

Des Moines Vs. Des Moines City Ry. Co.

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Court : US Supreme Court

Decided On : May-17-1909

Appeal No. : 214 U.S. 179

Appellant : Des Moines

Respondent : Des Moines City Ry. Co.

Judgement :

Des Moines v. Des Moines City Ry. Co. - 214 U.S. 179 (1909)

U.S. Supreme Court Des Moines v. Des Moines City Ry. Co., 214 U.S. 179 (1909)

Des Moines v. Des Moines City Railway Company

No. 171

Argued April 21, 22, 1909

Decided May 17, 1909

214 U.S. 179

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF IOWA

SYLLABUS

A resolution of a municipal council directing a street railway company to remove and replace tracks and wire, and, in case of failure to comply, instructing the City Solicitor to take such action as he deems advisable to enforce the resolution, amounts only to direction to bring a suit, and, even if contract rights should be violated if the resolution were enforced, the resolution does not of itself amount to an ordinance or law impairing the obligation of contract, and the circuit court has no jurisdiction of a suit to enjoin its enforcement.

The facts are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a bill brought in the circuit court by an Iowa corporation against a city of Iowa. The ground of jurisdiction is that a resolution of the city council of that city is a law impairing the obligation of contracts within the meaning of the Constitution of the United States, and, if carried out, will take the property of the corporation without due process of law, contrary to the Fourteenth Amendment. The circuit court granted an injunction against the enforcement of the resolution, and the defendant appealed to this Court.

The plaintiff, the appellee, sets up, under a certain ordinance, a right, unlimited as to time, to construct, maintain, and operate an electric street railway in and over the streets, alleys, and bridges of Des Moines. The resolution alleged to impair these rights is as follows:

"Whereas questions have been raised as to the rights of the Des Moines City Railway Company and the Interurban Railway Company to maintain their tracks and operate their lines upon and along and over the streets and bridges and public places of the City of Des Moines, and"

"Whereas it is essential to the preservation of the rights of the City of Des Moines that such questions be determined as speedily as possible, "

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"Be it resolved by the City Council of the City of Des Moines that said companies be, and they are hereby, ordered to remove all of their tracks, poles, and wires from the streets, bridges, and public places of the City of Des Moines, and to restore and repair the surface and pavement, where paved, of all of the streets along which they they are now operating their lines, and said companies are hereby ordered to commence said removal within twenty-five days after the passage of this resolution."

"Be it further resolved that, should the said railway companies fail to commence such removal within the time above specified, the City Solicitor be, and he is hereby, instructed to take such action as he shall deem advisable and necessary to secure the enforcement of the above resolution."

"Be it further resolved that the City Clerk be, and he is hereby, instructed to serve a certified copy of this resolution upon the Des Moines City Railway Company and the Interurban Railway Company forthwith."

We are of opinion that this is not a law impairing the rights alleged by the appellee, and therefore that the jurisdiction of the circuit court cannot be maintained. Leaving on one side all questions as to what can be done by resolution, as distinguished from ordinance, under Iowa laws, we read this resolution as simply a denial of the appellee's claim, and a direction to the City Solicitor to resort to the courts if the appellee shall not accept the city's views. The resolution begins with a recital that questions as to the railway company's rights have been raised, and ends with a direction to the City Solicitor to take action to enforce the city's position. The only action to be expected from a City Solicitor is a suit in court. We cannot take it to have been within the meaning of the direction to him that he should take a posse and begin to pull up the tracks. The order addressed to the companies to remove their tracks was simply to put them in the position of

disobedience, as ground for a suit, if the city was right.

Decree reversed, with direction to dismiss the bill.

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