

Smithsonian Institution Vs. St. John

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Appeal No. : 214 U.S. 19

Appellant : Smithsonian Institution

Respondent : St. John

Judgement :

Smithsonian Institution v. St. John - 214 U.S. 19 (1909)

U.S. Supreme Court Smithsonian Institution v. St. John, 214 U.S. 19 (1909)

Smithsonian Institution v. St. John

No. 613

Argued April 5, 6, 1909

Decided May 17, 1909

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ERROR TO THE SUPREME COURT

OF THE STATE OF NEW YORK

SYLLABUS

Quaere where a petition to the highest court of the state for rehearing asserts that a federal question had been set up in the brief and arguments is simply denied with the statement that no federal question had been raised in that court, whether this Court has jurisdiction to review the judgment on writ of error.

This Court cannot decline jurisdiction when it is plain that the fair result of a decision of the state court is to deny a constitutional right. *Rogers v. Alabama*, [192 U. S. 226](#) .

It is as obligatory upon the courts of a state to give the same full force and effect to the constitution of another state as it must give to its judicial proceedings. *Chicago & Alton Railroad v. Wiggins Ferry Co.*, [119 U. S. 615](#) .

The mere construction, even if erroneous, by a state court of the statute or, as in this case, of a provision of the constitution of another state does not deny to it the full faith and credit demanded by the federal Constitution.

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The decision of the Court of Appeals of New York that a statute of Ohio authorizing the formation of corporations general in terms, but applicable to a special situation, did not contravene the prohibition of the Constitution of Ohio against the general assembly's passing any special act conferring corporate powers, and that a corporation organized under such a statute could take as legatee, *held* not to question the validity of the constitutional provision and, even if erroneous, such decision did not repudiate the obligations of the full faith and credit clause of the federal Constitution, and is not reviewable by this Court under 709, Rev.Stat. [*](#)

Writ of error to review 191 N.Y. 254, 192 N.Y. 382, 583, dismissed.

This is in effect a controversy between the Smithsonian Institution of Washington, District of Columbia, and the Andrews Institute for Girls, a corporation of the State

of Ohio, concerning a will made by Wallace C. Andrews, a resident of the City, County, and State of New York, who died in that city on April 7, 1899. Both Mr. Andrews and his wife perished on that day in a fire in their dwelling house in New York City. Whether husband or wife died first is not known. She was twelve years younger than he. They had no children. The will was executed on November 12, 1891. After some special gifts, which need not be noticed, the will provides:

"Fourth: Upon the death of my said wife, I devise and bequeath to the corporation hereinafter directed to be formed, all the excess and residue of my estate over the sum of \$500,000 specified in the third paragraph hereof."

"Fifth: I direct my executor and executrix as soon as practicable after my decease and during the lives of my said wife and her said brother or the life of the longest liver of them, to

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procure under the laws of the State of Ohio an incorporation, to be formed with proper powers, for the purpose of establishing an institution on the farm known as the Williams Farm, formerly owned by me and now owned by my wife, fronting on Erie Street, in the town of Willoughby, Lake County, Ohio, or if said farm be for any cause not available, then on other suitable premises in the said Town of Willoughby, for the free education of girls and for their support in proper cases during education, with a special view toward rendering them self-supporting."

"Said institution shall contain, among others, a sewing department, cooking department, designing department and departments of phonography and typewriting and other useful work that would afford the pupils employment in life, including such new discoveries and inventions as may be made from time to time tending to enlarge the opportunities for useful and honorable employment for women, and such as will aid them in obtaining honorable and independent positions in life. Such school to be open only to girls between the ages of ten and sixteen, both inclusive."

"Not exceeding one-tenth of the sum devoted to the said institution by the fourth paragraph hereof may be used for the erection of suitable buildings therefor on the said farm, or in the contingency above specified, for the purchase of suitable premises in said town and the erection of such buildings thereon, and the income of the remaining nine tenths shall be devoted to the support and maintenance of said institution."

"If, when the said sum shall be received by said corporation, the one tenth thereof shall not, in the judgment of the directors, be sufficient for such erection or such purchase and erection as the case may be, the whole sum may, in their discretion, be allowed to accumulate until the one tenth thereof with its accumulation shall be so sufficient, when such one tenth may be used therefor, while the income of the remaining nine tenths of said sum and accumulations shall be devoted to the support and maintenance of said institution. "

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"The charter of the said corporation shall also provide, if and so far as may be consistent with law and practicable, for the management of the said corporation by a board of five directors, to consist of the Governor for the time being of the State of Ohio, the member of congress for the time being for the congressional district embracing said Town of Willoughby, the Treasurer for the time being of said County of Lake, the Mayor for the time being of Willoughby, and the said Gamaliel C. St. John, and for the choice of a resident of Willoughby by the said Governor as successor to the said St. John as often as the fifth place shall become or be vacant."

"Sixth: If my said wife shall die before me, then the dispositions provided for in the third and fourth paragraphs hereof shall take effect upon my death."

"Seventh: I direct my said executor and executrix as soon as they may deem advisable, but within two years after my decease, to sell all my real estate and invest the proceeds in interest-paying securities, and as to all my estate I give them and my trustees power to invest and reinvest the same or any part thereof,

having regard both to income and safety."

"Eighth: In case my intention with respect to the said institution for girls shall because of illegality fail, or become impossible of realization, I then devise and bequeath the sum intended for it to the Smithsonian Institution at Washington, District of Columbia, to be devoted to the purposes for which it was established."

"Ninth: I appoint my said wife executrix and my said brother-in-law executor of this my will, and neither as such nor as trustees shall they be required to give security. All the powers herein granted to them may be exercised by the survivor of them and unless limited to their lives, by their successor or successors in the administration of my estate."

Mrs. Andrews dying at the same time her husband did, his brother-in-law, Mr. St. John, duly qualified as executor and trustee under the will. Thereafter he commenced this suit in the Supreme Court of New York County, seeking a construction

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of the will and a determination of the rights of the Andrews Institute for Girls, the Smithsonian Institution, and the heirs at law and next of kin of the deceased. The Andrews Institute for Girls, the Smithsonian Institution, Chief Justice Melville W. Fuller, as Chancellor thereof, the Attorney General of the State of New York, and the heirs and next of kin of the deceased, were made parties defendant. At a hearing in a special term of the Supreme Court of the County of New York, it was held that

"the defendant the Andrews Institute for Girls is entitled to the residuary estate of the said Wallace C. Andrews, deceased, together with the income thereof which has accrued since the death of said deceased, after paying the expenses of administration,"

and also that the defendant the Smithsonian Institution has no interest in the estate of the said Wallace C. Andrews, deceased. This decision was sustained by

the Appellate Division of the First Department, and thereafter, with a slight modification, by the Court of Appeals of the state, which remitted the record of the Supreme Court of New York City, where the final judgment was entered. Thereupon that judgment was brought here on a writ of error by the Smithsonian Institution and its chancellor.

The defendants in error filed a motion to dismiss, which was postponed until the final hearing, and the case is now before us on such final hearing and motion to dismiss.

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MR. JUSTICE BREWER delivered the opinion of the Court.

It is difficult to spell out from the record in this case the decision of any question arising under the Constitution and laws of the United States. Neither in the pleadings nor in the opinions is there a direct reference to any special provision of the federal Constitution. It is true that, after the decision by the Court of Appeals, an affidavit was filed by one of the counsel for plaintiffs in error in support of a petition for a rehearing stating that, in the brief as well as upon the oral argument in that court, a federal question (describing it) had been presented and discussed, which petition was denied by the Court of Appeals in these words: "Ordered, that the said motion be and the same hereby is denied, with ten dollars costs, no federal question having been raised in this Court."

It is unnecessary to determine whether this, of itself, is sufficient to give jurisdiction to this Court. The language of the Court of Appeals may be construed as denying that any such matter was brought to its attention as stated in the affidavit, or as holding that it presented no federal question. *Mallett v. North Carolina*, [181 U. S. 589](#) ; *M., K. & T. Ry. Co. v. Elliott*, [184 U. S. 530](#) ; *Leigh v. Green*, [193 U. S. 79](#) ; *McKay v. Kalyton*, [204 U. S. 458](#) .

Counsel further contend that there was necessarily involved in the decision of the case the determination of a question arising under the Constitution and laws of the

United States, and that hence this Court has jurisdiction of this writ of error even if the question was not formally referred to by counsel

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or the state courts. *Chapman v. Goodnow*, [123 U. S. 540](#) , [123 U. S. 548](#) ; *Navigation Company v. Homestead Company*, [123 U. S. 552](#) ; *McCullough v. Virginia*, [172 U. S. 102](#) , [172 U. S. 117](#) ; *M., K. & T. Ry. Co. v. Elliott*, [184 U. S. 530](#) , [184 U. S. 534](#) ; *Rogers v. Alabama*, [192 U. S. 226](#) , [192 U. S. 230](#) , in which last case it is said:

"It is a necessary and well settled rule that the exercise of jurisdiction by this Court to protect constitutional rights cannot be declined when it is plain that the fair result of a decision is to deny the rights. . . . There can be no doubt that, if full faith and credit were denied to a judgment rendered in another state upon a suggestion of want of jurisdiction, without evidence to warrant the finding, this Court would enforce the constitutional requirement. See *German Savings Society v. Dormitzer*, *ante*, p. [192 U. S. 125](#) ."

The question upon which counsel rely arises upon Article IV, 1, of the federal Constitution, which reads:

"Full faith and credit shall be given each state to the public acts, records, and judicial proceedings of every other state, and the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof."

It is not pretended that any judgment of the State of Ohio was disregarded by the courts of New York, but it is contended that full force and effect was not given to the Constitution of the State of Ohio. This duty is as obligatory as the similar duty in respect to the judicial proceedings of that state. *Town of South Ottawa v. Perkins*, [94 U. S. 260](#) , [94 U. S. 268](#) ; *Chicago & Alton Railroad Company v. Wiggins Ferry Company*, [119 U. S. 615](#) , [119 U. S. 622](#) , in which Mr. Chief Justice Waite said:

"Without doubt, the constitutional requirement, Art, IV, 1, that 'full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state,' implies that the public acts of every state shall be given the same effect by the courts of another state that they have by law and usage at home. This is clearly the logical result of the principles announced as early as 1813 in [Mills](#)

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v. Duryee, 7 Cranch 481, and steadily adhered to ever since."

Hancock National Bank v. Farnum, [176 U. S. 640](#) , [176 U. S. 642](#) .

On the other hand, it is settled that the mere construction by a state court of the statute of another state, without questioning its validity, does not deny to it the full faith and credit demanded by the constitutional provision. *Glenn v. Garth*, [147 U. S. 360](#) ; *Lloyd v. Matthews*, [155 U. S. 222](#) ; *Bankolzer v. New York Life Insurance Company*, [178 U. S. 402](#) ; *Johnson v. New York Life Insurance Company*, [187 U. S. 491](#) ; *Finney v. Guy*, [189 U. S. 335](#) ; *Allen v. Alleghany Company*, [196 U. S. 458](#) .

In the light of these decisions, we pass to consider the particular question presented. Sections 1 and 2 of article 13 of the Ohio Constitution read:

"SEC. 1. The general assembly shall pass no special act conferring corporate powers."

"SEC. 2. Corporations may be formed under general laws, but all such laws may, from time to time, be altered or repealed."

By 3235, 2 Bates' Ann. Ohio Statutes (6th ed.), p. 1836, it is provided:

"Corporations may be formed in the manner provided in this chapter for any purpose for which individuals may lawfully associate themselves, except for carrying on professional business,"

and immediately following this section are those naming the conditions and methods of incorporation. After the death of the testator, and on March 19, 1902, the general assembly of the State of Ohio passed an act (Laws 1902, p. 61), the first section of which is as follows:

"SEC. 1. Whenever, by the last will and testament of any person which has heretofore been, or shall hereafter be, duly admitted testament of any person which has heretofore been, or shall hereafter be, duly admitted may devise or bequeath, his or her property, or any portion thereof, for charitable uses within this state, or for the establishment and maintenance of any industrial or educational within this state, or for the establishment and maintenance of any industrial or educational in any

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such will and testament, it has been, or may be, provided that the executor or executors thereof shall organize a corporation under the laws of this state for the purpose of receiving the property so devised or bequeathed, and carrying out the charitable purposes in such will expressed, or establishing and maintaining the institution or school therein provided for, and such will further provides for the management of such corporation by a board of trustees or directors, consisting, in part, of officials of this state, of the county in which such charities are to be administered or such institution or school located, the officials of any municipal incorporation in said county, and the member of Congress for the district of which said county forms a part, or any of such officials, and names any other person or persons to be associated with said officials or any of them, and provides for the appointment of a successor or successors to the person or persons so appointed, to act with such officials in any manner specified in said will, such executor or executors, or his or their successors in office, and the persons hereinafter named, may constitute themselves a body corporate, with the general powers of benevolent incorporations."

The second section requires that a copy of the will or testament, for the carrying out of the provisions of which the corporation is organized, shall be set forth in the

articles of incorporation. Thereafter the Andrews Institute for Girls was incorporated, containing, as required by 2, the will of the testator. Now it is contended by counsel for the plaintiffs in error that this act was a special act, conferring corporate powers, and that therefore it and the incorporation made under it was in conflict with the Constitution of Ohio. It is not suggested that there has been any decision of the courts of Ohio in reference to the validity of the act or subsequent incorporation of the Andrews Institute, but it is insisted that it is so obvious that the act is a special act, conferring corporate powers, inasmuch as the terms of the will of an individual are the basis of the act and the incorporation, that the courts of

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New York could not have given force and effect to the prohibitions of the Constitution of Ohio. Nevertheless, whether rightly or wrongly, the New York courts held that there was no violation of the Constitution of Ohio, the Court of Appeals saying in its opinion:

"At the death of the testator, the general statutes of Ohio provided that corporations might be formed for any purpose for which individuals might lawfully associate themselves, except for carrying on professional business. 2 Bates' Ann. Ohio Statutes (6th ed.), p. 1836."

"Subsequent to the death of the testator, and in March, 1902, an act was passed by the General Assembly of the State of Ohio entitled, 'An Act to Provide for the Administration of Charitable Trusts in Certain cases.' If we assume that such act was passed to aid in the incorporation of the Andrews Institute for Girls, it is not necessarily, unconstitutional for that reason. It is not an uncommon thing in any state for questions to arise making it desirable or perhaps necessary for further general legislation to enable persons interested to carry out desired and desirable measures. The fact that such further general statute is passed to aid a particular person for the time being does not make the act a special, as distinguished from a general, one. Whether an act, general in form, is a mere device to evade a wholesome constitutional provision is largely dependent upon the special

circumstances of each case. If the act relates to persons, places, and things as a class, and is neither local nor temporary, the mere fact that its practical effect is special and private does not necessarily prove that it violates constitutional provisions against special legislation. *Matter of N.Y.El. R. Co.*, 70 N.Y. 327-344; *In the Matter of Church*, 92 N.Y. 1; *Matter of Henneberger*, 155 N.Y. 420, 426; *People v. Dunn*, 157 N.Y. 528; *Kittinger v. Buffalo Traction Co.*, 160 N.Y. 377; *People ex Rel. Clauson v. Newburgh & S. Plank Road Co.*, 86 N.Y. 1; *Matter of N.Y. & L. I. Bridge Co.*, 148 N.Y. 540; *Waterloo Woolen Mfg. Co. v. Shanahan*, 128 N.Y. 345; *Ferguson v. Ross*, 126 N.Y.

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459; *Sun P. & Pub. Association v. New York*, 152 N.Y. 257."

"The act so passed by the General Assembly of the State of Ohio in 1902 would not seem to be a violation of the Constitution of that state. *Platt v. Craig*, 66 Ohio St. 75; *State v. Spellmire*, 67 Ohio St. 77; *Gentsch v. State*, 71 Ohio St. 151; *Cinn. Street R. Co. v. Horstman*, 72 Ohio St. 93; *State of Ohio v. Sherman*, 22 Ohio St. 411."

"Subsequent to the death of the testator, and on the 8th day of May, 1902, 'The Andrews Institute for Girls' was incorporated pursuant to the laws of the State of Ohio"

"for the purpose of receiving the property devised and bequeathed in and by the wills of Wallace C. Andrews, and Margaret M. St. John Andrews, late of the city and State of New York, to the corporation therein directed to be formed, and for the purpose of carrying out the charitable purposes in such wills expressed, and of establishing and maintaining the institution therein provided for."

"The articles of incorporation include a complete copy of the will of the testator, and also of the will and codicil of Margaret M. St. John Andrews. They also provide that the corporation shall be located in the Town of Willoughby, Ohio, and name as members of the corporation the persons proposed in the will of said testator, together with two other persons in the State of Ohio, which persons so named

constitute the board of directors for the administration and management of the property and trust or other funds of the corporation, and for the control and management of said institution. Said act of the General Assembly of the State of Ohio, among other things, provides:"

"The Attorney General of the State of Ohio shall, in his official capacity, have power to bring proceedings in any court of record, and enforce any such devise or bequest, whenever he deems such action necessary for the protection and carrying out of the purposes named in said last will and testament, without waiting for the organization of such corporation. "

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That there is some foundation for the conclusion reached by the Court of Appeals is obvious from the opinions of the Supreme Court of Ohio, cited in the foregoing quotation. It is unnecessary to hold that there was no error in the ruling of the Court of Appeals. It is enough for the purposes of this case to hold that that court did not question the validity of any provision of the Constitution of the State of Ohio, and did not sustain any act or incorporation which it held to be in conflict with such provision. At most, there was simply a matter of error, and not a repudiation of the obligations of the federal Constitution.

We do not see that any provision of the federal Constitution has been violated, and the writ of error is

Dismissed.

THE CHIEF JUSTICE did not hear the arguments and took no part in the decision of this case.

* In this case, the New York court held: whether an act general in form is a mere device to evade a wholesome constitutional provision [against special acts conferring corporate powers] is largely dependent upon the special circumstances. If the act relates to persons and things as a class, and is neither local nor temporary, the mere fact that its practical effect is special and private does not

necessarily prove that it violates constitutional provisions against special legislation.

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