

Fallbrook Irrigation Dist. Vs. Bradley

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Appellant : Fallbrook Irrigation Dist.

Respondent : Bradley

Judgement :

Fallbrook Irrigation Dist. v. Bradley - 164 U.S. 112 (1896)

U.S. Supreme Court Fallbrook Irrigation Dist. v. Bradley, 164 U.S. 112 (1896)

Fallbrook Irrigation District v. Bradley

No. 355

Argued January 23, 24, 27, 1896

Decided November 16, 1896

164 U.S. 112

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

SYLLABUS

In a suit brought in a circuit court of the United States by an alien against a citizen of the state in which the court sits, claiming that an act about to be done therein by the defendant to the injury of the plaintiff, under authority of a statute of the state, will be in violation of the Constitution of the United States and also in violation of the constitution of the state, the federal courts have jurisdiction of both classes of questions; but, in exercising that jurisdiction as to questions arising

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under the state constitution, it is their duty to be guided by and follow the decisions of the highest court of the state (1) as to the construction of the statute and (2) as to whether, if so construed, it violates any provision of that constitution. [Loan Association v. Topeka](#), 20 Wall. 655, shown to be in harmony with this decision.

The statute of California of March 7, 1887, to provide for the organization and government of irrigation districts and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes, and the several acts amendatory thereof having been clearly and repeatedly decided by the highest court of that state not to be in violation of its Constitution, this Court will not hold to the contrary.

Davidson v. New Orleans, [96 U. S. 97](#) , [96 U. S. 104](#) , cited and armed to the point that

"whenever, by the laws of a state or by state authority, a tax, assessment, servitude or other burden is imposed upon property for the public use, whether it be for the whole state or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed in the ordinary courts of justice, with such notice to the person, or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections."

There is no specific prohibition in the federal Constitution which acts upon the states in regard to their taking private property for any but a public use.

What is a public use for which private property may be taken by due process of law depends upon the particular facts and circumstances connected with the particular subject matter.

The irrigation of really arid lands is a public purpose, and the water thus used is put to a public use, and the statutes providing for such irrigation are valid exercises of legislative power.

The land which can be properly included in any irrigation district under the statutes of California is sufficiently limited to arid, unproductive land by the provisions of the acts.

Due process of law is furnished and equal protection of the law given in such proceedings when the course pursued for the assessment and collection of taxes is that customarily followed in the state and when the party who may be charged in his property has an opportunity to be heard.

The irrigation acts make proper provisions for a hearing as to whether the petitioners are of the class mentioned or described in them, whether they have complied with the statutory provisions, and whether their lands will be benefited by the proposed improvement. They make it the duty of the board of supervisors, when landowners deny that the signers of a petition have fulfilled the requirements of law, to give a hearing or hearings on that point. They provide for due notice of the proposed

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presentation of a petition, and that the irrigation districts when created

in the manner provided are to be public corporations with fixed boundaries. They provide for a general scheme of assessment upon the property included within each district, and they give an opportunity to the taxpayer to be heard upon the questions of benefit, valuation, and assessment, and the question as to the mode

of reaching the results, even if in some cases the results are inequitable, does not reach to the level of a federal constitutional problem. In all these respects, the statutes furnish due process of law within the meaning of that term as used in the Fourteenth Amendment to the Constitution of the United States.

This is an appeal from the United States Circuit Court for the Southern District of California. The case is reported in 68 F. 948. The action was commenced in that court by defendants in error (the plaintiffs below) for the purpose of procuring an injunction restraining defendant Tomlins, the collector of the irrigation district, from giving a deed to it of the premises belonging to plaintiff Mrs. Bradley based on a sale of her land made by the collector for the nonpayment of a certain assessment upon such lands under the act incorporating the irrigation district, and to set aside such assessment, and for other relief.

The following, among other facts, were set up in the plaintiffs' second amended bill in equity: the plaintiffs are aliens and subjects of Great Britain, residing in San Diego County, California. The irrigation district is a corporation organized pursuant to the laws of California, and doing business at Fallbrook, San Diego County. Matthew Tomlins was the collector of the corporation at the time of the commencement of the suit, and it has been doing business as, and claims to be, a corporation, under

"An act providing for the organization and government of irrigation districts, and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes,"

approved March 7, 1887, as such acts have been amended.

The original act, which is commonly known as the Wright Act and was so cited by counsel in their arguments, was enacted on the 7th of March, 1887, and will be found in the laws of California at page 29. It contained 47 sections.

Sections, 1, 2, 3, and 4 were amended by an Act of March 20,

1891, Laws of 1891, page 142, so as to read as in that act set forth.

Sections 5, 6, 7, 8, and 9 stand as originally enacted.

Section 10 was amended by the Act of February 16, 1889, Laws of 1889, page 15, so as to read as in that act set forth.

Sections 11 and 12 were amended by said Act of March 20, 1891, so as to read as in that act set forth.

Sections 13 and 14 stand as originally enacted.

Section 15 was amended by another Act of March 20, 1891, Laws of 1891, page 147, so as to read as in that act set forth.

Section 16 remains as originally enacted.

Section 17 was amended by the Act of March 11, 1893, Laws of 1893, page 175, so as to read as in that act set forth.

Section 18 was amended by the Act of March 21, 1891, Laws of 1891, page 244, so as to read as in that act set forth.

Sections 19, 20, and 21 remain as originally enacted.

Section 22 has been twice amended: (1) by the said act of February 16, 1889, page 15: (2) by the said Act of March 20, 1891, Laws of 1891, page 147. It now stands as so amended in 1891.

Section 23 was amended by said Act of March 20, 1891, Laws of 1891, page 147. It now reads as in that act set forth.

Sections 24, 25, and 26 were amended by the Act of March 21, 1891, Laws of 1891, page 244. They now read as in that act set forth.

Section 27 of said act was amended by the Act of February 16, 1889, Laws of 1889, page 15. It now reads as so amended.

Sections 28, 29, 40, 31, 32, 33, and 34 stand as originally enacted.

Section 35 was amended by said Act of March 20, 1891, Laws of 1891, page 142. It now reads as so amended.

Sections 36, 37, 38, 39, 40, and 41 stand as originally enacted.

Section 42 was amended by the Act of March 20, 1891, Laws of 1891, page 142. It now reads as so amended.

Sections 43, 44, 45, 46, and 47 have not been changed.

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The material sections of the act, as amended by the other acts just stated, are set forth in the margin herein. [*](#)

The legislature also passed two acts, approved February 16, 1889, called, respectively, the "Inclusion" and the "Exclusion" Act, by which means were provided, in the first-named

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act, for including lands within an irrigation district which had not been included in the petition when first presented to the board of supervisors; and, in the second-named act, for excluding from a district already formed some portion of the land which then formed part of such district. An

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examination of those acts does not become material in this case.

The plaintiff, Mrs. Bradley, is the owner of certain real estate described in complainants' bill, which is included within

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the lines of the irrigation district. The bill sets forth the various steps taken under the irrigation act for the purpose of forming the irrigation district, and it alleges the taking of

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all steps necessary therefor, including the election of officers as provided in the act; that the board of directors submitted to the electors the question whether a special assessment for

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\$6,000 should be made for the purpose of defraying the expenses of organization, and that the electors approved of such assessment, and the proper proceedings were thereafter taken

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by which to assess the property owners, and that plaintiff Mrs. Bradley's assessment amounted to \$51.31, which she refused to pay because the act was, as alleged, unconstitutional and void.

The bill further states that the collector then proceeded to enforce the collection by a sale of the land, and did sell it to the irrigation district, but that no deed has been given to the

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district by the collector, and an injunction is asked to restrain the execution and delivery of any deed by such collector because of the alleged invalidity of the act under which the proceedings were taken.

The bill also alleged a proposed issue of bonds to the amount of \$400,000, subject to the decision of the electors at an election proposed to be held under the provisions of the act.

Various reasons are set out in the bill upon which are based the allegation of the invalidity of the act, among which it is stated that the law violates the federal Constitution in that it amounts to the taking of the plaintiff's property without due process of law. It is also stated that the act is in violation of the state constitution in many different particulars, which are therein set forth.

The bill also asks that the assessment may be set aside and all the proceedings declared void on the ground of the invalidity of the act itself.

The defendants demurred to the first bill of the complainants, and the demurrer was overruled. The complainants were granted leave to serve a second amended bill, to which the defendants put in an answer denying many of the material allegations of the bill and claiming the entire validity of the act.

The case came on for hearing before the circuit judge, by consent, upon the second amended bill of complainants and defendants' answer thereto, and the court gave judgment against the defendants because of the unconstitutionality of the irrigation act, it being, as held, in violation of the federal Constitution as the effect of such legislation by the state was to deprive complainants of their property without due process of law. The decision of the circuit judge was given for the reasons stated by him in his opinion rendered upon the argument of the demurrer to the bill of complainants, and some of the facts stated in the bill and admitted by the demurrer were denied in the answer subsequently served by the defendants. The sole ground of the decision was, however, the unconstitutionality of the act, as above stated. From

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the judgment entered upon the decision of the circuit judge, the irrigation district appealed directly to this Court by virtue of the provisions of 5, c. 517, of the Laws of 1891, 26 Stat. 826, which gave an appeal from the circuit court direct to the supreme court "in any case that involves the construction or application of the Constitution of the United States," and also "in any case in which the Constitution or law of a state is claimed to be in contravention to the Constitution of the United

States."

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MR. JUSTICE PECKHAM, after stating the facts in the foregoing language, delivered the opinion of the Court.

The decision of this case involves the validity of the irrigation act enacted by the Legislature of the State of California, and set forth in the above statement of facts. The principal

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act, passed in 1887, has been amended once or twice by subsequent legislation, but in its main features it remains as first enacted. The title of the act indicates its purpose. It is admitted by all that very large tracts of land in California are in fact "arid lands" which require artificial irrigation in order to produce any thing of value. There are different degrees, however, in which irrigation is necessary, from a point where, without its use, the land is absolutely uncultivable, to that where, if not irrigated artificially, it may yet produce some return for the labor of the husbandman in the shape of a puny and unreliable crop, but nothing like what it could and would do if water were used upon it. There are, again, other lands which, if not irrigated, will still produce the ordinary cereal crops to a more or less uncertain extent, but which, if water be used artificially upon them at appropriate times, are thereby fitted to and will produce much more certain and larger crops without it, and will be also rendered capable of producing fruit and grapes of all kinds, of first-rate quality and in very large quantities. What is termed the "arid belt" is said, in the Census Bulletin No. 23, for the census of 1890, to extend from Colorado to the Pacific Ocean, and to include over 600,000,000 acres of land.

Of this enormous total, artificial irrigation has thus far been used only upon about three and a half million acres, of which slightly over a million acres lie in the State of California. It was stated by counsel that something over thirty irrigation districts had been organized in California under the act in question, and that a total bonded

indebtedness of more than \$16,000,000 had been authorized by the various districts under the provisions of the act, and that more than \$8,000,000 of the bonds had been sold, and the money used for the acquisition of property and water rights, and for the construction of works necessary for the irrigation of the lands contained in the various districts.

Whether these statements are perfectly accurate or not is a matter of no great importance, as it has been assumed by all that numbers of districts have been formed under the act, and a very large indebtedness already incurred, and that more

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will be necessary before all the districts will be placed in an efficient working condition. All these moneys, if the act be valid, must eventually be repaid from assessments levied upon the lands embraced within the respective districts, while the annually recurring interest upon these moneys is also to be paid in the same way. Taking the California act as a model, it was also stated, and not contradicted, that several of the other states which contain portions of the arid belt (seven or eight of them) had passed irrigation acts, and that proceedings under them were generally awaiting the result of this litigation. The future prosperity of these states, it was claimed, depended upon the validity of this act as furnishing the only means practicable for obtaining artificial irrigation, without the aid of which millions and millions of acres would be condemned to lie idle and worthless which otherwise would furnish enormous quantities of agricultural products and increase the material wealth and prosperity of that whole section of country. On the other hand, it has been asserted with equal earnestness that the whole scheme of the act will, if carried out to the end, result in the practical confiscation of lands like those belonging to the appellees herein for the benefit of those owning different kinds of land, upon which the assessments for the water would be comparatively light and the benefits resulting from its use far in excess of those otherwise situated. Such results, it is said, are nothing more than taking by legislation the property of one person or class of persons and giving it to another, which is an arbitrary act of pure spoliation, from which the citizen is protected, if not by any state constitution, at

least by the federal instrument, under which we live and the provisions of which we are all bound to obey.

These matters are only alluded to for the purpose of showing the really great practical importance of the question before the Court to the people of California and of those other states where similar statutes have been passed -- important not alone to the public, but also and specially important to those landowners whose lands are not only to be irrigated, but are also to be assessed for the payment of the cost of the construction of the works necessary for supplying the water.

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This Court fully appreciates the importance of the question, and its decision has been reached after due reflection upon the subject and after a careful examination of the authorities bearing upon it.

The form in which the question comes before the Court in this case is by appeal from a decree of the United States Circuit Court for the Southern District of California perpetually enjoining the collector of the irrigation district from executing a deed conveying the land of the plaintiff Maria King Bradley under a sale made of such land pursuant to the provisions of the act under consideration. The grounds upon which relief was sought were that the act was in violation of the federal Constitution and also the Constitution of the State of California. The decree is based upon the sole ground that the act violates the federal Constitution in that it in substance authorizes the taking of the land of the appellee "without due process of law." Coming before the Court in this way, we are not confined in our review of the decision of the lower court within the same limits that we would be if the case were here on error from the judgment of a state court.

The jurisdiction of the United States circuit court in this case was based upon the fact that the plaintiffs were aliens, and subjects of Great Britain, and that court therefore had the same jurisdiction as a state court would have had to try the whole question and to examine and decide not only as to its conformity with the federal Constitution, but in addition whether the act were in violation of the state

constitution and whether the provisions of the act itself had been complied with. In exercising that jurisdiction, it was nevertheless the duty of the trial court to follow and be guided by the decisions of the highest state court upon the construction of the statute and upon the question whether, as construed, the statute violated any provision of the state constitution. The same duty rests upon this Court, and it has been so determined from the earliest period of its history. If the act of the state legislature, as construed by its highest court, conflicts with the federal Constitution or with any valid act of Congress, it is the duty of the circuit court and of this Court to so decide, and to thus enforce

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the provisions of the federal Constitution. The following are some of the numerous cases in which this principle has been announced and carried into effect: [Shelby v. Guy](#), 11 Wheat. 361; [Nesmith v. Sheldon](#), 7 How. 812; [Van Renesselaer v. Kearney](#), 11 How. 297; [Webster v. Cooper](#), 14 How. 488; [Leffingwell v. Warren](#), 2 Black 599; *Hagar v. Reclamation District No. 108*, [111 U. S. 701](#) , [111 U. S. 704](#) ; *Detroit v. Osborne*, [135 U. S. 492](#) .

We should not be justified in holding the act to be in violation of the state constitution in the face of clear and repeated decisions of the highest court of the state to the contrary under the pretext that we were deciding principles of general constitutional law. If the act violate any provision, expressed or properly implied, of the federal Constitution, it is our duty to so declare it; but if it do not, there is no justification for the federal courts to run counter to the decisions of the highest state courts upon questions involving the construction of state statutes or constitutions on any alleged ground that such decisions are in conflict with sound principles of general constitutional law. The contrary has not been held in this Court by the case of [Loan Association v. Topeka](#), 20 Wall. 655. In that case, a statute of Kansas was held invalid because, by its provisions, the property of the citizen, under the guise of taxation, would be taken in aid of a private enterprise, which was a perversion of the power of taxation. The case was brought in the United States Circuit Court for the District of Kansas, and was decided by that court in favor of the city. There had been no decision of the highest state court

upon the question whether the act violated the Constitution of Kansas, and consequently there was none to be followed by the federal court upon that question. This Court held that a law taxing the citizen for the use of a private enterprise conducted by other citizens was an unauthorized invasion of private right. Mr. Justice Miller said that there were such rights in every free government which were beyond the control of the state. The ground of the decision was as stated, that the act took the property of the citizen for a private purpose, although under the forms of taxation. In thus holding, there was no overruling

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or refusing to follow the decisions of the highest court of the state respecting the constitution of its own state.

We are therefore practically confined in this case to the inquiry whether the act in question, as it has been construed by the state courts, violates the federal Constitution.

The assertion that it does is based upon that part of the Fourteenth Amendment of the Constitution which reads as follows:

"Nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Referring to the amendment above quoted, the appellees herein urge several objections to this act. They say first that the use for which the water is to be procured is not in any sense a public one, because it is limited to the landowners who may be such at the time when the water is to be apportioned, and the interest of the public is nothing more than that indirect and collateral benefit that it derives from every improvement of a useful character that is made in the state; second, they assert that under the act in question, the irrigation of lands need not be limited to those which are in fact unproductive, but that, by its very terms, the act includes all lands which are susceptible of one mode of irrigation from a common source, etc., no matter how fertile or productive they may already be, and it is

denied that the furnishing of a fertilizer for lands of individual proprietors which are already productive, in order to make them more productive, is, in any legal sense, a public improvement; third, it is also objected that under the act, the landowner has no right to demand, and no opportunity is given him, for a hearing on the question whether his land is or can be benefited by irrigation as proposed; also that he has no right to a hearing upon the question whether the statute has been complied with in the preliminaries requisite to the formation of the district; fourth, that the basis of assessment for the cost of construction is not in accordance with and in proportion to the benefits conferred by the improvement; and finally, that land which cannot, in fact be benefited, may yet, under the act, be placed in one of the irrigation districts, and assessed upon its value to pay the cost of

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construction of works which benefit others at his expense. These are the main objections urged against the act.

It has often been said to be extremely difficult to give any sufficient definition of what is embraced within the phrase "due process of law," as used in the constitutional amendment under discussion. None will be attempted here. It was stated by Mr. Justice Miller in *Davidson v. New Orleans*, [96 U. S. 97](#) , [96 U. S. 104](#) , that there was

"abundant evidence that there exists some strange misconception of the scope of this provision as found in the Fourteenth Amendment. In fact, it would seem from the character of many of the cases before us, and the arguments made in them, that the clause under consideration is looked upon as a means of bringing to the test of the decision of this Court the abstract opinions of every unsuccessful litigant in a state court of the justice of the decision against him, and of the merits of the legislation on which such a decision may be founded."

Of course, no such jurisdiction exists or is claimed to exist by the parties here. It is at the same time most difficult to set certain and clear bounds to the right of this Court, and consequently to its duty, to review questions arising under state

legislation with reference to this amendment as to due process of law.

It never was intended that the Court should, as the effect of the amendment, be transformed into a court of appeal, where all decisions of state courts involving merely questions of general justice and equitable considerations in the taking of property should be submitted to this Court for its determination. The final jurisdiction of the courts of the states would thereby be enormously reduced, and a corresponding increase in the jurisdiction of this Court would result, and it would be a great misfortune in each case. *Mobile County v. Kimball*, [102 U. S. 691](#) , [102 U. S. 704](#) ; *Missouri Pacific Railway v. Humes*, [115 U. S. 512](#) , [115 U. S. 520](#) . We reiterate the statement made in *Davidson v. New Orleans*, *supra*, that

"Whenever, by the laws of the state or by state authority, a tax, assessment, servitude, or other burden is imposed upon property for the public use, whether it be for the whole state or of some more limited portion of the community, and those laws provide for a mode

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of confirming or contesting the charge thus imposed in the ordinary courts of justice, with such notice to the person or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections."

Coming to a review of these various objections, we think the first, that the water is not for a public use, is not well founded. The question what constitutes a public use has been before the courts of many of the states, and their decisions have not been harmonious, the inclination of some of these courts being towards a narrower and more limited definition of such use than those of others.

There is no specific prohibition in the federal Constitution which acts upon the states in regard to their taking private property for any but a public use. The Fifth Amendment, which provides, among other things, that such property shall not be taken for public use without just compensation, applies only to the federal

government, as has many times been decided. *Spies v. Illinois*, [123 U. S. 313](#) ; *Thornington v. Montgomery*, [147 U. S. 490](#) . In the Fourteenth Amendment the provision regarding the taking of private property is omitted, and the prohibition against the state is confined to its depriving any person of life, liberty, or property without due process of law. It is claimed, however, that the citizen is deprived of his property without due process of law if it be taken by or under state authority for any other than a public use, either under the guise of taxation or by the assumption of the right of eminent domain. In that way, the question whether private property has been taken for any other than a public use becomes material in this Court even where the taking is under the authority of the state, instead of the federal, government.

Is this assessment for the nonpayment of which the land of the plaintiff was to be sold, levied for a public purpose? The question has in substance been answered in the affirmative by the people of California, and by the legislative and

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judicial branches of the state government. The people of the state adopted a Constitution, which contains this provision:

" *Water and Water Rights*. SEC. 1. The use of all water apportioned, or that may hereafter be apportioned, for sale, rental or distribution is hereby declared to be a public use, and subject to the regulation and control of the state in the manner to be prescribed by law."

Constitution of California, Art. 14.

The latter part of 12 of the act now under consideration, as amended in March, 1891, reads as follows:

"The use of all water required for the irrigation of the lands of any district formed under the provisions of this act, together with the rights of way for canals and ditches, sites for reservoirs, and all other property required in fully carrying out the provisions of this act, is hereby declared to be for a public use, subject to the

regulation and control of the state, in the manner prescribed by law."

The Supreme Court of California has held in a number of cases that the irrigation act is in accordance with the state constitution, and that it does not deprive the landowners of any property without due process of law; that the use of the water for irrigating purposes under the provisions of the act is a public use, and the corporations organized by virtue of the act for the purpose of irrigation are public municipal corporations, organized for the promotion of the prosperity and welfare of the people. *Turlock Irrigation District v. Williams*, 76 Cal. 360; *Central Irrigation District v. De Lappe*, 79 Cal. 351; *In re Madera Irrigation District*, 92 Cal. 296.

We do not assume that these various statements, constitutional and legislative, together with the decisions of the state court, are conclusive and binding upon this Court upon the question as to what is due process of law, and, as incident thereto, what is a public use. As here presented, these are questions which also arise under the federal Constitution, and we must decide them in accordance with our views of constitutional law.

It is obvious, however, that what is a public use frequently

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and largely depends upon the facts and circumstances surrounding the particular subject matter in regard to which the character of the use is questioned.

To provide for the irrigation of lands in states where there is no color of necessity therefor within any fair meaning of the term, and simply for the purpose of gratifying the taste of the owner or his desire to enter upon the cultivation of an entirely new kind of crop, not necessary for the purpose of rendering the ordinary cultivation of the land reasonably remunerative, might be regarded by courts as an improper exercise of legislative will, and the use might not be held to be public in any constitutional sense, no matter how many owners were interested in the scheme. On the other hand, in a state like California, which confessedly embraces millions of acres of arid lands, an act of the legislature providing for their irrigation

might well be regarded as an act devoting the water to a public use, and therefore as a valid exercise of the legislative power. The people of California and the members of her legislature must, in the nature of things, be more familiar with the facts and circumstances which surround the subject, and with the necessities and the occasion for the irrigation of the lands, than can anyone be who is a stranger to her soil. This knowledge and familiarity must have their due weight with the state courts which are to pass upon the question of public use in the light of the facts which surround the subject in their own state. For these reasons, while not regarding the matter as concluded by these various declarations and acts and decisions of the people and legislature and courts of California, we yet, in the consideration of the subject, accord to and treat them with very great respect, and we regard the decisions as embodying the deliberate judgment and matured thought of the courts of that state on this question.

Viewing the subject for ourselves and in the light of these considerations, we have very little difficulty in coming to the same conclusion reached by the courts of California.

The use must be regarded as a public use, or else it would seem to follow that no general scheme of irrigation can be

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formed or carried into effect. In general, the water to be used must be carried for some distance, and over or through private property, which cannot be taken *in invitum* if the use to which it is to be put be not public, and if there be no power to take property by condemnation, it may be impossible to acquire it at all. The use for which private property is to be taken must be a public one, whether the taking be by the exercise of the right of eminent domain or by that of taxation. *Cole v. La Grange*, [113 U. S. 1](#) . A private company or corporation, without the power to acquire the land *in invitum*, would be of no real benefit, and at any rate the cost of the undertaking would be so greatly enhanced by the knowledge that the land must be acquired by purchase that it would be practically impossible to build the works or obtain the water. Individual enterprise would be equally ineffectual. No

one owner would find it possible to construct and maintain waterworks and canals any better than private corporations or companies, and unless they had the power of eminent domain, they could accomplish nothing. If that power could be conferred upon them, it could only be upon the ground that the property they took was to be taken for a public purpose.

While the consideration that the work of irrigation must be abandoned if the use of the water may not be held to be or constitute a public use is not to be regarded as conclusive in favor of such use, yet that fact is in this case a most important consideration. Millions of acres of land otherwise cultivable must be left in their present arid and worthless condition, and an effectual obstacle will therefore remain in the way of the advance of a large portion of the state in material wealth and prosperity. To irrigate, and thus to bring into possible cultivation, these large masses of otherwise worthless lands would seem to be a public purpose, and a matter of public interest not confined to the landowners, or even to any one section of the state. The fact that the use of the water is limited to the landowner is not, therefore, a fatal objection to this legislation. It is not essential that the entire community, or even any considerable portion thereof, should directly enjoy or participate in an improvement in order to constitute a

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public use. All landowners in the district have the right to a proportionate share of the water, and no one landowner is favored above his fellow in his right to the use of the water. It is not necessary, in order that the use should be public, that every resident in the district should have the right to the use of the water. The water is not used for general, domestic, or for drinking purposes, and it is plain from the scheme of the act that the water is intended for the use of those who will have occasion to use it on their lands. Nevertheless, if it should so happen that at any particular time the landowner should have more water than he wanted to use on his land, he has the right to sell or assign the surplus or the whole of the water, as he may choose.

The method of the distribution of the water for irrigation purposes provided for in section 11 of the act is criticized as amounting to a distribution to individuals, and not to lands, and on that account it is claimed that the use for irrigation may not be achieved, and therefore the only purpose which could render the use a public one may not exist. This claim we consider not well founded in the language and true construction of the act. It is plain that some method for apportioning the use of the water to the various lands to be benefited must be employed, and what better plan than to say that it shall be apportioned ratably to each landowner upon the basis which the last assessment of such owner for district purposes within the district bears to the whole sum assessed upon the district? Such an apportionment, when followed by the right to assign the whole or any portion of the waters apportioned to the landowner, operates with as near an approach to justice and equality as can be hoped for in such matters, and does not alter the use from a public to a private one. This right of assignment may be availed of also by the owner of any lands which, in his judgment, would not be benefited by irrigation, although the board of supervisors may have otherwise decided. We think it clearly appears that all who, by reason of their ownership of or connection with any portion of the lands, would have occasion to use the water, would in truth have the opportunity to use it

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upon the same terms as all others similarly situated. In this way, the use, so far as this point is concerned, is public, because all persons have the right to use the water under the same circumstances. This is sufficient.

The case does not essentially differ from that of *Hagar v. Reclamation District*, [111 U. S. 701](#) , where this Court held that the power of the legislature of California to prescribe a system for reclaiming swamp lands was not inconsistent with any provision of the federal Constitution. The power does not rest simply upon the ground that the reclamation must be necessary for the public health. That, indeed, is one ground for interposition by the state, but not the only one. Statutes authorizing drainage of swamp lands have frequently been upheld, independently of any effect upon the public health, as reasonable regulations for the general advantage of those who are treated for this purpose as owners of a common

property. *Head v. Amoskeag Manufacturing Co.*, [113 U. S. 9](#) , [113 U. S. 22](#) ; *Wurts v. Hoagland*, [114 U. S. 606](#) , [114 U. S. 611](#) ; Cooley on Taxation 617, 2d ed. If it be essential or material for the prosperity of the community, and if the improvement be one in which all the landowners have to a certain extent a common interest, and the improvement cannot be accomplished without the concurrence of all or nearly all of such owners by reason of the peculiar natural condition of the tract sought to be reclaimed, then such reclamation may be made, and the land rendered useful to all and at their joint expense. In such case, the absolute right of each individual owner of land must yield to a certain extent, or be modified by corresponding rights on the part of other owners for what is declared upon the whole to be for the public benefit.

Irrigation is not so different from the reclamation of swamps as to require the application of other and different principles to the case. The fact that, in draining swamp lands, it is a necessity to drain the lands of all owners which are similarly situated goes only to the extent of the peculiarity of situation and the kind of land. Some of the swamp lands may not be nearly so wet and worthless as some others, and yet all may be so situated as to be benefited by the reclamation, and

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whether it is so situated or not must be a question of fact. The same reasoning applies to land which is to some extent arid, instead of wet. Indeed, the general principle that arid lands may be provided with water, and the cost thereof provided for by a general tax or by an assessment for local improvement upon the lands benefited, seems to be admitted by counsel for the appellees. This necessarily assumes the proposition that water used for irrigation purposes upon lands which are actually arid is used for a public purpose, and the tax to pay for it is collected for a public use, and the assessment upon lands benefited is also levied for a public purpose. Taking all the facts into consideration, as already touched upon, we have no doubt that the irrigation of really arid lands is a public purpose, and the water thus used is put to a public use.

Second. The second objection urged by the appellees herein is that the operations of this act need not be, and are not, limited to arid, unproductive lands, but include within its possibilities all lands, no matter how fertile or productive, so long as they are susceptible, "in their natural state," of one mode of irrigation from a common source, etc. The words "in their natural state" are interpolated in the text of the statute by the counsel for the appellees on the assumption that the Supreme Court of California has thus construed the act in the *Modesto Irrigation District v. Tregea*, 88 Cal. 334. The objection had been made in that case that it was unlawful to include the City of Modesto in an irrigation district. The court, per Chief Justice Beatty, said that the legislature undoubtedly intended that cities and towns should in proper cases be included in irrigation districts, and that the act as thus construed did not violate the state constitution. The learned Chief Justice also said:

"The idea of a city or town is, of course, associated with the existence of streets to a greater or less extent, lined with shops and stores, as well as of dwelling houses, but it is also a notorious fact that in many of the towns and cities of California, there are gardens and orchards, inside the corporate boundaries, requiring irrigation. It is equally notorious that in many districts

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lying outside of the corporate limits of any city or town there are not only roads and highways, but dwelling houses, outhouses, warehouses, and shops. With respect to these things, which determine the usefulness of irrigation, there is only a difference of degree between town and country. . . . It being equally clear and notorious, as matter of fact, that there are cities and towns which not only may be benefited by irrigation, but actually have in profitable use extensive systems for irrigating lands within their corporate limits, it cannot be denied that the supervisors of Stanislaus County had the power to determine that the lands comprising the City of Modesto would be benefited by irrigation, and might be included in an irrigation district. . . ."

"In the nature of things, an irrigation district must cover an extensive tract of land, and, no matter how purely rural and agricultural the community may be, there must exist here and there within its limits a shop or warehouse, covering a limited extent of ground, that can derive no direct benefit from the use of water for irrigation. Here again, the difference between town and country is one of degree only, and a decision in the interest of the shop owners in towns, that their lots cannot be included in an irrigation district, would necessarily cover the case of the owner of similar property outside of a town. It is nowhere contended by the appellant that, in organizing irrigation districts, it is the duty to exclude by demarcation every tract or parcel of land that happens to be covered by a building or other structure which unfits it for cultivation, and certainly the law could not be so construed without disregarding many of its express provisions, and at the same time rendering it practically inoperative. We construe the act to mean that the board may include in the boundaries of the district all lands which *in their natural state would be* benefited by irrigation, and are susceptible of irrigation by one system, regardless of the fact that buildings or other structures may have been erected here and there upon small lots, which are thereby rendered unfit for cultivation at the same time that their value for other purposes may have been greatly enhanced. "

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We do not see in this construction, the meaning of which is apparent from the foregoing quotations from the opinion, any substantial difference, favorable to the appellees, from the act without the interpolation of those words.

As an evidence of what can be done under the act, it is alleged in the complaint in this suit that the plaintiff is the owner of forty acres of land in the district, and that it is worth \$5,000, and that it is subject to beneficial use without the necessity of water for irrigation, and that it has been used beneficially for the past several years for purposes other than cultivation with irrigation. These allegations are admitted by the answer of the defendants, who nevertheless assert that if a sufficient supply of water is obtained for the irrigation of the plaintiff's land, the same can be beneficially used for many purposes other than that for which it can be used without the water for irrigating the same.

What is the limit of the power of the legislature in regard to providing for irrigation? Is it bounded by the absolutely worthless condition of the land without the artificial irrigation? Is it confined to land which cannot otherwise be made to yield the smallest particle of a return for the labor bestowed upon it? If not absolutely worthless and incapable of growing any valuable thing without the water, how valuable may the land be, and to what beneficial use and to what extent may it be put, before it reaches the point at which the legislature has no power to provide for its improvement by that means? The general power of the legislature over the subject of providing for the irrigation of certain kinds of lands must be admitted and assumed. The further questions of limitation, as above propounded, are somewhat legislative in their nature, although subject to the scrutiny and judgment of the courts, to the extent that it must appear that the use intended is a "public use," as that expression has been defined relatively to this kind of legislation.

The legislature by this act has not itself named any irrigation district, and, of course, has not decided as to the nature and quality of any specific lands which have been included in any such district. It has given a general statement as to what

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conditions must exist in order to permit the inclusion of any land within a district. The land which can properly be so included is, as we think, sufficiently limited in its character by the provisions of the act. It must be susceptible of one mode of irrigation, from a common source and by the same system of works, and it must be of such a character that it will be benefited by irrigation by the system to be adopted. This, as we think, means that the amount of benefit must be substantial, and not limited to the creation of an opportunity to thereafter use the land for a new kind of crop, while not substantially benefiting it for the cultivation of the old kind, which it had produced in reasonable quantities and with ordinary certainty and success, without the aid of artificial irrigation. The question whether any particular land would be thus benefited is necessarily one of fact.

The legislature, not having itself described the district, has not decided that any particular land would or could possibly be benefited as described, and therefore it would be necessary to give a hearing at some time to those interested, upon the question of fact whether or not the land of any owner which was intended to be included would be benefited by the irrigation proposed. If such a hearing were provided for by the act, the decision of the tribunal thereby created would be sufficient. Whether it is provided for will be discussed when we come to the question of the proper construction of the act itself. If land which can, to a certain extent, be beneficially used without artificial irrigation may yet be so much improved by it that it will be thereby, and for its original use, substantially benefited, and, in addition to the former use, though not in exclusion of it, if it can then be put to other and more remunerative uses, we think it erroneous to say that the furnishing of artificial irrigation to that kind of land cannot be, in a legal sense, a public improvement or the use of the water a public use.

Assuming for the purpose of this objection that the owner of these lands had, by the provisions of the act and before the lands were finally included in the district, an opportunity to be heard before a proper tribunal upon the question of benefits,

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we are of opinion that the decision of such a tribunal, in the absence of actual fraud and bad faith, would be, so far as this Court is concerned, conclusive upon that question. It cannot be that, upon a question of fact of such a nature, this Court has the power to review the decision of the state tribunal which has been pronounced under a statute providing for a hearing upon notice. The erroneous decision of such a question of fact violates no constitutional provision. The circuit court in this case has not assumed to undertake any such review of a question of fact.

The difference between this case and the case of *Spencer v. Merchant*, [125 U. S. 353](#) , is said by counsel for appellees to consist in the fact that, in the *Spencer* case, the lands in question might have been benefited, while here, the additional benefit to land already capable of beneficial use without irrigation is in no legal or

proper sense a benefit which can be considered for the purpose of an assessment. We think this alleged difference is not material. It is in each case one of degree only, and the fact of the benefit is by the act to be determined after a hearing by the board of supervisors. In this case, the board has necessarily decided that question in favor of the fact of benefits, by retaining the lands in the district. Unless this Court is prepared to review all questions of fact of this nature decided by a state tribunal, where the claim is made that the judgment was without any evidence to support it or was against the evidence, then we must be concluded by the judgment on such a question of fact and treat the legal question as based upon the facts as found by the state board. Due process of law is not violated, and the equal protection of the laws is given, when the ordinary course is pursued in such proceedings for the assessment and collection of taxes that has been customarily followed in the state, and where the party who may subsequently be charged in his property has had a hearing, or an opportunity for one, provided by the statute. *Kelley v. Pittsburg*, [104 U. S. 78](#) .

In view of the finding of the board of supervisors on this question of benefits, assuming that there has been one, this Court cannot say as a matter of law that the lands of the

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plaintiff in this case have not been, or cannot be, benefited by this proposed irrigation. There can be no doubt that the board of supervisors (if it have power to hear the question of benefits, as to which something will be said under another head of this discussion) would be a proper and sufficient tribunal to satisfy the constitutional requirement in such case. In speaking of a board of supervisors, Mr. Chief Justice Waite, in *Spring Valley Waterworks Company v. Schottler*, [110 U. S. 347](#) , [110 U. S. 354](#) , said:

"Like every other tribunal established by the legislature for such a purpose, their duties are judicial in their nature, and they are bound, in morals and in law, to exercise an honest judgment as to all matters submitted for their official determination. It is not to be presumed that they will act otherwise than according

to this rule."

In that case, the board was to fix the price of water, while in this it is to determine the fact of benefits to lands. The principle is the same in each case.

It may be that the action of the board upon any question of fact as to contents or sufficiency of the petition, or upon any other fact of a jurisdictional nature, is open to review in the state courts. It would seem to be so held in the *Tregea* case, decided in 1891. 88 Cal. 334.

If the state courts would have had the right to review these findings of fact, jurisdictional in their nature, the United States circuit court had the same right in this case; but it has not done so, its judgment being based upon the sole ground that the act was a violation of the Fourteenth Amendment of the federal Constitution. Upon the question of fact as to benefits, decided by the board, it is held that its decision is conclusive. 88 Cal., *supra*. Whether a review is or is not given upon any of these questions of fact (if the tribunal created by the state had power to decide them, and if an opportunity for a hearing were given by the act) is a mere question of legislative discretion. It is not constitutionally necessary in such cases to give a rehearing or an appeal. *Missouri v. Lewis*, [101 U. S. 22](#) ; *Pearson v. Yewdall*, [95 U. S. 294](#) .

Very possibly a decision by the statutory tribunal which included

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tracts of land within the district that plainly could not, by any fair or proper view of the facts, be benefited by irrigation would be the subject of a review in some form and of a reversal by the courts on the ground that the decision was based not alone upon no evidence in its favor, but that it was actually opposed to all the evidence, and to the plain and uncontradicted facts of common knowledge, and was given in bad faith. In such case, the decision would not have been the result of fair or honest, although grossly mistaken, judgment, but would be one based upon bad faith and fraud, and so could not be conclusive in the nature of things. A question of this kind would involve no constitutional element, and its solution would

depend upon the ordinary jurisdiction of courts of justice over this class of cases. It is not pretended that such jurisdiction has been invoked or exercised here. As was said by Mr. Justice Miller in *Davidson v. New Orleans*, *supra*, where the objection was made that part of the property was not in fact benefited:

"This is a matter of detail, with which this Court cannot interfere if it were clearly so, but it is hard to fix a limit within these two parishes where property would not be benefited by the removal of the swamps and marshes which are within their bounds."

To the same effect, *Spencer v. Merchant*, [125 U. S. 345](#) ; *Lent v. Tillson*, [140 U. S. 316](#) , [140 U. S. 333](#) .

In regard to the matters thus far discussed, we see no valid objection to the act in question.

Third. We come now to the question of the true construction of the act. Does it provide for a hearing as to whether the petitioners are of the class mentioned and described in the act, and as to their compliance with the conditions of the act in regard to the proceedings prior to the presentation of the petition for the formation of the district? Is there any opportunity provided for a hearing upon notice to the landowners interested in the question whether their lands will be benefited by the proposed irrigation? We think the right to a hearing in regard to all these facts is given by the act, and that it has been practically so construed by the Supreme Court of California in some of the cases above cited from the Reports of that court, and in the cases cited in the briefs of

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counsel. We should come to the same conclusion from a perusal of the act. The first two sections provide for the petition and a hearing. The petition is to be signed by a majority of the holders of title to lands susceptible of one mode of irrigation, etc. This petition is to be presented to the board of supervisors at a regular meeting, and notice of intended presentation must be published two weeks before the time at which it is to be presented. The board shall hear the same, shall

establish and define the boundaries, although it cannot modify those described in the petition so as to except from the district lands susceptible of irrigation by the same system of works applicable to the other lands in the proposed district, and the board cannot include in the district, even though included in the description in the petition, lands which shall not, in the judgment of the board, be benefited by irrigation by said system.

If the board is to hear the petition upon notice, and is not to include land which will not, in its judgment, be benefited by irrigation by the system, we think it follows as a necessary and a fair implication that the persons interested in, or who may be affected by, the proposed improvement, have the right, under the notice, to appear before the board and contest the facts upon which the petition is based, and also the fact of benefit to any particular land included in the description of the proposed district.

It is not an accurate construction of the statute to say that no opportunity is afforded the landowner to test the sufficiency of the petition in regard to the signers thereof, and in regard to the other conditions named in the act; nor is it correct to say that the power of the board of supervisors is in terms limited to making such changes in the boundaries proposed by the petitioners as it may deem proper, subject to the conditions named in the act.

When the act speaks of a hearing of the petition, what is meant by it? Certainly it must extend to a hearing of the facts stated in the petition, and whether those who sign it are sufficient in number, and are among the class of persons mentioned in the act as alone having the right to sign the same.

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The obvious purpose of the publication of the notice of the intended presentation of the petition is to give those who are in any way interested in the proceeding an opportunity to appear before the board and be heard upon all the questions of fact, including the question of benefits to lands described in the petition. As there is to be a hearing before the board, and the board is not to include any lands which in

its judgment will not be benefited, the plain construction of the act is that the hearing before the board includes the question as to the benefits of the lands, because that is one of the conditions upon which the final determination of the board is based, and the act cannot, in reason, be so construed as to provide that while the board is to give a hearing on the petition, it must nevertheless decide in favor of the petitioners, and must establish and define the boundaries of the district, although the signers may not be fifty, or a majority, of the holders of title, as provided by the act, and notwithstanding some other defect may become apparent upon the hearing.

This provision that the board "shall establish the define such boundaries" (section 2) cannot reasonably or properly be held to mean that the boundaries must be established notwithstanding any or all of the defects above mentioned have been proved upon the hearing. The language of the sections, taken together, plainly implies that the board is to establish and define the boundaries only in case the necessary facts appear up on the hearing which the act provides for.

It cannot be supposed that the act, while providing for a hearing of the petition, yet at the same time commands the establishment and defining of the boundaries of a district notwithstanding the fact that the hearing shows a failure on the part of the petitioners to comply with some or all of the conditions upon which the right to organize is placed by the same act.

Such an absurdity cannot be imputed to the legislature. It cannot be doubted that, by the true construction of the act, the board of supervisors is not only entitled, but it is its duty, to entertain a contest by a landowner in respect to the question whether the signers of the petition fulfill the requirements

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described in the first section of the act; and, if the board find in favor of the contestant upon that issue, it is the duty of the board, under the provisions of the statute, to deny the petition and dismiss the proceedings. Otherwise, what is the hearing for? And if, upon a hearing of the question of benefits to any lands

described in the petition, it appears to the board that such lands will not be benefited, it is the duty of the board to so decide, and to exclude the lands from the district. The inclusion of any lands is therefore, in and of itself, a determination (after an opportunity for a hearing) that they will be benefited by the proposed irrigation.

We have said that the Supreme Court of California has substantially decided these questions in the same way. This appears, among others, in the case of *Modesto Irrigation District v. Tregea*, above referred to. The court uses this language in that case:

"The formation of irrigation districts is accomplished by proceedings so closely analogous to those prescribed for swamp lands and reclamation districts that the decisions with respect to the latter are authority as to the former, and we cite, as conclusive on this point, *People v. Hagar*, 52 Cal. 181; s.c., 66 Cal. 60, and many decisions to the same effect are cited by the briefs of counsel, but we deem it unnecessary to refer to them."

In the case of *People v. Hagar*, 52 Cal. 171, 182, it was held that the board of supervisors, on presentation of the petition, was to hear and determine the question of jurisdiction, and whether the allegations of the petition were true. An approval and confirmation of the petition and the establishment of the district was held to be a conclusive judgment by the board that the lands mentioned and in question were swamp lands, that the petitioners held the proper evidences of title thereto, and *that the lands would be benefited by the reclamation*. These jurisdictional facts, it was held, must exist before the district could lawfully be established.

The provision for a hearing in the irrigation act is similar, and the condition therein, that lands which in the judgment of the board are not benefited shall not be included renders

the determination of the board, including them, after a hearing, a judgment that such lands will be benefited by the proposed plan of irrigation.

The publication of a notice of the proposed presentation of the petition is a sufficient notification to those interested in the question, and gives them an opportunity to be heard before the board. *Hagar v. Reclamation District*, [111 U. S. 701](#) ; *Lent v. Tillson*, [140 U. S. 316](#) ; *Paulsen v. Portland*, [149 U. S. 30](#) .

The formation of one of these irrigation districts amounts to the creation of a public corporation, and their officers are public officers. This has been held in the Supreme Court of California. *In re Madera Irrigation Dist.*, 92 Cal. 296, 28 P. 272, 675; *People v. Irrigation District*, 98 Cal. 206.

There is nothing in the essential nature of such a corporation, so far as its creation only is concerned, which required notice to or hearing of the parties included therein before it can be formed. It is created for a public purpose, and it rests in the discretion of the legislature when to create it, and with what powers to endow it.

In the act under consideration, however, the establishment of its boundaries and the purposes for which the district is created, if it be finally organized by reason of the approving vote of the people, will almost necessarily be followed by, and result in, an assessment upon all the lands included within the boundaries of the district. The legislature thus, in substance, provides for the creation not alone of a public corporation, but of a taxing district, whose boundaries are fixed not by the legislature, but, after a hearing, by the board of supervisors, subject to the final approval by the people in an election called for that purpose. It has been held in this Court that the legislature has power to fix such a district for itself, without any hearing as to benefits, for the purpose of assessing upon the lands within the district the cost of a local public improvement. The legislature, when it fixes the district itself, is supposed to have made proper inquiry, and to have finally and conclusively determined the fact of benefits to the land included in the district, and the citizen has no constitutional

right to any other or further hearing upon that question. The right which he thereafter has is to a hearing upon the question of what is termed the "apportionment of the tax" -- *i.e.* the amount of the tax which he is to pay. *Paulsen v. Portland*, [149 U. S. 30](#) , [149 U. S. 41](#) . But when, as in this case, the determination of the question of what lands shall be included in the district is only to be decided after a decision as to what lands described in the petition will be benefited, and the decision of that question is submitted to some tribunal (the board of supervisors in this case), the parties whose lands are thus included in the petition are entitled to a hearing upon the question of benefits, and to have the lands excluded, if the judgment of the board be against their being benefited. Unless the legislature decide the question of benefits itself, the landowner has the right to be heard upon that question before his property can be taken. This, in substance, was determined by the decisions of this Court in *Spencer v. Merchant*, [125 U. S. 345](#) , [125 U. S. 356](#) , and *Walston v. Nevin*, [128 U. S. 578](#) . Such a hearing upon notice is duly provided for in the act.

Then, as to a hearing upon the question of apportionment, the act, in sections 18, 20, and 21 provides a general scheme for the assessment upon the property included in the district, and it also provides for a notice by publication of the making of such assessment, and an opportunity is given to the taxpayer to be heard upon the question of the valuation and assessment, and to make such objections thereto as he may think proper, and after that, the assessors are to decide.

Thus, the act provides for a hearing of the landowner both as to the question whether his land will be benefited by the proposed irrigation and, when that has been decided in favor of the benefit, then upon the question of the valuation and assessment of and upon his land included in the district. As to other matters, the district can be created without notice to anyone. Our conclusion is that the act, as construed with reference to the objections considered under this third head, is unassailable.

Fourth. The fourth objection, and also the objection above alluded to as the final one, may be discussed together, as

they practically cover the same principle. It is insisted that the basis of the assessment upon the lands benefited for the cost of the construction of the works is not in accordance with and in proportion to the benefits conferred by the improvement, and therefore there is a violation of the constitutional amendment referred to, and a taking of the property of the citizen without due process of law.

Although there is a marked distinction between an assessment for a local improvement and the levy of a general tax, yet the former is still the exercise of the same power as the latter, both having their source in the sovereign power of taxation. Whatever objections may be urged to this kind of an assessment as being in violation of the state constitution, yet, as the state court has held them to be without force, we follow its judgment in that case, and our attention must be directed to the question whether any violation of the federal Constitution is shown in such an assessment. Can an *ad valorem* assessment on the land benefited, or, in other words, can such an assessment as is provided for in sections 18, 20, 21, and 22 of the act, be legally levied in such a case as this? Assume that the only theory of these assessments for local improvements upon which they can stand is that they are imposed on account of the benefits received, and that no land ought, in justice, to be assessed for a greater sum than the benefits received by it; yet it is plain that the fact of the amount of benefits is not susceptible of that accurate determination which appertains to a demonstration in geometry. Some means of arriving at this amount must be used, and the same method may be more or less accurate in different cases involving different facts. Some choice is to be made, and, where the fact of some benefit accruing to all the lands has been legally found, can it be that the adoption of an *ad valorem* method of assessing the lands is to be held a violation of the federal constitution? It seems to us clearly not. It is one of those matters of detail in arriving at the proper and fair amount and proportion of the tax that is to be levied on the land with regard to the benefits it has received, which is open to the discretion of the state legislature, and with which this Court ought

to have nothing to do. The way of arriving at the amount may be in some instances inequitable and unequal, but that is far from rising to the level of a constitutional problem and far from a case of taking property without due process of law.

In the case of *Davidson v. New Orleans*, [96 U. S. 106](#) , the assessment, with which this Court refused to interfere, was for a local improvement (reclaiming swamp lands), and by 8 of the Act of the Legislature of Louisiana, passed in 1858, Laws of Louisiana, 1858, 114, such a uniform assessment was levied upon "the superficial or square foot of land situate within the draining section or district of such board" as would pay for the cost of construction. The effect of this provision was that each foot of land in the whole district paid the same sum as any other foot, although the assessment was founded upon the theory of an assessment for benefits. It was complained that the amount assessed upon plaintiff's lands was excessive, and that part of them received no benefit at all, and it was to that argument that the reply was made that it was a matter of detail, so far as this Court was concerned -- *i.e.* it was not a constitutional question, and therefore was not reviewable here.

In *Walston v. Nevin*, [128 U. S. 578](#) , an assessment was laid upon lands for benefits received from construction of a local improvement according to the number of square feet owned by the landowner. It was urged that it was not an assessment governed by the amount of benefits received, but was an absolutely arbitrary and illegal method of assessment. This Court held the objection not well founded, and that the matter was for the decision of the legislature, to which body the discretion was committed of providing for payment of the improvement.

We refer to the case of *Cleveland v. Tripp*, 13 R.I. 59, decided in 1880, as one which treats this subject with much ability. The act provided for the construction of a sewer in the City of Providence, and directed the laying of an assessment upon the abutting lands of a certain sum for each front foot, and another sum for each square foot extending back 150 feet. The claim was made that such a mode of assessment

did not apply the tax in proportion to the benefits received, and was unequal and unfair, and therefore unconstitutional. The court, while admitting the complaint of inequality to be well founded, yet held the act to be within the power of the legislature.

There are some states where assessments under such circumstances as here exist, and made upon an *ad valorem* basis, have been held invalid as an infringement of some provision of the state constitution or in violation of the act under which they were levied. Counsel have cited several such in the briefs herein filed. We do not discover, and our attention has not been called to, any case in this Court where such an assessment has been held to violate any provision of the federal Constitution. If it do not, this Court can grant no relief.

The method of assessment here provided for may not be the best which could have been adopted in order to accomplish the most equal and exact justice which the nature of the case permits. But, nonetheless, we are unable to say that it runs counter to any provision of the federal Constitution, and we must for that reason hold the objection here considered to be untenable.

An objection is also urged that it is delegating to others a legislative right -- that of the incorporating of public corporations -- inasmuch as the act vests in the supervisors and the people the right to say whether such a corporation shall be created, and it is said that the legislature cannot so delegate its power, and that any act performed by such a corporation, by means of which the property of the citizen is taken from him, either by the right of eminent domain or by assessment, results in taking such property without due process of law.

We do not think there is any validity to the argument. The legislature delegates no power. It enacts conditions upon the performance of which the corporation shall be regarded as organized with the powers mentioned and described in the act.

After careful scrutiny of the objections to this act, we are compelled to the conclusion that no one of such objections is well taken. The judgment appealed from herein is therefore

Reversed, and the cause remanded to the Circuit Court of the United States for the Southern District of California for further proceedings not inconsistent with this opinion.

MR. CHIEF JUSTICE FULLER and MR. JUSTICE FIELD dissented.

* The act reads as follows:

"SEC. 1. Whenever fifty or a majority of the holders of title or evidence of title to lands susceptible of one mode of irrigation from a common source and by the same system of works desire to provide for the irrigation of the same, they may propose the organization of an irrigation district under the provisions of this act, and when so organized, such district shall have the powers conferred, or that may hereafter be conferred, by law upon such irrigation districts. The equalized county assessment roll next preceding the presentation of a petition for the organization of an irrigation district, under the provisions of this act, shall be sufficient evidence of title for the purposes of this act."

"SEC. 2. A petition shall first be presented to the board of supervisors of the county in which the lands, or the greatest portion thereof, are situated, signed by the required number of holders of title, or evidence of title, of such proposed district, evidenced as above provided, which petition shall set forth and particularly describe the proposed boundaries of such district, and shall pray that the same may be organized under the provisions of this act. The petitioners must accompany the petition with a good and sufficient bond, to be approved by the said board of supervisors, in double the amount of the probable cost of organizing such district, conditioned that the bondsmen will pay all the said costs in case said organization shall not be effected. Such petition shall be presented at a regular meeting of the said board, and shall be published for at least two weeks before the time at which the same is to be presented in some newspaper printed and published in the county where said petition is presented, together with a notice stating the time of the meeting at which the same will be presented, and if any

portion of such proposed district lies within another county or counties, then said petition and notice shall be published in a newspaper published in each of said counties. When such petition is presented, the said board of supervisors shall hear the same, and may adjourn such hearing from time to time, not exceeding four weeks in all, and on the final hearing may make such changes in the proposed boundaries as they may find to be proper, and shall establish and define such boundaries, *provided* that said board shall not modify said boundaries so as to except from the operation of this act any territory within the boundaries of the district proposed by said petitioners which is susceptible of irrigation by the same system of works applicable to the other lands in such proposed district; nor shall any lands which will not in the judgment of the said board be benefited by irrigation by said system be included within such district, *provided* that any person whose lands are susceptible of irrigation from the same source may, in the discretion of the board, upon application of the owner to said board, have such lands included in said district. Said board shall also make an order dividing said district into five divisions, as nearly equal in size as may be practicable, which shall be numbered first, second, third, fourth and fifth, and one director, who shall be a freeholder in the division and an elector and resident of the district, shall be elected by each division, *provided* that if a majority of the holders of title, or evidence of title, evidenced as above provided, petition for the formation of a district, the board of supervisors may, if so requested in the petition, order that there may be either three or five directors, as said board may order, for such district, and that they may be elected by the district at large. Said board of supervisors shall then give notice of an election to be held in such proposed district for the purpose of determining whether or not the same shall be organized under the provisions of this act. Such notice shall describe the boundaries so established, and shall designate a name for such proposed district, and said notice shall be published for at least three weeks prior to such election in a newspaper published within said county, and if any portion of such proposed district lie within another county or counties, then said notice shall be published in a newspaper published within each of said counties. Such notice shall require the electors to cast ballots which shall contain the words 'Irrigation District -- Yes,' or 'Irrigation District -- No,' or words equivalent thereto, and also the names of persons to be voted for to fill the various elective

offices hereinafter prescribed. No person shall be entitled to vote at any election, held under the provisions of this act, unless he shall possess all the qualifications required of electors under the general election laws of this state."

"SEC. 3. Such election shall be conducted as nearly as practicable in accordance with the general laws of this state, *provided* that no particular form of ballot shall be required. The said board of supervisors shall meet on the second Monday next succeeding such election, and proceed to canvass the votes cast thereat, and if upon such canvass it appear that at least two-thirds of all the votes cast are 'Irrigation District -- Yes,' the said board shall, by an order entered on its minutes, declare such territory duly organized as an irrigation district, under the name and style theretofore designated, and shall declare the persons receiving respectively the highest number of votes for such several offices to be duly elected to such offices. And no action shall be commenced or maintained, or defense made, affecting the validity of the organization, unless the same shall have been commenced or made within two years after the making and entering of said order. Said board shall cause a copy of such order, duly certified, to be immediately filed for record in the office of the county recorder of each county in which any portion of such lands are situated, and must also immediately forward a copy thereof to the clerk of the board of supervisors of each of the counties in which any portion of the district may lie, and no board of supervisors of any county, including any portion of such district, shall, after the date of the organization of such district, allow another district to be formed including any of the lands in such district without the consent of the board of directors thereof, and from and after the date of such filing, the organization of such district shall be complete, and the officers thereof shall be entitled to enter immediately upon the duties of their respective offices upon qualifying in accordance with law, and shall hold such offices respectively until their successors are elected and qualified. For the purposes of the election above provided for, the said board of supervisors must establish a convenient number of election precincts in said proposed district and define the boundaries thereof, which said precincts may thereafter be changed by the board of directors of such district. In any district, the board of directors thereof may, upon the presentation of a petition therefor by a majority of the holders of title or

evidence of title of said district, evidenced as above provided, order that on and after the next ensuing general election for the district there shall be either three or five directors, as said board may order, and that, they shall be elected by the district at large, or by divisions, as so petitioned and ordered, and after such order such directors shall be so elected."

Sections 4 to 10, inclusive, provide for the election of officers of the company and for their giving bonds, and are not material here.

"SEC. 11. On the first Tuesday in March next following their election, the board of directors shall meet and organize as a board, elect a President from their number, and appoint a secretary, who shall each hold office during the pleasure of the board. The board shall have the power, and it shall be their duty, to manage and conduct the business and affairs of the district, make and execute all necessary contracts, employ and appoint such agents, officers and employees as may be required, and prescribe their duties, establish equitable bylaws, rules and regulations for the distribution and use of water among the owners of said lands, and generally to perform all such acts as shall be necessary to fully carry out the purposes of this act. The said bylaws, rules, and regulations must be printed in convenient form for distribution in the district. And it is hereby expressly provided that all waters distributed for irrigation purposes shall be apportioned ratably to each land owner upon the basis of the ratio which the last assessment of such owner for district purposes within said district bears to the whole sum assessed upon the district, *provided* that any land owner may assign the right to the whole or any portion of the waters so apportioned to him."

"SEC. 12. The board of directors shall hold a regular monthly meeting in their office on the first Tuesday in every month, and such special meetings as may be required for the proper transaction of business, *provided* that all special meetings must be ordered by a majority of the board. The order must be entered of record, and five days' notice thereof must, by the secretary, be given to each member not joining in the order. The order must specify the business to be transacted, and none other than that specified must be transacted at such special meeting. All meetings of the board must be public, and three members shall constitute a

quorum for the transaction of business, but on all questions requiring a vote there shall be a concurrence of at least three members of said board. All records of the board shall be open to the inspection of any elector during business hours. The board and its agents and employees shall have the right to enter upon any land to make surveys, and may locate the necessary irrigation works and the line for any canal or canals, and the necessary branches for the same, on any lands which may be deemed best for such location. Said board shall also have the right to acquire, either by purchase or condemnation or other legal means, all lands and waters and water rights, and other property necessary for the construction, use, supply, maintenance, repair, and improvements of said canal or canals and works, including canals and works constructed and being constructed by private owners, lands for reservoirs for the storage of needful waters, and all necessary appurtenances. In case of purchase, the bonds of the district hereinafter provided for may be used at their par value in payment, and in case of condemnation the board shall proceed, in the name of the district, under the provisions of title seven of part three of the Code of Civil Procedure. Said board may also construct the necessary dams, reservoirs, and works for the collection of water for said district, and do any and every lawful act necessary to be done that sufficient water may be furnished to each land owner in said district for irrigation purposes. The use of all water required for the irrigation of the lands of any district formed under the provisions of this act, together with the rights of way for canals and ditches, sites for reservoirs, and all other property required in fully carrying out the provisions of this act, is hereby declared to be a public use, subject to the regulation and control of the state, in the manner prescribed by law."

(Sections 13 and 14 are not material.)

"SEC. 15. For the purpose of constructing necessary irrigating canals and works, and acquiring the necessary property and rights therefor, and otherwise carrying out the provisions of this act, the board of directors of any such district must, as soon after such district has been organized as may be practicable, and whenever thereafter the construction fund has been exhausted by expenditures herein authorized therefrom, and the board deem it necessary or expedient to raise

additional money for said purposes, estimate and determine the amount of money necessary to be raised, and shall immediately thereafter call a special election at which shall be submitted to the electors of such district possessing the qualifications prescribed by this act, the question whether or not the bonds of said district in the amount as determined shall be issued. Notice of such election must be given by posting notices in three public places in each election precinct in said district for at least twenty days, and also by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept, once a week for at least three successive weeks. Such notices must specify the time of holding the election, the amount of bonds proposed to be issued, and said election must be held, and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of this act governing the election of officers, *provided* that no informalities in conducting such an election shall invalidate the same, if the election shall have been otherwise fairly conducted. At such election, the ballots shall contain the words 'Bonds -- Yes,' or 'Bonds -- No,' or words equivalent thereto. If a majority of the votes cast are 'Bonds -- Yes,' the board of directors shall cause bonds in said amount to be issued; if a majority of the votes cast at any bond election are 'Bonds -- No,' the result of such election shall be so declared, and entered of record. And whenever thereafter said board in its judgment deems it for the best interest of the district that the question of issuance of bonds in said amount, or any amount, shall be submitted to said electors, it shall so declare of record in its minutes, and may thereupon submit such questions to said electors in the same manner and with like effect as at such previous election. . . ."

(The remainder of the section provides for the maturing and payment of the bonds, and is not material.)

(Section 16 is not material.)

"SEC. 17. Said bonds and the interest thereon shall be paid by revenue derived from an annual assessment upon the real property of the district, and all the real property in the district shall be and remain liable to be assessed for such

payments, as hereinafter provided."

"SEC. 18. The assessor must, between the first Monday in March and the first Monday in June, in each year, assess all the real property in the district to the persons who own, claim, or have the possession or control thereof at its full cash value. He must prepare an assessment book, with appropriate headings, in which must be listed all such property within the district, in which must be specified, in separate columns, under the appropriate head:"

" *First*. -- The name of the person to whom the property is assessed. If the name is not known to the assessor, the property shall be assessed to Unknown owners."

" *Second* -- Land by township, range, section or fractional section, and when such land is not a congressional division or subdivision, by metes and bounds, or other description sufficient to identify it, giving an estimate of the number of acres, locality, and the improvements thereon."

" *Third* -- City and town lots, naming the city or town, and the number and block, according to the system of numbering in such city or town, and the improvements thereon."

" *Fourth* -- The cash value of real estate other than city or town lots."

" *Fifth* -- The cash value of improvements on such real estate."

" *Sixth* -- The cash value of city and town lots."

" *Seventh* -- The cash value of improvements on city and town lots."

" *Eighth* -- The cash value of improvements on real estate assessed to persons other than the owners of the real estate."

" *Ninth* -- The total value of all property assessed."

" *Tenth* -- The total value of all property after equalization by the board of directors."

" *Eleventh* -- Such other things as the board of directors may require."

"Any property which may have escaped the payment of any assessment for any year shall, in addition to the assessment for the then current year, be assessed for such year with the same effect and with the same penalties as are provided for such current year."

(Section 19 is not material.)

"SEC. 20. On or before the first Monday in August in each year, the assessor must complete his assessment book and deliver it to the secretary of the board, who must immediately give notice thereof, and of the time the board of directors, acting as a board of equalization, will meet to equalize assessments, by publication in a newspaper published in each of the counties comprising the district. The time fixed for the meeting shall not be less than twenty nor more than thirty days from the first publication of the notice, and in the meantime the assessment book must remain in the office of the secretary for the inspection of all persons interested."

"SEC. 21. Upon the day specified in the notice required by the preceding section for the meeting, the board of directors, which is hereby constituted a board of equalization for that purpose, shall meet and continue in session from day to day, as long as may be necessary, not to exceed ten days, exclusive of Sundays, to hear and determine such objections to the valuation and assessment as may come before them, and the board may change the valuation as may be just. The secretary of the board shall be present during its sessions and note all changes made in the valuation of property, and in the names of the persons whose property is assessed, and within ten days after the close of the session he shall have the total values, as finally equalized by the board, extended into columns and added."

"SEC. 22. The board of directors shall then levy an assessment sufficient to raise the annual interest on the outstanding bonds, and at the expiration of ten years after the issuing of bonds of any issue must increase said assessment to an amount sufficient to raise a sum sufficient to pay the principal of the outstanding bonds as they mature. The secretary of the board must compute and enter in a

separate column of the assessment book the respective sums, in dollars and cents, to be paid as an assessment on the property therein enumerated. When collected, the assessment shall be paid into the district treasury, and shall constitute a special fund, to be called the 'Bond Fund of ____ Irrigation District.' In case of the neglect or refusal of the board of directors to cause such assessment and levy to be made as in this act provided, then the assessment of property made by the county assessor and the state board of equalization shall be adopted, and shall be the basis of assessments for the district, and the board of supervisors for the county in which the office of the board of directors is situated shall cause an assessment roll for said district to be prepared, and shall make the levy required by this act, in the same manner and with the like effect as if the same had been made by said board of directors, and all expenses incident thereto shall be borne by such district. In case of the neglect or refusal of the collector or treasurer of the district to perform the duties imposed by law, then the tax collector and treasurer of the county in which the office of the board of directors is situated must, respectively, perform such duties, and shall be accountable therefor upon their official bond as in other cases."

"SEC. 23. The assessment upon real property is a lien against the property assessed from and after the first Monday in March for any year, and the lien for the bonds of any issue shall be a preferred lien to that for any subsequent issue, and such lien is not removed until the assessments are paid or the property sold for the payment thereof."

(Sections 24 to 30, inclusive, provide for collecting the assessments and for the sale of the lands of those not paying, the giving of deeds upon such sale, and for the redemption of the lands so sold and for the character of the deed as to its being *prima facie* evidence, and in some cases conclusive evidence of the regularity of the proceedings, and such sections, and the remainder of the act, are not material to the present inquiry.)