

Eldridge Vs. Trezevant

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Appellant : Eldridge

Respondent : Trezevant

Judgement :

Eldridge v. Trezevant - 160 U.S. 452 (1896)

U.S. Supreme Court Eldridge v. Trezevant, 160 U.S. 452 (1896)

Eldridge v. Trezevant

No. 62

Submitted October 17, 1896

Decided January 6, 1896

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE WESTERN DISTRICT OF LOUISIANA

SYLLABUS

In Louisiana, the constitution and laws of the state, as interpreted by its highest court, permit the taking, without compensation, of land for the construction of a public levee on the Mississippi River on the ground that the state has, under French laws existing before its transfer to the United States, a servitude on such lands for such a purpose, and they subject a citizen of another state owning such land therein, the title to which was derived from the United States, to the operation of the state law as so interpreted. *Held* that there was no error in this so long as the citizen of another state receives the same measure of right as that awarded to citizens of Louisiana in regard to their property similarly situated.

The provisions of the Fourteenth Amendment to the Constitution do not override public rights, existing in the form of servitudes or easements, which are held by the courts of a state to be valid under its constitution and laws.

William B. Eldridge, a citizen of the State of Mississippi, filed in the Circuit Court of the United States for the Western District of Louisiana a bill of complaint against Henry B. Richardson, Chief of the Board of Engineers of the State of Louisiana, and Peter J. Trezevant, citizens of Louisiana, whereby he sought to have the defendants enjoined from the construction of a certain public levee through a plantation belonging to the complainant and situated in Carroll Township, State of Louisiana.

An answer was filed admitting that the state board of engineers had projected and laid out a public levee through the complainant's plantation, and that a contract to construct said levee had been awarded to Peter J. Trezevant, but claiming that such proceedings were in pursuance of an act of the General Assembly of the State of Louisiana, approved February 10, 1879, and were therefore lawful

The case was heard upon the issues presented by the bill and answer, supplemented with an admission that none of the

acts complained of in the bill were wanton, malicious, or arbitrary.

On June 20, 1891, a decree was rendered adjudging the sufficiency of the answer and dismissing the bill, from which decree an appeal was taken to this Court.

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

By an Act of the General Assembly of the State of Louisiana approved February 10, 1879, there was created a Board of State Engineers, whose duty it was to make a survey of the watercourses, public works, and levees of the state. They were to report to the governor of the state the improvements which they should deem necessary and the construction of such levees as were of prime importance to the state at large and were beyond the means of the parochial authorities. They were also in said report to furnish estimates and specifications of work necessary to be done. It was thereupon made the duty of the governor to advertise for proposals to make such improvements and construct such levees as were recommended, and to award the contracts to the lowest responsible bidder under proper and sufficient bonds for the faithful performance of their contracts, and, upon completion of said works, it was made the duty of the board of engineers to examine and measure the work and to certify to its correctness, and, upon approval by the governor, the auditor of public accounts of the state was to draw his warrant therefor, payable out of the general engineer fund or such fund as should be provided by law.

In the exercise of the powers thus conferred, the board of engineers reported to the governor that it was necessary to construct a levee across complainant's plantation; that such levee was of prime importance to the state at large; would have to be of large size; that the riverfront was a dangerous and constantly caving bank, and that necessarily the levee had to be located some distance from the river, and they

furnished estimates and specifications of the work necessary to be done. Subsequently, after advertising for proposals, the governor awarded the contract for constructing the levees proposed to the defendant Peter J. Trezevant, as the lowest responsible bidder, who was at the time of filing of the bill, proceeding with the work.

The plaintiff expressly admits in his bill that although the Constitution of the State of Louisiana contains a provision that private property shall not be taken or damaged without adequate and just compensation's being first paid, the laws of the state, as interpreted by the supreme court of the state, provide no remedy for cases of proceedings under the levee laws, and that the supreme court of the state has decided that such taking, damage, and destruction of property for the purpose of building a public levee is an exercise of the police power of the state, and *damnum absque injuria*, because the state has a right of servitude or easement over the lands on the shores of navigable rivers for the making and repairing of levees, roads, and other public works. But he contends that as he cannot sue the state for compensation, and as an action at law, if such would lie, would not furnish that just and adequate compensation first paid contemplated by the provision of the state constitution, he has a right, as a citizen of another state, to invoke, in the circuit court of the United States, the protection of the Fourteenth amendment of the Constitution of the United States, which provides that no state shall 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 its laws.

The concession distinctly made by the complainant in his bill, that the state courts refuse to recognize that owners of lands abutting on the Mississippi River and the bayous running to and from the same, where levees are necessary to confine the waters and to protect the inhabitants against inundation, are entitled, when a public levee is located upon such lands, to invoke the application of that provision of the state constitution which provides that "private property shall not be taken nor damaged for public use without just and adequate compensation

first paid," and repeated in the brief filed on his behalf in this Court, relieves us from an extended examination of the origin and history of the state enactments, constitutional and legislative and of the decisions of the state courts on this subject.

It is important, however, to observe the ground upon which the state legislative and judicial authorities base their action. That ground is found in the doctrine existing in the Territory of Louisiana before its purchase by the United States and continuing to this time -- that lands abutting on the rivers and bayous are subject to a servitude in favor of the public whereby such portions thereof as are necessary for the purpose of making and repairing public levees may be taken in pursuance of law without compensation. This doctrine is said to have been derived from the Code Napoleon, whose 649th and 650th articles were as follows:

"Servitudes established by law have for object the public or commercial utility, or the utility of private persons. Those established for the public or commercial utility have for object the towpaths along the navigable or floatable rivers, the construction or repairing of roads and other public or commercial works. All that concerns this kind of servitude is determined by laws or particular regulations."

But whether the servitude in question was derived from French or Spanish sources or from local and natural causes we need not inquire, because it is explicitly asserted in the Civil Code of Louisiana, article 661, in the following terms:

"Servitudes imposed for the public or common utility relate to the space which is to be left for public use by the adjacent proprietors, on the shores of navigable rivers, and for the making and repairing of levees, roads, and other public or common

works. All that relates to this kind of servitude is determined by laws or particular regulations."

In the case of *Zenor v. Parish of Concordia*, 7 La. Ann. 150, where the legislature had enacted that the police jury of a parish exposed to inundation should have plenary power to locate and construct levees, and where such police jury, in pursuance of these powers, had placed and built a levee on the lands of the complainant, greatly to his detriment, it was held that the enactment was valid and that no liability for damages was caused by a *bona fide* proceeding under it. The court said:

"In this state, so much exposed to ruinous inundations, the public have the undoubted right, on the shores of the Mississippi River, to the use of the space of ground necessary for the making and repairing of the public levees and roads. C.C. Art. 665. It was the condition of the ancient grants of land on the Mississippi River, and sufficient depth was always given to each tract to prevent the exercise of the public rights from proving ruinous to the individual."

"Speculations and other motives have in later times caused the division and sale of some tracts and entries of others with large fronts and little depth, in opposition to the general policy of the country. Thus, in the present case, the plaintiff has scarcely any depth, with a large front, in a deep bend, with a curving bank. The policy of the country and the laws of the land, made for the general safety, cannot yield to cases of individual hardship. Those who purchase and own the front on the Mississippi River gain all that is made by alluvion, and lose all that is carried away by abrasion. And those who choose to purchase tracts with little depth, in caving bends, expose themselves knowingly to total loss, and must suffer the consequences when they occur. They suffer *damnum absque injuria*. "

In *Dubose v. Levee Commissioners*, 11 La. Ann. 165, the plaintiff sued for damages occasioned to his land by the acts of the commissioners in changing the line of the public levee, but the court, citing the provisions of the code, article 665, held that

"the law concerning the expropriation of private property for public use does not apply to such lands upon the

banks of navigable rivers as may be found necessary for levee purposes. The quantity of land to be taken for such purposes presents a question of policy or administration to be decided by the local authorities, whose decision should not be revised by this tribunal except for the most cogent reasons and where there has been manifest oppression or injustice."

In the case of *Bass v. State of Louisiana*, 34 La. Ann. 494, the supreme court again held that an owner of land abutting on the Mississippi River could not recover for damages inflicted upon his property by the state board of engineers and contractors in locating and constructing a public levee, but put the immunity of the state mainly upon the proposition that such public works are done in the exercise of the police power, and did not advert to the doctrine of servitude, upon which the previous decision had placed such immunity.

But we do not understand that the supreme court of the state intended thereby to repudiate the doctrine of a servitude, explicitly declared in the code, and recognized through a long period by many decisions. If, to approve the judgment in that case, it were necessary to hold that the state and its agents can take private property wherever situated and apply it to any public purposes, and escape from the duty of compensation, by terming such action an exercise of the police power, it is difficult to see how such a conclusion could be reached by the courts of a state in whose constitution is to be found a provision that private property shall not be taken for public use without just and adequate compensation first made. But, as we have said, it is not necessary to so read the decision in question, nor to consider whether, even in such a case, a remedy could be found in any provision of the federal Constitution.

This, we think, clearly appears by the later case of *Ruch v. New Orleans*, 43 La. Ann. 275, where the supreme court reviewed the law and the cases, and again put the immunity of the city from liability for damages occasioned to the front of the plaintiff's property by a public work upon the long established doctrine of a servitude, and declared that

"the riparian owner enjoys his property *sub modo*, i.e. subject to

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the right of the public to reserve space enough for levees, public works, and the like; that over this space the front proprietor never acquires complete dominion. It never passes free of this reservation to a purchase."

With the admission that, under the state constitution and laws, as construed by the highest court of the state, the plaintiff below was not entitled to the remedies he sought, we are requested to hold that he can obtain relief by invoking, in a circuit court of the United States, the protection of the Fourteenth Amendment of the Constitution of the United States, which declares that no state shall 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.

The first contention of the plaintiff in error is that, as it is admitted that he owns the land in fee through title derived by patent from the United States, without reservation, whatever may have been the conditions of the ancient grants, no such condition attaches to his ownership, and the lands, although bordering on a navigable stream, are as much within the protection of the constitutional principle awarding compensation as other property. In other words, the claim is that the servitude under which are held lands whose titles are derived by grant from Spain or France, or from the state, does not attach to lands whose titles are derived from the United States.

Previous decisions of this Court furnish a ready answer to this contention.

In *Barney v. Keokuk*, [94 U. S. 324](#) , where the dispute was as to the nature of the title as to the riverfront, and as to new ground formed by filling in upon the bed of the river, and where some conflict was shown to exist between the common law rules as to such ownership and those asserted by the State of Iowa in her legislation and the decisions of her courts, Mr. Justice Bradley, speaking for the Court, said:

"It is generally conceded that the riparian title attaches to subsequent accretions to the land affected by the gradual and imperceptible operation of natural causes. But whether it attaches to land reclaimed by artificial means from the bed of the river, or to sudden accretions produced by unusual

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floods, *is a question which each state decides for itself.* . . . The confusion of navigable with tidewater, found in the monuments of the common law, long prevailed in this country notwithstanding the broad differences existing between the extent and topography of the British island and that of the American continent. It had the influence for two generations of excluding the admiralty jurisdiction from our great rivers and inland seas, and under the like influence, it laid the foundation in many states of doctrines with regard to the ownership of the soil in navigable waters above tide water at variance with sound principles of public policy. Whether, as rules of property, it would now be safe to change these doctrines where they have been applied, as before remarked, *is for the several states themselves to determine.* If they choose to resign to the riparian proprietor rights which properly belong to them in the sovereign capacity, it is not for others to raise objections."

In *Packer v. Bird*, [137 U. S. 662](#) , where a similar question arose, and where it was claimed that the fact that the title was derived by a grant from the United States afforded a reason for decision, MR. JUSTICE FIELD states the question as follows:

"The courts of the United States will construe the grants of the general government without reference to the rules of construction adopted by the states for their grants, but whatever rights or incidents attach to the ownership of property conveyed by the government will be determined by the states, subject to the condition that their rules do not impair the efficacy of the grants or the use and enjoyment of the property by the grantee. As an incident of such ownership, the rights of the riparian owner, where the waters are above the influence of the tide, will be limited according to the law of the state, either to low or high water mark, or will extend to

the middle of the stream."

The language of *Barney v. Keokuk* was cited with approval, and the conclusion reached was that the law of the state, as construed by its supreme court, was decisive of the controversy.

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The question was again presented in *Hardin v. Jordan*, [140 U. S. 372](#) , and, after a review of the cases, Mr. Justice Bradley stated the conclusion as follows:

"We do not think it necessary to discuss this point further. In our judgment, the grants of the government for lands bounded on streams and other waters, without any reservation or restriction of terms, are to be construed as to their effect according to the law of the state in which the lands lie."

In *Shively v. Bowlby*, [152 U. S. 1](#) , this Court had to deal with a conflict as to the title in certain lands below high water mark in the Columbia River, in the State of Oregon, between parties claiming respectively under the United States and under the State of Oregon. The entire subject was thoroughly examined, involving a review of all the cases, both state and federal, and one of the conclusions reached was thus stated by MR. JUSTICE GRAY:

"Grants by Congress of portions of the public lands within a territory to settlers thereon, though bordering on or bounded by navigable waters, convey of their own force no title or right below high water mark, and do not impair the title and dominion of the future state when created, but leave the question of the use of the shores by the owners of uplands to the sovereign control of each state, subject only to the rights vested by the Constitution of the United States."

These decisions not only dispose of the proposition that lands situated within a state, but whose title is derived from the United States, are entitled to be exempted from local regulations admitted to be applicable to lands held by grant from the state, but also of the other proposition that the provisions of the Fourteenth Amendment extend to and override public rights, existing in the form of servitudes

or easements, held by the courts of a state to be valid under the Constitution and laws of such state.

The subject matter of such rights and regulations falls within the control of the states, and the provisions of the Fourteenth Amendment of the Constitution of the United States are satisfied if, in cases like the present one, the state law, with its benefits and its obligations, is impartially administered.

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Walker v. Sauvinet, [92 U. S. 90](#) ; *Davidson v. New Orleans*, [96 U. S. 97](#) ; *Missouri v. Lewis*, [101 U. S. 31](#) ; *Hallinger v. Davis*, [146 U. S. 314](#) .

The plaintiff in error is, indeed, not a citizen of Louisiana, but he concedes that as respects his property in that state, he has received the same measure of right as that awarded to its citizens, and we are unable to see, in the light of the federal Constitution, that he has been deprived of his property without due process of law, or been denied the equal protection of the laws.

The decree of the court below is

Affirmed.

MR. JUSTICE BREWER dissenting.