HAIRSTON v. DANVILLE AND WESTERN RAILWAY

SUPREME COURT OF THE UNITED STATES

208 U.S. 598

February 24, 1908

JUSTICE MOODY...If the condemnation [by the State of Virginia] was for private uses, it is forbidden by the 14th Amendment. *Fallbrook Irrigation District v. Bradley*[1]*; Clark v. Nash; Strickley v. Highland Boy Mining Co.*[2]

...The courts of the States, whenever the question has been presented to them for decision, have, without exception, held that it is beyond the legislative power to take, against his will, the property of one and give it to another for what the court deems private uses, even though full compensation for the taking be required...When we come to inquire what are public uses for which the right of compulsory taking may be employed, and what are private uses for which the right is forbidden we find no agreement, either in reasoning or conclusion. **The one and only principle in which all courts seem to agree is that the nature of the uses, whether public or private, is ultimately a judicial question**. The determination of this question by the courts has been influenced in the different States by considerations touching the resources, the capacity of the soil, the relative importance of industries to the general public welfare, and the long-established methods and habits of the people. In all these respects conditions vary so much in the States and Territories of the Union that different results might well be expected...The propriety of keeping in view by this court, while enforcing the 14th Amendment, the diversity of local conditions and of **regarding with great respect the judgments of the state courts** upon what should be deemed public uses in that State, is expressed, justified, and acted upon in *Fallbrook Irrigation District v. Bradley* and *Strickley v. Highland Boy Mining Co...*No case is recalled where this court has condemned as a violation of the 14th Amendment a taking upheld by the state court as a taking for public uses in conformity with its

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[1]Case 5A-E-5 on this website.

[2]Case 5A-E-6 on this website.

laws...The cases cited show how greatly we have deferred to the opinions of the state courts on this subject, which so closely concerns the welfare of their people. **We have found nothing in the Federal Constitution which prevents the condemnation by one person for his individual use of a right of way over the land of another for the construction of an irrigation ditch; of a right of way over the land of another for an aerial bucket line; or of the right to flow the land of another by the erection of a dam. It remains for the future to disclose what cases, if any, of taking for uses which the state constitution, law, and court approve will be held to be forbidden by the 14th Amendment to the Constitution of the United States.**

...The Virginia court has...found that the condemnation was for public uses...We need not consider whether a condemnation by a railroad, authorized by a state law and approved by the state court, of land for the construction of a spur track to be used solely to transport commodities to the main line and thence to the place of sale and consumption throughout the country, is a violation of the 14th Amendment; nor the authorities bearing upon the question whether such a use is public. Here the proposed spur track can be used, and was designed to be used, not only for access to the factory of the tobacco company but for the storage of cars to be laden or unladen by receivers and shippers of freight, and to relieve the congestion of business which, through the growth of the town, overburdened the limited trackage of the railroad. We think the court below was justified in finding that the superintendent testified accurately when he said, **"In order to meet the demands of the business, therefore, it is absolutely necessary to obtain more and better terminal facilities here;" and "We have located what we think to be the best and most feasible line to accomplish two objects -- get the terminal facilities, and at the same time reach the plant of the Rucker & Witten Tobacco Co.;"** and "It will be for the use of the public..." This testimony describes a use which is clearly public...**The uses for which the track was desired are not the less public because the motive which dictated its location over this particular land was to reach a private industry, or because the proprietors of that industry contributed in any way to the cost.**

We have considered the elaborate argument of counsel that the track was not intended for the use of the public generally, and that it could not, in fact, be so used, and are not convinced by it. The judgment is Affirmed.

A use is no less a "public use" merely because the motivation of condemnation was to reach a private industry? Are you kidding me? Does anyone understand the public outcry over the *Kelo* case? And, *Hairston* is still only a 1908 case!!! We now jump 46 years ahead to 1954!