CENTRAL UNION TELEPHONE CO. v. CITY OF EDWARDSVILLE, ILLINOIS
SUPREME COURT OF THE UNITED STATES
269 U.S. 190
November 23, 1925

COUNSEL FOR CENTRAL UNION TELEPHONE CO.:
WILLIAM DEAN BANGS; JAMES DWIGHT DICKERSON.

COUNSEL FOR THE CITY OF EDWARDSVILLE:
MARK LESTER GEERS; GEORGE ALLEN LYTLE; JOHN FREDERICK EECK.

JUDGES: William Howard Taft; Oliver Wendell Holmes; Van Devanter; McReynolds; **Louis Brandeis;** Sutherland; Butler; Sanford; and, Stone.

OPINION: Chief Justice Taft...The City of Edwardsville, Illinois,...in 1914 passed an ordinance which in effect imposes a tax of 50 cents a pole upon every person, firm or corporation owning, controlling or occupying any such poles in the streets of Edwardsville. The city brought suit for the amount due under the tax law at 50 cents a pole. A jury was waived, and after a hearing the court entered judgment for $ 3,000 against the company. The Circuit Court held that neither the ordinance by which the Central Telephone Company was permitted to occupy the streets, nor the subsequent resolution accepted by the Central Union Telephone Company, constituted a contract, and that the tax law was not therefore a violation of the Constitution of the United States in impairing a contract, or in depriving the company of property without due process of law. Upon this record an appeal was taken to the Appellate Court of the State for the Fourth Circuit. That court transferred the case to the Supreme Court of Illinois, on the ground that the Appellate Court had no jurisdiction of it. *City of Edwardsville v. Central Union Telephone Co., 302 Ill. 362.* The Supreme Court [of Illinois] held that as the appeal had been taken to the Appellate Court [of Illinois] and errors assigned which that court had jurisdiction to hear, the case was improperly transferred to the Supreme Court [of Illinois], and remanded it to the Appellate Court [of Illinois], which gave judgment affirming the Circuit Court. The plaintiff then obtained a certiorari from [this Court] to review the decision of the Appellate Court, and in that hearing the Supreme Court declined to hear the constitutional questions on the ground that they had been waived by the failure to carry the case from the Circuit Court directly to the Supreme Court to review those questions...

The construction of [Paragraph 89, §88 of the Annotated Illinois Statutes] has been uniformly held to be, that where a question involves the Constitution, it must be taken...to the [Illinois] Supreme Court, and that if it be taken to the Appellate Court on other grounds, the party taking the appeal...shall be held to have waived the constitutional questions. The city, therefore, moves to [dismiss this appeal].

It is objected on behalf of the [telephone company] that the words "validity of a statute or construction of the Constitution" refer to the constitution of Illinois and not to the Federal

Constitution. The Supreme Court of Illinois has held otherwise in this case.

But counsel for [the telephone company] insist that it is for this Court to determine finally whether a litigant in a state court has waived his federal right, citing [several cases]. But there is nothing in these cases which justifies this Court in ignoring or setting aside a required form of practice under the appellate statutes of the State by which federal constitutional rights, as well as state constitutional rights, may be asserted in the Supreme Court of the State or be held to be waived, if the practice gives to the litigant a reasonable opportunity to have the issue as to the claimed right heard and determined by that court. We said in *John v. Paullin, 231 U.S. 583, 585:* "Without any doubt it rests with each State to prescribe the jurisdiction of its appellate courts, the mode and time of invoking that jurisdiction, and the rules of practice to be applied in its exercise; and the state law and practice in this regard are no less applicable when Federal rights are in controversy than when the case turns entirely upon questions of local or general law," -- and many cases are there cited.

It seems to us that the practice under the statute of Illinois above quoted is entirely fair. If the litigant has a constitutional question, federal or state, he may take the case directly to the Supreme Court and have that question decided, together with all the other questions in the case, and then, if the federal constitutional question is decided against him, he may bring it here by writ of error or application for certiorari. If he elects to take his case to the Appellate Court, he may have the non-constitutional questions considered and decided, but he gives up the right to raise constitutional objections in any court. There is some complaint that counsel could not infer that the constitutional questions referred to in the statute were federal questions, because the Supreme Court of Illinois had not so decided before this case. We have not been able to determine from the Illinois decisions cited above whether any of the constitutional questions held to be waived therein were federal until the present case. It is not, however, a forced or strained interpretation to hold that "cases...in which the validity of a statute or construction of the Constitution is involved" include validity under, or construction of, both constitutions. **When so declared by the state court it should bind us unless so unfair or unreasonable in its application to those asserting a federal right as to obstruct it. This is no such case...**

Here, the law of the State under the statute, as many times construed, required the appeal on constitutional grounds to be taken directly from the Circuit Court to the Supreme Court of Illinois. It elected, instead, to go to the Appellate Court, with the consequences well understood, and thereby it waived the question which it now wishes to present here. *The motion to dismiss...is granted.*