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Constitutional Law-Mortgage Moratorium

CONSTITUTIONAL LAW—MORTGAGE MORATORIUM—Minnesota statute authorized the courts to grant a two-year extension of time in which redemption might be made from mortgage foreclosure sales, but required as a condition precedent to the procurement of this period of grace, that the mortgagor be ordered to pay the income or the reasonable rental value of the property toward the discharge of debts arising out of taxes, interest on the mortgage loan, and insurance. Such act was to remain in effect only during continuance of the emergency and in no event beyond May 1, 1935. The state supreme court sustained this legislation as a valid exercise of the police power because of the public economic emergency, rather than an impairment of the obligation of contract. Held: on appeal to the United States Supreme Court, judgment affirmed, four judges dissenting.[1]

As this decision is the first by the United States Supreme Court concerning the recent emergency relief legislation, it has invoked much criticism, both pro and con, as to its soundness. The issue of real significance is in fact, one of approach; that is, whether the Constitution of the United States is to be interpreted as of the time of its framers, or is to be interpreted in the light of present day conditions and social demands. This issue is clearly pointed out by Chief Justice Hughes speaking for the court and Justice Sutherland speaking for the dissenting judges. In the Chief Justice's opinion appears the following passage, "If by the statement that what the Constitution meant at the time of its adoption it means today, it is intended to say that the great clauses of the Constitution must be confined to the interpretation which the framers with the conditions and outlook of their time, would have placed upon them, the statement carries its own refutation. It was to guard against such a narrow conception that Chief Justice Marshall uttered the memorable warning: 'We must never forget, that it is a constitution we are expounding' (McCullouch v. Maryland, 4 Wheat 316, 417, 4 L. Ed. 579); 'a constitution intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs'."[2] While if we turn to the dissenting opinion, the following statement is found, "A provision of the Constitution, it is hardly necessary to say, does not admit of two distinctly opposite interpretations. It does not mean one thing at one time and an entirely different thing at another time. If the contract impairment clause, when framed and adopted, meant that the terms of a contract for the payment of money could not be altered in invitum by a state statute enacted for the relief of hardly pressed debtors to the end and with the effect of postponing payment or enforcement during and because of an economic or financial emergency, it is but to state the obvious to say that it means the same now."[3]

To determine philosophically which of the two views is the right one would be to invoke an endless debate which has had sufficient precedent ever since the adoption of that document. Thus, it is better to look to the historical development of the contract impairment clause, propounded by the highest court in the land, to ascertain the correctness of this decision.

Bank (1869), 1 S. C. 441; Henney Buggy Co. v. Higham (1897), 7 N. D. 45, 72 N. W. 911; Alton v. Taxicab Co. (1910), 66 Misc. 191, 121 N. Y. S. 271.

[1] Blaisdell v. Home Building and Loan Assn. (1934), 54 S. Ct. 231.

[2] Blaisdell v. Home Building and Loan Assn. (1934), 54 S. Ct. 231, 242.

[3] Blaisdell v. Home Building and Loan Assn. (1934), 54 S. Ct. 231, 244.

After the court in the celebrated Dartmouth College Case[4] held that a contract obligation was impaired by a subsequent law of the state, this clause of the Constitution[5] has gained prominence. And for the next fifty years, the court held that a contract obligation was impaired though the state passed its law in the exercise of the police power, or taxation, or eminent domain.[6] It was during this interim, that the court, on numerous occasions, held that state legislation extending the period of redemption of existing mortgages was an impairment of the obligation of contract and therefore void.[7] If we were to stop here and rely upon these cases as judicial precedent, our conclusion as to the correctness of this case would not be persuasive due to the uncomprehensive treatment of the subject. For in none of these cases was the question of the exercise by the state of its police power raised or discussed.

Finally, the court, by a number of cases, came to the position that all contracts are subject to the proper exercise of the police power by the state, as to public morals,[8] public health,[9] public safety,[10] and, lastly, as to economic social interests.[11] The exercise of the police power is not an impairment of the obligation of contract, but a limitation upon the guarantee against impairment set down in the contract clause of the Constitution. The police power is a power reserved to the state and one to which all contracts are made subject.[12] Chief Justice Hughes recognizes such a limitation, for, in the opinion of the instant case, he writes, "The economic interests of the state may justify the exercise of its continuing and dominating protective power notwithstanding interference with contracts."[13] Thus, in the light of judicial precedent, it is obvious that the construction placed upon the contract impairment clause by Chief Justice Hughes is correct, and that Justice Sutherland's contention is without foundation.

Having determined that contracts are made subject to the proper exercise of the police power by the state, the question now arises whether this legislation was a proper exercise of that power? The declaration by the legislature concerning public conditions is given great respect by the court

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[4] (1819), 4 Wheat 518.

[5] Art. I, Sec. 10—"No state shall pass any law impairing the obligation of contracts."

[6] Bridge Pro. v. Hoboken Co. (1864), 1 Wall. 116; Piqua Bank v. Knoop (1853), 16 How. 369; see H. E. Willis, Some Conflicting Decisions of the United States Supreme Court (1927), 13 Va. L. Rev. 155.

[7] Bonson v. Kinzie (1843), 1 How. 311; Howard v. Bugbee (1860), 24 How. 461; Edwards v. Kearzey (1877), 96 U. S. 595.

[8] Stone v. Mississippi (1879), 101 U. S. 746.

[9] Butchers, etc. Co. v. Crecent City Co. (1883), 111 U. S. 746; Block v. Hirsh (1921), 256 U. S. 135; Marcus Brown Holding Co. v. Feldman (1921), 256 U. S. 170.

[10] Texas, etc. Co. v. Miller (1911), 221 U. S. 408; New Orleans v. Louisiana Light Co. (1885), 115 U. S. 650; Atlantic Coast Line Ry. Co. v. Goldsboro (1913), 232 U. S. 548.

[11] Illinois Central Ry. Co. v. Illinois (1892), 146 U. S. 387; Manigault v. Springs (1905), 199 U. S. 473; Hudson County Water Co. v. McCarter (1908), 209 U. S. 349; see H. E. Willis, Some Conflicting Decisions of the United States Supreme Court (1927), 13 Va. L. Rev. 155.

[12] Atlantic Coast Line Ry. Co. v. Goldsboro (1913), 232 U. S. 548; 44 S. Ct. 405; People v. La Fetra (1921), 230 N. Y. 429, 130 N. E. 601; Gultag v. Shatzkin (1921), 230 N. Y. 647, 130 N. E. 929.

[13] Blaisdell v. Home Building and Loan Assn. (1934), 54 S. Ct. 231, 239.

insomuch as the court recognizes that it is the duty of the legislature to know of such conditions.[14] However, such declaration by the legislature is always subject to judicial review.[15] In the present case, the legislature declared that a public economic emergency existed in Minnesota and that it was deemed imperative to pass this legislation for the public good.[16] And the United States Supreme Court, after noting that the legislation was temporary in character and that it was limited to the exigency which called it forth, upheld the act as a proper exercise of the police power by that state, due to the economic emergency existing in that state.

The Court is very careful to point out that the emergency does not give the state the power to pass such a law but only creates the occasion for the exercise of its inherent police power; Chief Justice Hughes saying, "While emergency does not create power, emergency may furnish the occasion for the exercise of that power. 'Altho an emergency may not call into life a power which has never lived, nevertheless emergency may afford a reason for the exercise of a living power already enjoyed.' Wilson v. New, 243 U. S. 332, 348, 37 S. Ct. 298, 302."[17]

Judicial determination of what is a proper exercise of the police power by a state involves a balancing of social interests. For here, on the one hand, is the social interest in the security of contract obligations; while on the other, is the social interest in our economic social structure. Thus the court will declare legislation constitutional or unconstitutional, depending on which of the two social interests, in its estimation, weighs the heavier. Such determination is largely a matter of judicial discretion, and so in many cases, altho you or I might personally disagree with the result, yet we cannot adversely criticize the decision, it being a matter which reasonable men might rightfully reach opposite results. Nevertheless, there may be other cases, in which the court has abused its sound discretion and reached a result which is preposterous in the light of the circumstances; then, I think, it is possible to call the decision erroneous. It seems that the particular case under discussion falls within the first group, and that it would not be fitting for the writer to criticize adversely the discretion of the court where it has been so carefully invoked.

S. E. M.

CORPORATE REORGANIZATIONS—CAN SECURITIES OF THE NEW CORPORATION BE FORCED ON RECALCITRANT CREDITORS?—The reorganization plan submitted in the recent Coriell case provided that all the assets of the

[14] Block v. Hirsh (1921), 256 U. S. 135, 154; People v. La Fetra (1921), 230 N. Y. 429, 440, 130 N. E. 601.

[15] Chastleton Corp. v. Sinclair (1924), 264 U. S. 543, 44 S. Ct. 405, reversing (1923), 290 Fed. 348; Johnson v. Jones (1925), 48 S. D. 260, 204 S. W. 15.

[16] Preamble of the act after setting forth the conditions in Minnesota at that time, reads, "Whereas, it is believed, and the Legislature of Minnesota hereby declares its belief, that the conditions existing as hereinbefore set forth has created an emergency of such nature that justifies and validates legislation for the extension of the time of redemption from mortgage foreclosure and execution sales and other relief of a like character; and Whereas, The State of Minnesota possesses the right under its police power to declare a state of emergency to exist, and Whereas, the inherent and fundamental purposes of our government is to safeguard the public and promote the general welfare of the people, etc."

[17] Blaisdell v. Home Building and Loan Assn. (1934), 54 S. Ct. 231, 235.