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THE EFFECT OF A DECREE OF CONFIRMATION UNDER THE CALIFORNIA IRRIGATION DISTRICT LAW.

To promote the reclamation of the vast areas of arid lands within its territorial jurisdiction, the Legislature of California, on the 7th day of March, 1887, passed an Act entitled, "An Act to provide for the organization and government of irrigation districts and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes" (Cal. Stats. 1887, p. 29). This act will be hereinafter called the "Wright Act." The irrigation districts organized under this law having experienced no small difficulty in effecting the loans necessary to enable them to construct their proposed systems of reservoirs, canals and ditches, the Legislature of the State came to their assistance with the supplementary Act of March 16, 1889, commonly called the "Confirmation Act" (Cal. Stats. 1889, p. 212). This act provided in substance that the board of directors of any irrigation district organized under and in pursuance of the Wright Act might commence and prosecute in the courts of the state a special proceeding for the judicial determination of all proceedings of the district and of its board of directors by which the validity of the issue and sale of district bonds might be effected. The confirmation proceedings were authorized to be maintained either before or after the negotiation of a sale of the bonds. The manner in which jurisdiction should be acquired and exercised in such proceedings was prescribed in detail. Ample opportunity was afforded to all persons interested to appear and contest the petition of the board of directors. The purpose of the Confirmation Act is well stated in the opinion of the Supreme Court of California rendered in the case of the Board of Directors of Modesto Irrigation District *v.* Tregoe, 88 Cal. 334, 338, as follows:

"As the validity of the bonds when issued depends upon the regularity of the proceedings of the board, and upon the ratification of the proposition by a majority of the electors, it is matter of common knowledge that investors have been unwilling to

take them at their par value while all the facts affecting their validity remain the subject of question and dispute.”

“To meet this inconvenience—for the security of investors, and to enable the irrigation districts to dispose of their bonds on advantageous terms—the Supplemental Act, under which this proceeding was instituted, was passed.”

All the legislation relating to the formation of irrigation districts, and to their powers and functions, was revised and consolidated in 1897 (Cal. Stats. 1897, p. 254). In Sections 68-73 of this act provision is made for confirmation proceedings similar to those authorized by the old Confirmation Act.

The importance of these and similar legislative attempts to provide for the systematic reclamation by public authority of the arid lands lying in the western and southwestern parts of the United States is not easy of estimation. The constitutionality of the Wright Act in its principal provisions was fully sustained in *Fallbrook Irrigation District v. Bradley et al.*, 164 U. S. 112. But the constitutionality of the Confirmation Act and the effect of the decrees of the state courts confirming or refusing to confirm the proceedings of the irrigation districts leading to the issue and sale of bonds are, it must be conceded, still the cause of very distressing anxiety to the owners of securities of the irrigation districts; and, to the irrigation districts themselves, the occasion of no slight financial embarrassment. This unfortunate state of affairs—unfortunate alike for the investors in district bonds and the owners of irrigable lands—is largely attributable to what, it is submitted, is a serious misapprehension of the import of the opinion which the Supreme Court of the United States rendered November 16, 1896, in the case of *Tregea v. Modesto Irrigation District*, 164 U. S. 179. The misapprehension appears to be based in part upon the respect with which the opinions of that high tribunal are deservedly received, but in far greater part upon a failure to apply the principles of constitutional law in the light of which this particular opinion ought to be read.

It is proposed therefore to examine, somewhat minutely, the legal principles determining what effect, in the present state of the authorities, should be given to a decree of the state courts confirming and approving the proceedings leading to an issue of bonds by irrigation districts organized under the provisions of the Wright Act.

There is no need of argument to show that, in determining this matter, it is the duty of all courts, whether state or federal,

to be controlled by the supreme law of the land as defined in the second paragraph of Article VI. of the Constitution of the United States:

“This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; anything in the constitution or laws of any state to the contrary notwithstanding.”

But, subject only to the express and implied limitations and restrictions imposed upon the political power of the states by the supreme law of the land as defined in the Constitution of the United States, each state is possessed of supreme, uncontrollable political authority within its territorial limits. In other words, each state, within its territorial jurisdiction, and within the sphere of its political authority, is sovereign (*Tarble's Case*, 13 Wallace, 397, 406; *Ableman v. Booth*, 21 Howard, 506).

In the people of each state inheres the legal right to establish their own constitution of government, provided that in so doing they neither invade the sphere of the nation's sovereignty, nor otherwise come in conflict with the supreme law of the land. The people of the State of California have, by their constitution, created a legislature with power to enact laws for their government within the sphere of the state's sovereignty, and, within that sphere, possessed of powers limited only by the provisions of the state constitution. The people of the State of California have also, by their constitution, created a judiciary with power to hear and finally to determine all controversies of a judicial nature arising under their constitution and laws, and not within the jurisdiction of the federal courts. And, as has been so well said by the late Hon. Thomas M. Cooley, “the same reasons which require that the final decision upon all questions of national jurisdiction should be left to the national courts, will also hold the national courts bound to respect the decisions of the state courts upon all questions arising under the state constitution and laws, where nothing is involved of national authority, or of right under the Constitution, laws or treaties of the United States; and to accept the state decisions as correct, and to follow them whenever the same questions arise in the national courts” (*Const. Lim.* 6th ed., pp. 20, 21).

Among the matters, with respect to which the judgment of the highest state tribunal is conclusive and binding, not only upon the inferior courts of the State, but even upon the Supreme

Court of the United States, the construction of the state constitution and of the acts of the state legislature stands foremost. It is the established doctrine of the Supreme Court of the United States that it will adopt and follow the decisions of the state courts in the construction of their own constitutions and statutes, when that construction has been settled by the decisions of the highest tribunal of the state, whatever may be the opinion entertained by it of the original soundness of such construction. To this doctrine some exceptions have been recognized; such exceptions, for the most part, having been designed to protect the substantial rights of citizens who, in reliance upon decisions of the state courts, have entered into contracts or acquired property only to find the earlier decisions soon overruled by the same court by which they were pronounced. None of the exceptions have to do with cases where the construction of the state constitution or statutes by the state courts has been uniform (*Morley v. L. S. & M. S. Ry. Co.*, 146 U. S. 162; *Aberdeen Bank v. Chehalis County*, 166 U. S. 440; *Fairfield v. County of Gallatin*, 100 U. S. 47; *Burgess v. Seligman*, 107 U. S. 20, 33-4).

In *Fairfield v. County of Gallatin*, *supra*, it appears that the Supreme Court of the United States had previously placed a construction upon a provision of the constitution of the State of Illinois in ignorance of the fact that the supreme court of that state had theretofore construed it in a different manner. Yet, in that case, the United States Supreme Court thought itself in duty bound to follow the state court and to adopt as the true construction of the state constitution that which the state court had declared.

The construction, therefore, of a state constitution or statute does not present a federal question, at all events unless the state court of last resort has at different times in construing such constitution or statute, rendered inconsistent and conflicting decisions. Nor does a conflict between an act of a state legislature and the state constitution ordinarily give rise to a federal question. But whether or not a state constitution or statute, as construed by the state court of last resort, is in conflict with the supreme law of the land, is a question to be finally determined by the Supreme Court of the United States.

It has been contended that the operation of the California irrigation district law including the Confirmation Act, is to deprive property owners residing within irrigation districts of property without due process of law. But, since the decision of the case of *Fallbrook Irrigation District v. Bradley*, *supra*, this

contention is obviously without merit, unless it be considered that the confirmation proceedings, which are designed to result eventually in deprivation of property, do not constitute due process of law upon the ground that the Confirmation Act imposes upon the courts of the state other than judicial duties in violation of the state constitution.

At this point let us take up the case of *Tregea v. Modesto Irrigation District*, *supra*. It does not appear from the published reports of this case whether or not there were brought to the notice of the court any of the California cases construing the Confirmation Act, except *Board of Directors of the Modesto Irrigation District v. Tregea*, *supra*. At all events, the Supreme Court construed the act and considered the nature of the proceedings as if these matters were yet open. Assuming that the construction of the Confirmation Act is as yet undetermined by the Supreme Court of California the opinion of the Supreme Court of the United States in *Tregea v. Modesto Irrigation District*, *supra*, is entitled to great weight in any attempt to determine the meaning of the Confirmation Act. It is important, therefore, to ascertain exactly what was determined by that court, and upon what consideration its determination was based. In that case, it is submitted, one point, and one point only, was decided, viz., that the Supreme Court of the United States could not acquire or exercise jurisdiction of the special proceedings authorized by the Confirmation Act. This decision was based entirely upon the ground that such confirmation proceedings do not constitute "a case or controversy with opposing parties, such as can be submitted to or compel judicial consideration or judgment." Notwithstanding the fact that three Justices dissented from the opinion of the majority of their brethren, the decision appears, to the present writer at least, to be in perfect harmony with settled principles. Upon the ground set forth above the federal courts will be forever precluded from taking jurisdiction of proceedings instituted under the Confirmation Act.

In ruling thus, however, the Supreme Court plainly considered the matter solely in the light of Article III. of the Constitution of the United States which defines the powers of the federal judiciary. For the Supreme Court is careful to say that it is "not concerned with any question as to what a state may require of its judges and courts, nor with what measures it may adopt for securing evidence of the regularity of the proceedings of its municipal corporations." And this is a most important distinction as will be observed upon an examination of the case of *Forsyth v. Hammond*; 166 U. S. 506.

From the report of the last-mentioned case, it appears that the City of Hammond had instituted proceedings in one of the courts of Indiana, and had obtained a decree of that court annexing to the city certain lands belonging to Forsyth and others. Forsyth appealed from that decree; and, before the Supreme Court of Indiana, contended that the decree in the lower court was null and void as having been rendered without jurisdiction. The ground upon which this contention was made was that the proceedings for annexation of territory to the municipality were legislative, and not judicial, in their nature; or, to use the language of Mr. Justice Brewer in the case of *Tregea v. Modesto Irrigation District*, *supra*, did not constitute "a case or controversy with opposing parties, such as can be submitted to and can compel judicial consideration and judgment." The state supreme court decided in favor of the jurisdiction. Subsequently, Forsyth filed a bill in the Circuit Court of the United States for the District of Indiana, against the City of Hammond and others, to restrain the collection of certain taxes which had been levied upon her land annexed to the city as already mentioned. Her bill set forth the proceedings leading to the annexation of her lands to the city, "but averred that those proceedings were void because the enlargement of the limits of the city was a matter of legislative and not of judicial cognizance, and that it was not competent for the Legislature to intrust to the courts, the decision of such questions." The Circuit Court dismissed the bill; but its judgment was reversed by the Circuit Court of Appeals which ruled in accordance with the contentions of plaintiff Forsyth. The Supreme Court of the United States reversed the decree of the Circuit Court of Appeals upon the ground "that the construction, by the courts of a state, of its constitution and statutes, is, as a general rule, binding on the federal courts," even though they think that the state court has misconstrued such constitution and statutes.

Upon the principles declared in *Forsyth v. Hammond*, *supra*, it is the duty of the inferior courts of California to give effect to a decree of confirmation duly given and made in pursuance of the Confirmation Act, in accordance with the decisions of the state supreme court; and it is equally the duty of the federal courts, whenever such a confirmation decree shall be pleaded or introduced in evidence in causes of which they have jurisdiction, to follow the state decisions. If, as the fact is, the California Supreme Court has decided that confirmation proceedings are so far judicial in their nature as to be capable of being submitted

to and of compelling judicial consideration and judgment in the state courts, the further question whether such proceedings are to be considered as operating *in rem* or *in personam* is also one upon which its decision is conclusive (*Wood v. Brady*, 150 U. S. 18, 23).

A consideration of the points thus far advanced will show that the original question has been narrowed to this, What construction and effect has the Supreme Court of the State of California given to the Confirmation Act?

In the case of *Cullen v. Glendora Water Company*, 113 Cal., 503, 511, 516, there was presented to the Supreme Court of the State of California, for its determination the very question which was passed upon by the Supreme Court of the United States in the case of *Tregea v. Modesto Irrigation District*, *supra*, the court stating the point as follows: "Counsel for appellant contend that the Act of March 16, 1889, providing for a judicial examination, approval, and confirmation of bonds of irrigation district, is unconstitutional for the reason that it authorizes a court to hear and determine what will be the rights of parties interested in those bonds, in advance of any controversy as to such rights." The Supreme Court of California ruled against this contention, and sustained the Confirmation Act as constitutional just as the Supreme Court of Indiana had upheld the constitutionality of the statute considered in the case of *Forsyth v. Hammond*, *supra*.

Not only has the constitutionality of the Confirmation Act been upheld by the Supreme Court of this State, but the nature and effect of the decree rendered in confirmation proceedings have been judicially considered and determined. In the case of *Crall v. Poso Irrigation District*, 87 Cal. 140, 146, it was decided, (1) that the confirmation proceeding, denominated in the act a special proceeding, is in the nature of a proceeding *in rem*, the object being to determine the status of the district and its power to issue valid bonds; and (2), that the judgments rendered in confirmation proceedings are conclusive and binding upon all the world until reversed on appeal, or set aside by some direct proceeding instituted for that purpose. Upon the authority of *Crall v. Poso Irrigation District*, *supra*, the Supreme Court of this State decided the same questions in the same way in the case of *Rialto Irrigation District v. Brandon*, 103 Cal. 384. And the same construction is placed upon the Confirmation Act in *Cullen v. Glendora Water Company*, *supra*, and in *Modesto Irrigation District v. Tregea*, *supra*, which is the very case taken

up to the Supreme Court of the United States and there reported as *Tregea v. Modesto Irrigation District*. Since the United States Supreme Court dismissed the case of *Tregea v. Modesto Irrigation District*, the Supreme Court of the State of California has exercised jurisdiction upon appeal from a decree by the Superior Court of Colusa County confirming proceedings resulting in the organization of the Central Irrigation District (*in re* Central Irrigation District, 49 Pac. Rep. 354). In this case no intimation is given of any change of mind on the part of the Supreme Court of this State respecting the construction and effect of the Confirmation Act.

It is to be observed that the Supreme Court of the United States, in arriving at the conclusion that a decree by a state court approving and confirming each and all of the proceedings for the organization of an irrigation district under the provisions of the Wright Act, from and including the petition for the organization of the district, and of other proceedings which may affect the legality and validity of the bonds of such district, and the order for the sale, and the sale thereof, cannot be invoked as *res judicata*, appears to have considered as of great importance that a decree refusing to confirm such proceedings would not be conclusive in respect to negotiable paper as against purchasers thereof without notice of the suit or decree. In that part of its opinion devoted to this point, it is submitted, the Supreme Court slightly misconceived the purpose and scope of the Confirmation Act as determined by the courts of California. The purpose of the Confirmation Act is to provide for a judicial examination and determination of the "legality and validity of all the proceedings for the organization of irrigation districts, and all other proceedings affecting the legality or validity of the bonds of such district, including the order for the sale, and the sale of such bonds." In other words, the purpose of the Act is to provide for the judicial determination of the status of the district and of the regularity of its proceedings, and only indirectly to establish the status or character of bonds as valid or invalid in their inception (*Crall v. Poño Irrigation District*, 87 Cal. 140, 146; *in re* Madera Irrigation District, 92 Cal. 296, 340).

A decree rendered, in conformity with the provisions of the Confirmation Act, refusing to approve and confirm the proceedings affecting the legality of bonds issued or to be issued, if given the force of a judgment *in rem*, would merely establish the fact or facts, from which the necessary inference would be that the bonds of the district were invalid in their inception.

Proof of such an adjudication would merely put upon the owner of bonds the burden of proving that he was a *bona fide* purchaser for value, in the ordinary course of business, before maturity (Eames *v.* Crosier, 101 Cal. 216; Stewart *v.* Lansing, 104 U. S. 505). The rights of holders of irrigation district bonds proved by such an adjudication to be invalid in their inception do not appear to have been passed upon yet by the courts. Causes involving such rights, when they arise, will undoubtedly be decided upon the facts peculiar to each case, in accordance with the usual rules which determine the liability of municipal corporations on securities issued by them.

Wm. Bradford Bosley.

SAN FRANCISCO, CAL., November 29, 1897.