



STRICKLEY v. HIGHLAND BOY GOLD MINING COMPANY
SUPREME COURT OF THE UNITED STATES

200 U.S. 527

February 19, 1906

JUSTICE HOLMES...This is a proceeding begun by...a mining corporation to condemn a right of way for an aerial bucket line across a "placer mining claim" of the plaintiffs. The mining corporation owns mines high up in Bingham Canyon, Salt Lake County, Utah, and is using the line...to carry ores...for itself and others from the mines, in suspended buckets, down to the railway station, two miles distant and twelve hundred feet below. Before building the line it made diligent inquiry but could not discover the owner of the placer claim in question. Strickley stood by without objecting or making known his rights while the company put up its structure. The trial court [entered] an order of condemnation,...the mining company has paid into court the value of the right of way...to be used for the erection of certain towers to support the cables of the line, with a right to drive along the way when necessary for repairs, the mining company to move the towers as often as reasonably required by the owners of the claim for using and working the said claim. [The Supreme Court of the State affirmed and the case was brought here].

Strickley argues that the right of way demanded is solely for private use, and that the taking of...land for that purpose is contrary to the 14th Amendment...The mining company...relies upon the statutes of Utah, which provide that "the right of eminent domain may be exercised in behalf of the following public uses:...Roads, railroads, tramways, tunnels, ditches, flumes, pipes and dumping places to facilitate the milling, smelting or other reduction of ores, or the working of mines." In view of the decision of the state court we assume that the condemnation was authorized by the state laws, subject only to the question whether those laws as construed are consistent with the 14th Amendment...[The question is answered by the recent decision in *Clark v. Nash, 198 U.S. 361.*] That case established the constitutionality of the Utah statute, so far as it permitted the condemnation of land for the irrigation of other land belonging to a private person, in pursuance of the declared policy of the State. In discussing what constitutes a public use it recognized the inadequacy of use by the general public as a universal test. While emphasizing the great caution necessary to be shown, it proved that **there might be exceptional times and places in which the very foundations of**

public welfare could not be laid without requiring concessions from individuals to each other upon due compensation which under other circumstances would be left wholly to voluntary consent. In such unusual cases there is nothing in the 14th Amendment which prevents a State from requiring such concessions. If the state constitution restricts the legislature within narrower bounds that is a local affair, and must be left where the state court leaves it in a case like the one at bar. **In the opinion of the legislature and the Supreme Court of Utah the public welfare of that State demands that aerial lines between the mines upon its mountain sides and the railways in the valleys below should not be made impossible by the refusal of a private owner to sell the right to cross his land. The Constitution of the United States does not require us to say that they are wrong.** Judgment affirmed.

As you will see, *Kelo* doesn't begin to be this intrusive upon asserted "private" interests and *Strickley* is a 1906 case!

