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CONSTITUTIONAL LAW -VALIDITY OF STATE MORTGAGE MORATORIUM STATUTES - EFFECT OF EMERGENCY

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CONSTITUTIONAL LAW — VALIDITY OF STATE MORTGAGE MORATORIUM STATUTES — EFFECT OF EMERGENCY — A Maryland statute¹ provided that mortgagees holding less than a 25 per cent interest in a mortgage could not have recourse to summary remedies for sale of mortgaged property during an emergency period declared to exist until June 1, 1935. Plaintiff, the holder of such an interest in a mortgage providing for summary proceedings for sale upon default, had the right to foreclose in this manner,² mortgagor having defaulted, if the statute did not bar his action. *Held*, the remedies denied were so interwoven with the rights contracted for that the abolition of such remedies impaired the right, and is repugnant to the contracts clause of the federal Constitution.³ *United States Mortgage Co. v. Matthews*, (Md. 1934) 173 Atl. 903.

Despite its language, the contracts clause of the federal Constitution has never been construed as a bar to all changes in contract relations between individuals.⁴ A state may change the remedy if the alteration does not materially

¹ Secs. 720 and 720A, art. 4, Code of Public Local Laws (1930 ed.), title "Baltimore City," subtitle "Mortgages." Section 720A was added by enactment of c. 56, Acts 1933 (Ex. Sess.). Section 3 of c. 56 declares the law to be an emergency provision, and necessary for the immediate preservation of the public health and safety.

² Statute so interpreted by a Maryland leading case, *Richardson v. Owings*, 86 Md. 663, 39 Atl. 100 (1898).

³ United States Constitution, Art. I, sec. 10, cl. 1.

⁴ *Sturges v. Crowninshield*, 4 Wheat. (17 U. S.) 122 (1819); *Bronson v. Kinzie*, 1 How. (42 U. S.) 311 (1843); *Green v. Biddle*, 8 Wheat. (21 U. S.) 1 (1823); *Antoni v. Greenhow*, 107 U. S. 769, 2 Sup. Ct. 91 (1882).

lessen, weaken, or impair the obligation of the contract.⁵ "Right" and "remedy" being general terms, the effect given to the contracts clause consequently has been flexible. The scope of the section has been limited within the field of due process.⁶ The police power of the states overrides the constitutional prohibition, so that the proper exercise of the power may affect substantial rights without being held to impair contract obligations.⁷ Rights of persons under pre-existing contracts are not allowed to hamper the states in the exercise of their broad residual powers. Two general types of state statutes under the police power have been upheld which interfered with contract rights. Legislation for general social and economic betterment purposes has been sustained on the basis of protection of the public health, safety, and welfare, where the incidental effects were in derogation of contractual rights.⁸ The Supreme Court in certain cases has also upheld state laws based upon the necessary police power of the state to deal with problems in periods of emergency, although the legislation dealt directly with contract rights of individuals. In the New York rent cases,⁹ the taking away of contract remedies was justified as an exercise of the police power to cope with an emergency situation. In the *Blaisdell* case,¹⁰ the police power was held to be equal in scope to the needs of the state to safeguard the welfare of the people. The reasonableness of the legislation under existing circumstances is the test laid down.¹¹ The Maryland legislation in question did affect prejudicially the remedies of holders of partial mortgage interests. And as benefiting a comparatively limited class, the holders of major interests, the Court might well say that this was not a reasonable exercise of the legislative power under the circumstances.

T. M. D.

⁵ *Manigault v. Springs*, 199 U. S. 473, 26 Sup. Ct. 127 (1905); *Hepburn v. Griswold*, 8 Wall. (75 U. S.) 603 (1869); *Sinking Fund Cases*, 99 U. S. 700 (1878). See 32 COL. L. REV. 476 (1932); 2 WILLOUGHBY, CONSTITUTIONAL LAW, p. 1252, sec. 781 (1929).

⁶ *Ettor v. Tacoma*, 228 U. S. 148, 33 Sup. Ct. 428 (1913); *Oshkosh Waterworks Co. v. Oshkosh*, 187 U. S. 437, 23 Sup. Ct. 234 (1903); *Red River Valley Nat. Bank v. Craig*, 181 U. S. 548, 21 Sup. Ct. 703 (1901); *Von Hoffman v. Quincy*, 4 Wall. (71 U. S.) 535 (1866).

⁷ *Atlantic Coast Line R. R. v. Goldsboro*, 232 U. S. 548, 34 Sup. Ct. 364 (1914); *Hudson County Water Co. v. McCarter*, 209 U. S. 349, 28 Sup. Ct. 529 (1908); *Louisville & N. R. R. v. Mottley*, 219 U. S. 467, 31 Sup. Ct. 265 (1910); *Chicago & Alton R. R. v. Tranbarger*, 238 U. S. 67, 35 Sup. Ct. 678 (1914). See comment on validity of mortgage moratorium legislation in 32 MICH. L. REV. 71 (1933).

⁸ *Fertilizing Co. v. Hyde Park*, 97 U. S. 659 (1878); *New Orleans Gas-Light Co. v. Louisiana Light & Heat Producing Co.*, 115 U. S. 650, 6 Sup. Ct. 252 (1885); *California Reduction Co. v. Sanitary Reduction Works*, 199 U. S. 306, 26 Sup. Ct. 100 (1905); *Gardner v. Michigan*, 199 U. S. 325, 26 Sup. Ct. 106 (1905).

⁹ *Marcus Brown Holding Co., Inc. v. Feldman*, 256 U. S. 170, 41 Sup. Ct. 465 (1921); *Block v. Hirsh*, 256 U. S. 135, 41 Sup. Ct. 458 (1921); *Levy Leasing Co. v. Siegel*, 258 U. S. 242, 42 Sup. Ct. 289 (1922).

¹⁰ *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U. S. 398, 54 Sup. Ct. 231 (1934).

¹¹ *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U. S. 398 at 440, 445, 54 Sup. Ct. 231 at 241, 242 (1934).