fertilizing Co. v. Hyde Park*, [97 U. S. 666](#) ; *Hannibal &c.; Railroad v. Missouri River Packet Co.*, [125 U. S. 271](#) ; *Central Transportation Co. v. Pullman's Car Co.*, [139 U. S. 24](#) , [139 U. S. 49](#) ; *Stein v. Bienville Water Supply Co.*, [141 U. S. 67](#) , [141 U. S. 80](#) ; *State v. Pacific Guano Co.*, 22 S.C. 50, 83, 86. Statutory grants of that character are to be construed strictly in favor of the public, and whatever is not unequivocally granted is withheld. Nothing passes by mere implication. [\*Holyoke Co. v. Lyman\*, 15 Wall. 512; \*The Binghamton Bridge\*, 3 Wall. 51, 70 U. S. 75](#) . This principle, it has been said,

"is a wise one, as it serves to defeat any purpose concealed by the skillful use of terms to accomplish something not apparent on the face of the act, and thus sanctions only open dealing with legislative bodies."

*Slidell v. Grandjean*, [111 U. S. 412](#) , [111 U. S. 438](#) .

The wisdom of the rule adverted to is well illustrated by the present case. Neither the title nor the preamble of the act of 1876 suggests the purpose on the part of the Coosaw Mining Company, or of any other association or corporation, to obtain, or the intention of the legislature to grant, a new right to dig, mine, and remove phosphate rocks and phosphatic deposits, much less a grant of such a right in perpetuity. The title discloses only a purpose to settle definitely the time for making returns of rocks and deposits so dug, mined, and removed, to establish the royalty to be paid, and to fix the terms on which the act might be accepted by the parties named in it. If the parties so named had in mind to acquire a grant for an indefinite period, their purpose was concealed under the general words in the title, "and also to fix the terms on which this act may be accepted by the parties named therein." Turning to the preamble, which has been said to be a key to open the understanding of a statute, we find that the occasion of the passage of the act of 1876 was a dispute between the Coosaw Mining Company and the Comptroller General of the

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state not as to the right of that company to dig, mine, and remove phosphate rock and phosphatic deposits, but only as to the times and manner in which it should make its returns and pay the prescribed royalty, and that "for remedy thereof" the act was passed. Neither the title nor the preamble indicates a purpose to enlarge the right given by the act of 1870 for twenty-one years to one for an indefinite period. While express provisions in the body of an act cannot be controlled or restrained by the title or preamble, the latter may be referred to when ascertaining the meaning of a statute which is susceptible of different constructions. In [United States v. Fisher](#), 2 Cranch 358, [6 U. S. 386](#) , Chief Justice Marshall said:

"Neither party contends that the title of an act can control plain words in the body of the statute, and neither denies that, taken with other parts, it may assist in removing ambiguities. Where the intent is plain, nothing is left to construction. Where the mind labors to discover the design of the legislature, it seizes everything from which aid can be derived, and in such case the title claims a degree of notice, and will have its due share of consideration."

*United States v. Palmer*, 3 Wheat. 610, 16 U. S. 631 . This rule is especially applicable in states whose constitutions, like that of South Carolina, provide that "every act or resolution having the force of law shall relate to but one subject, and that shall be expressed in the title." *Meyer v. Car Co.*, 102 U. S. 1 , 102 U. S. 11 -12. So, in *Beard v. Rowan*, 9 Pet. 301, 34 U. S. 317 : "The preamble in the act may be resorted to to aid in the construction of the enacting clause when any ambiguity exists." The ambiguity here referred to is not simply that arising from the meaning of particular words, but such as may arise, in respect to the general scope and meaning of a statute, when all of its provisions are examined. Interpreting the act of 1876 with such aid as may be properly derived from its title and preamble, we are of opinion that the legislature did not intend to grant the appellant an exclusive right for an indefinite period, but only an exclusive right during the balance of the term of twenty-one years fixed by the act of 1870, and not even an exclusive right for that period except upon the performance of the conditions set

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forth in the act of 1876 as to making returns and paying the prescribed royalty.

It results that the contention of the state must be sustained whether we apply the rule requiring public grants to be favorably construed for the government or whether, independently of that rule, we give effect to the intention of the legislature as disclosed by the words of the statute.

It is contended by the appellant that this case is not one of which a court of the United States, sitting in equity, could take cognizance. In meeting this question,

the counsel for the state have placed some reliance upon the provisions in the act of 1890 authorizing the board of phosphate commissioners, in the name and on behalf of the state, "to take such measures or proceedings as they may be advised are proper to enjoin and terminate" any molestation, interference, or obstruction of the peaceable possession and occupation for mining purposes of the navigable streams of the state, either by the board or by anyone licensed or authorized by it, and to take such action for and in behalf of the state as they deem proper for the protection of its interests. This statute is not important here except as showing the authority of that board to bring suits in the name of or for the state to protect its interests. The suit may have been cognizable in the state court, sitting in equity. But if it was not one of which the circuit court of the United States, sitting in equity, could properly take cognizance, [Payne v. Hook](#), 7 Wall. 425, [74 U. S. 430](#) ; [Arrowsmith v. Gleason](#), [129 U. S. 86](#) , [129 U. S. 98](#) , the pleadings, upon removal of the case from the state court, should have been reformed so as to make it a case to be tried at law. It is necessary, therefore, to inquire whether, according to the principles of equity as recognized in the courts of the United States, the state can obtain relief by a suit in equity.

The grounds of equity jurisdiction in such cases as the one before us are substantially those upon which courts of equity interfere in cases of waste, public nuisance, and purpresture.

The case of [United States v. Gear](#), 3 How. 120, [44 U. S. 121](#) , [44 U. S. 133](#) , bears upon this question. The United States, claiming to be the owner of certain lands upon which there was a lead mine,

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brought an action of trespass *quare clausum fregit* against the party in possession. They also brought a suit in equity for an injunction to stay waste. This Court held in the equity case that digging ore from lead mines upon the public lands was such waste as entitled the United States to a writ of injunction to restrain it.

In [City of Georgetown v. Alexandria Canal Co.](#), 12 Pet. 91, [37 U. S. 98](#) , it was said to be

"now settled that a court of equity may take jurisdiction in cases of public nuisance by an information filed by the Attorney General, . . . upon the principle that equity can give more adequate and complete relief than can be obtained at law."

In *Attorney General v. Richards*, 2 Anstr. 603, an information in equity in the name of the attorney general to restrain the erection of wharves and docks in a certain harbor and to abate those erected was sustained, the court observing that "where the King claims and proves a right to the soil, where a purpresture and nuisance have been committed, he may have a decree to abate it." In *Attorney General v. Forbes*, 2 My. & Cr. 123, 133, it was said by the Lord Chancellor that

"in informations and proceedings for the purpose of preventing public nuisances, the ordinary course is for the attorney general to take it on himself to sue as representing the public."

In reply to the suggestion that an application to the High Court of Chancery to prevent a nuisance to a public road was never heard of before, he said:

"Many cases might have been produced in which the court has interfered to prevent nuisances to public rivers and to public harbors, and the Court of Exchequer, as well as this court, acting as a court of equity, has a well established jurisdiction, upon a proceeding by way of information, to prevent nuisances to public harbors and public roads, and in short, generally to prevent public nuisances."

So, in *Gibson v. Smith*, 2 Atk. 182, in which an injunction was sought to restrain a defendant from opening mines upon an estate held by him under a deed containing reservations against waste and the opening of mines, and in which it was objected that the matter was not for the determination of a court of equity, Lord Chancellor Hardwicke

said:

"The plaintiff may certainly come into this court to restrain the defendant from opening the mines, etc., even if he has only threatened to do it; nor is it necessary the plaintiff should have waited till the waste is actually committed, where the intention appears, and the defendant, even by his answer, insists on his right to do so."

An instructive case upon this subject is *Attorney General v. Jamaica Pond Aqueduct*, 133 Mass. 361, 363-364. That was an information in equity, in the name of the attorney general, to restrain a corporation from doing certain illegal acts the necessary effects of which would be not only to impair the rights of the public in the use of one of the great ponds of Massachusetts for purposes of fishing and boating, but to create a nuisance by lowering the pond and exposing upon its shores slime, mud, and offensive vegetation detrimental to the public health. It was held, upon the authority of numerous cases, American and English, that where the nuisance is a public one, an information by the attorney general was the appropriate remedy. After observing that the preventive force of a decree in equity restraining the illegal acts before any mischief was done would give a more efficacious and complete remedy than an indictment or proceedings under a statute for the abatement of the nuisance, the court said:

"There is another ground upon which in our opinion this information can be maintained, though perhaps it belongs to the same general head of equity jurisdiction of restraining and preventing nuisances. The great ponds of the commonwealth belong to the public, and like the tidewaters of navigable streams, are under the control and care of the commonwealth. The rights of fishing, boating, bathing, and other like rights which pertain to the public are regarded as valuable rights, entitled to the protection of the government. . . . If a corporation or an individual is found to be doing acts without right the necessary effect of which is to destroy those rights and privileges, it furnishes a proper case for an information by the attorney general to restrain and prevent the mischief."

So, in *Eden on Injunctions*:

"The usual, and perhaps the more correct, mode of proceeding in

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equity in cases of public nuisance, is by information at the suit of the attorney general."

Page 267. Mr. Justice Story said that an information in equity at the suit of the attorney general would lie in cases of purpresture and public nuisance, the jurisdiction of courts of equity being sustained because of

"their ability to give a more complete and perfect remedy than is attainable at law in order to prevent irreparable mischief and also to suppress oppressive and vexatious litigations."

Eq.Jur. 922-924; *People v. Vanderbilt*, 26 N.Y. 287, 293; *District Attorney v. Lynne & Boston Railroad Co.*, 16 Gray 242, 245; Kerr on Injunctions 262, 263; 1 Joyce on Injunctions 120.

These principles are applicable to the present case. The remedy at law for the protection of the state in respect to the phosphate rocks and phosphatic deposits in the beds of its navigable waters is not so efficacious or complete as a perpetual injunction against interference with its rights by digging, mining, and removing such rocks and deposits without its consent. The Coosaw Mining Company, unless restrained, will not only appropriate to its use property held in trust for the public, but will prevent the proper administration of that trust for an indefinite period by obstructing others, acting under lawful authority, from enjoying rights in respect to that property derived from the state. These conflicting claims cannot be so effectively or conclusively settled by proceedings at law as by a comprehensive decree covering all the matters in controversy. Proceedings at law or by indictment can only reach past or present wrongs done by the appellant, and will not adequately protect the public interests in the future. What the public are entitled to have is security for all time against illegal interference with the control by the state of the digging, mining, and removing of phosphatic rock and phosphatic deposits in the bed of Coosaw River. Such security was properly given by the decree

below.

*Decree affirmed.*

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