Constitutional Law--Contract Clause-Emergency Legislation

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He believed in the "oughtness" of the law.

Many more like these few excerpts from his wisdom might be given, but these are here set down "in order that we may remember all that buffoons forget." He did not believe in wild swings of the pendulum because he once said, "Historic continuity with the past is not a duty, it is only a necessity." But he did believe that the past is not the present nor the present the future.

He once wrote to a Hoosier friend of mine, Oswald Ryan, of the Federal Power Commission:

"Life is a romantic business. It is painting a picture, not doing a sum; but you have to make the romance. And it will come to the question, How much fire have you in your belly?"

As he once said of an associate who had passed on, so we may say of him:

"Sooner or later the race of men will die, but we demand an external record. We have it. What we have done is woven forever in the great vibrating web of the world. The eye that can read the import of its motion can decipher the story of all our deeds, of all our thoughts. To that eye I am content to leave the recognition and memory of this great head and heart."

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**RECENT CASE NOTES**

**Constitutional Law—Contract Clause—Emergency Legislation.** Thomas, by garnishment proceedings, impressed a lien upon funds payable to Mrs. Worthen as beneficiary of a life insurance policy carried by her deceased husband. Garnishment was taken in satisfaction of a judgment debt upon a contract between Mrs. Worthen and Thomas. Subsequent to imposition of the lien, the Arkansas legislature enacted an exemption of money paid or payable to beneficiaries under insurance policies from seizure through the judicial process for the amortization of any contract debt. Held, The statute is unconstitutional as a civil, retroactive law transgressing the constitutional prohibition that no state shall pass any law impairing the obligation of a contract.¹

The contract clause was conceived as a constitutional subsidy to the infant credit structure of these United States. It was a permanent protest against those legislative schemes for the obliteration of debts which issued from the states during the depressed epoch that followed the War of Independence. Both the historical justification presented by Mr. Justice Marshall² and the political argument of the Federalist Papers³ reveal that, "The power of changing the relative situation of debtor and creditor, of interfering with contracts . . . had been used to such an excess by the state legislatures, as to break in upon the ordinary intercourse of society, and destroy all confidence between man and man".⁴ It follows that the social interest which the contract clause protects is the stability of promises, the "private faith" and confidence that is credit. No amount of legal sanction, however, can insure the fulfillment of contractual obligation.

¹ W. B. Worthen Co. v. Thomas (1934), 292 U. S. 426.
² Sturges v. Crowninshield (1819), 4 Wheat. 122.
³ Madison, Federalist Papers, No. 44.
⁴ Ogden v. Saunders (1827), 12 Wheat. 213.
Our present day credit structure, burdened by an indebtedness of two hundred fifty billions of dollars, finds little support in its constitutional guaranty. Serious impairment of security valuations and the inability of debtors to fulfill their obligations have harassed both debtor and creditor during this depression. Faced with losing their homes and farms through foreclosure sales, organized debtors have employed threats of force to restrict the bidding to nominal sums at these sales. It is not strange, therefore, that the stubborn demands of the debtor for relaxed obligations have found expression in the enactments of many states declaring emergency moratoria.

With the decision of the celebrated Minnesota mortgage moratorium case, upholding the constitutionality of a statute hedged about with protective assurances to the creditor, there came a judicial recognition that social interests do exist which are paramount to contract rights. There was the accompanying limitation, however, that the statute be cautiously drafted not to exceed the minimum of invasion necessary to sustain that interest. The Arkansas statute, here under investigation, cannot fairly be said to have limited its operative effect to the ambit of the interest sought to be protected. By withdrawing the only appropriate remedy of the creditor in this case, the statute did nothing less than make for legalized repudiation.

Although a change in available remedies which does not diminish the substantial value of the right is constitutional, a denial of remedy has always brought a judicial interdiction. Mr. Justice Marshall, in Sturgess v. Crowninshield, gave a full expansion to this principle when he said that contracts are made with a view to satisfaction from future acquisitions. Therefore, those classes of property subject to the remedial process at the time of the making of the contract remain subject thereto until the contract, by some manner, is discharged.

As denial of remedy is unconstitutional, contractual obligations remain subject only to an exercise of the sovereign residuary power of the state. Those decisions sustaining the operation of the police power have often seized upon Mr. Justice Marshall's presumption, "that the parties contracted with a view to future acquisitions", twisting it in favor of social control. They quote the formula that the "contract must be deemed to have been

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10 (1819), 4 Wheat. 122.

11 Constitution of the United States, 10th Amendment.
made in contemplation of the regulatory authority of the state". It appears more in accord with realism to divorce the police power as a method of social control from fictional presumption that the parties contemplate a measure of restraint. An honest view brings the simple admission that the state is privileged to make a reasonable invasion of contractual rights for a proper objective.

A widening galaxy of interests has served to justify the exercise of this residuary power. The social interest in public health, safety, morals, economic security and progress, social security, and a more or less vague general welfare have individually and in union supported legislative interference with contract rights. In view of estimations that as great as eighty per cent of those persons leaving estates do so only by way of insurance and the general knowledge that the income derived from money thus bequeathed cannot more than provide a subsistence standard in the average case, it is patent that recognized social interests should be invoked to exempt dependents. The Arkansas statute, however, did not limit the exemption to dependents; its preamble did not sufficiently identify the social policy; and, there was no accompanying limitation as to the amount of money insulated. Furthermore, there was no restriction of operation to the duration of the emergency which it loosely sought to alleviate. With tactful gesture, the legislature might well have given the courts a measure of discretion in its application. The antithesis of this careless type of draftsmanship is found in the New York Emergency Rent laws and in the Minnesota mortgage moratorium statute. In view of these statutory differences it is difficult to accept the inference of Mr. Justice Sutherland, who spoke for three other justices in his concurring opinion, that the instant decision in effect repudiates emergency legislation heretofore declared constitutional. Mr. Charles Bunn, in a recent article, has pointed to the paradox that contracts have been impaired by constitutional legislation but they have been impaired only to save them. Thus, stay legislation has maintained the security interest of mortgagees from repudiation by force; and, moratory measures, which have temporarily impaired the contract right to loans on insurance policies, have saved the ultimate right of the beneficiary under the insurance contract, thereby saving insurance as an institution. A complete denial of remedy certainly

12 Sproles v. Binford (1931), 286 U. S. 374; Home Bldg. & Loan Assn. v. Blaisdell (1934), 290 U. S. 398. "Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate for the legal order."

13 Manigault v. Springs (1905), 199 U. S. 473; Atlantic Coast Line Ry. Co. v. Goldsboro (1913), 232 U. S. 48—"Contract and property rights are held subject to a fair exercise of the police power"; Hudson County Water Co. v. McCarter (1908), 209 U. S. 349—"One whose rights, such as they are, are subject to State restriction, cannot remove them from the power of the State by making a contract about them. The contract will carry with it the infirmity of the subject matter."


is not a device to save the institution of credit. Until the credit structure is in imminent danger of collapse and unless, at that time, the interest in economic security clearly demands a leveling of debts, it is futile to predict that economic adjustments will be had under color of denied remedy. A more equitable distribution of loss would undoubtedly ensue. Yet, after examining "the judicial pattern" which the modern cases have set out, it is impossible to speak with positive assurance of the static contract in a dynamic world.21

J. F. T.

Constitutional Law—Indirect Criminal Contempt—Publications. Appellant editor was charged with publishing contemptuous articles relating to the past appointment by the court of a receiver for a bank. Held, publications regarding matter which has been finally adjudicated so that carrying out of the court's judgment cannot be obstructed are not contempt and cannot be summarily punished unless such publications obstruct, impede, or interfere with, or embarrass the court in the administration of justice in future stages of the case.1

Criminal contempts of court embrace all acts committed against the majesty of the law or the dignity of the court, and the primary purpose of the punishment of offenders is the vindication of the public authority of which the court is the embodiment.2 Criminal contempt is to be distinguished from civil contempt. The latter is violation of an order or decree of a court made for the benefit of the opposing party. It is not an offense so much against the dignity of the court as against the party.3 Criminal contempts are classified as either direct or indirect. A contempt is direct when committed in the presence of the court, or so near to the court as to interrupt the proceedings thereof; and such contempts are punished in a summary manner, without evidence, but upon view and personal knowledge of the presiding judge. That is, contempts of this sort may be punished by the same judge without a jury trial and without truth as a defense.4 The power of the courts summarily to punish their critics, curbing as it does the liberty of the press and freedom of speech, has been fruitful of controversy. However, it would seem that such power in the matter of direct contempts is clearly reasonable in the light of the necessity for it if litigation is to continue.5

Contempts are indirect or constructive when they are done, not in the presence of the court, but tend by their operation to interrupt, obstruct, or embarrass the due administration of justice.6 Such contempts may occur either when there is a case pending or when there is no case pending. A

21 See Willis, The Dartmouth College Case—Then and Now (1934) 19 St. Louis Law Review 183.
1 Nixon v. State (1935), 193 N. E. 591 (Ind.).
3 Ex parte Wright (1876), 65 Ind. 504; Anderson v. Indianapolis Drop Forging Co. (1904), 34 Ind. App. 100, 72 N. E. 277; Denny v. State (1932), 203 Ind. 682, 182 N. E. 313.
5 Hugh E. Willis, "Punishment for Contempt of Court," (1927) 2 Ind. L. J. 309.
6 Whittem v. State (1871), 36 Ind. 196; Ex parte Wright (1876), 65 Ind. 504; Dale v. State (1926), 198 Ind. 110, 150 N. E. 781.