

[Barron v. The Mayor and City Council of Baltimore.]

state; the corporation appealing to the legislative acts of Maryland for the discretionary power which it has exercised.

3. That this exercise of authority was repugnant to the constitution of the United States, contravening the fifth article of the amendments to the constitution, which declares that "private property shall not be taken for public use without just compensation;" the plaintiff contending that this article declares principles which regulate the legislation of the states, for the protection of the people in each and all of the states regarded as citizens of the United States, or as inhabitants subject to the laws of the union.

4. That under the evidence, prayers, and pleadings in the case, the constitutionality of this authority exercised under the state must have been drawn in question, and that this court has appellate jurisdiction of the point, from the judgment of the court of appeals of Maryland, the highest court of that state; that point being the essential ground of the plaintiff's pretension in opposition to the power and discretion of the corporation.

5. That this court in such appellate cognizance is not confined to the establishment of an abstract point of construction, but is empowered to pass upon the right or title of either party; and may, therefore, determine all points incidental or preliminary to the question of title, and necessarily in the course to that inquiry; that consequently the question is for this court's determination whether the declaration avers actionable matter, or whether the complaint is only of a public nuisance; and on that head the plaintiff will contend that special damage is fully shown here within the principle of the cases where an individual injury resulting from a public nuisance is deemed actionable; the wrong being merely public only so long as the loss suffered in the particular case is no more than all members of the community suffer.

Upon these views the plaintiff contends that the judgment of the court of appeals ought to be reversed.

The counsel for the plaintiff in error, Mr Mayer, on the suggestion of the court, confined the argument to the question whether, under the amendment to the constitution, the court had jurisdiction of the case.

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The counsel for the defendants in error, Mr Taney and Mr Scott, were stopped by the court.

Mr Chief Justice MARSHALL delivered the opinion of the Court.

The judgment brought up by this writ of error having been rendered by the court of a state, this tribunal can exercise no jurisdiction over it, unless it be shown to come within the provisions of the twenty-fifth section of the judicial act.

The plaintiff in error contends that it comes within that clause in the fifth amendment to the constitution, which inhibits the taking of private property for public use, without just compensation. He insists that this amendment, being in favour of the liberty of the citizen, ought to be so construed as to restrain the legislative power of a state, as well as that of the United States. If this proposition be untrue, the court can take no jurisdiction of the cause.

The question thus presented is, we think, of great importance, but not of much difficulty.

The constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual states. Each state established a constitution for itself, and, in that constitution, provided such limitations and restrictions on the powers of its particular government as its judgment dictated. The people of the United States framed such a government for the United States as they supposed best adapted to their situation, and best calculated to promote their interests. The powers they conferred on this government were to be exercised by itself; and the limitations on power, if expressed in general terms, are naturally, and, we think, necessarily applicable to the government created by the instrument. They are limitations of power granted in the instrument itself; not of distinct governments, framed by different persons and for different purposes.

If these propositions be correct, the fifth amendment must be understood as restraining the power of the general government, not as applicable to the states. In their several constitutions they have imposed such restrictions on their respective