

er's use of it to an extent that, as between private parties, a servitude has been acquired either by agreement or in course of time."⁶⁷³ It was thus held that the government had imposed a servitude for which it must compensate the owner on land adjoining its fort when it repeatedly fired the guns at the fort across the land and had established a fire control service there.⁶⁷⁴ In two major cases, the Court held that the lessees or operators of airports were required to compensate the owners of adjacent land when the noise, glare, and fear of injury occasioned by the low altitude overflights during takeoffs and landings made the land unfit for the use to which the owners had applied it.⁶⁷⁵ Eventually, the term "inverse condemnation" came to be used to refer to such cases where the government has not instituted formal condemnation proceedings, but instead the property owner has sued for just compensation, claiming that governmental action or regulation has "taken" his property.⁶⁷⁶

Navigable Waters.—The repeated holdings that riparian ownership is subject to the power of Congress to regulate commerce constitute an important reservation to the developing law of liability in the taking area. When damage results consequentially from an improvement to a river's navigable capacity, or from an improvement on a nonnavigable river designed to affect navigability elsewhere, it is generally not a taking of property but merely an exercise of a servitude to which the property is always subject.⁶⁷⁷ This exception does not apply to lands above the ordinary high-water mark of a stream,⁶⁷⁸ hence is inapplicable to the damage the government

⁶⁷³ *United States v. Dickinson*, 331 U.S. 745, 748 (1947).

⁶⁷⁴ *Portsmouth Harbor Land & Hotel Co. v. United States*, 260 U.S. 327 (1922). Cf. *Portsmouth Harbor Land & Hotel Co. v. United States*, 250 U.S. 1 (1919); *Peabody v. United States*, 231 U.S. 530 (1913).

⁶⁷⁵ *United States v. Causby*, 328 U.S. 256 (1946); *Griggs v. Allegheny County*, 369 U.S. 84 (1962). A corporation chartered by Congress to construct a tunnel and operate railway trains therein was held liable for damages in a suit by one whose property was so injured by smoke and gas forced from the tunnel as to amount to a taking. *Richards v. Washington Terminal Co.*, 233 U.S. 546 (1914).

⁶⁷⁶ "The phrase 'inverse condemnation' generally describes a cause of action against a government defendant in which a landowner may recover just compensation for a 'taking' of his property under the Fifth Amendment, even though formal condemnation proceedings in exercise of the sovereign's power of eminent domain have not been instituted by the government entity." *San Diego Gas & Electric Co. v. City of San Diego*, 450 U.S. 621, 638 n.2 (1981) (Justice Brennan dissenting). See also *United States v. Clarke*, 445 U.S. 253, 257 (1980); *Agins v. City of Tiburon*, 447 U.S. 255, 258 n.2 (1980).

⁶⁷⁷ *Gibson v. United States*, 166 U.S. 269 (1897); *Lewis Blue Point Oyster Co. v. Briggs*, 229 U.S. 82 (1913); *United States v. Chandler-Dunbar Water Power Co.*, 229 U.S. 53 (1913); *United States v. Appalachian Power Co.*, 311 U.S. 377 (1940); *United States v. Commodore Park, Inc.*, 324 U.S. 386 (1945); *United States v. Willow River Power Co.*, 324 U.S. 499 (1945); *United States v. Twin City Power Co.*, 350 U.S. 222 (1956); *United States v. Rands*, 389 U.S. 121 (1967).

⁶⁷⁸ *United States v. Virginia Elec. & Power Co.*, 365 U.S. 624, 628 (1961).