AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 7: The Republican Era – Individual Rights/Property/Takings

**Juragua Iron Company, Limited v. United States, 212 U.S. 297 (1909)**

*Juragua Iron Company was a Pennsylvania company that engaged in the mining and selling of iron ore and the manufacturing of iron and steel products. It owned several mines and facilities in Cuba. In 1898 during the Spanish-American War, an American general operating in Cuba ordered the destruction by fire of several buildings owned by Juragua Iron Company that he believed were contaminated by yellow fever.*

*After the war, the company filed suit in the federal court of claims seeking compensation for its property that the American army had destroyed in Cuba. The court of claims dismissed the case, finding that the government did not owe any compensation in these circumstances. The company appealed to the U.S. Supreme Court, which unanimously affirmed that ruling. The Court concluded that American-owned property destroyed as part of a war effort for military exigency was not a taking for constitutional purposes and did not create an obligation for compensation on the part of the government.*

JUSTICE HARLAN, delivered the opinion of the Court.

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. . . . It is . . . to be assumed that the health, efficiency and safety of the troops required that to be done which was done. Under these circumstances was the United States under any legal obligation to make good the loss sustained by the owner of the property destroyed?

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The plaintiff contends that the destruction of the property by order of the military commander representing the authority and power of the United States was such a taking of private property for public use as to imply a constitutional obligation, on the part of the Government, to make compensation to the owner. . . .

*United States v. Great Falls Manufacturing Co.* (1884) was a case of the taking for public use by agents and officers of the United States proceeding under the authority of an act of Congress of certain private property — lands, water rights and privileges — which were held and used by the Government for nearly twenty years, without any compensation being made to the owner. A suit was brought against the United States in the Court of Claims, and judgment was rendered for the claimant. This court said:

"It seems clear that these property rights have been held and used by the agents of the United States under the sanction of legislative enactments by Congress; for the appropriation of money specifically for the construction of the dam from the Maryland shore to Conn's Island was, all the circumstances considered, equivalent to an express direction by the legislative and executive branches of the Government to its officers to take this particular property for the public objects contemplated by the scheme for supplying the capital of the Nation with wholesome water. The making of the improvements necessarily involves the taking of the property; and if, for the want of formal proceedings for its condemnation to public use, the claimant was entitled, at the beginning of the work, to have the agents of the Government enjoined from prosecuting it until provision was made for securing in some way payment of the compensation required by the Constitution — upon which question we express no opinion — there is no sound reason why the claimant might not waive that right, and, electing to regard the action of the Government as a taking under its sovereign right of eminent domain, demand just compensation. *Kohl v. United States* (1876). In that view we are of opinion that the United States, having by its agents, proceeding under the authority of an act of Congress, taken the property of the claimant for public use, are under an obligation, imposed by the Constitution, to make compensation. The law will imply a promise to make the required compensation, where property, to which the Government asserts no title, is taken, pursuant to an act of Congress, as private property to be applied for public uses. Such an implication being consistent with the constitutional duty of the Government, as well as with common justice, the claimant's cause of action is one that arises out of implied contract, within the meaning of the statute which confers jurisdiction upon the Court of Claims of actions founded `upon any contract, express or implied, with the Government of the United States.'"

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It is clear that these cases lend no support to the proposition that an implied *contract* arose on the part of the United States to make compensation for the property destroyed by order of General Miles. The cases cited arose in a time of peace and in each it was claimed that there was within the meaning of the Constitution an actual taking of property for the use of the United States, and that the taking was by authority of Congress. That taking, it was adjudged, created by implication an obligation to make the compensation required by the Constitution. But can such a principle be enforced in respect of property destroyed by the United States in the course of military operations for the purpose, and only for the purpose, of protecting the health and lives of its soldiers actually engaged at the time in war in the enemy's country? We say "enemy's country" because, under the recognized rules governing the conduct of a war between two nations, Cuba, being a part of Spain, was enemy's country, and all persons, whatever their nationality, who resided there were, pending such war, to be deemed enemies of the United States and of all its people. The plaintiff, although an American corporation, doing business in Cuba, was, during the war with Spain, to be deemed an enemy to the United States with respect of its property found and then used in that country, and such property could be regarded as enemy's property, liable to be seized and confiscated by the United States in the progress of the war then being prosecuted; indeed, subject under the laws of war to be destroyed whenever, in the conduct of military operations, its destruction was necessary for the safety of our troops or to weaken the power of the enemy.

. . . . In *Lamar’s Executor v. Browne* (1876), the court said: “For the purposes of capture, property found in enemy territory is enemy property, without regard to the status of the owner. In war, all residents of enemy country are enemies.” . . .

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In view of these principles — if there were no other reason — the plaintiff corporation could not invoke the protection of the Constitution in respect of its property used in business in Cuba, during the war, any more than a Spaniard residing there could have done, under like circumstances, in reference to his property then in that island. If the property destroyed by order of General Miles had belonged at the time to a resident Cuban, the owner would not have been heard in any court, under the facts found, to claim, as upon implied contract, compensation from the United States on account of such destruction. How then under the facts found could an obligation, based on implied contract, arise under the Constitution in favor of the plaintiff, an American corporation, which at the time and in reference to the property in question had a commercial domicile in the enemy's country? . . . In the circumstances disclosed by the record it cannot reasonably be said that there was, in respect of the destruction of the property in question, any "convention between the parties," any "coming together of minds," or any circumstances from which a *contract* could be implied. Again, if, as contended — without, however, any basis for the contention — the acts of that officer were not justified by the laws of war, then the utmost that could be said would be that what was done pursuant to his order amounted to a tort, and a claim against the Government for compensation on account thereof would make a case "sounding in tort." But of such a case the court would, of course, have no jurisdiction under the act of Congress.

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*Affirmed*.