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Agricultural Composition and Extension

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Supreme Court could still have exercised its inherent power.

BANKRUPTCY

AGRICULTURAL COMPOSITION AND EXTENSION

Petitioner held respondents' note secured by a mortgage on their Indiana farm. On March 4, 1939, foreclosure proceedings were instituted in a state court and a judgment was obtained on Nov. 20, 1939, ordering the property sold to satisfy the debt. The sheriff sold the farm on May 25, 1940, and three days later respondents filed petition for agricultural composition and extension under the Bankruptcy Act[1] listing the farm in their schedules. The sheriff's deed was executed

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(1909); Ie re Strong, 27 Ohio C.A., 29 Ohio C. D. 281 (1917); In re Dougherty, 103 W. Va. 7, 136 S.E. 402 (1927). Cf. Commonwealth ex rel, Ward v. Harrington, 266 Ky. 41, 50, 98 S.W. (2d) 53, 58 (1936).

27. See cases cited in note 26 supra.

28. A disbarment by a circuit or superior court revokes the attorney's privilege to practice in any and all of the courts of the state. Ind. Stat. Ann. (Burns, 1933) §4-3614.

29. Apparently only one other state, Texas, could have the same problem which confronted the Court in the instant case. See Texas Rev. Stat. (Vernon, 1936) arts. 305, 306, 313. The Supreme Court has control of admission to the bar, but by statutes (art. 313), the power to disbar is given to the district courts. The Texas Supreme Court has not had to take original jurisdiction of a disbarment case, but it is said that "While the legislature has given the district court jurisdiction of disbarment proceedings generally, it would seem that the Supreme Court by virtue of its power to admit to the bar would have a like power to disbar, and all other courts of record and general jurisdiction may at least exercise disciplinary control over those who practice before them." Green, Court's Power over Admission and Disbarment (1925) 4 Tex. L. Rev. 1, 25. This same argument should hold true in Indiana.

1. 49 Stat. 942-945; 11 U. S. C. §203. Petition was filed under section 75 (a-r) but we are concerned here only with a portion of subsection (n) which provides that "The filing of a petition . . . praying for relief under this section, shall immediately subject the farmer and all his property . . . to the exclusive jurisdiction of the court including . . . the equity of redemption when the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition."

"In all cases where at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extened or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section."

and delivered on June 1, 1940, and thereafter petitioner filed a motion in the United States district court to strike the farm from the schedules on the ground that they had no right or equity in the property, the period of redemption having expired at the time of the sale as provided by state law.[2] The court granted the motion but was reversed by the circuit court of appeals, and petitioner applied for certiorari to the United States Supreme Court. Held, respondents' petition, filed after the sheriff's sale, but prior to delivery of the deed, did not bring the property under the jurisdiction of the bankruptcy court. State Bank of Hardinsburg v. Brown et al, 63 Sup. Ct. 128 (1942).

At first it appears that section 75 (n) permits the farmer to file his petition for agricultural composition and extension at any time prior to delivery of the sheriff's deed to the purchaser, and thereby bring his property under the jurisdiction of the bankruptcy court. His property would include his equity of redemption which would be extended for a period necessary to carry out the provisions of the act. This literal interpretation brings the issue in the instant case into sharp focus since the applicable Indiana statute[3] indicates clearly that under the state law the mortgagor's equity of redemption expires simultaneously with the sheriff's sale,[4] and the delivery of the deed is a mere ministerial duty, performance of which may be compelled by writ of mandate.[5] At the sale the purchaser acquires the equitable interest, the mortgagor retaining only the bare legal title in trust for him.[6]

Section 75 (n), literally construed, purports to revive the mortagor's interest in the land in contravention of state law under which this interest had expired. Had the court adopted this construction, they necessarily would have been compelled to consider its validity.[7] Congress, under the bankruptcy power, may extend the period of redemption fixed by state law without violating constitutional provisions,[8] but "the state law still establishes the norm to which Congress must substantially adhere, . . . and a serious departure from this norm has led to condemnation of the federal action as constituting a deprivation of property without due process."[9] The exercise of the bank-

2. Ind. Stat. Ann. (Burns, 1933) §3-1801 to §3-1809 inclusive.
3. Ind. Stat. Ann. (Burns, 1933) §3-1801 to §3-1809 inclusive.
4. Hubble v. Berry et al., 180 Ind. 513, 103 N.E. 328 (1913); Robertson et al. v. Van Cleave et al., 129 Ind. 217, 231, 29 N.E. 781 (1892).
5. State ex rel. Miller v. Bender, 102 Ind. App. 185, 1 N.E. (2d) 662 (1936); Hubble v. Berry et al., 180 Ind. 513, 103 N.E. 328 (1913); Jessup et al. v. Carey, 61 Ind. 584 (1878).
6. Stang v. Redden, 28 Fed. 11 (C.C.D. Kan. 1886); Bell et al. v. Diesem et al., 86 Kan. 364, 121 Pac. 335 (1912); See 42 C. J. 247.
7. In the dissenting opinion of the instant case Mr. Justice Murphy contended for a liberal construction to give the full measure of relief to the mortgagor, but the question of the validity of the section under such construction was not discussed in spite of petitioner's argument on this point.
8. Wright v. Union Central Ins. Co., 304 U.S. 502, 516 (1938).
9. Wright v. Union Central Ins. Co., 304 U.S. 502, 517 (1938).

duptcy power, as in the case of other delegated powers,[10] is subject to the requirement of the due process clause.[11] But that the Court is extremely hesitant even to consider the question of validity is evident since it is a cardinal principle that " . . . when the validity of an act of Congress is drawn in question, and even if a serious doubt of constitutionality is raised . . . , this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided."[12] In the instant case the Court avoided the question by an interpretation based upon "a fair reading of the entire section" which appears to be fully supported by the legislative history of the act.[13]

The intention of Congress was to provide " . . . a procedure to effectuate a broad program of rehabilitation of distressed farmers faced with the disaster of forced sales and an oppressive burden of debt,"[14] and at the same time to provide safeguards throughout the proceedings for the protection of secured creditors.[15] Prior to the amendment[16] to subsection (n) there were diverse rulings and holdings by various federal district courts as a result of their highly dissimilar interpretations.[17] Some of the courts even refused to permit the farmer to file his petition after foreclosure proceedings had been initiated although his period of redemption had not yet expired.[18] Obviously these decisions were technical and failed to carry out the

10. Hamilton v. Kentucky Distilleries & Warehouse Co., 251 U.S. 146, 155 (1919); Ochoa v. Hernandez, 230 U. S. 139, 153 (1913); Ex parte Milligan, 71 U. S. 2, 119 (1866) (War power). Heiner v. Donnan et al., 285 U.S. 312, 326 (1932); Blodgett v. Holden, 275 U. S. 142, 147 (1927); Nichols v. Coolidge et al., 274 U. S. 531, 542 (1927); Barclay & Co. v. Edwards, 267 U. S. 442, 450 (1924); Boyd v. United States, 116 U. S. 616 (1886); United States v. Railroad Co., 84 U. S. 322 (1872) (Power to tax). United States v. Cress, 243 U. S. 316, 326 (1917); Carroll v. Greenwich Ins. Co., 199 U. S. 401, 410 (1905); United States v. Lynah, 188 U. S. 445, 471 (1903); United States v. Joint Traffic Assn., 171 U. S. 505, 571 (1898); Monongahela Navigation Co. v. United States, 148 U. S. 312, 336 (1893) (Power to regulate commerce). Wong Wing v. United States, 163 U. S. 228, 236 (1896) (Power to exclude aliens).
11. Louisville Joint Stock Land Bank v. Radford, 295 U. S. 555, 589 (1935).
12. Wright v. Vinton Branch of Mountain Trust Bank et al., 300 U. S. 440, 461 (1937); Crowell v. Benson, 285 U. S. 22, 62 (1931); See 1 Cooley's Constitutional Limitations (8th ed. 1927) 338, 339.
13. See instant case at 130.
14. Wright v. Union Central Ins. Co. et al., 311 U.S. 273, 278 (1940); Kalb v. Feuerstein, 308 U. S. 433 (1940); John Hancock Mut. Life Ins. Co. v. Bartels, 308 U. S. 180 (1939).
15. Wright v. Union Central Ins. Co. et al., 311 U. S. 273, 278 (1940); Borchard et al. v. California Bank et al., 310 U. S. 311, 317 (1940).
16. By act of Aug. 28, 1935, c. 792, §§2-5, 49 Stat. 942-945; 11 U. S. C. §203.
17. See 99 A. L. R. 1390.
18. In re Borgelt, 10 F. Supp. 113 (S.D.Ill. 1935); In re Chaboya, 9 F. Supp. 174 (N.D. Cal. 1934); See 99 A. L. R. 1390; Sen. Rep. No. 985, 74th Cong., 1st Sess. (1935).

congressional purpose of protecting the farmer's home and property.[19] To promote uniformity and to clarify the section, Congress amended it.[20] Senator Borah, a member of the committee, explained the amendment indicating clearly an intention to allow petitions to be filed "during the period of redemption" or "during the period of moritorium provided within the state."[21] The period of redemption expires in some states when foreclosure proceedings are instituted, in others when sale is made, in others when the sale is confirmed, and yet in others when the deed is delivered.[22] Undoubtedly the ambiguous phrasing of the section is a result of the draftsman's endeavor to extend to the farmer the right to file his petition during the period of redemption in his particular state.[23] This excess of caution placed the section in jeopardy, but the Court rightly decided that a fair reading of the entire section, supplemented by a knowledge of the legislative history, indicates a clear intent to extend the bankruptcy jurisdiction only over property which still remains subject to redemption under state law at the time of filing the petition.[24]

CONSTITUTIONAL LAW

AGRICULTURE AS INTERSTATE COMMERCE

Plaintiff seeks declaratory judgment on the constitutionality of the Agricultural Adjustment Act of 1938,[1] as amended May 26, 1941[2] with regard to the commerce clause[3] and asks that the Secretary of Agriculture of the United States be enjoined from enforcing the marketing penalty imposed by that act upon wheat grown in excess of the 1941 marketing quota.[4] From a judgment granting the injunction,[5]

19. Sen. Rep. No. 985, 74th Cong., 1st Sess. (1935); H. R. Rep. No. 1808, 74th Cong., 1st Sess. (1935).
20. See note 16 supra.
21. 79 Cong. Rec., Pt. 15 at 15632.
22. Jones, Mortgages (8th ed. 1928) §§1695-1746; Wiltsie, Mortgage Foreclosure (5th ed. 1939) §1199.
23. See instant case at 131 (dicta). But see Mr. Justice Murphy dissenting in instant case at 133 where he states " . . . If Congress so intended its words were poorly chosen. Congress could easily have declared that bankruptcy jurisdiction does not survive the extinguishment of the equity of redemption under state law, . . . "
24. See instant case at 130.

1. 52 Stat. 31 (1938), as amended 7 U.S.C. §1281 et seq., 7 U.S.C.A. §1281 et seq. (Supp. 1942).
2. 55 Stat. 203 (1941), 7 U.S.C. §1340 (Supp. No. 1), 7 U.S.C.A. §1340 (Supp. 1942).
3. U.S. Const. Art. I, §8, cl. 3.
4. The quota provisions in the act include all wheat grown whether for sale or for farm consumption. 54 Stat. 727 (1940), 7 U.S.C. §1301(b) (6) (A,B), 7 U.S.C.A. §1301(b) (6) (A,B) (Supp. 1942). The term "market" includes the disposal of wheat "by feeding (in any form) to poultry or livestock which, or the products of which are sold, bartered, or exchanged, or to be so disposed of." Ibid. The Court in the instant case 63 Sup. Ct. at 86 interprets this to mean that "penalties do not depend upon whether any part of the wheat either within or without the quota is sold or intended to be sold."
5. Filburn v. Helke, 43 F. Supp. 1017 (S.D. Ohio 1942).