Pomona Vs. Sunset Tel. and Tel. Co.

Pomona Vs. Sunset Tel. and Tel. Co.

SooperKanoon Citation : sooperkanoon.com/91281

Court : US Supreme Court

Decided On : Apr-08-1912

Appeal No. : 224 U.S. 330

Appellant : Pomona

Respondent : Sunset Tel. and Tel. Co.

Judgement :

Pomona v. Sunset Tel. & Tel. Co. - 224 U.S. 330 (1912)
U.S. Supreme Court Pomona v. Sunset Tel. & Tel. Co., 224 U.S. 330 (1912)

Pomona v. Sunset Telephone and Telegraph Company

No. 215

Argued March 14, 15, 1912

Decided April 8, 1912

224 U.S. 330

APPEAL FROM THE CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT

SYLLABUS

A provision in a state constitution that municipal corporations may establish and operate public utility plants, and that persons and corporations may establish and operate works for supplying public service upon such conditions and under such regulations as the municipality may prescribe is a step towards municipal control or ownership, and is not a grant to others of a right to occupy streets without the consent of the municipality; nor does it limit the municipality to regulations under its police power. The conditions are of general import, and so *held* as to the provision in Article XI, 19, of the constitution of California as amended October 11, 1911.

There is no sufficient reason why this Court should not follow the highest court of California in construing "telegraph" corporations as used in 536 of the Civil Code of that state as not including " telephone " corporations.

Page 224 U. S. 331

Where a statute is amended so as to bring a certain class thereunder, the amendment to take effect at subsequent date, before which date another act is passed relating to the same subject with a general repealing act enumerating exceptions, the amended statute is repealed, subject only to the exceptions before any rights accrue under the amendment.

In the absence of any apparent policy inducing it, it will be assumed that an exception to the repealing clause of an act to regulate franchises of "lines doing an interstate business" was made unwillingly and because the legislature assumed it was bound to exempt such lines from regulations.

In this case, *held* that, under the statutes of California, a telephone corporation operating interstate and local lines in Pomona, a city of the fifth class, obtained rights to maintain its main line in the streets, but not its local posts and wires except subject to regulations of the city.

172 F. 829 reversed.

The facts, which involve the validity and constitutionality of certain provisions of the constitution and statutes of California in regard to the use of streets by telephone companies, are stated in the opinion.

Page 224 U. S. 342

MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a bill brought by the appellee, a California corporation, to restrain the City of Pomona from removing the appellee's poles and wires from the streets of the city, and from preventing the appellee's placing further poles and wires in the streets. The circuit court dismissed the bill, 164 F. 561, but the decree was reversed and an injunction granted by the circuit court of appeals. 172 F. 829. Two of the grounds originally relied upon were that the appellee, being a telegraph as well as a telephone company, had rights under the Act of Congress of July 24, 1866, c. 230, 14 Stat. 221 (Rev.Stat. 5263 *et seq.*), that were infringed, and that the conduct of the city had given rise to a contract. These are no longer pressed, but they warranted taking the case to the circuit court of appeals. *Spreckels Sugar Refining Co. v. McClain,* 192 U. S. 397 , 192 U. S. 407 . The remaining ground is that the Constitution of California, as amended in 1911, or the statutes of the state, contained a grant with which the Constitution of the United States does not permit the city to interfere. This is the only argument pressed here. Unless the appellee got a grant from one of these two sources, it has no right to occupy the streets.

The claim based upon the amendment to Article XI, 19, of the Constitution of the state, October 10, 1911, does not impress us. Before that date, the article provided that in cities having no public works for artificial light, etc. individuals or corporations of the state, duly authorized, should have the privilege of using the streets, etc., for the purpose, upon the condition that

Page 224 U. S. 343

the municipal government should have the right to regulate the charges. By the amendment, "any municipal corporation may establish and operate public works for . . . telephone service," either by construction or by purchase. It then goes on:

"Persons or corporations may establish and operate works for supplying the inhabitants with such service upon such conditions and under such regulations as the municipality may prescribe under its organic law, on condition that the municipal government shall have the right to regulate the charges therefore."

We agree with the appellants that the amendment seems intended as a step in the direction of municipal ownership or control. The words, "upon such conditions," etc., are not to be confined to police powers, which are conferred by 11 of the same article, but are of general import. If the municipal corporation does not see fit to establish the public works itself, it may let others do it, but its power to impose conditions excludes the notion that the Constitution alone is a grant to others of a right to occupy the streets without its consent.

The claim founded upon the statutes seems to us stronger. By 536 of the Civil Code,

"Telegraph . . . corporations may construct lines of telegraph . . . along and upon any public road or highway . . . and may erect poles . . . in such manner and at such points as not to incommode the public use of the road."

This is treated by the Supreme Court of California as a grant when acted upon. *Western Union Telegraph Co. v. Hopkins,* 160 Cal. 106. But, as the words "telegraph corporations" have been construed not to include telephone corporations, *Sunset Telephone & Telegraph Co. v. Pasadena,* 118 P. 796, construction that we know no sufficient reason for not following, *Yazoo & Mississippi Valley R. Co. v. Adams,* 181 U. S. 580 ; *Richmond v. Southern Bell Telephone & Telegraph Co.,*

174 U. S. 761 , the section, until amended, did the appellee no good. On March 20, 1905, however, the section was amended so as to include telephone corporations, so that, if that were all, the case of the appellee would be clear, the City of Pomona not having been organized under provisions of the constitution that withdrew certain cities from the operation of general laws. *See Ex Parte Helm,* 143 Cal. 553; *Sunset Telephone & Telegraph Co. v. Pasadena,* 118 P. 796, 803.

But the amendment did not go into effect for sixty days, and two days later, on March 22, a franchise act was passed, to take effect immediately, providing that

"every franchise or privilege to erect or lay telegraph or telephone wires, to construct or operate street or interurban railroads, . . . or to exercise any other privilege whatever hereafter proposed to be granted"

by the legislative body of any country, city and county, city or town, except telegraph or telephone lines doing an interstate business, should be granted upon the conditions specified in the act, and not otherwise. "Any applicant for any franchise or privilege above mentioned" was required to file an application, there was to be an advertisement for bids, etc., with other particulars that need not be specified, as the appellee does not claim under this statute. It contends that this act establishes conditions only for counties, cities, and towns, and does not qualify the grant from the state in the amended 536. The appellant, on the other hand, argues that the franchise act repealed 536 so far as it affects this case except as to telephones doing an interstate business. In view of the frame of the act as a whole, of a general repealing clause at the end, naming certain exceptions of which 536 is not one, and of the fact that the grant of such franchises seems generally to have been left to the local subdivisions concerned (*Sunset Telephone & Telegraph Co. v. Pasadena, supra*), we construe the words quoted as

Page 224 U. S. 345

of general application, and are of opinion that they cannot be supposed to have had the narrow operation that would be left to them if there were in force a grant

from the state of almost universal scope. Until the state court shall decide otherwise, we must take 536 to have been repealed, subject to the exception contained in the later act, before any grant or right under it had accrued to the appellee.

We come, then, to consider the extent of the exception. This is not a question whether all telephones having the usual connections might not be instruments of commerce among the states; it is not a question whether the state could interfere with the local business of lines engaged in such commerce. It is a question of how far the offer of a grant that had not yet taken effect should be understood to have been left on foot by the repealing act -- a question as to the meaning of words. In construing them, it may be assumed that the exception was made unwillingly. No policy can be discovered that would be likely to induce the making of it, and it is most easily explained by the uncertainty then prevailing as to the power of the state over telegraphs, etc., running into other states in view of the commerce clause of the Constitution and the Act of July 24, 1866, an uncertainty then lately and since largely dispelled. *Western Union Telegraph Co. v. Pennsylvania Railroad Co.,* 195 U. S. 540 ; *Western Union Telegraph Co. v. Richmond,* April 1, 1912. The words to be interpreted are "except telegraph or telephone lines doing an interstate business." The qualification "doing an interstate business" shows that not all telephones were expected to benefit by the grant in 536, and the limitation is presumably substantial. The legislature probably supposed by mistake that it was bound to grant a right to direct through lines, but evidently meant to grant no more than it must. It was understood so by the city. The order and threat of the city were confined to poles and wires

Page 224 U. S. 346

doing a state and local business. This appears by the bill and the finding of the circuit court, not disturbed above, as to what actually was done. We are of opinion that the city's interpretation was correct.

The result is that the appellee must be taken to have a grant of the right to keep its main through lines in the streets of Pomona, but not to maintain the posts and

wires by which it connects with subscribers. So far as appears, the city attacks only the latter, and therefore no present ground is shown for the bill. But ,as the line of distinction may be delicate and questions may arise, the bill will be dismissed without prejudice.

Decree reversed.

Bill to be dismissed without prejudice.