

NEW ORLEANS WATER-WORKS CO. v. SOUTHERN BREWING CO. SAME
v. PEOPLE'S ICE CO. SAME v. MCGINNIS OIL & SOAP WORKS.¹

(Circuit Court, E. D. Louisiana. June 7, 1888.)

COURTS—FEDERAL COURTS—FOLLOWING STATE DECISIONS.

In *Water-Works Co. v. Refinery Co.*, 35 La. Ann. 1111, the supreme court of Louisiana held that in spite of the charter of the water-works, giving that corporation the exclusive privilege of supplying water from the Mississippi to the city and its inhabitants, and reserving to the city council the power to grant persons contiguous to the river the privilege of laying pipes for his own use, the council, under said charter and the general laws of the state, could grant such privilege to persons without regard to their contiguity. In this decision the United States supreme court held that no federal question was involved, the determination of the council's power, under the state laws, being for the state supreme court, (8 Sup. Ct. Rep. 741.) Before this ruling, but after the state decision, the United States supreme court, in the case of *Water-Works Co. v. Rivers*, 6 Sup. Ct. Rep. 273, without referring to the state decision, held that the council's grant of such privilege under the provision of the state constitution adopted after the water-works charter had been granted, which abrogated monopolies, impaired the obligation of the state's contract with the company. Held, that the United States circuit court in Louisiana should be governed by the decision of the state supreme court, the matter being, as conceded by the United States supreme court, one for its determination, and the parties being all of them Louisiana corporations. BILLINGS, J., dissenting.

In Equity. Final hearing on injunction.

J. R. Beckwith, for complainants.

A. Goldthwaite and W. S. Benedict, for defendants.

Argued before PARDEE and BILLINGS, JJ.

PARDEE, J. Assuming that the questions arising under the constitution, upon which our jurisdiction rests, are to be decided in favor of the complainant, there remains the question of construction of complainant's charter, and the general laws of Louisiana with reference to the right of the city of New Orleans through its council to grant licenses or permits to the defendants to lay pipes in and across the public streets to their respective establishments for the sole purpose of supplying themselves respectively with water from the Mississippi river. In the case of *Water-Works Co. v. Refinery Co.*, 35 La. Ann. 1111, this question of the authority of the city of New Orleans under the complainant's charter and the laws of the state was presented to the supreme court of the state of Louisiana, and was decided in favor of the right. It is true that in the case the refining company, among other defenses to the suit, set up that it was a contiguous person to the Mississippi river, and therefore within the letter of the proviso in the eighteenth section of complainant's charter, but the court wholly ignored the contiguity defense, and based its judgment wholly upon the general law of the state, and upon the construction and effect of the charter from the legislature to the water-works company, and of the license from the city council to the refining company, and in no degree upon the constitution or any law of the state sub-

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sequent to the water-works charter. The case was carried by writ of error to the supreme court of the United States, and there dismissed for want of jurisdiction; the court deciding that no federal question was involved, the right of the city of New Orleans to grant the license complained of being wholly a question to be decided under Louisiana law. See 8 Sup. Ct. Rep. 741. The decision of the supreme court of the state was rendered in 1884. In 1885 the precise question was before the supreme court of the United States in the case of *Water-Works v. Rivers*, and was then decided in favor of the water-works company, the court holding that an exclusive franchise granted to supply water to the inhabitants of a municipality by means of pipes and mains laid through the public streets is violated by a grant to an individual in the municipality of the right to supply his premises with water by means of pipes so laid. Although the case of the *Water-Works Co. v. Refinery Co.* was then pending on a writ of error, and the counsel for the refining company submitted a brief in the *Rivers Case*, in the decision no reference whatever is made to the decision of the supreme court of Louisiana upon this very question, conceded to be not a federal question, but one wholly depending upon local Louisiana law. See *Water-Works Co. v. Rivers*, 115 U. S. 674, 6 Sup. Ct. Rep. 273.

The question is thus squarely presented whether, in a matter involving solely Louisiana law, where no property rights under former decisions are involved, this court should follow the decision of the highest court of the state or the decision of the supreme court of the United States. This same question was presented to the supreme court of the United States in the case of *Fairfield v. County of Gallatin*, 100 U. S. 47. In 1874, in the case of *Railroad Co. v. Pinckney*, 74 Ill. 277, the supreme court of the state of Illinois gave a certain construction to a provision of the constitution of the state. About one year afterwards, in *Town of Concord v. Portsmouth*, 92 U. S. 625, the same constitutional provision came before the supreme court of the United States, and received a contrary construction, the case of *Railroad Co. v. Pinckney* not being called to the attention of the court. In *Fairfield v. County of Gallatin*, *supra*, the same question was again brought before the supreme court of the United States, the defendant in error relying upon, and the court below having followed, *Town of Concord v. Portsmouth*, *supra*, and it was then held, reversing the circuit court, and citing *Polk's Lessee v. Wendal*, 9 Cranch, 87; *Nesmith v. Sheldon*, 7 How. 812; *Walker v. Commissioners*, 17 Wall. 648; *Elmendorf v. Taylor*, 10 Wheat. 152; *Green v. Neal's Lessee*, 6 Pet. 291; *Leffingwell v. Warren*, 2 Black, 599; *Sumner v. Hicks*, Id. 532; *Olcott v. Supervisors*, 16 Wall. 678; and *State Railroad Tax Cases*, 92 U. S. 575,—that it is the general rule of decision to follow and adopt the decisions of the state courts in the construction of their own constitution and statutes when that construction has been settled by the decisions of its highest tribunal; and that this rule of decision is to be followed even where the supreme court of the United States has given a different construction to the state law, provided no rights are affected which have been acquired under their former decisions. See, also, *Suydam v. Williamson*, 24 How. 427. To