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Syllabus.

their rights in and to said alley without due process of law." But it is settled that such an averment making no reference to the Constitution of the United States and asserting no express rights thereunder is solely referable to the state constitution, which in this instance has a due process clause, and affords no basis whatever for invoking the jurisdiction of this court. *Miller v. Cornwall R. R. Co.*, 168 U. S. 131, 134; *Harding v. Illinois*, 196 U. S. 78.

As from what we have said it results that there is no foundation whatever for the claims of Federal right relied upon as the basis for invoking the jurisdiction of this court since such claims are so wholly unsubstantial and frivolous as to be devoid of any merit, it follows that we have not jurisdiction and the writ of error must be dismissed.

Dismissed for want of jurisdiction.

McDONALD v. OREGON RAILROAD AND NAVIGATION COMPANY.

ERROR TO THE SUPREME COURT OF THE STATE OF OREGON.

No. 463. Motion to dismiss submitted May 4, 1914.—Decided May 25, 1914.

The due process clause of the Fourteenth Amendment does not control methods of state procedure or give jurisdiction to this court to review mere errors of law alleged to have been committed by a state court in the performance of its duties and within the scope of its authority concerning matters non-Federal in character.

It is the lack of jurisdiction in the sense of fundamental absence of any and all right to take cognizance of the cause that amounts to deprivation of property without due process of law and gives this court power to review the judgment of the state court under § 237, Judicial Code, not the wrongful exercise of jurisdiction in the sense of duty to

rightfully decide subjects to which judicial power extends. *Castillo v. McConnico*, 168 U. S. 674.

Where a defendant in the state court did not object to the jurisdiction of the court to entertain an action to enjoin him from enforcing his rights of ownership, but went further and sought affirmative relief in that action, he cannot be heard in this court to deny that the court had any power to exert the very jurisdiction which he invoked.

Writ of error to review 58 Oregon, 228 dismissed.

THE facts, which involve the jurisdiction of this court under § 237, Judicial Code, to review a judgment of the state court involving a railroad right of way, are stated in the opinion.

Mr. W. W. Cotton, Mr. H. W. Clark and Mr. Arthur C. Spencer, for defendant in error, in support of the motion.

Mr. George E. Chamberlain, Mr. Will R. King and Mr. Turner Oliver, for plaintiffs in error, in opposition to the motion.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

The defendant in error, hereafter referred to as the Railroad Company, was plaintiff below and sued the plaintiffs in error who were defendants to enjoin them from interfering with its right of possession of a strip of land constituting a railroad right of way. It was alleged that this strip which traversed property belonging to the defendants had been bought from them by the Railroad Company for a cash price of \$600 which was paid, but nevertheless the defendants, asserting some title to the land, were threatening to disturb the railroad in its possession, to tear up a track where laid, and otherwise to prevent the use of the land for the purpose for which it had been bought. The defendants answered and although

admitting that they had sold the land to the railway for a right of way and had received the stipulated price, nevertheless asserted that they were yet the owners of the property for the following reasons: *a*, Because in the deed by which the property was conveyed there was an express condition "that the Oregon Railroad & Navigation Company will construct the line of road over the above described premises within two years from the date hereof." *b*, Because while after the deed the railroad had commenced to construct its road and had graded along the right of way, after doing so it suspended all work so that the two years provided in the deed elapsed without the railroad being built and therefore all right to the land had been lost and the defendants had reentered and notified the railroad of the fact.

Availing that the land was "reasonably worth the sum of \$1000 and the plaintiff has not paid the same nor any part thereof and has not offered to pay defendant anything for said land since its failure to comply with the condition of the deed," the answer prayed not merely the rejection of the plaintiff's demand and the dissolution of the injunction which had been allowed, but asked substantive relief, that is, that the defendants be decreed to be the owners and that the complainant be enjoined from in any way interfering with them and for the awarding of "such other and further relief as shall seem to the court equitable in the premises." After trial at which considerable testimony was taken among other things as to the value of the property, the court, holding in favor of the defendants, decided that the railroad by virtue of its failure to build within the period specified and the reentry of the defendants, had lost all right to the land and therefore that the subsequent action of the railroad in entering upon the land to complete its railroad was a trespass. The injunction which was issued at the inception of the cause was dissolved. On appeal the court below expressly

adopted the legal principles which the trial court had applied, that is, the court likewise declared the clause in the deed to be a condition and decided that the failure of the railroad to comply with its terms had forfeited all its right and title in and to the land. But nevertheless the decree was not affirmed. After expounding its reasons for fully agreeing with the legal conclusions of the trial court, it was said: "So far, then, we have found that defendants were entitled to a forfeiture and that the land has reverted, but we now recur to the remedy. The situation is anomalous. Plaintiff has constructed its road and has it in operation, thereby performing an important public function for a large and increasing population. . . . It is to the interest of the public that it should continue to do so and that the defendants should not be allowed to acquire a portion of its roadbed to the detriment of public travel. The condemnation of land for railway purposes is usually the function of a court of law, but there are in this case such special circumstances as to authorize this court to end the whole litigation at once and forever. The pleadings show that this land is needed for the purpose of a railway, and the evidence shows that the railway is actually there on the ground. Defendants come into court, submit themselves to the jurisdiction of equity and ask affirmative relief. Much of the testimony was devoted to showing the value of the land taken, the effect of the taking on the remainder of the tract and all those things which are usually shown in an action to condemn for a railroad right-of-way. Having jurisdiction of this case we have concluded to assume it for all purposes and to so modify the decree that plaintiff shall take title to the land described in this strip upon the paying to defendants the damage occasioned by such taking, which we assess at \$700, and the costs and disbursements of this suit." Upon the entry of a decree conformably to these views, the defendants asked that the decree be

modified so as to confine it to a recognition of their title and to exclude all its provisions conferring upon the Railroad Company the right to take the property on paying the adjudged sum. This application was supported by an elaborate argument challenging the right of the court under the state law to exert the power which it had exerted. In none, however, of the elaborate arguments pressed to sustain the motion to modify was there any reference whatever to any supposed denial by the state court of rights guaranteed by the Constitution of the United States, and for that reason and because it is insisted that on the face of the record it is manifest no Federal question is presented, a motion to dismiss has been made which we come to consider.

All the contentions as to Federal rights rest upon the assumption that the court below denied due process of law when it entered the decree complained of and this is based upon the conception that the court exceeded its jurisdiction and misconceived or wrongfully interpreted the evidence and thereby in effect while recognizing the title of the plaintiffs in error, virtually deprived them of the right conferred by the state law of having a common law trial for the purpose of determining the questions which would require to be decided in case of the exercise by the Railroad Company of the right of eminent domain including of course the fixing of compensation to be paid for the taking and the damages incident thereto. Leaving aside for the moment the question of the jurisdiction of the court in the fundamental sense, that is, *ratione materiae*, it is manifest that the want of foundation for all the propositions insisted upon is quite clear, since after all, taking the aspect most favorable for the plaintiffs in error, the propositions but assert that the court below in deciding the case, committed error as to matters involving no Federal question because purely of state cognizance. It is elementary and needs no citation of authority to show that

the due process clause of the Fourteenth Amendment does not control methods of state procedure or give jurisdiction to this court to review mere errors of law alleged to have been committed by a state court in the performance of its duties within the scope of its authority concerning matters non-Federal in character. So far as the contentions address themselves to the subject-matter of jurisdiction it is clear that they do not deny jurisdiction in the sense of the fundamental absence of any and all right to take cognizance of the cause, but are confined to jurisdiction in the sense of the duty to rightfully decide subjects to which judicial power extends. In this aspect the error of all the contentions is within the principle announced in *Castillo v. McConnico*, 168 U. S. 674.

But aside from the reasons just stated the absolute want of merit in the Federal right asserted becomes doubly apparent when it is observed that the plaintiffs in error, who were defendants in the trial court did not simply stand upon their rights as defendants, but went further and sought affirmative relief at its hands and could only be now heard to deny all power by being permitted to deny the right to exert the very jurisdiction which they invoked.

Dismissed for want of jurisdiction.