

Hunter v. City of Pittsburgh

SUPREME COURT OF THE UNITED STATES

207 U.S. 161, 28 S. Ct. 40, 52 L. Ed. 151 · No. 264 · Decided November 18, 1907 · Moody

OPINION

Mr. Justice Moody,

after making the foregoing statement of the case, delivered the opinion of the court.

The plaintiffs in error seek a reversal of the judgment of the Supreme Court of Pennsylvania, which affirmed a decree of a lower court, directing the consolidation of the cities of Pittsburgh and Allegheny. This decree was entered by authority of an act of the General Assembly of that State, after proceedings taken in conformity with its requirements. The act authorized the consolidation of two cities, situated with reference to each other as Pittsburgh and Allegheny are, if upon an election the majority of the votes cast in the territory comprised within the limits of both cities favor the consolidation, even though, as happened in this instance, a majority of the votes cast in one of the cities oppose it. The procedure prescribed by the act is that after a petition filed by one of the cities in the Court of Quarter Sessions, and a hearing upon that petition, that court, if the petition and proceedings are found to be regular and in conformity with the act, shall order an election. If the election shows a majority of the votes cast to be in favor of the consolidation, the court "shall enter a decree annexing and consolidating the lesser city . . . with the greater city." The act provides, in considerable detail, for the effect of the consolidation upon the debts, obligations, claims and property of the constituent cities; grants, rights of citizenship to the citizens of those cities in the consolidated city; enacts that "except as hereinafter otherwise provided, all the property . . . and rights and privileges . . . vested in or belonging to either of said cities . . . prior to or at the time of the annexation, shall be vested in and owned by the consolidated or united city," and establishes the form of government of the new city. This procedure was followed by the filing of a petition by the City of Pittsburgh; by an election in which the majority of all the votes cast were in the affirmative, although the majority of all the votes cast by the voters of Allegheny were in the negative, and by a decree of the court uniting the two cities.

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Prior to the hearing upon the petition the plaintiffs in error, who were citizens, voters, owners of property and taxpayers in Allegheny, filed twenty-two exceptions to the petition. These exceptions were disposed of adversely to the exceptants by the Court of Quarter Sessions, and the action, of that court, was successively affirmed by the Superior and Supreme courts of the State. The case is here upon writ of error and the

assignment of errors alleges that eight errors were committed by the Supreme Court of the State. This assignment of errors is founded upon the dispositions by the state courts of the questions duly raised by the filing of the exceptions under the provisions of the Act of the Assembly. .

The defendants in error moved to dismiss the case because no Federal question was raised in the court below or by the assignments of error, or, if any Federal question was raised, because it was frivolous. This motion must be overruled. The plaintiffs in error claimed that the Act of Assembly was in violation of the Constitution of the United States, and specially set up and claimed in the court below rights under several sections of that Constitution, and all their claims were denied by that court. These rights were claimed in the clearest possible words, and the sections of the Constitution relied upon were specifically named. The questions raised by the denial of these claims are not so unsubstantial and devoid of all color of merit that we are warranted in dismissing the case without consideration of their merits.

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Some part of the assignments of error and of the arguments in support of them may be quickly disposed of by the application of well-settled principles. We have nothing to do with the policy, wisdom, justice or fairness of the act under consideration; those questions are for the consideration of those to whom the State has entrusted its legislative power, and their determination of them is not subject to review or criticism by this court. We have nothing to do with the interpretation of the constitution of the State and the conformity of the enactment of the Assembly to that constitution; those questions are for the consideration of the courts of the State, and their decision of them is final. The Fifth Amendment to the Constitution of the United States is not restrictive of state, but only of national, action.

After thus eliminating all questions with which we have no lawful concern, there remain two questions which are within our jurisdiction. There were two claims of rights under the Constitution of the United States which were clearly made in the court below and as clearly denied. They appear in the second and fourth assignments of error. Briefly stated, the assertion in the second assignment of error is that the Act of Assembly impairs the obligation of a contract existing between the City of Allegheny and the plaintiffs in error, that the latter are to be taxed only for the governmental purposes of that city, and that the legislative attempt to subject them to the taxes of the enlarged city violates Article I, section 9, paragraph 10, of the Constitution of the United States. This assignment does not rest upon the theory that the charter of the city is a contract with the State, a proposition frequently denied by this and other courts. . It rests upon the novel proposition that there is a contract between the citizens and taxpayers of a municipal

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corporation and the corporation itself, that the citizens and taxpayers shall be taxed only for the uses of that corporation, and shall not be taxed for the uses of any like corporation with which it may be consolidated. It is not said that the City of Allegheny expressly made any such extraordinary contract, but only that the contract, arises out of the relation of the parties to each other. It is difficult to deal with a proposition of this kind except by saying that it is not true. No authority or reason in support of it has been offered to us, and it is utterly inconsistent with the nature of municipal corporations, the purposes for which they are created, and the relation they bear to those who dwell and own property within their limits. This assignment of error is overruled.

Briefly stated, the assertion in the fourth assignment of error is that the Act of Assembly deprives the plaintiffs in error of their property without due process of law, by subjecting it to the burden of the additional taxation which would result from the consolidation. The manner in which the right of due process of law has been violated, as set forth in the first assignment of error and insisted upon in argument, is that the method of voting on the consolidation prescribed in the act has permitted the voters of the larger city to overpower the voters of the smaller city, and compel the union without their consent and against their protest. The precise question thus presented has not been determined by this court. It is important, and, as we have said, not so devoid of merit as to be denied consideration, although its solution by principles long settled and constantly acted upon is not difficult. This court has many times had occasion to consider and decide the nature of municipal corporations, their rights and duties, and the rights of their citizens and creditors. *Maryland v. Balt. & Ohio Railroad*, [3 How. 534, 550](#); *East Hartford v. Hartford Bridge Company*, [10 How. 511, 533, 534, 536](#); *United States v. Railroad Company*, [17 Wall. 322, 329](#); *Laramie County v. Albany County*, [92 U. S. 307, 308, 310-312](#); *Commissioners v. Lucas*, [93 U. S. 108, 114](#); *New Orleans v. Clark*, [95 U. S. 644, 654](#); *Mount Pleasant v. Beckwith*, [100 U. S. 514, 524, 525, 531, 532](#); *Meriwether v. Garrett*, [102 U. S. 472, 511](#); *Kelly v. Pittsburgh*, [104 U. S. 78, 80](#); *Forsyth v. Hammond*, [166 U. S. 506, 518](#); *Williams v. Eggleston*, [170 U. S. 304, 310](#); *Covington v. Kentucky*, [173 U. S. 231, 241](#); *Worcester v. Worcester Street Railway Company*, [196 U. S. 539, 549](#); *Kies v. Lowrey*, [199 U. S. 233](#). It would be unnecessary and unprofitable to analyze these decisions or quote from the opinions rendered. We think the following principles have been established by them and have become settled doctrines of this court, to be acted upon whenever they are applicable. - Municipal corporations are political, subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire,

hold, and 'manage personal and real property. The number, nature and duration of the powers conferred upon these corporations' and the territory over which they shall be exercised rests in the absolute discretion of the State. Neither .their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes,* or authorizing them to hold or manage such property,- or exempting them from taxation upon it, constitutes a contract with the State within the meaning of the Federal Constitution. ' The State, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself,-or vest it in other agencies, expand or contract the territorial area; unite' the whole or a part of it with another municipality, repeal the charter, and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even- against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and property owners may by such changes suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, .or for any other reason, .they have no right by contract or otherwise in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences: The power is in the State and those who legislate for the State are alone responsible for any unjust or oppressive exercise of it.

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Applying these principles to the case at bar, it follows irresistibly that this assignment of error, so far as it relates to the citizens who are plaintiffs in error, must be overruled.

It will be observed that , in describing the absolute power of the State over the property of municipal corporations^we have not extended it beyond the property held and used for governmental purposes. Such corporations are sometimes authorized to hold and do hold property for the same purposes that property is held by private corporations or individuals. The distinction between property owned by municipal corporations in their public and governmental capacity and that owned by them in their private capacity, though difficult to define, has been approved by many of the state courts (1 Dillon, *Municipal Corporations** 4th -ed., sections 66 to 66a, inclusive, and cases cited in note to 48 L. R. A. 465), and it has been held that as to the latter class of property the legislature is not 'omnipotent: If the distinction is recognized it suggests the question whether property of a municipal corporation owned in its private and proprietary capacity may be taken from it against its will and without compensation. Mr. Dillon says truly that the question has never arisen directly for adjudication in this court. But it and the distinction

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upon which it is based has several (times been noticed. *Commissioners v. Lucas*, [93 U. S. 108, 115](#); *Meriwether v. Garrett*, [102 U. S. 472, 518, 530](#); *Essex Board v. Skinkle*, [140 U. S. 334, 342](#); *New Orleans v. Water Works Co.*, [142 U. S. 79, 91](#); *Covington v. Kentucky*, [173 U. S. 231, 240](#); *Worcester v. Street Railway Co.*, [196 U. S. 539, 551](#); *Monterey v. Jacks*, [203 U. S. 360](#). Counsel for plaintiffs in error assert that the City of Allegheny was the owner of property held in its private and proprietary capacity, and insist that the effect of the proceedings under this act was to take its property without compensation and vest it in another corporation, and that thereby the city was deprived of its property without due process of law in violation of the Fourteenth Amendment. But no such question is presented by the record, and there is but a vague suggestion of facts upon which it might have been founded. In the sixth exception there is a recital of facts with a purpose of showing how the taxes of the citizens of Allegheny would be increased by annexation to Pittsburgh. In that connection it is alleged that while Pittsburgh intends to spend large sums of money in the purchase of the water plant of a private company and for the construction of an electric light plant, Allegheny “has improved its streets, established its own system of electric lighting, and” established a satisfactory water supply.” This is the only reference in the record to the property rights of Allegheny, and it falls far short of a statement that that city holds any property in its private and proprietary capacity. Nor was there any allegation that Allegheny had been deprived of its property without due process of law. The only allegation of this kind is that the taxpayers, plaintiffs in error, were deprived of their property without due process of law because of the increased taxation which would result from the annexation—an entirely different proposition. Nor is the situation varied by the fact that, in the Superior Court, Allegheny was “permitted to intervene and become one of the appellants.” The city made no new allegations and raised no new questions, but was content to rest upon the record as it was made up. Moreover, no question of the effect of the act upon private property rights of the City of Allegheny was considered in the opinions in the state courts or suggested by assignment of errors in this court. The question is entirely outside of the record and has no connection with any question which is raised in the record. For these reasons we are without jurisdiction to consider it, *Dewey v. Des Moines*, [173 U. S. 193](#); *Harding v. Illinois*, [196 U. S. 78](#), and neither express nor intimate any opinion upon it.

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The judgment is
Affirmed,