

United States Vs. Welch

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Court : US Supreme Court

Decided On : Apr-25-1910

Appeal No. : 217 U.S. 333

Appellant : United States

Respondent : Welch

Judgement :

United States v. Welch - 217 U.S. 333 (1910)

U.S. Supreme Court United States v. Welch, 217 U.S. 333 (1910)

United States v. Welch

No. 147

Argued April 11, 1910

Decided April 25, 1910

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ERROR TO THE CIRCUIT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF KENTUCKY

SYLLABUS

A private right of way is an easement and its destruction for public purposes is a taking for which the owner of the dominant estate to which it is attached is entitled to compensation.

The value of an easement cannot be ascertained without reference to the dominant estate to which it is attached. In this case, an award for destruction of a right of way and also for damage to the property to which it was an easement sustained.

The facts are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a proceeding under the Act of March 3, 1887, c. 359, 24 Stat. 505, to recover the value of land taken by the United States. It is admitted that a strip of about three acres of land lying along the side of Four Mile Creek, and running east and west, was taken, and is to be paid for. It was permanently flooded by a dam on the Kentucky River, into which Four Mile Creek flows. *United States v. Lynah*, [188 U. S. 445](#) . *Manigault v. Springs*, [199 U. S. 473](#) , [199 U. S. 484](#) . The plaintiffs owned other land south of and adjoining the strip taken, and had a private right of way at right angles to the creek, northerly, across land of other parties, to the Ford County Road, which ran parallel to the creek and at some distance from it. This was the only practical outlet from the plaintiffs' farm to the county road. The taking of the intervening strip, of course, cut off the use of the way, and the judge who tried the case found that it lessened the value of the farm \$1,700. He allowed this sum in addition to \$300 for the land taken. The United States took a writ of error on the ground that the former item was merely for collateral damage not amounting to a taking, and of a kind that cannot be allowed; that at most it was only a tort. The case is likened to the depreciation in value of a neighboring but distinct tract by reason of the use to which the government intends to put that

which it takes. *Sharp v. United States*, [191 U. S. 341](#) , [191 U. S. 355](#) .

The petition, like the form of the finding, lends some countenance to this contention by laying emphasis on the damage

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to the farm, although it is to be noted that, even in this aspect, the damage is to the tract of which a part is taken. 191 U.S. [191 U. S. 354](#) . But both petition and finding in substance show clearly that the way has been permanently cut off. A private right of way is an easement, and is land. We perceive no reason why it should not be held to be acquired by the United States as incident to the fee for which it admits that it must pay. But if it were only destroyed and ended, a destruction for public purposes may as well be a taking as would be an appropriation for the same end. *Miller v. Horton*, 152 Mass. 540, 547, a recovery for the taking of land by permanent occupation allows it for a right of way taken in the same manner, and the value of the easement cannot be ascertained without reference to the dominant estate to which it was attached. The argument is only confused by reference to cases like *Gibson v. United States*, [166 U. S. 269](#) ; *Harvard College v. Stearns*, 15 Gray, 1; *Smith v. Boston*, 7 Cush. 254, etc., where it was held, although there are decisions the other way, that a landowner cannot recover for the obstruction of a public watercourse, the discontinuance of a public way, or the like. The ground of such decisions is that the plaintiff's rights are subject to superior public rights, or that he has no private right, and that his damage, though greater in degree than that of the rest of the public, is the same in kind. Here there is no question of the plaintiffs' private right.

Judgment affirmed.

MR. JUSTICE HARLAN concurs in the judgment only so far as it allows the item of \$300.