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SPECIAL ASSESSMENTS - CONSTITUTIONALITY OF LEGISLATION MODIFYING MEANS OF ENFORCEMENT OF SPECIAL ASSESSMENT LIENS

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SPECIAL ASSESSMENTS — CONSTITUTIONALITY OF LEGISLATION MODIFYING MEANS OF ENFORCEMENT OF SPECIAL ASSESSMENT LIENS—An Arkansas statute,¹ affecting the mortgage securing certain special assessment bonds, provided, *inter alia*, for the extension of the interval between default in payment and sale under foreclosure from sixty-five days to at least two and a half years, reduced the penalty for non-payment from twenty per cent to three per cent, and provided that the possession of the delinquent property owner be undisturbed for four years after sale on foreclosure, thus modifying the law existing at the time the bonds were issued. The United States Supreme Court *held* the statute to be invalid as violating the constitutional prohibition against laws impairing the obligation of contracts.² *W. B. Worthen Co. v. Kavanaugh*, (U. S. Sup. Ct.) 2 U. S. LAW WEEK, index p. 697 (April 2, 1935).

The question raised by this and similar cases concerning the validity of so-called "moratorium" statutes is to what extent legislation can go in relieving debtors from hardship incident to depressed economic conditions. Most legislation of this kind has taken the form of modification in or postponement of remedies available to creditors to enforce the obligations owing them. In general, the constitutional prohibition of laws impairing the obligation of contracts inhibits the state legislative power.³ The "obligation" of a contract is said to include the law which binds the parties to perform their agreements, as it existed at the time the contract was entered into.⁴ The remedy is a part of the obligation insofar as it is necessary to the enjoyment of benefits under the contract; if the remedy is not left unimpaired or if its substantial equivalent is not provided, the constitutional provision has been violated.⁵ Thus, it has been held that statutes adding to the debtor's exemptions,⁶ or postponing the time for foreclosure sale,⁷ or extending the period of redemption,⁸ or changing the time, place, and notice of foreclosure sale⁹ are laws impairing the obligation of contract, within the constitutional prohibition.

However, statutes which do in fact impair the contractual obligation may be

first few kilowatt-hours the less will be the deficit created which has to be made up in the price charged for these essential additional kilowatt-hours." Ferguson, "Inducement Rates, Key to Progress," 93 ELECTRICAL WORLD 435 at 437 (March 2, 1929).

¹ Acts of Arkansas, 1933, Nos. 129, 252, 278.

² U. S. C. A., Constitution, Part 2, p. 31.

³ U. S. C. A., Constitution, Part 2, p. 31.

⁴ *Ogden v. Saunders*, 12 Wheat. (25 U. S.) 213, 6 L. ed. 606 (1827); *Walker v. Whitehead*, 16 Wall. (83 U. S.) 314, 21 L. ed. 357 (1873).

⁵ *Mobile v. Watson*, 116 U. S. 289, 6 Sup. Ct. 398 (1886). *Penniman's Case*, 103 U. S. 714, 26 L. ed. 602 (1880). *Oshkosh Waterworks Co. v. Oshkosh*, 187 U. S. 437, 23 Sup. Ct. 234 (1903).

⁶ *Wilson v. Brown*, 58 Ala. 62 (1877). *Bank of Minden v. Clement*, 256 U. S. 126, 41 Sup. Ct. 408 (1921).

⁷ *Swinburne v. Mills*, 17 Wash. 611, 50 Pac. 489, 61 Am. St. Rep. 932 (1897).

⁸ *Barnitz v. Beverly*, 163 U. S. 118, 16 Sup. Ct. 1042 (1896). *Howard v. Bugbee*, 24 How. (65 U. S.) 461, 16 L. ed. 753 (1861).

⁹ *Thompson v. Cobb*, 95 Tex. 140, 65 S. W. 1090 (1902). *International Bldg., etc. Ass'n v. Hardy*, 86 Tex. 610, 26 S. W. 497, 24 L. R. A. 284 (1894).

justified as exercises of the police power. The statute in question must be *bona fide* intended to relieve some social evil and must be appropriate to that end.¹⁰ *Home Building and Loan Ass'n v. Blaisdell*¹¹ is an instance of this sort of case. There a statute extending the redemption period for the duration of the economic emergency declared by the legislature to exist (but in no event for longer than two years), and providing for the application of rents during this period to charges against the property, any surplus to be distributed as the court directed, was upheld as a justifiable exercise of the police power in view of the emergency actually existing.¹² On the other hand, it was held in *Hanauer v. Republic Building Co.*¹³ that a statute indefinitely prohibiting action on a bond secured by mortgage till the mortgage had been foreclosed was unconstitutional since it deprived the individual bondholder of his only practicable remedy. Similarly, in *W. B. Worthen Co. v. Thomas*,¹⁴ an alleged emergency statute exempting the proceeds of life insurance policies from garnishment for an indefinite time was held to impair the obligation of pre-existing contracts.

The determinative considerations in these cases are those intangible policy factors which are always involved in the question of the validity of legislation. For instance, the requirement that the statute be limited in its operation to approximately the duration of the emergency is but one aspect of the more general principle that any exercise of the police power be reasonably related to the end it seeks to accomplish. From this viewpoint, the recent decision in *Louisville Joint Stock Land Bank v. Radford*,¹⁵ involving the constitutionality of the Frazier-Lemke Act,¹⁶ presents the same question. There the due process clause¹⁷ of the federal Constitution was held to limit the federal bankruptcy power and to prohibit legislation which in effect deprived the mortgagee of a bankrupt mortgagor of his lien, the Court saying that no social necessity could justify such a taking of private property without compensation. The bases of these decisions are essentially legislative considerations. The "reasonableness" of the legislation, its adaptation to its purpose, the urgency of the emergency, the balance of interest between debtor and creditor—these and similar factors must be relied on to determine the extent to which such legislation can properly go.

W. H. C.

¹⁰ *Manigault v. Springs*, 199 U. S. 473, 26 Sup. Ct. 127 (1905); *State v. Richmond R. R.*, 73 N. C. 527 (1875); *Block v. Hirsh*, 256 U. S. 135, 31 Sup. Ct. 458 (1921).

¹¹ 290 U. S. 398, 54 Sup. Ct. 231 (1934).

¹² See also *McCarty v. Prudence-Bonds Corp.*, 149 Misc. 13, 266 N. Y. S. 629 (1933); *Russell v. Battle Creek Lumber Co.*, 265 Mich. 649, 252 N. W. 561 (1934); *Des Moines Joint Stock Land Bank v. Nordholm*, 217 Iowa 1319, 253 N. W. 701 (1934); *Klinke v. Samuels*, 264 N. Y. 144, 190 N. E. 324 (1934).

¹³ (Wis. 1934) 255 N. W. 136.

¹⁴ 292 U. S. 426, 54 Sup. Ct. 816 (1934).

¹⁵ (U. S. 1935) 55 Sup. Ct. 854.

¹⁶ U. S. C. tit. 11, sec. 203(s), p. 110 at 113.

¹⁷ U. S. C., Constitution, Part 2, p. 517.