Jackman Vs. Rosenbaum Co.

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SooperKanoon Citation : sooperkanoon.com/93624

Court : US Supreme Court

Decided On : Oct-23-1922

Appeal No. : 260 U.S. 22

Appellant : Jackman

Respondent : Rosenbaum Co.

Judgement :

Jackman v. Rosenbaum Co. - 260 U.S. 22 (1922)
U.S. Supreme Court Jackman v. Rosenbaum Co., 260 U.S. 22 (1922)

Jackman v. Rosenbaum Company

No. 3

Argued October 4, 1922

Decided October 23, 1922

260 U.S. 22

ERROR TO THE SUPREME COURT

OF THE STATE OF PENNSYLVANIA

SYLLABUS

1. The fact that a practice is of ancient standing in a state is a reason for holding it unaffected by the Fourteenth Amendment. P. 260 U. S. 31 .

2. Under a statute of Pennsylvania, following an old custom whereby adjoining lots are subject to party wall servitudes, plaintiff's wall, which was built to the line, was torn down by the adjoining owner (being unsuitable for incorporation in a new one), and a party wall of reasonable width was erected on the line. *Held* that due process of law did not require that he be repaid for necessarily incident damages. P. 260 U. S. 30 .

263 Pa.St. 158 affirmed.

Error to a judgment of the Supreme Court of Pennsylvania affirming a judgment for the defendant in an action brought by the plaintiff in error for damages resulting from the destruction of a wall of his building and its replacement by a party wall, by the defendant, proceeding under a statute of Pennsylvania of June 7, 1895, P.L. 135, 9. *

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MR. JUSTICE HOLMES delivered the opinion of the Court.

The plaintiff in error, the original plaintiff, owned a theater building in Pittsburgh, Pennsylvania, a wall of which went to the edge of his line. Proceeding under a statute of Pennsylvania, the defendant, owner of the adjoining land, began to build a party wall, intending to incorporate the plaintiff's wall. The city authorities decided that the latter was not safe, and ordered its removal, which was done by the contractor employed by the defendant. The plaintiff later brought this suit. The declaration did not set up that the entry upon the plaintiff's land was unlawful, but alleged wrongful delay in completing the wall and the use of improper methods. It claimed damages for the failure to restore the plaintiff's building to the equivalent of its former condition, and for the delay, which, it was alleged, caused the plaintiff

to lose the rental for a theatrical season. At the trial, the plaintiff asked for a ruling that the statute relating to party walls, if interpreted to exclude the recovery of damages without proof of negligence, was contrary to the Fourteenth Amendment. This was refused, the court ruling that the defendant was not liable for damages

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necessarily resulting from the exercise of the right given by the statute to build a party wall upon the line, and, more specifically, was not liable for the removal of the plaintiff's old wall. There were further questions as to whether the work was done by an independent contractor and as to negligence, on which the jury brought in a verdict for the plaintiff for $25,000; but the court of Common Pleas held that the party employed was an independent contractor, and that the defendant was entitled to judgment *non obstante veredicto.* The Supreme court affirmed the judgment, holding, among other things, that the statute imposed no liability for damages necessarily caused by building such a party wall as it permitted, and that, so construed, it did not encounter the Fourteenth Amendment of the Constitution of the United States. 263 Pa. 158.

In the state court, the judgment was justified by reference to the power of the state to impose burdens upon property or to cut down its value in various ways without compensation, as a branch of what is called the police power. The exercise of this has been held warranted in some cases by what we may call the average reciprocity of advantage, although the advantages may not be equal in the particular case. *Wurts v. Hoagland,* 114 U. S. 606 ; *Fallbrook Irrigation District v. Bradley,* 164 U. S. 112 ; *Noble State Bank v. Haskell,* 219 U. S. 104 , 219 U. S. 111 . The supreme court of the state adverted also to increased safety against fire, and traced the origin to the great fire in London in 1666. It is unnecessary to decide upon the adequacy of these grounds. It is enough to refer to the fact, also brought out and relied upon in the opinion below, that the custom of party walls was introduced by the first settlers in Philadelphia under William Penn, and has prevailed in the state ever since. It is illustrated by statutes concerning Philadelphia going back to 1721, 1 Dallas, Laws of Pennsylvania 152, and by an

Act of 1794 for Pittsburgh, 3 Dallas, Laws 588, 591, referring to the Act incorporating the Borough of Reading, 2 Dallas, Laws 124, 129.

The Fourteenth Amendment, itself a historical product, did not destroy history for the states and substitute mechanical compartments of law all exactly alike. If a thing has been practiced for two hundred years by common consent, it will need a strong case for the Fourteenth Amendment to affect it, as is well illustrated by *Ownbey v. Morgan,* 256 U. S. 94 , 256 U. S. 104 , 256 U. S. 112 . *See Louisville & Nashville R. Co. v. Barber Asphalt Co.,* 197 U. S. 430 , 197 U. S. 434 . Such words as "right" are a constant solicitation to fallacy. We say a man has a right to the land that he has bought and that to subject a strip six inches or a foot wide to liability to use for a party wall therefore takes his right to that extent. It might be so, and we might be driven to the economic and social considerations that we have mentioned if the law were an innovation, now heard of for the first time. But if, from what we may call time immemorial, it has been the understanding that the burden exists, the landowner does not have the right to that part of his land except as so qualified, and the statute that embodies that understanding does not need to invoke the police power.

Of course, a case could be imagined where the modest mutualities of simple townspeople might become something very different when extended to buildings like those of modern New York. There was a suggestion of such a difference in this case. But, although the foundations spread wide, the wall above the surface of the ground was only thirteen inches thick, or six and a half on the plaintiff's land, and, as the damage complained of was a necessary incident to any such building, the question how far the liability might be extended does not arise. It follows, as stated by the Supreme Court of Pennsylvania, that

"when either lot holder builds upon his own property

up to the division line, he does so with the knowledge that, in case of the erection of a party wall, that part of his building which encroaches upon the portion of the land subject to the easement will have to come down, if not suitable for incorporation into the new wall."

In a case involving local history, as this does, we should be slow to overrule the decision of courts steeped in the local tradition even if we saw reasons for doubting it, which, in this case, we do not.

Judgment affirmed.

* This act provides for a bureau of building inspection in cities of the second class.

Anyone about to erect a party wall shall apply to the bureau, describing his property and furnishing plans and specifications of the party wall he desires to erect. The bureau then fixes a time for a meeting on the ground, notice of which shall be served on the adjoining owner. At the time appointed, the superintendent of the bureau, "or some suitable person by him appointed," shall have the line between the two parties surveyed and also

"the land upon which the said party wall is to be erected, with the breadth and length of the same, and which wall shall be equally one-half upon the land of each of the adjoining owners, unless the adjoining owners shall object that said wall as proposed is thicker than necessary for the purpose of any ordinary building. If such objection shall be made, then the superintendent, or the person by him appointed, shall determine how much of said wall shall be placed upon each of said lots, and shall decide the same within forty-eight hours after the said objection has been made, and his decision shall be final and conclusive upon all parties."

The party first applying shall erect the wall at his own cost, which, and the proportions to be paid by each owner, shall be determined by the superintendent or his agent; the adjoining owner shall not thereafter use the wall for any new structure until he has paid his proper proportion, as fixed.

The question of necessary alterations and repairs in existing walls shall also be referred to and determined by the superintendent, and he may order an old party wall torn down and a new one erected, and fix the proportion of the cost which each of the adjoining owners shall pay. The courts are given power to restrain the adjoining owner from making any new use of the wall until his proportion of the costs, as fixed by the superintendent, has been paid.