Supreme Court Case: Munn v. Illinois 1877

Introduction

This case involved the right of the Illinois legislature to prescribe maximum charges for the storage of grain. Its implications, however, were far more sweeping, because it directly affected the constitutionality of state railroad regulation as well. The case arose because nine business firms acting together were able to fix the prices of storage and handling in Chicago grain elevators and warehouses, through which the produce of a vast middle-western farming area had to pass on its way to market. The Illinois legislature passed a law regulating warehouse storage charges. When the Illinois law was tested in the Supreme Court, the problem before the Court was to find a legal basis for regulating such property as grain elevators and railroads without setting a precedent for the regulation of all private property. For precedent, Chief Justice Morrison R. Waite went back to Sir Matthew Hale, a seventeenth-castury English jurist, whe had laid down the principle that property "affected with a public interest" ceases to be an object of private law alone and becomes liable to public regulation. Having applied this doctrine to elevators, Chief Justice Waite in other cases applied it to railroads as well. The Munn decision set a legal foundation for regulation, but its value was whittled down by later decisions which took their cue from Justice Field`s dissent in this case.

Mr. Chief Justice Waite delivered the opinion of the court.

The question to be determined in this case is whether the general assembly of Illinois can, under the limitations upon the legislative powers of the States imposed by the Constitution of the United States, fix by law the maximum of charges for the Storage of grain in warehouses at Chicago and other places in the State having not less than one hundred thousand inhabitants,

"in which grain is stored in bulk, and in which the grain of different owners is mixed together, or in which grain is stored in such a manner that the identity of different lots or parcels cannot be accurately preserved."

It is claimed that such a law is repugnant-

1. To that part of sect. 8, art. I, of the Constitution of the United States which confers upon Congress the power "to regulate commerce with foreign nations and among the several States;"
2. To that part of sect. 9 of the same article which provides that "no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another;" and
3. 3. To that part of amendment 14 which ordains that no State shall "deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

We will consider the last of these objections first. .

The Constitution contains no definition of the word "deprive," as used in the Fourteenth Amendment. To detenmine its signification, therefore, it is necessary to ascertain the effect which usage has given it, when employed in the same or a like connection.

While this provision of the amendment is new in the Constitution of the United States, as a limitation upon the powers of the States, it is old as a principle of civilized government. It is found in Magna Charta, and, in substance if not in form, in nearly or quite all the constitutions that have been from time to time adopted by the several States of the Union. By the Fifth Amendment, it was introduced into the Constitution of the United States as a limitation upon the powers of the national government, and by the Fourteenth, as a guarantee against any encroachment upon an acknowledged right of cilizenship by the legislatures of the States. -

When one becomes a member of society, he encessarily parts with some rights or privileges which, as an individual not affected by his relations to others, he might retain. "A body politic," as aptly defined in the preamble of the Constitution of Massachusetts,

"is a social compact by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good."

This does not confer power upon the whole people to control rights which are purely and exclusively private - . - but it does authorize the establishment of laws requiring each citizen to so conduct himself, and so use his own property, as not unnecessarily to injure another. - . - From this source came the police powers, which, as was said by Mr. Chief Justice

Taney in the License Cases - . - are nothing more or less than the powers of government inherent in every sovereignty, - . - that is to say, - . - the power to govern men and things." Under these powers the government regulates the conduct of its citizens one towards another, and the manner in which each shall use his own property, when such regulation becomes necessary for the public good.

From this it is apparent that, down to the time of the adoption of the Fourteenth Amendment, it was not sub posed that statutes regulating the use, or even the price of the use, of private property necessarily deprived an owner of his property without due process of law. Under some circumstances they may, but not under all. The amendment does not change the law in this particular: it simply prevents the States from doing that which will operate as such a deprivation.

This brings us to inquire as to the principles upon which this power of regulation rests, in ord~ that we may determine what is within and what without its operative effect. Looking, then, to the common law, from whence came the right which the Constitution protects, we find that when private property is "affected with `a public interest, it ceases to be juris privati only." This was said by Lord Chief Justice Hale more than two hundred years ago, in his treatise De Port ib us Maris . . . and has been accepted without objection as an essential element in the law of property ever since. Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control. .

From the same source comes the power to regulate the charges of common carriers, which was done in England as long ago as the third year of the reign of William and Mary, and continued until within a comparatively recent period. .

Common carriers exercise a sort of public office, and have duties to perform in which the public is interested. . . . Their business is, therefore, "affected with a public interest," within the meaning of the doctrine which Lord Hale has so forcibly stated.

But we need not go further. Enough has already been said to show that, when private property is devoted to a public use, it is subject to public regulation. It remains only to ascertain whether the warehouses of these plaintiffs in error, and the business which is carried on there, come within the operation of this principle. .

Neither is it a matter of any moment that no precedent can be found for a statute precisely like this. It is conceded that the business is one of recent origin, that its growth has been rapid, and that it is already of great importance. And it must also be conceded that it is a business in which the whole public has a direct and positive interest. It presents, therefore, a case for the applicatior of a long-known and well-established principle in social science, and this statute simply extends the law so as to meet this new development of commercial progress. There is no attempt to compel these owners to grant the public an interest in their property, but to decline their obligations, if they use it in this particular manner.

It is insisted, however, that the owner of property is entitled to a reasonable compensation for its use, even though it be clothed with a public interest, and that what is reasonable is a judicial and not a legislative question.

As has already been shown, the practice has been otherwise. In countries where the common law prevails, it has been customary from time immemorial for the legislature to declare what shall be a reasonable compensation under such circumstances, or perhaps more properly speaking, to fix a maximum beyond which any charge made would be unreasonable. Undoubtedly in mere private contracts, relating to matters in which the public has no interest, what is reasonable must be ascertained judicially. But this is because the legislature has no control over such a contract. So, too, in matters which do not affect the public interest, and as to which legislative control may be exercised . . . the courts must determine what is reasonable. The controlling fact is the power to regulate at all. If that exists, the right to establish the maximum of charge, as one of the means of regulation, is implied.

We know that this is a power which may be abused; but that is no argument against its existence. For protection against abuses by legislatures the people must resort to the polls, not to the courts. .

We come now to consider the effect upon this statute of the power of Congress to regulate commerce. .

The warehouses of these plaintiffs in error are situated and their business carried on exclusively within the limits of the State of Illinois. They are used as instruments by those engaged in State as well as those engaged in inter-state commerce. . . . Incidentally they may come connected with inter-state commerce, but not necessarily so. Their regulation is a thing of domestic concern and, certainly, until Congress acts in reference to their interstate relations, the State may exercise all the powers of government over them, even though in so doing it may indirectly operate upon commerce outside its immediate jurisdiction. .

Justice Stephen J. Field dissenting

This dissent became one of the most important in the history of the Supreme Court when it began to influence subsequent decisions governing the regulatory power of the states. Justice Field denounced the decision as "subversive of the rights of private property" and of "the constitutional prohibition that no state shall deprive any person of his property except by due process of law." In later years the Court receded from Chief Justice Waite`s position that for protection against legislative abuse of the regulatory power "the people must resort to the polls, not to the courts." In 1890, the Court dealt a vital blow to the doctrine of Munn v. Illinois; in the *Minnesota Rate Case (Chicago, Minneapolis and St. Paul Railroad Co. v. Minnesota)* it declared unconstitutional a Minnesota law providing that the ruling of a state regulatory commission as to the reasonableness of rates should be final, and that no appeal could be made to the courts. The Court found this provision a violation of due process of law, and said that the question of the reasonableness of a rate "is eminently a question for fudicIal investigation." In*Reagan v. Farmers` Loan and Trust Co. (1894)*, the Court asserted its right not only to pass on the reasonableness of a rate but, further, to award returns to shippers who it found had paid excessive charges. Finally, in *Smyth v. Ames (1898)* it declared that courts could not only decide on reasonableness but also on whether the designated rate gave the business firm a fair return on a fair valuation of its investment. Thus by the end of the century, the Court had moved to a position similar to Field`s in 1877; and many new developments had to take place before railroads could be regulated effectively by the federal government.

The question presented, therefore, is one of the greatest importance,- whether it is within the competency of a State to fix the compensation which an individual may receive for the use of his own property in his private business, and for his services in connection with it.

The declaration of the Constitution *[of the state of Illinois]* of 1870, that private buildings used for private purposes shall be deemed public institutions, does not make them so. The receipt and storage of grain in a building erected by private means for that purpose does not constitute the building a public warehouse. There is no magic in the language, though used by a constitutional convention, which can change a private business into a public one, or alter the character of the building in which the business is transacted. A tailor's or a shoemaker's shop would still retain its private character, even though the assembled wisdom of the State should declare, by organic act or legislative ordinance, that such a place was a public workshop, and that the workmen were public tailors or public shoemakers. One might as well attempt to change the nature of colors, by giving them a new designation. The defendants were no more public warehousemen, as justly observed by counsel, than the merchant who sells his

merchandise to the public is a public merchant, or the blacksmith who shoes horses for the public is a public blacksmith; and it was a strange notion that by calling them so they would be brought under legislative control.

The Supreme Court of the State-divided, it is true, by three to two of its members-has held that this legislation was a legitimate exercise of State authority over private business; and the Supreme Court of the United States, two only of its members dissenting, has decided that there is nothing in the Constitution of the United States, or its recent amendments, which impugns its validity. It is, therefore, with diffidence I presume to question the soundness of the decision.

The validity of the legislation was, among other grounds, assailed in the State court as being in conflict with that provision of the State Constitution which declares that no person shall be deprived of life, liberty, or property without due process of law, and with that provision of the Fourteenth Amendment of the Federal Constitution which imposes a similar restriction upon the action of the State. . . . In this court the legislation was also assailed on the same ground, our jurisdiction arising upon the clause of the Fourteenth Amendment, ordaining that no State shall deprive any person of life, liberty, or property without due process of law. But it would seem from its opinion that the court holds that property loses something of its private character when employed in such a way as to be generally useful. The doctrine declared is that property

"becomes clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large;"

and from such clothing the right of the legislative is deduced to control the use of the property, and to determine the compensation which the owner may receive for it. When Sir Matthew Hale, and the sages of the law in his day, spoke of property as affected by a public interest, and ceasing from that cause to be juris privati solely, that is, ceasing to be held merely in private right, they referred to property dedicated by the owner to public uses, or to property the use of which was granted by the government, or in connection with which special privileges were conferred. Unless the property was thus dedicated, or some right bestowed by the government was held with the property, either by specific grant or by prescription of so long a time as to imply a grant originally, the property was not affected by any public interest so as to be taken out of the category of property held in private right. But it is not in any such sense that the terms "clothing property with a public interest" are used in this case. From the nature of the business under consideration-the storage of grain-which, in any sense in which the words can be used, is a private business, in which the public are interested only as they are interested in the storage of other products

of the soil, or in articles of manufacture, it is clear that the court intended to declare that, whenever one devotes his property to a business which is useful to the public,-"affects the community at large,"-the legislature can regulate the compensation which the owner may receive for its use, and for his own services in connection with it.

"When, therefore,"

says the court,

"one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the exent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control."

The building used by the defendants was for the storage of grain: in such storage, says the court, the public has an interest; therefore the defendants, by devoting the building to that storage, have granted the public an interest in that use, and must submit to have their compensation regulated by the legislature.

If this be sound law, if there be no protection, either in the principles upon which our republican government is founded, or in the prohibitions of the Constitution against such invasion of private rights, all property and all business in the State are held at the mercy of a majority of its legislature. The public has no greater interest in the use of buildings for the storage of grain than it has in the use of buildings for the residences of families, nor, indeed, any thing like so great an interest; and, according to the doctrine announced, the legislature may fix the rent of all tenements used for residences, without reference to the cost of their erection. If the owner does not like the rates prescribed, he may cease renting his houses. . Indeed, there is hardly an enterprise or business engaging the attention and labor of any considerable portion of the community, in which the public has not an interest in the sense in which that term is used by the court in its opinion; and the doctrine which allows the legislature to interfere with and regulate the charges which the owners of property thus employed shall make for its use, that is, the rates at which all these different kinds of business shall be carried on, has never before been asserted, so far as I am aware, by any judicial tribunal in the United States.

The doctrine of the State court, that no one is deprived of his property, within the meaning of the constitutional inhibition, so long as he retains its title and possession, and the doctrine of this court, that, whenever one s property is used in such a manner as to affect the community at large, it becomes by that fact clothed with a public interest, and ceases to be *juris privati* only, appear to me to destroy, for all useful purposes, the efficacy of the constitutional

guarantee. All that is beneficial in property arises from its use, and the fruits of that use; and whatever deprives a person of them deprives him of all that is desirable or valuable in the title and possession. If the constitutional guarantee extends no further than to prevent a deprivation of title and possession, and allows a deprivation of use, and the fruits of that use, it does not merit the encomiums it has received. Unless I have misread the history of the provision now incorporated into all our State constitutions, and by the Fifth and Fourteenth Amendments into our Federal Constitution, and have misunderstood the interpretation it has received, it is not thus limited in its scope, and thus impotent for good. It has a much more extended operation than either court, State, or Federal has given to it. The provision, it is to be observed, places property under the same protection as life and liberty. Except by due process of law, no State can deprive any person of either. The provision has been supposed to secure to every individual the essential conditions for the pursuit of happiness; and for that reason has not been heretofore, and should never be, construed in any narrow or restricted sense.

No State

"shall deprive any person of life, liberty, or property without due process of law,"

says the Fourteenth Amendment to the Constitution. By the term "life," as here used, something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world. The deprivation not only of life, but of whatever God has given to every one with life, for its growth and enjoyment, is prohibited by the provision in question, if its efficacy be not frittered away by judicial decision.

By the term "liberty," as used in the provision, something more is meant than mere freedom from physical restraint or the bounds of a prison. It means freedom to go where one may choose, and to act in such manner, not inconsistent with the equal rights of others, as his judgment may dictate for the promotion of his happiness; that is, to pursue such callings and avocations as may be most suitable to develop his capacities, and give to them their highest enjoyment.

The same liberal construction which is required for the protection of life and liberty, in all particulars in which life and liberty are of any value, should be applied to the protection of private property. If the legislature of a State, under pretence of providing for the public good, or for any other reason, can

determine, against the consent of the owner, the uses to which private property shall be devoted, or the prices which the owner shall receive for its uses, it can deprive him of the property as completely as by a special act for its confiscation or destruction.