

THE M'LUCAS CASE

Supreme Court Decision Has Aroused Public Sentiment in Opposition

Editor Independent: The supreme court of Nebraska recently decided a case which is of vast importance to a great number of property owners of this state, and particularly those whose property adjoins the right of way of the various railroads of the state. The case I refer to is entitled *McLucas vs. St. Joseph and Grand Island Railroad Co.* The syllabus of the opinion, as appeared in the newspapers, is as follows:

"1. Under the provisions of section 4, article 11, of the constitution of Nebraska, a railroad constructed and operated in this state is a public highway.

"2. The general public has the same interest in the preservation and maintenance of railroads as it has in the maintenance of other highways, and the title to a part of a railroad's right of way, while such road is being operated as a common carrier, cannot be divested by adverse possession."

The facts in this case, briefly stated, are about as follows: In 1872 the railroad company obtained deed from one Ryburn, who homesteaded the land in controversy, to a strip 100 feet wide for the right of way, and in 1874 filed this deed, and had it recorded here. In 1883 a part of this homestead was laid out into lots, blocks, streets and alleys, and platted as a subdivision to the city of Fairbury, extending on both sides of this right of way, and in conformity with the 100 feet right of way, which plat was duly recorded. Afterwards lots and blocks were sold to various purchasers, and deeds made and recorded giving the metes and bounds as shown by this plat. In 1886, McLucas Bros. purchased a number of these lots and placed their deed of record, and immediately erected stock yards, scales and made other lasting and valuable improvements thereon, conforming the same to a distance of fifty feet from the center of the right of way, and have continued to so occupy the same ever since, openly, exclusively, notoriously, and adversely, claiming the premises as their own, and had no notice until the commencement of this suit in 1898, that the railroad company claimed any part of the land in dispute. The railroad company now claims a right of way 200 feet wide, under a grant from the United States government, dated July 23, 1866. This means about 25 acres to the mile along the St. Joseph & Grand Island railroad, and about 50 acres to the mile along the Union Pacific railroad, where it claims a right of way 400 feet wide, under a similar grant. To McLucas Bros. this case does not mean very much, but to the railroads in this state it means a gain of \$50,000,000 at least, and to the people whose lands are taken it means a loss of \$50,000,000 at least.

The above case was taken from the district court of this, Jefferson, county and while the amount involved in this particular case is small, yet the statements contained in the second section of the syllabus are so sweeping as to call for more than a mere passing notice. Not only is the rule laid down above, novel, but startling as well. I am not a lawyer, and make no pretension to that branch of learning; I am just a plain, common, ordinary farmer and nurseryman. But when I read that the public has the same interest in the preservation and maintenance of the railroads as the state has in the maintenance of its highways, I began to wonder when the state has acquired title to the railroads and when the section foreman would be coming along calling us out to work out our poll tax on the section, and if the public had such a deep interest in railroads, why it was that the good people of Omaha and other cities were struggling so hard for the passage of the late lamented H. R. 330. If the above rule be sound, then why seek to tax the terminals of the railroads without including the school houses, court houses, the capitol, the university, and other public buildings and grounds? I suppose if the income of the railroads were not sufficient to pay the regular quarterly dividends on the stock, watered and otherwise, and at the same time furnish sufficient revenue to maintain the road in a good condition, that the railroads will apply to our legislature for an appropriation to meet such deficiency, because of this GREAT PUBLIC interest which the state has in their "preservation and maintenance." In view of this decision of our supreme court how can any fair-minded man or well-meaning newspaper heap censure and opprobrium upon the head of John N. Baldwin & Co. and the fifty-three statesmen who are doing all in their power to prevent railroad taxation? Are they not serving a GREAT PUBLIC interest by so doing? Instead of all this censure, ought not

the constituents of these statesmen (?) meet them at the depots when they return to their homes from their legislative labors with brass bands, flaring trumpets, waving bunting, red fire works, and tumultuous shouts of approval of their noble deeds heroically performed? Why? Because they saved the railroads from paying their just share of municipal taxation?

No! Because they prevented the cities from taxing the state, or its wards, the railroads.

A man said to me the other day, "When the railroads of this state unite to oppose any measure, or seek the enactment of any measure, they usually succeed. What they cannot obtain at the hands of the legislature they seek and obtain from the courts." I have always believed in the integrity of the courts and the sacredness of the judicial ermine, and was therefore very reluctant to believe the truth of the foregoing statement, but I am free to admit that my sense of justice has been shocked when I realize that the railroads of this state through our supreme court have obtained a modification of a plain enactment of the legislature, which says:

"Civil actions can only be commenced within the time prescribed in this title, after the cause of action shall have accrued.

"An action for the recovery of the title or possession of lands, tenements, or hereditaments, can only be brought within ten years after the cause of action shall have accrued."

Can language be more plainer than the above? Yet our supreme court has seen fit to ignore it, or to so modify it as to exempt railroads from its binding effect. I very much doubt if the railroads could have secured so great a concession from the present legislature, bound hand and foot as it appears to be, and again I hear the statement echoing in my ears: "What they cannot obtain at the hands of the legislature, they seek and obtain from the courts."

I was formerly a republican, staunch and true, but I became convinced that the controlling element in that party was entirely too susceptible to the corporation branding iron, and its chosen officers too forgetful of the rights of the people, so I left the republican party and have since affiliated with the people's independent party. I have often taunted my republican neighbors and friends for continuing to support a party whose leaders are so notoriously subservient to the whip and lash of their corporation masters, who were willing tools and fawning sycophants, and who for a little free transportation would sell their personal independence and barter away their country's freedom. And so, for the last ten years I have loyally supported the principles of the people's party, and faithfully upheld the honor and integrity of nominees and officers elected by that party; and it was with pardonable pride that I was able to point to some of their records as being without spot or blemish. I am at present chairman of the county central committee of the people's party, but if the above decision is to stand, coming from a court the majority of whom I helped to elect, and over whose election I rejoiced, then I am through with politics. I should like to hear from some of the other people of the state on this question, through the columns of your estimable paper.

GEO. B. GALBRAITH.
Fairbury, Neb.

SPECIAL MARKET LETTER

FROM NYE & BUCHANAN CO., LIVE STOCK COMMISSION MERCHANTS, SO. OMAHA, NEB.

SPECIAL MARKET LET.. N. N ..

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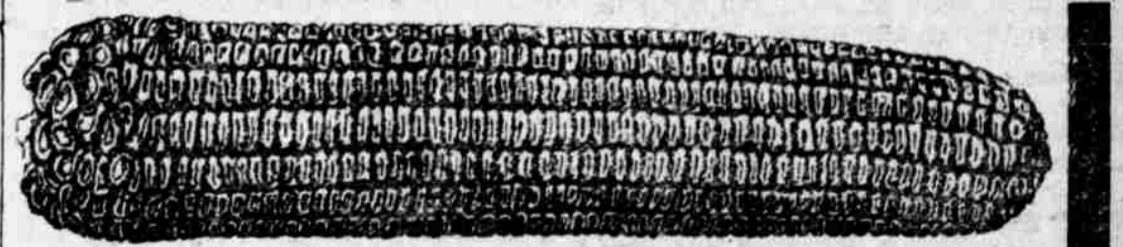
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