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BANKS AND BANKING-CONSTITUTIONAL VALIDITY OF STATUTES ALLOWING REORGANIZATION OF INSOLVENT BANK

BANKS AND BANKING—CONSTITUTIONAL VALIDITY OF STATUTES ALLOWING REORGANIZATION OF INSOLVENT BANKS—A statute of Mississippi permitted the reopening of a closed bank, for the purpose of paying off creditors, upon terms proposed by three-fourths of the bank's creditors. The statute required that the proposition of the creditors be approved by the state superintendent of banks and confirmed by the court of chancery. Dissenting creditors opposed such a plan on the ground that the statute was unconstitutional because it impaired the obligation of contracts, and was contrary to the due process clause of the Federal Constitution. The court *held* that the statute was valid, that all it did was to change the method of liquidation. Property was not taken without due process since all creditors were in fact to be benefited by the plan. The fact that causes of action in favor of the dissenting creditors against the shareholders were extinguished in return for contributions of capital was not impairment of contract obligations since the causes of action were in the state superintendent of banks, who under the insolvency laws could have compromised the claims and released them with the approval of the court. Relinquishment of the claims under the statute amounted to the same thing since the plan of reorganization must be approved by the court of chancery. *Doty v. Love*, 295 U. S. 64, 55 S. Ct. 558 (1935).

The reopened bank, said the court in the principal case, takes the place of the superintendent of banking for the purpose of devoting the assets to the payment of debts. The Constitution does not give the right of liquidation at the hands of a state official. And this seems to be the general attitude of the courts, which base their decisions on arguments of public policy. Mr. Justice Sutherland, in writing the opinion in a case under Section 77B of the Bankruptcy Act which allows reorganization in much the same manner as the statute in the principal case, adopts from *Canada Southern R. R. v. Gebhard*[1] the theory that these schemes are like composition agreements and quotes that case to the effect that: "In no just sense do such governmental regulations deprive a person of his property without due process of law. They simply require each individual to so conduct himself for the general good as not unnecessarily to injure another. . . . Bankrupt laws, whatever may be the form they assume, are of that character. . . . [The act] is in entire harmony with the spirit of bankrupt laws."[2] As any exercise of the bank-

[1] 109 U. S. 527 at 536, 539, 3 S. Ct. 363 (1883).

[2] Continental Illinois Nat. Bank & Trust Co. v. Chicago, R. I. & P. Ry., 294 U. S. 648 at 673-674, 55 S. Ct. 595 at 605 (1935); Grand Boulevard Investment Co. v. Strauss, (C. C. A. 8th, 1935) 78 F. (2d) 180; Baumlisberger v. Dorman, 259 Ky. 37, 81 S. W. (2d) 876 (1935).

ruptcy power impairs the obligation of contracts, such impairment is not to be taken as in itself a denial of due process, but the provisions of the act must be so arbitrary and unreasonable as to be "'incompatible with fundamental law.'"[3] The requirement that creditors scale their debts in accord with a plan to be accepted by two-thirds of them is not that unreasonable. Realistically no property is taken from these creditors, their claims have already depreciated, and all they are asked to do is to accept the pro rata share quietly so as not to jeopardize the rights of other creditors by insisting on foreclosure. What they give up is merely the arbitrary power to frustrate the wishes of the majority.[4] In connection with banks public interest is especially involved, and the courts are quick to hold these reorganization statutes valid in bank cases. The police power of the state to enact insolvency laws is presupposed by the policy of protecting contracts against impairment.[5] Contrary to this trend we find cases holding that non-assenting creditors whose claims existed before the reorganization statute went into effect are not bound[6]—that any encroachment in any respect on an obligation is an impairment of contract.[7] But the better view and the weight of authority seem to be decidedly the other way, including creditors who became such before as well as after enactment of the reorganization statute on the ground that they are charged with notice that a corporation is subject to insolvency laws.[8] The cases do not discuss the problem of non-assenting non-resident creditors, probably because the point was not raised. If it were, it might perhaps be disposed of in the same way.[9]

J. J. DE L.

[3] Campbell v. Alleghany Corp., (C. C. A. 4th, 1935) 75 F. (2d) 947 at 953.

[4] Campbell v. Alleghany Corp., (C. C. A. 4th, 1935) 75 F. (2d) 947.

[5] Priest v. Whitney Loan & Trust Co., (Iowa 1935) 261 N. W. 374; Wausau Malt Products Co. v. Citizens' State Bank, 214 Wis. 654, 254 N. W. 379 (1934); Re Citizens' Savings Bank of Pemberville, 30 Ohio N. P. (N. S.) 291 (1933).

[6] Hagen v. First State Bank, 180 Minn. 113, 230 N. W. 267 (1930).

[7] Engelcke v. Farmers State Bank, 61 S. D. 92, 246 N. W. 288 (1932); Re Farmers' Exch. Bank, 55 S. D. 190, 225 N. W. 307 (1929); Bush v. Lien, 57 S. D. 501, 234 N. W. 29 (1930).

[8] Timmer v. Hardwick State Bank, (Minn. 1935) 261 N. W. 456; Milner v. Gibson, 249 Ky. 594, 61 S. W. (2d) 273 (1933); Sweeny v. Jefferson County Bank's Reorganization Committee, 250 Ky. 187, 61 S. W. (2d) 1090 (1933); Timmons v. People's Trust Co., 114 W. Va. 618, 173 S. E. 79 (1934); Eskew v. Buckhannon Bank, (W. Va. 1934) 177 S. E. 433; 92 A. L. R. 1337 (1934); 96 A. L. R. 1445 (1935).

[9] See 30 MICH. L. REV. 934 (1932) where the possibility is recognized that insolvency laws may not apply to nonresident nonassenting creditors because the laws of a state can have no extraterritorial effect, yet these nonresident creditors might be bound on the theory that their rights must be subservient to the rules of sound business policy.