



United States v. Gettysburg Electric Railway Company

SUPREME COURT OF THE UNITED STATES

160 U.S. 668

January 27, 1896

JUSTICE PECKHAM...[W]hether the use to which the [United States] desires to put the land described in the petitions is of that kind of public use for which the government of the United States is authorized to condemn land? **It has authority to do so whenever it is necessary or appropriate to use the land in the execution of any of the powers granted to it by the Constitution.** *Kohl v. United States*¹...

This Court also believes it must first find authority to “take” through some other Constitutional power.

Is the proposed use...a public use within this limitation?...[W]hen the legislature has declared the use or purpose to be a public one, **its judgment will be respected by the courts, unless the use be palpably without reasonable foundation.** [This is]...a rational and proper [rule].

So, in 3 short years since *Monongahela*, the Court has gone from “avoiding encroachment on personal rights” to “deferring to government judgment.” So much for “erosion” of the slippery slope. I would call this a “gully washer.” And, this is 1896!!!

As just compensation, which is the full value of the property taken, is to be paid, and the amount must be raised by taxation where the land is taken by the government itself, there is not much ground to fear any abuse of the power. The responsibility of Congress to the people will generally, if not always, result in a most conservative exercise of the right....

¹Case 5A-E-2 on this website.

Hold on. The general public may not have any problem whatsoever with taxes being raised to “take” John Doe’s land and, therefore, they have no fear of abuse. But, we are not talking about John Q. Public — we are determining Mr. Doe’s rights. Does it appear that Congress had more respect for “the People” in 1896 when it came to raising taxes? Do we “fear” abuse of power or just accept it as part of the system? Does Congress “fear” we will do anything about them “abusing power when they raise taxes”?

Upon the question whether the proposed use of this land is a public one, we think there can be no well founded doubt. And also, in our judgment, the government has the constitutional power to condemn the land for the proposed use. **It is, of course, not necessary that the power of condemnation for such purpose be expressly given by the Constitution. The right to condemn at all is not so given. It results from the powers that are given, and it is implied because of its necessity, or because it is appropriate in exercising those powers. Congress has power to declare war and to create and equip armies and navies. It has the great power of taxation to be exercised for the common defence and general welfare. Having such powers, it has such other and implied ones as are necessary and appropriate for the purpose of carrying the powers expressly given into effect.** Any act of Congress which plainly and directly tends to enhance the respect and love of the citizen for the institutions of his country and to quicken and strengthen his motives to defend them, and which is germane to and intimately connected with and appropriate to the exercise of some one or all of the powers granted by Congress must be valid. This proposed use comes within such description...

This is rather insightful. The Court notes that the Constitution does not specifically grant the power of condemnation, but it is implied in the necessary exercise of other powers that “are” given.



The battle of Gettysburg was one of the great battles of the world...The existence of the government itself and the perpetuity of our institutions depended upon the result...Can it be that the government is without power to preserve the land, and properly mark out the various sites upon which this struggle took place? Can it not erect the monuments provided for by these acts of Congress, or even take possession of the field of battle in the name and for the benefit of all the citizens of the country for the present and for the future? Such a use seems necessarily not only a public use, but one so closely connected with the welfare of the republic itself as to be within the powers granted Congress by the Constitution for the purpose of protecting and preserving the whole country...The value of the sacrifices then freely made is rendered plainer and more durable by the fact that the government of the United States, through its representatives in Congress

assembled, appreciates and endeavors to perpetuate it by this most suitable recognition...The institutions of our country which were saved at this enormous expenditure of life and property ought to and will be regarded with proportionate affection. Here upon this battlefield is one of the proofs of that expenditure, and the sacrifices are rendered more obvious and more easily appreciated when such a battlefield is preserved by the government at the public expense. The right to take land for cemeteries for the burial of the deceased soldiers of the country rests on the same footing...It seems very clear that the government has the right to bury its own soldiers and to see to it that their graves shall not remain unknown or unhonored. **No narrow view of the character of this proposed use should be taken. Its national character and importance, we think, are plain. The power to condemn for this purpose need not be plainly and unmistakably deduced from any one of the particularly specified powers. Any number of those powers may be grouped together, and an inference from them all may be drawn that the power claimed has been conferred.**

Fascinating. Does this 1896 “grouping of powers” concept sound anything like the “**penumbras** formed by emanations” from the 1965 *Griswold* case? Perhaps Justice Douglas would have done well to cite **UNITED STATES v. GETTYSBURG**. Perhaps he did.

...Another objection taken...is that the land proposed to be taken in this proceeding was already devoted to another public use, to wit, that of the railroad company, and that it does not appear that it was the intention of Congress to take land which was devoted to another public use. The defendant in error concedes what is without doubt true, that this is a question of intention simply; **the power of Congress to take land devoted to one public use for another and a different public use upon making just compensation cannot be disputed.**

So, we add to our arsenal of knowledge that land taken for a “public use” can later be taken again for a different “public use.”

