

**PENNSYLVANIA COAL COMPANY v. MAHON (edited)**

**SUPREME COURT OF THE UNITED STATES (1922)**

MR. JUSTICE HOLMES delivered the opinion of the Court.

This is an appeal of a [lawsuit brought by Mahon, the plaintiffs] to prevent the Pennsylvania Coal Company from mining under plaintiffs' property in such way as to remove the supports and cause a sinking of the ground surface level and of their house. [In 1878 the Pennsylvania Coal Company sold the land to plaintiffs]. The deed of sale conveys the surface of the land, but in express terms reserves the right to remove all the coal under the surface, and the buyer takes the premises with the risk, and waives all claim for damages that may arise from mining out the coal. But the plaintiffs say that whatever may have been the Coal Company's rights, they were taken away by an Act of Pennsylvania [a state law]... commonly known there as the Kohler Act. ... On appeal the Supreme Court of the State of Pennsylvania agreed that the defendant Coal Company had contract and property rights protected by the Constitution of the United States, but held that the statute was a legitimate exercise of the police power of the State of Pennsylvania and found in favor of the plaintiffs. An appeal was granted bringing the case to this Court.

The state law forbids the mining of coal in such way as to cause the sinking of, among other things, any structure used as a human habitation... *As applied to this case the statute is admitted to destroy previously existing rights of property and contract. The question is whether the police power can be stretched so far.*

Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law. As long recognized, some values are enjoyed under an implied limitation and must yield to the police power. But obviously the implied limitation must have its limits, or the contract and due process clauses [of the U.S. Constitution] are gone. One fact for consideration in determining such limits is the extent of the diminution of value. When it reaches a certain magnitude, in most if not in all cases there must be an exercise of eminent domain and compensation to sustain the act. So the question depends upon the particular facts. The greatest weight is given to the judgment of the legislature, but it always is open to interested parties to contend that the legislature has gone beyond its constitutional power...

It is our opinion that the act cannot be sustained as an exercise of the police power, so far as it affects the mining of coal under streets or cities in places where the right to mine such coal has been reserved. As said in an earlier Pennsylvania case, "*For practical purposes, the right to coal consists in the right to mine it.*" What makes the right to mine coal valuable is that it can be exercised with profit. *To make it commercially*

*impracticable to mine certain coal has very nearly the same effect for constitutional purposes as appropriating or destroying it...*

The rights of the public in a street purchased or laid out by eminent domain are those that it has paid for. If in any case its representatives have been so short sighted as to acquire only surface rights without the right of support, we see no more authority for supplying the latter without compensation than there was for taking the right of way in the first place and refusing to pay for it because the public wanted it very much. *The protection of private property in the Fifth Amendment presupposes that it is wanted for public use, but provides that it shall not be taken for such use without compensation.* When this seemingly absolute protection is found to be qualified by the police power, the natural tendency of human nature is to extend the qualification more and more until at last private property disappears. But that cannot be accomplished in this way under the Constitution of the United States.

*The general rule at least is, that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking [under the Fifth Amendment]... We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change. As we already have said, this is a question of degree -- and therefore cannot be disposed of by general propositions....*

We assume, of course, that the statute was passed upon the conviction that a [serious problem] existed that would warrant it, and we assume that [the same problem] would warrant the exercise of eminent domain. But the question at bottom is *upon whom the loss of the changes desired should fall*. So far as private persons or communities have seen fit to take the risk of acquiring only surface rights, we cannot see that the fact that their risk has become a danger warrants the giving to them greater rights than they bought.

MR. JUSTICE BRANDEIS, dissenting.

*... Coal in place is land; and the right of the owner to use his land is not absolute. He may not so use it as to create a public nuisance; and uses, once harmless, may, owing to changed conditions, seriously threaten the public welfare.* Whenever they do, the legislature has power to prohibit such uses without paying compensation; and the power to prohibit extends alike to the manner, the character and the purpose of the use. Are we justified in declaring that the Legislature of Pennsylvania has, in restricting the right to mine coal [underneath surface land occupied by dwelling houses], exercised this power so arbitrarily as to violate the [Fifth Amendment applied to the States through the] Fourteenth Amendment"?

Every restriction upon the use of property imposed in the exercise of the police power deprives the owner of some right theretofore enjoyed, and is, in that sense, an abridgment by the State of rights in property without making compensation. *But restriction imposed to protect the public health, safety or morals from dangers threatened is not a taking.* The restriction here in question is merely the prohibition of a damaging

use. The property so restricted remains in the possession of its owner. The State does not appropriate it or make any use of it. The State merely prevents the owner from making a use which interferes with paramount rights of the public. Whenever the use prohibited ceases to be damaging to others -- as it may because of further change in local or social conditions -- the restriction will have to be removed and the owner will again be free to enjoy his property as heretofore.

If public safety is imperiled, surely neither grant, nor contract, can prevail against the exercise of the police power. The rule that the State's power to take appropriate measures to guard the safety of all who may be within its jurisdiction may not be bargained away was applied to compel [railroads] to establish grade crossings at their own expense... "One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them."