Vanhorne's Lessee v. Dorrance (1795)

2 U.S. 304

The Pennsylvania legislature, in an attempt to settle a land dispute between state residents and out-of-state purchasers from Connecticut, passed a law vesting title to the disputed property in the out-of-state purchasers. State residents with bona fide claims were compensated with an equivalent tract. Several Pennsylvania residents sued, claiming that the legislative resolution of the land dispute deprived them of their vested rights and right to a jury trial. The excerpt below is from Justice William Patterson's charge to the jury. Patterson was serving on the Circuit Court of the United States for the Pennsylvania district.

Paterson, J

. . . I. The constitutionality of the confirming act; or, in other words, whether the legislature had authority to make that act?

Legislation is the exercise of sovereign authority. High and important powers are necessarily vested in the legislative body; whose acts, under some forms of government, are irresistible and subject to no control. In England, from whence most of our legal principles and legislative notions are derived, the authority of the Parliament is transcendent and has no bounds. "The power and jurisdiction of Parliament," says Sir Edward Coke, "is so transcendent and absolute, that it cannot be confined, either for causes or persons, within any bounds. . . .

[I]t is evident, that, in England, the authority of the parliament runs without limits, and rises above control. It is difficult to say, what the constitution of England is; because, not being reduced to written certainty and precision, it lies entirely at the mercy of the parliament: it bends to every governmental exigency; it varies and is blown about by every breeze of legislative humor or political caprice. Some of the judges in England have had the boldness to assert, that an act of parliament, made against natural equity, is void; but this opinion contravenes the general position, that the validity of an act of parliament cannot be drawn into question by the judicial department: it cannot be disputed, and must be obeyed. The power of parliament is absolute and transcendent; it is omnipotent in the scale of political existence. Besides, in England, there is no written constitution, no fundamental law, nothing visible, nothing real, nothing certain, by which a statute can be tested. In America, the case is widely different: every state in the Union has its constitution reduced to written exactitude and precision.

What is a Constitution? It is the form of government, delineated by the mighty hand of the people, in which certain first principles of fundamental laws are established. The constitution is certain and fixed; it contains the permanent will of the people, and is the supreme law of the land; it is paramount to the power of the legislature, and can be revoked or altered only by the authority that made it. The life-giving principle and the death-doing stroke must proceed from the same hand. What are legislatures? Creatures of the constitution; they owe their existence to the constitution: they derive their powers from the constitution: it is their commission; and therefore, all their acts must be conformable to it, or else they will be void. The constitution is the work or will of the people themselves, in their original, sovereign and unlimited capacity. Law is the work or will of the legislature, in their derivative and subordinate capacity. The one is the work of the creator, and the other of the creature. The constitution fixes limits to the exercise of legislative authority, and prescribes the orbit within which it must move. In short, gentlemen,

the constitution is the sun of the political system, around which all legislative, executive and judicial bodies must revolve. Whatever may be the case in other countries, yet, in this, there can be no doubt, that every act of the legislature, repugnant to the constitution, is absolutely void.

In the second article of the declaration of rights, which was made part of the late constitution of Pennsylvania, it is declared: "That all men have a natural and unalienable right to worship Almighty God, according to the dictates of their own consciences and understanding; and that no man ought, or of right can be, compelled to attend any religious worship, or erect or support any place of worship, or maintain any ministry, contrary to, or against, his own free will and consent; nor can any man, who acknowledges the being of a God, be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments, or peculiar mode of religious worship; and that no authority can, or ought to be, vested in, or assumed, by any power whatever, that shall, in any case, interfere with, or in any manner control, the right of conscience in the free exercise of religious worship." (Dec. of Rights, Art. II.)

In the thirty-second section of the same constitution, it is ordained; "that all elections, whether by the people or in general assembly, shall be by ballot, free and voluntary." (Const. Penn. § 32.)

Could the legislature have annulled these articles, respecting religion, the rights of conscience, and elections by ballot? Surely no. As to these points, there was no devolution of power; the authority was purposely withheld, and reserved by the people to themselves. If the legislature had passed an act declaring, that, in future, there should be no trial by jury, would it have been obligatory? No: it would have been void for want of jurisdiction, or constitutional extent of power. The right of trial by jury is a fundamental law, made sacred by the constitution, and cannot be legislated away. The constitution of a state is stable and permanent, not to be worked upon by the temper of the times, nor to rise and fall with the tide of events: notwithstanding the competition of opposing interests, and the violence of contending parties, it remains firm and immovable, as a mountain amidst the strife of storms, or a rock in the ocean amidst the raging of the waves. I take it to be a clear position; that if a legislative act oppugns a constitutional principle, the former must give way, and be rejected on the score of repugnance. I hold it to be a position equally clear and sound, that, in such case, it will be the duty of the court to adhere to the constitution, and to declare the act null and void. The constitution is the basis of legislative authority; it lies at the foundation of all law, and is a rule and commission by which both legislators and judges are to proceed. It is an important principle, which, in the discussion of questions of the present kind, ought never to be lost sight of, that the judiciary in this country is not a subordinate, but co-ordinate, branch of the government. . . .

[The judge read the 1st, 8th and 11th articles of the declaration of rights; and the 9th and 46th sections of the constitution of Pennsylvania.) (See 1 Dall. Laws, app. p. 55--6, 60.] From these passages, it is evident, that the right of acquiring and possessing property, and having it protected, is one of the natural, inherent and inalienable rights of man. Men have a sense of property: property is necessary to their subsistence, and correspondent to their natural wants and desires; its security was one of the objects that induced them to unite in society. No man could become a member of a community, in which he could not enjoy the fruits of his honest labor and industry. The preservation of property, then, is a primary object of the social compact, and, by the late constitution of Pennsylvania, was made a fundamental law. Every person ought to contribute his proportion for public purposes and public exigencies; but no one can be called upon to surrender or sacrifice his whole property, real and personal, for the good of the

community, without receiving a recompense in value. This would be laying a burden upon an individual, which ought to be sustained by the society at large. The English history does not furnish an instance of the kind; the parliament, with all their boasted omnipotence, never committed such an outrage on private property; and if they had, it would have served only to display the dangerous nature of unlimited authority; it would have been an exercise of power and not of right. Such an act would be a monster in legislation and shock all mankind. The legislature, therefore, had no authority to make an act divesting one citizen of his freehold, and vesting it in another, without a just compensation. It is inconsistent with the principles of reason, justice and moral rectitude; it is incompatible with the comfort, peace and happiness of mankind; it is contrary to the principles of social alliance, in every free government; and lastly, it is contrary both to the letter and spirit of the constitution. In short, it is what every one would think unreasonable and unjust in his own case. . . .

To close this part of the discourse: It is contended, that the legislature must judge of the necessity of interposing their despotic authority; it is a right of necessity, upon which no other power in government can decide: that no civil institution is perfect; and that cases will occur in which private property must yield to urgent calls of public utility or general danger. Be it so. But then it must be upon complete indemnification to the individual. Agreed, but who shall judge of this? Did there also exist a state necessity, that the legislature, or persons solely appointed by them, must admeasure the compensation, or value of the lands seized and taken, and the validity of the title thereto? Did a third state necessity exist, that the proprietor must take land by way of equivalent for his land? And did a fourth state necessity exist, that the value of this land-equivalent must be adjusted by the board of property, without the consent of the party, or the interference of a jury? Alas! how necessity begets necessity. They rise upon each other and become endless. The proprietor stands afar off, a solitary and unprotected member of the community, and is stripped of his property, without his consent, without a hearing, without notice, the values of that property judged upon, without his participation, or the intervention of a jury, and the equivalent therefor in lands ascertained in the same way. If this be the legislation of a republican government, in which the preservation of property is made sacred by the constitution, I ask, wherein it differs from the mandate of an Asiatic prince? Omnipotence in legislation is despotism. According to this doctrine, we have nothing that we can call our own, or are sure of, for a moment; we are all tenants at will, and hold our landed property at the mere pleasure of the legislature. Wretched situation, precarious tenure! And yet we boast of property and its security, of laws, of courts, of constitutions, and call ourselves free! In short, gentlemen, the confirming act is void; it never had constitutional existence; it is a dead letter, and of no more virtue or avail, than if it never had been made. . . .