

Fifth Avenue Coach Co. Vs. New York

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Appeal No. : 221 U.S. 467

Appellant : Fifth Avenue Coach Co.

Respondent : New York

Judgement :

Fifth Avenue Coach Co. v. New York - 221 U.S. 467 (1911)

U.S. Supreme Court Fifth Avenue Coach Co. v. New York, 221 U.S. 467 (1911)

Fifth Avenue Coach Company v. City of New York

No. 159

Argued April 27, 28, 1911

Decided May 29, 1911

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ERROR TO THE SUPREME COURT

OF THE STATE OF NEW YORK

SYLLABUS

The courts of a state are competent to construe the laws of the state and to determine what powers a corporation derives thereunder, and the use to which such corporation may employ its necessary property, and so *held* as to uses to which stages may be put by a transportation company.

Whatever the general rights as to corporate property may be, a state, in granting a charter, may define and limit the use of property necessary to the exercise of the granted powers.

The rights of one to do that which if done by all would work public harm and injury are not greater because others refrain from exercising such rights.

Classification based on reasonable distinctions is not an unconstitutional denial of equal protection of the laws, and so *held* that an

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ordinance of the City of New York prohibiting advertising vehicles in a certain street is not unconstitutional as denying equal protection to a transportation company operating stages on such street either because signs of the owners may be displayed on business wagons or because another transportation company may display advertising signs on its structure. There is a purpose to be achieved, as well as a distinction, which justifies the classification.

This Court may take judicial notice of the density of traffic on a well known thoroughfare.

Where rights exist to one, they exist to all of the class to which that one belongs.

The charter of this transportation company *held* not to contain any provisions giving it such contract right to use its vehicles for advertising purposes as rendered a subsequent ordinance prohibiting such use unconstitutional under the contract clause of the Constitution.

A contract with a corporation is subject to the limitations of the charter rights of the corporation, and is not impaired within the meaning of the contract clause of the Constitution by subsequent legislation that does not extend such limitation.

194 N.Y. 19 affirmed.

The facts, which involve the validity of an ordinance of the City of New York prohibiting the display of advertisements under certain conditions, are stated in the opinion.

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MR. JUSTICE Mc KENNA delivered the opinion of the Court.

Plaintiff in error, which was also plaintiff in the court below, and we shall so refer to it, brought suit against the city in the Supreme Court of the County of New York. It alleged the following: it is a corporation duly formed and organized under the laws of the State of New York, and engaged in the operation of automobile stages upon routes extending along Fifth Avenue and other streets in the City of New York under and in pursuance of certain acts of the legislature of the state, having acquired, under various acts, all the property rights and franchises of the Fifth Avenue Transportation Company, Limited.

The city is a municipal corporation, organized under the laws of the state, and exercises its powers through officers and departments.

The plaintiff has operated stages upon its routes, and has used the interior of them for the display of advertising signs or matter for many years. In May, 1905, with the complete substitution of automobile stages for horse stages, which was affected in July last (1907), it began to utilize and now utilizes, the exterior of its stages for such purposes, which it is able to do by reason of the necessary difference in form of the new vehicle and in the consequent increase of space adapted to use in the display of advertising matter, and from such use it is enabled to secure a substantial income from portions of its property not susceptible of being used otherwise for the purpose of its business.

The city, through its various officials, has interfered with such advertising, and intends to interfere with the operations of plaintiff's stages and to prevent it from maintaining advertising signs upon the exterior thereof,

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which will materially impair plaintiff's business, reduce its income, interfere with the exercise of its rights and franchises under the laws of the state, and "infringe its constitutional right to freedom in the use of its property." The damage to plaintiff will be irreparable, and no adequate compensation therefor can be obtained at law.

A permanent injunction was prayed.

The city answered, denying some allegations and admitting others, and set out a number of ordinances which precede that in controversy, and set out the latter as follows:

"No advertising trucks, vans, or wagons shall be allowed in the streets of the Borough of Manhattan, under a penalty of \$10 for each offense. Nothing herein contained shall prevent the putting of business notices upon ordinary business wagons, so long as such wagons are engaged in the usual business or regular work of the owner, and not used merely or mainly for advertising."

And it alleged that it was its duty to prevent "the display of the advertisements on the outside of the stages operated by complainant of Fifth Avenue."

After hearing, a judgment was entered dismissing the complaint. It was affirmed successively by the appellate division and by the Court of Appeals.

The trial court found that plaintiff had succeeded to all of the "rights, privileges, franchises, and properties" of the Fifth Avenue Transportation Company, having the right to use automobile power instead of horses. The franchises of the transportation company were to carry passengers and property for hire; to establish, maintain, and operate stage routes for public use in the conveyance of persons and property, and to receive compensation therefor. It had other

franchises not material to mention.

The court also found the following facts:

"The automobile omnibuses now operated over the routes of the plaintiff herein have two decks, on the lower of which are longitudinal seats for sixteen passengers, and

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on the upper deck there are transverse seats for eighteen passengers. There is a stairway leading from the rear platform of the lower deck to the upper deck. Said stairway has a screen extending from the top to the bottom."

"The space used for advertising purposes on the vehicles of the plaintiff herein is leased to the Railway Advertising Company, under an agreement dated May 11, 1907, from which the plaintiff herein receives the sum of \$10,000 per annum, plus the sum of \$200 per bus for exterior advertising. There was an agreement dated May 15, 1905, relating to interior advertising."

Advertising signs of various colors are upon the stairs of the elevated railways, in places on the elevated structures in the City of New York, and on the walls of the underground stations of the subway railroad company.

The advertising signs on plaintiff's coaches have no relation to their operation or to the physical comfort, convenience, or health of the passengers or the public, and are merely an incident to the use of the stages in the operation of the franchise belonging to it for the transportation of passengers.

The findings of fact are very descriptive as to the size and character of the signs used. There are two, 13 feet by 2 feet 7 inches; another, 2 by 6 1/2 feet; another, 4 by 2 feet; another, 8 feet by 20 inches; another, 2 feet 4 inches square, and others, 2 feet in length. And the signs or the pictures painted on them were in pink, blue, black, bright yellow, drab, and red.

It was concluded from the facts found that the advertisements were not a nuisance, could not be judicially condemned on esthetic grounds, that the health, safety, or comfort of passengers and the public are not injured by them, that plaintiff failed to prove that their display was a necessary incident to the operation of the stages, that, by its franchise, it did not acquire the right to display advertisements for hire, and that such display was

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ultra vires, being neither incidental to nor implied by the powers conferred by plaintiff's charter or bylaw. It was further concluded that the streets of New York could only be used for street purposes, and that the display of advertising signs by plaintiff was not a street use.

The appellate division affirmed the judgment. The court said:

"The complaint was properly dismissed, and the judgment would be affirmed without opinion were it not for the fact that we do not concur in the reasons assigned by the learned justice at special term for making this disposition of the case. . . . From the facts proved and the findings made, a case is not presented to a court of equity which calls for the exercise of its powers.."

The court further expressed the view that plaintiff had a right, under its charter, to operate its stages, but whether it could or not, as an incident to such right, display signs or advertisements must be determined when the question arose, and not, as in the pending case, upon a supposition which had for its foundation a mere threat which might never be carried into effect. And the court intimated that it was the concern of the state, and not of the city, if plaintiff was violating its charter, and further intimated that the advertisements did not violate the ordinance.

The Court of Appeals, however, agreed with the trial court. It reviewed the laws which constituted the charter powers of the Fifth Avenue Transportation Company and the laws by which plaintiff succeeded to the transportation company and its powers, and decided that the franchise of plaintiff

"does not expressly include the right to use the public streets mentioned therein for advertising purposes or to carry or maintain exterior advertisements on its stages, and the carrying of such advertisements is not a necessary or essential incident to its express franchise rights. Such exterior advertising is in no way related to the carrying of passengers for hire."

The court also decided that the city had the power to pass the ordinance

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which is in question, and that plaintiff offended against its provisions, and, after discussing at some length the powers of the city, among other things, said:

"Fifth Avenue is an important and much used street. At certain times of the day, slow-moving trucks are barred therefrom on account of the congestion in such street. The plaintiff's contract with the advertising company allows the advertisements on its stages to become the conspicuous part of their exterior, and the business of advertising for the purpose of revenue is of such value to the plaintiff that the gross income therefrom exceeds six percent upon its entire capital stock."

" * * * *"

"It appears that the right to display garish advertisements in conspicuous places has become a source of large revenue. If the plaintiff can cover the whole or a large part of the exterior of its stages with advertisements for hire, delivery wagons engaged by the owners in their usual business or regular work can rightfully be covered with similar advertisements. Cars and vehicles of many descriptions, although not engaged exclusively in advertising, and thus not incumbering the street exclusively for advertising purposes, may be used for a similar purpose. The extent and detail of such advertisements, when left wholly within the control of those contracting therefor, would make such stages, wagons, or cars a parade or show for the display of advertisements which would clearly tend to produce congestion upon the streets upon which they were driven or propelled. The exaggerated and gaudy display of advertisements by the plaintiff is for the express

purpose of attracting and claiming the attention of the people upon the streets through which the stages are propelled."

The court cited *Commonwealth v. McCafferty*, 145 Mass. 384, in which an ordinance was sustained which prohibited the placing or carrying on sidewalks,

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show boards, placards, or signs for the purpose of there displaying the same. It was said in this case that the tendency and effect of such signs might be to collect crowds, and thus interfere with the use of the sidewalks by the public, and lead to disorder, and that such a provision applicable to the crowded streets of a populous city was not unreasonable. The Court of Appeals therefore concluded that the ordinance of the City of New York was "not wholly arbitrary and unreasonable," and that the plaintiff

"has failed to show that the maintenance of such exterior advertisements is within its express franchise rights, or that such ordinance prohibiting their maintenance on its stages is not a proper exercise of the authority vested in the city to regulate the business conducted in the streets thereof, and the trial court was therefore right in dismissing the plaintiff's complaint."

To this conclusion, complainant urges (1) it has a property right to rent space on its stages for advertisements, and the doctrine of *ultra vires* has no application, (2) the ordinance, as construed by the Court of Appeals, deprives plaintiff in error of its property without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States, (3) denies to it the equal protection of the laws, (4) impairs the obligation of the contract between plaintiff and the Railway Advertising Company, and that between the State of New York and plaintiff.

To sustain the first proposition, plaintiff cites a number of cases which are not in point. It may be that in other jurisdictions it has been decided, construing the charters granted, that, under the local laws, particular uses of property may be merely incident to its ownership, and not *ultra vires*. A sufficient answer to the

cases is that the law is held to be different in New York.

It is surely competent for the courts of New York to construe the laws of the state, and decide what powers a

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corporation derives under them, or to what uses it may employ its property necessary for the exercise of those powers. And the stages used on the streets of the city transporting passengers is the very exercise of the franchise granted to plaintiff, and is not like the instances of the cited cases, where property was not intimately used in the exercise of charter rights. The right of property contended for in its full breadth would make property intended for corporate use as absolute as property not so committed or not limited by charter conditions. And this, we think, is enough for the decision of the case. No matter what may be the general rights of corporate property, it cannot be contended that a state granting a charter may not strictly define and limit the uses of the property necessary to the exercise of the powers granted. And this is what the Court of Appeals has decided the laws of New York have done, and that the Fifth Avenue Transportation Company was, and the plaintiff, as the successor of its rights, is, subject to the limitations imposed by those laws. When plaintiff went beyond the limitations, it became subject to the ordinance as construed by the Court of Appeals. "General advertising for hire," the court said,

"is by ordinance prohibited, whether carried on wagons wholly used for advertising, or in connection with the ordinary or usual business in which wagons are engaged."

Plaintiff's stages are therefore brought under even a broader principle than that of its charter. The same rule is applied to that as to other wagons, and within the exercise of the police power illustrated in *Commonwealth v. McCafferty, supra*. We concur with the Court of Appeals, for we cannot say that it was an arbitrary exercise of such power. The density of the traffic on Fifth Avenue we might take judicial notice of, but it is represented to us as a fact by the Court of Appeals, and

we find from the opinion of the trial court and the exhibits in the record that "the signs advertised in various glaring

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colors and appropriate legends divers articles" -- for example, Duke's Mixture Smoking Tobacco, Bull Durham Smoking Tobacco, and Helmar Turkish Cigarettes. There were painted figures of animals, men in oriental costume, busts of men and women, all made conspicuous by contrasted coloring. Describing the signs, the court said:

"The colors used -- green, dark blue, white, light blue, yellow, drab, and various brilliant shades of red -- are contrasted so as to attract attention, and are not blended so as to produce a harmonious or an artistic effect, and the resulting painting constitutes a disfigurement, rather than an ornament."

If plaintiff be right, however the advertisements may be displayed is immaterial. There can be no limitation of rights by degrees of the grotesque. If such rights exist in plaintiff, they exist in all wagon owners, and there might be such a fantastic panorama on the streets of New York that objection to it could not be said to have prompting only in an exaggerated esthetic sense. That rights may not be pushed to such extreme does not help plaintiff. Its rights are not greater because others may not exercise theirs.

This discussion of plaintiff's first contention answers in effect its other contentions. Necessarily, if plaintiff had no right under its charter to use its stages for advertising purposes, or if the ordinance of the city was a proper exercise of the police power, plaintiff was not deprived of its property without due process of law, which is the basis of its second contention.

We pass, therefore, to the third and fourth contentions. The third contention is that the ordinance denies plaintiff the equal protection of the laws, and to support the contention it is urged that

"no advertising wagons are allowed in the streets, but 'ordinary business wagons' when 'engaged in the usual business or work of the owner, and not used merely or mainly for advertising,' are permitted to exhibit 'business notices.'"

It is argued that the ordinance

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"thus creates a favored subclass of vehicles which are permitted to display advertisements." In view of the power of the state, and the city acting with the authority of the state, to classify the objects of legislation, we will not discuss the contention. The distinction between business wagons and those used for advertising purposes has a proper relation to the purpose of the ordinance, and is not an illegal discrimination. The same comment may be made as to the charge that the ordinance discriminates between two classes of passenger carriers having charter rights to use the streets. As an instance of this charge, plaintiff adduces the findings of the trial court that advertising is allowed on the stairs of the elevated railways and on elevated structures. This difference, too, is within the power of classification which the city possesses.

The fourth and last contention of plaintiff is that the ordinance impairs the obligations of the contract between plaintiff and the Railway Advertising Company and the contract between it and the State of New York.

This contention was made in the trial court, as follows:

"Any law or ordinance which prevents the Fifth Avenue Coach Company, the plaintiff herein, from displaying advertisements on the exterior of its vehicles, will impair the obligation of plaintiff's contract with the state."

It is doubtful if the point was properly raised in the courts below, but granting that it was, there are obvious answers to it. At the time of the contract of plaintiff with the advertising company, there existed an ordinance almost identical in terms with that in controversy, and, besides, the contract was necessarily subject to the charter of plaintiff. And if we should exercise the right to construe the charter as a contract

with the state, we should be unable to discern in it a right in plaintiff to use its stages for advertising purposes in the manner shown by this record.

Judgment affirmed.

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