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CONSTITUTIONAL LAW-POLICE POWER -VALIDITY OF COMPULSORY UNEMPLOYMENT INSURANCE ACT

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CONSTITUTIONAL LAW — POLICE POWER — VALIDITY OF COMPULSORY UNEMPLOYMENT INSURANCE ACT — Complainants asked for a declaratory judgment that the New York Unemployment Insurance Act[1] is unconstitutional. They contended that the law, providing for the payment of limited unemployment benefits out of a fund raised by a uniform payroll tax imposed on all employers, takes property without due process of law. *Held*, that the law is valid, violating neither the state nor the Federal Constitution. *W. H. H. Chamberlain, Inc. v. Andrews*, 271 N. Y. 1, 2 N. E. (2d) 22 (1936).

This is the first occasion on which a state court of last resort has been called upon to consider the validity of a compulsory system of unemployment insurance. In deciding that the New York law is constitutional, the Court of Appeals does not make clear whether the regulation is justified as an exercise of the police power of the state, or as a tax measure, but the first mentioned power receives the more detailed consideration. It is established beyond all doubt that the "due process" clauses of the state and Federal Constitutions do not offer an absolute guaranty of rights in private property,[2] and that a proper exercise of the police power of a state will justify the taking of property or the limitation of its use in private hands.[3] The extent to which the state can go in invading private rights and yet keep its exercise of power "proper" depends upon the particular facts of each case.[4] To justify the action the facts must reveal that there exists an important public need for such action, and also that the legislature has acted in a way reasonably and fairly calculated to meet the problem.[5] In the present case there is no difficulty in establishing a pressing need.[6] The existence of unemployment and its disastrous effects on both workers and employers are so well known that it is difficult to understand the suggestion of the dissenting judges that the law in question merely favors the unemployed as a class. The real question is whether the technique adopted by the legislature is a fair and reasonable one. Complaints insist that it is arbitrary and unreasonable to make them pay the cost of conditions which they, as individual employers, do not create. The "pooling" feature, distinguishing the law from the Wisconsin type of law that requires each employer to set aside an

[1] N. Y. Laws (1935), c. 468; New York Labor Law, art. 18; N. Y. Consol. Laws (McKinney, 1935 Supp.), § 500 et seq. For an analysis of the provisions of the act, see Gray, "Unemployment Insurance in the State of New York," 13 N. Y. UNIV. L. Q. REV. 19 (1935).

[2] Barbier v. Connolly, 113 U. S. 27, 5 S. Ct. 357 (1885); Commonwealth v. Alger, 61 Mass. 53 (1851); and Lambert, "Compulsory Unemployment Insurance and Due Process of Law," 7 Wis. L. Rev. 146 (1932).

[3] See 4 FORDHAM L. REV. 485 (1935) and cases there cited.

[4] See opinions of Holmes, J., in Hudson County Water Co. v. McCarter, 209 U. S. 349, 28 S. Ct. 529 (1908); and Stone v. Mississippi, 101 U. S. 814, 25 L. Ed. 1079 (1880).

[5] For the historical development of such a test, see Cushman, "The Social and Economic Interpretation of the Fourteenth Amendment," 20 MICH. L. REV. 737 (1922).

[6] Lambert, "Compulsory Unemployment Insurance and Due Process of Law," 7 WIS. L. REV. 146 (1932).

individual reserve to safeguard its own employees,[7] makes it clear that liability is being imposed even in the absence of fault. There is no provision by which any employer can limit his liability by revising production methods.[8] Yet the court properly decides that these facts do not justify a conclusion that the legislature has acted unreasonably. It cannot be said that it is entirely unreasonable to believe that such a measure will to a certain extent meet the state's problem, providing for the unemployed and, by stabilizing purchasing power somewhat, tending to remove certain causes of unemployment. Nor does it appear that an unreasonable burden is placed upon the employers, for the tax, being on all alike, becomes a cost of production, to be passed on to the consuming public.[9] And "liability without fault" can hardly be called unreasonable per se in view of the many decisions sustaining the imposition of such burdens.[10] The court finds ample support for the essential features of the law in the almost unanimous approval given by the courts to compulsory Workmen's Compensation Acts,[11] even though the rather incidental benefits which each employer receives from improved conditions is hardly as direct a "quid pro quo" as the release from suits by injured employees that features the Compensation Acts.[12] The bank deposit guaranty laws have also been sustained by the United States Supreme Court,[13] and it is difficult to distinguish the present legislation in any significant respect.[14] Rather self-evident practical considerations keep the Court from declaring unreasonable the provision limiting operation of the act to those employing at least four people,[15] and the provision for a longer waiting period

[7] Gray, "Unemployment Insurance in the State of New York," 13 N. Y. UNIV. L. Q. REV. 19 (1935).

[8] For an opinion of a lower court holding this act invalid for the reasons here suggested, see Associated Industries v. Dept. of Labor of State of New York, (N. Y. Sup. Ct. 1936) 286 N. Y. S. 459.

[9] Lambert, "Compulsory Unemployment Insurance and Due Process of Law," 7 WIS. L. REV. 146 at 149 (1932).

[10] Cases sustaining tax on dog owners to raise funds to repay farmers whose sheep are harmed by dogs: Longyear v. Buck, 83 Mich. 236, 47 N. W. 234 (1890); Van Horn v. People, 46 Mich. 183, 9 N. W. 246 (1881); McGlone v. Womack, 129 Ky. 274, 111 S. W. 688 (1908), with a vigorous dissent; Mitchell v. Williams, 27 Ind. 62 (1866). Sustaining laws that make railroads liable for fire damage in absence of negligence: St. Louis & S. F. Ry. v. Mathews, 165 U. S. 1, 17 S. Ct. 243 (1896). Sustaining laws that tax fire insurance agents to raise funds for the care of sick and disabled firemen: Firemen's Benevolent Assn. v. Lounsbury, 21 Ill. 510 (1859). Also see, New England Divisions Case, 261 U. S. 184, 43 S. Ct. 270 (1922), and Dayton-Goose Creek Ry. v. United States, 263 U. S. 456, 44 S. Ct. 169 (1923), and the dissenting opinion in Railroad Retirement Board v. Alton Ry., 295 U. S. 330, 55 S. Ct. 758 (1935).

[11] Jensen v. Southern Pacific Ry., 215 N. Y. 514, 109 N. E. 600 (1915); State ex rel. Davis-Smith Co. v. Clausen, 65 Wash. 156, 117 P. 1101 (1911); Mountain Timber Co. v. Washington, 243 U. S. 219, 37 S. Ct. 260 (1916). For an early case *contra*, see Ives v. South Buffalo Ry., 201 N. Y. 271, 94 N. E. 431 (1911).

[12] 4 FORDHAM L. REV. 485 (1935); and Hohman, "An Economic Analysis of Unemployment Insurance," 30 ILL. L. REV. 178 (1935).

[13] Noble State Bank v. Haskell, 219 U. S. 104, 31 S. Ct. 186 1910).

[14] DOUGLAS, STANDARDS OF UNEMPLOYMENT INSURANCE 195 (1933).

[15] Jeffrey Mfg. Co. v. Blagg, 235 U. S. 571, 35 S. Ct. 167 (1914).

in cases of unemployment due to industrial dispute. Greater experience with unemployment insurance may justify different conclusions, but the facts as they appear at present would hardly justify a decision by a court that this sort of law is so arbitrary and unreasonable that it is not a proper exercise of the police power.[16]

L. I. W.

[16] State ex rel. Davis-Smith Co. v. Clausen, 65 Wash. 156 at 195, 117 P. 1101 (1911). For an analysis of decisions seeming to point in the opposite direction, see Lambert, "Compulsory Unemployment Insurance and Due Process of Law," 7 WIS. L. REV. 146 (1932); Cousens, "The Constitutional Background of Unemployment Insurance," 20 VA. L. REV. 497 (1934); and 10 ST. JOHN'S L. REV. 147 (1935).