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CONSTITUTIONAL LAW - DUE PROCESS - BANK RECEIVING DEPOSITS DURING INSOLVENCY

CONSTITUTIONAL LAW — DUE PROCESS — BANK RECEIVING DEPOSITS DURING INSOLVENCY — An Ohio statute [1] provided that an officer of a bank who received a deposit therein "when he has knowledge that it is insolvent" shall be subject to criminal liability. The defendant, a director of a state bank,[2] was indicted under the statute for receiving deposits therein knowing the bank to be insolvent. The court of appeals reversed a decision of the common pleas court dismissing the defendant. On appeal the defendant contended that the statute violated the due process clause of the Fourteenth Amendment of the Federal Constitution in that the use of the word "insolvent," without providing a definition thereof, rendered it vague, indefinite and uncertain. *Held*, the statute is constitutional. The word "insolvent" has a commonly accepted meaning and must be so construed in interpreting the statute. *Eastman v. State*, (Ohio 1936) 1 N. E. (2d) 140.

The decision in the *Connally* [3] case established the requirement of definiteness [4] in statutory standards as a doctrine of constitutional law when it con-

[1] 1 Ohio Gen. Code (Page 1926), § 710-174.

[2] The Ohio Supreme Court had previously decided in State v. Whitmore, 126 Ohio St. 381, 185 N. E. 347 (1933), that a director of a bank is an officer within the meaning of the statute and affirmed that decision in the principal case.

[3] Connally v. General Const. Co., 269 U. S. 385, 46 S. Ct. 126 (1926).

[4] The concept of indefiniteness as a ground for invalidity has developed from the rule of construction that penal statutes are to be construed strictly in favor of

cluded that a statute in terms "so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential" of due process.[5] The doctrine itself is so indefinite that it has been applied with little consistency by the different courts. The source of contradiction may be found in the manner in which the courts have approached the question. They have apparently demanded a standard determinable by reference to common experience,[6] yet decisions holding that common law generalizations are definite enough indicate that certainty to the judge trained in the common law is the real test.[7] Thus, where standards are established without precedent in the common law, disagreement is inevitable.[8] Although an emergency rent law prohibiting "unreasonable rents" was considered unobjectionable,[9] standards of "unreasonable prices," [10] "reasonable profits" [11] and "current rate of wages" [12] were found too vague to merit the same test. Since different standards have been applied to the term "insolvent," [13] it is argued that it is so nebulous that

the accused. For a discussion of uncertainty in statutes, see Aigler, "Legislation in Vague or General Terms," 21 MICH. L. REV. 831 (1923); 45 HARV. L. REV. 160 (1931). Also see Bandini Petroleum Co. v. Superior Court, 284 U. S. 8, 52 S. Ct. 103 (1931), and Champlin Refining Co. v. Corporation Comm., 286 U. S. 210, 52 S. Ct. 559 (1932).

[5] Connally v. General Const. Co., 269 U. S. 385 at 391, 465 S. Ct. 126 (1926). Courts expanded the limits of due process on the authority of older cases dealing with problems of construction. Louisville & N. R. R. v. Commonwealth, 99 Ky. 132, 35 S. W. 129 (1896). The objection of unconstitutionality was recognized by the Supreme Court for the first time in Waters-Pierce Oil Co. v. Texas, 212 U. S. 86, 29 S. Ct. 220 (1909), but the first Supreme Court decision adopting the position was International Harvester Co. v. Kentucky, 234 U. S. 216, 34 S. Ct. 853 (1914).

[6] See Nash v. United States, 229 U. S. 373, 33 S. Ct. 780 (1913).

[7] Nash v. United States, 229 U. S. 373, 33 S. Ct. 780 (1913); Stewart v. State, 4 Okla. Cr. 564, 109 P. 243 (1910).

[8] The decision of the Ohio Supreme Court in Ohio Automatic Sprinkler Co. v. Fender, 108 Ohio St. 149, 141 N. E. 269 (1923), overruling, after a change in personnel, its previous decision in Patten v. Aluminum Castings Co., 105 Ohio St. 1, 136 N. E. 426 (1922), that "suitable safeguards for dangerous machinery" was too indefinite, indicates the confusion.

[9] Levy Leasing Co. v. Siegel, 258 U. S. 242, 42 S. Ct. 289 (1922). Indefiniteness was restricted to criminal laws.

[10] United States v. Cohen Grocery Co., 255 U. S. 81, 41 S. Ct. 298 (1921); Small Co. v. American Sugar Refining Co., 267 U. S. 233, 45 S. Ct. 295 (1925).

[11] Cline v. Frink Dairy Co., 274 U. S. 445, 47 S. Ct. 681 (1927). The Colorado anti-trust law involved other uncertain factors as well.

[12] Connally v. General Const. Co., 269 U. S. 385, 46 S. Ct. 126 (1926).

[13] The Ohio statute furnishes no definition of what is meant by the term "insolvent" in relation to banks. 1 Ohio Gen. Code (Page 1926), § 710-174. The court in the instant case enumerates numerous definitions including that found in the Penal Code Chapter on Frauds, 2 Ohio Gen. Code (Page 1926), § 13108-1. There the following broad definition is employed with reference to the receipt of money or other property by an insolvent bank: "A person shall be deemed insolvent within the meaning of the act whenever the aggregate of his property shall not, at a fair valuation, be sufficient in amount to pay his debts."

an honest judgment may be tainted with criminality.[14] But the court in the instant case concludes that the commonly accepted meaning denotes insufficiency of the entire property and assets of an individual to pay his debts.[15] Certainly the term is no more indefinite than a host of time-honored common-law phrases, successfully applied by the courts. And it is conceivable that the question is academic, for in practice a criminal suit is probably brought only when the bank is found to have been hopelessly insolvent. The fact that statutes with similar provisions have been administered satisfactorily in a majority of the states should be entitled to some weight.[16] Condemnation of such statutes as a severe burden on honest bankers during a period of economic depression has not been lacking; [17] nevertheless it is for the legislature to determine not only the need for such legislation but the means best suited to achieve the desired end, and the courts should hesitate to substitute their views of definiteness for that of the legislatures.

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[14] See 43 YALE L. J. 1304 (1934); 47 HARV. L. REV. 1428 (1934).

[15] The court is following the more popular "liberal" rule. See Gass v. State, 130 Tenn. 581, 172 S. W. 305 (1914); Ellis v. State, 138 Wis. 513, 119 N. W. 1110 (1910). See note in 81 A. L. R. 1160 (1932). In a minority of jurisdictions insolvency is defined as "inability to meet demands in the ordinary course of business." See State v. Kiefer, 183 Iowa 319 at 337-338, 163 N. W. 698 (1918).

[16] In thirty-nine jurisdictions today it is a crime for directors to receive deposits with knowledge of the bank's insolvency. See 47 HARV. L. REV. 1428 (1934).

[17] See Easton v. Iowa, 188 U. S. 220, 23 S. Ct. 288 (1903); 43 YALE L. J. 1304 (1934).