

have been sought and allowed, pleading the ground of negligence afterwards set up in the second action. Nevertheless, the cause of action was one and indivisible, and the erroneous conclusion to the contrary cannot have the effect of depriving the defendants in the second action of their right to rely upon the plea of *res judicata*. Plaintiff's claim for damages having been submitted and passed upon, the effect of the judgment in the admiralty case as a bar is the same whether resting upon an erroneous view of the law or not. A judgment merely voidable because based upon an erroneous view of the law is not open to collateral attack, but can be corrected only by a direct review and not by bringing another action upon the same cause. *Colburn v. Woodworth*, 31 Barb. (N. Y.) 381, 384; *Wolverton v. Baker*, 86 Cal. 591, 593; *Bettys v. C. M. & St. P. R. Co.*, 43 Iowa 602, 604; *Bancroft v. Winspear*, 44 Barb. (N. Y.) 209, 215-216; *Winslow v. Stokes*, 48 N. C. 285.

The conclusion that the judgment below must be reversed cannot be avoided without subverting long established principles of general application, which we are not at liberty to set aside for a special case of hardship.

Judgment reversed.

MR. JUSTICE STONE concurs in the result.

ZAHN ET AL. v. BOARD OF PUBLIC WORKS ET AL.

ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

No. 196. Argued March 7, 1927.—Decided May 16, 1927.

1. A zoning ordinance dividing the City of Los Angeles into five building zones and prescribing the kinds of buildings that may be erected in each zone, *held* constitutional in its general scope (*Euclid v. Ambler Realty Co.*, 272 U. S. 365), and not violative of due process or equal protection as applied to this case. P. 327.

2. The plaintiff's lot was in a zone limited by the ordinance to buildings for residences, churches, private clubs, educational purposes, etc., and excluding buildings for private business other than physicians' offices. The value of the lot would be much enhanced if it could be used for business purposes, for which it was favorably situated. Other property in the zone was largely restricted by covenant to residential uses. The entire neighborhood at the time of the ordinance was largely unimproved but in course of rapid development. The conclusion of the city council, on these and other facts, that the public welfare would be promoted by establishing the zone can not be adjudged clearly arbitrary or unreasonable; and this court can not in such circumstances substitute its judgment for theirs. P. 328.

195 Cal. 497, affirmed.

ERROR to a judgment of the Supreme Court of California, on an original application for a writ of mandate commanding the Board of Public Works of the City of Los Angeles to issue to the petitioners a permit for the construction of a business building, suitable for occupation by stores, upon property of the petitioners in that city. An alternative writ was issued, returnable in the District Court of Appeal, which found in favor of the petitioners, holding the city zoning ordinances unreasonable and discriminatory. This was reversed, and the ordinances upheld, by the subsequent judgment of the Supreme Court, here under review.

Mr. A. J. Hill for plaintiffs in error.

Mr. Lucius P. Green, with whom *Mr. Jess E. Stephens* was on the brief, for defendants in error.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

This is a proceeding in mandamus brought in the state court to compel defendants in error to issue a building permit enabling plaintiffs in error to erect a business

building upon a lot lying within a district of the City of Los Angeles restricted by the zoning ordinance of that city against buildings of that character. The ordinance creates five zones, designated as "A," "B," "C," "D," and "E," respectively, and classifies the kinds of buildings, structures and improvements which may be erected in each. The ordinance is of the now familiar comprehensive type, but in the main regulates only the character of buildings which lawfully may be erected and does not prescribe height and area limitations. It is assailed as being repugnant to the due process of law and equal protection clauses of the Fourteenth Amendment. The property of plaintiffs in error is in zone "B," in which, generally stated, the use is limited to buildings for residential purposes, churches, private clubs, educational and similar purposes. All buildings for private business are excluded, with the exception of offices of persons practicing medicine. The state supreme court, in a well reasoned opinion, upheld the ordinance and denied the relief sought. 195 Cal. 497. And see *Miller v. Board of Public Works*, 195 Cal. 477.

The constitutional validity of the ordinance in its general scope is settled by the recent decision of this court in *Euclid v. Ambler Co.*, 272 U. S. 365; and upon the record here we find no warrant for saying that the ordinance is unconstitutional as applied to the facts in the present case. The property of plaintiffs in error adjoins Wilshire Avenue, a main artery of travel through and beyond the city; and if such property were available for business purposes its market value would be greatly enhanced. The lands within the district were, when the ordinance was adopted, sparsely occupied by buildings, those in which business was carried on being limited to a few real estate offices, a grocery store, a market, a fruit stand, and a two-story business block. Much of the land

adjoining the boulevard within the restricted district had already been sold with restrictions against buildings for business purposes, although the property of plaintiffs in error and the adjacent property had not been so restricted. The effect of the evidence is to show that the entire neighborhood, at the time of the passage of the zoning ordinance, was largely unimproved, but in course of rapid development. The Common Council of the city, upon these and other facts, concluded that the public welfare would be promoted by constituting the area, including the property of plaintiffs in error, a zone "B" district; and it is impossible for us to say that their conclusion in that respect was clearly arbitrary and unreasonable. The most that can be said is that whether that determination was an unreasonable, arbitrary or unequal exercise of power is fairly debatable. In such circumstances, the settled rule of this court is that it will not substitute its judgment for that of the legislative body charged with the primary duty and responsibility of determining the question. *Euclid v. Ambler Co.*, *supra*, 388, 395; *Radice v. New York*, 264 U. S. 292, 294; *Hadacheck v. Los Angeles*, 239 U. S. 394, 408-412, 413-414; *Cusack Co. v. City of Chicago*, 242 U. S. 526, 530-531; *Rast v. Van Deman & Lewis*, 240 U. S. 342, 357; *Price v. Illinois*, 238 U. S. 446, 452.

Judgment affirmed.

BURNS v. UNITED STATES.

ERROR TO THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA.

No. 135. Argued November 24, 1926.—Decided May 16, 1927.

1. The California statute defining and punishing criminal syndicalism is not violative of the Fourteenth Amendment. *Whitney v. California*, *post*, p. 357. P. 330.