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CONSTITUTIONAL LAW - IMPAIRMENT OF OBLIGATION OF CONTRACTS CHANGE IN STATUTORY REGULATIONS FOR WITHDRAWAL AND PAYMENT OF BUILDING AND LOAN ASSOCIATION MEMBERS

CONSTITUTIONAL LAW — IMPAIRMENT OF OBLIGATION OF CONTRACTS — CHANGE IN STATUTORY REGULATIONS FOR WITHDRAWAL AND PAYMENT OF BUILDING AND LOAN ASSOCIATION MEMBERS — Plaintiff became a member stockholder of the defendant building and loan association under a general Louisiana statute authorizing such corporations.[1] This law provided for withdrawal of members, setting up a fund for payment to be made in order of notice of intent to withdraw. Plaintiff placed his name on the list, but before payment the statute in question was enacted and payment was refused. This statute [2] abolished the liquidation fund and changed the order of withdrawal to a payment of 25 per cent of the claim at the head of the list, the claimant's name to be then placed at the bottom of the list as to the balance. *Held*, the statute is unconstitutional as depriving the plaintiff of property without due process of law and impairing the obligation of contracts. *Treigle v. Acme Homestead Assn.*, 297 U. S. 189, 56 S. Ct. 408 (1936), rehearing denied 297 U. S. 728, 56 S. Ct. 587 (1936).

The state supreme court recognized the impairment of plaintiff's contract rights but upheld the enactment upon two grounds: [3] (1) Building and loan associations are quasi-public institutions which may be regulated in the public

[1] La. Laws (1902), No. 120, p. 195, as amended by La. Laws (1916), No. 280, p. 568.

[2] La. Laws (1932), No. 140, p. 454.

[3] Treigle v. Acme Homestead Assn., 181 La. 941, 160 So. 637 (1935).

interest. (2) The existing economic emergency was forcing many withdrawals and imperiling the financial stability of these associations; this statute had a valid purpose in preserving such organizations, and an exercise of the police power justifies an impairment of contracts. The United States Supreme Court held that the act did not purport to deal with an emergency and hence could not be upheld upon that ground. Legislation may not interfere with purely private rights on a pretext of public necessity. This law did nothing to preserve the assets of the corporation, but merely concerns the rights of the members inter se. While obligations must yield to a proper exercise of the police power, it must be exercised for an end which is in fact public and the means used must be reasonably adapted to accomplish that end.[4] There is no doubt but that building and loan associations are "quasi-public" institutions and as such are subject to legislative control.[5] While ordinarily general statutes allowing states to alter or amend corporate charters do not permit the impairment of contracts between stockholders and the corporation,[6] yet, in the instant case, the statute can perhaps be justified on the ground of regulation alone. Authorities indicate that the clause in the Federal Constitution forbidding impairment of contracts[7] does protect a contract made under an original statute providing for membership in a corporation as the law enters and becomes a provision of that contract.[8] However, the right of withdrawal is peculiar to building and loan associations,[9] and is set up by organic law as a result of a certain legislative policy.[10] As such it may be doubted as to whether it has the characteristic of a conventional agreement or a vested right free from constitutional guarantees.[11] May not, then, such "contracts" be abrogated by a change in such policy as evidenced by legislative enactment? Of course, what is a reasonable exercise of the police power is open to interpretation in the individual case. While it may be that the measure attempted here would accomplish its purpose—to

[4] Nobel State Bank v. Haskell, 219 U. S. 104, 31 S. Ct. 186 (1911); California Reduction Co. v. Sanitary Reduction Works, 199 U. S. 306, 26 S. Ct. 100 (1905).

[5] Hopkins Fed. Savings & Loan Assn. v. Cleary, 296 U. S. 315, 56 S. Ct. 235 (1935); Sullivan v. Shaw, (D. C. Cal. 1934) 6 F. Supp. 112; State v. Merrill, 83 Wash. 8, 144 P. 925 (1914); State ex rel. Crabbe v. Massillon Savings & Loan Co., 110 Ohio St. 320, 143 N. E. 894 (1924); 3 R. C. L. 379 (1914).

[6] Yoakum v. Providence Biltmore Hotel Co., (D. C. R. I. 1929) 34 F. (2d) 533.

[7] Constitution, Art. 1, § 10.

[8] Hawthorne v. Calef, 2 Wall. (69 U. S.) 10 (1864); McCracken v. Hayward, 2 How. (43 U. S.) 608 (1844); Coombes v. Getz, 285 U. S. 434, 52 S. Ct. 435 (1932). But see Kauper, "What Is a 'Contract' under the Contracts Clause of the Federal Constitution?" 31 MICH. L. REV. 187 (1932).

[9] Latimer v. Equitable Loan & Investment Co., (C. C. Mo. 1897) 81 F. 776, quoting THOMPSON, BUILDING AND LOAN ASSOCIATIONS 64 (1895): "A distinguishing difference between the stockholders of a building association and the stockholders in an ordinary private corporation is the right of the former, upon giving notice, to terminate future liability on his stock."

[10] Adams v. Union Nat. Savings & Loan Assn., 55 Ind. App. 676, 100 N. E. 389, 102 N. E. 145 (1913).

[11] Fornataro v. Atlantic Coast Building & Loan Assn., 10 N. J. Misc. 1248, 163 A. 240 (1932).

stabilize the financial conditions of these associations at least by hindering "runs" made by the withdrawing members [12]—and while this view may be strengthened by a realization of the great weight usually given to the legislative determination of matters pertaining to the policy and expediency of statutes, especially where the state supreme court has affirmed that policy,[13] yet the severe penalty placed upon the contracting members seemingly justifies the ultimate decision. Also perhaps a different result could be expected in view of decisions upholding recent "emergency legislation" impairing contract rights.[14] While the Court recognized the liberal doctrine of the *Blaisdell* case,[15] it refused to consider this legislation as an emergency measure on apparently valid grounds. "We may take judicial notice of the financial emergency . . . but we may not read into the statute a limited duration that is neither expressed nor implied therein nor do we subscribe the intimation that an emergency automatically lifts all constitutional restraints." [16]

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[12] Fornataro v. Atlantic Coast Building & Loan Assn., 10 N. J. Misc. 1248, 163 A. 240 (1932), noted 81 UNIV. PA. L. REV. 631 (1933).

[13] Marcus Brown Holding Co. v. Feldman, (D. C. N. Y. 1920) 269 F. 306, 314, affd. 256 U. S. 170, 41 S. Ct. 465 (1921); Adkins v. Children's Hospital, 261 U. S. 525, 43 S. Ct. 394 (1922); Hackler v. Farm & Home Savings & Loan Assn., (D. C. Mo. 1934) 6 F. Supp. 610; United States Building & Loan Assn. v. McClelland, (D. C. Colo. 1934) 6 F. Supp. 299; Otis v. Parker, 187 U. S. 606, 23 S. Ct. 168 (1902).

[14] Home Building & Loan Assn. v. Blaisdell, 290 U. S. 398, 54 S. Ct. 231 (1933); Dunn v. Love, 172 Miss. 342, 155 So. 331 (1934); State ex rel. Standard Investment Co. v. Erickson, 191 Minn. 188, 253 N. W. 529 (1934). See Bunn, "The Impairment of Contracts: Mortgage and Insurance Moratoria," 1 UNIV. CHI. L. REV. 249 (1933); also 88 A. L. R. 1519 (1934); 96 A. L. R. 312 (1935). Other illustrations of police power: Holland v. Nakdimen, 177 Ark. 920, 9 S. W. (2d) 307 (1928); Manigault v. Springs, 199 U. S. 473, 26 S. Ct. 127 (1905); Block v. Hirsh, 256 U. S. 135, 41 S. Ct. 458 (1921).

[15] Home Building & Loan Assn. v. Blaisdell, 290 U. S. 398, 54 S. Ct. 231 (1933).

[16] Vanderbilt v. Brunton Piano Co., 111 N. J. L. 596 at 603, 169 A. 177 (1933).