

Willoughby Vs. Chicago

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Court : US Supreme Court

Decided On : Nov-16-1914

Appeal No. : 235 U.S. 45

Appellant : Willoughby

Respondent : Chicago

Judgement :

Willoughby v. Chicago - 235 U.S. 45 (1914)

U.S. Supreme Court Willoughby v. Chicago, 235 U.S. 45 (1914)

Willoughby v. City of Chicago

No. 6

Motion to dismiss submitted November 6, 1914

Decided November 16, 1914

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ERROR TO THE SUPREME COURT

OF THE STATE OF ILLINOIS

SYLLABUS

Where the constitutional question is obvious from the beginning and is not open in the supreme court of the state unless taken on the trial, it cannot be considered here unless it was so taken. *Hulbert v. Chicago*, [202 U. S. 275](#) .

Where an assessment could have been levied for a past improvement against the original owners, purchasers take subject to the same liability, and such an assessment does not deprive them of their property without due process of law. *Seattle v. Kelleher*, [195 U. S. 351](#) .

Whether a particular assessment could have been levied for past improvements if the property had not been sold depends upon the construction of state statutes, as to which this Court follows the decisions of the state courts.

The overruling of its earlier decisions by the state court does not amount to deprivation of property without due process of law where no vested rights are interfered with. *Muhlker v. Harlem R. Co.*, [197 U. S. 544](#) , distinguished.

On writ of error based on the claim that there was no power to make the assessment, this Court cannot inquire into the facts as found by the state court in regard to value of the land taken for, and the extent of the benefit conferred by, the improvement for which the land has been assessed.

Writ of error to review 249 Ill. 249 dismissed.

The facts, which involve the jurisdiction of this Court under 237, Judicial Code, to review a judgment of the state court confirming a street widening assessment, are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

In 1893, a portion of certain land now belonging to the plaintiffs in error was taken by Chicago for the widening of a street, and the damages to the owners were fixed by judgment in due form. Afterwards, an assessment for betterments by reason of the change was laid upon certain lands in this neighborhood, including the lots in question, and was confirmed as to the other land. At the trial with regard to these lots, it was contended by the owner and ruled in the lower court that the matter was concluded

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by the first judgment. This ruling was reversed by the supreme court of the state (*Chicago v. Mecartney*, 216 Ill. 377), but, by the failure of the city to file the remanding order within two years, the assessment upon these lots failed. In January, 1910, the city passed an ordinance for a new assessment, the object of which was to reach these lots, and a new petition was filed. The supreme court of the state held that the validity of the assessment did not depend on the validity of the ordinance, that the petition was warranted by the former proceedings, and that a judgment for the amount should be affirmed. 249 Ill. 249.

The error assigned is that the property of the plaintiffs in error is taken without due process of law, and that the obligation of their contracts is impaired (they having purchased before this supplementary proceeding was begun), contrary to the Fourteenth Amendment and Art. I, 10, of the Constitution of the United States. There is a motion to dismiss upon which we must dispose of the case. The objection which is urged is that there was no statutory authority for this proceeding, and that the assessment was imposed by mere judicial fiat that could not have been anticipated, and that was without warrant of law. If there were anything in this objection, it was obvious from the beginning, and as it was not taken at the trial, it was not open in the supreme court of the state, and could not be considered here. *Hulbert v. Chicago*, [202 U. S. 275](#) . It is obvious, too, that the state could have authorized the proceeding followed here, which ordinarily is the only question to be considered by this Court. *Missouri v. Dockery*, [191 U. S. 165](#) .

If the assessment could have been levied against the original owners of the land, purchasers took subject to the same liability. *Seattle v. Kelleher*, [195 U. S. 351](#) . The question whether it could have been levied if the land had not been sold depended upon the construction of state

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statutes, as to which we follow the decision of the state court. Even if the court had overruled earlier decisions, it would have interfered with no vested rights of the plaintiffs in error. *Knox v. Exchange Bank*, 12 Wall. 379, [79 U. S. 383](#) ; *Sauer v. New York*, [206 U. S. 536](#) ; *Moore-Mansfield Constr. Co. v. Electrical Installation Co.*, [234 U. S. 619](#) , [234 U. S. 626](#) . But it does not appear to have done so, and although its decision may have been unexpected, there was plausible ground for it in the statutes. We go no further, because there is no question before us of the kind that was before the Court in *Muhlker v. New York & Harlem R. Co.*, [197 U. S. 544](#) , and *Tampa Water Works Co. v. Tampa*, [199 U. S. 241](#) , [199 U. S. 243](#) , and, in circumstances like these, it is not within our province to inquire whether the construction was right. It is objected that less was allowed for the land taken than was charged for the benefit, but it is quite possible that the benefit was greater than the loss, and we cannot inquire into the fact.

Writ of error dismissed.