

Michigan Law Review

Volume 32 | Issue 4

1934

CONSTITUTIONAL LAW - MORATORY LEGISLATION

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Recommended Citation

CONSTITUTIONAL LAW - MORATORY LEGISLATION, 32 MICH. L. REV. 545 (1934).

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CONSTITUTIONAL LAW — MORATORY LEGISLATION — A Minnesota statute, in view of the economic emergency, provided, among other things, that courts might, upon petition of a mortgagor, extend the period of redemption

from mortgage foreclosure sales for a definite time not beyond May 1, 1935. If a court took such action, the mortgagor was to remain in possession of the premises and pay a reasonable rental to the mortgagee. *Held*, by the United States Supreme Court in a five-to-four decision, that this statute did not violate the contracts, or due process, or equal protection clauses of the Constitution. *Home Building and Loan Association v. Blaisdell*, 1 UNITED STATES LAW WEEK, index p. 381 (January 9, 1934). (A discussion of this case, as decided by the Minnesota Supreme Court, and a collection of cases on this subject appeared in an earlier number of this Review.¹)

The Chief Justice, speaking for the majority, accepted the contracts clause as the most serious of the objections offered to this statute, and proceeded to consider the effect of the present emergency upon its interpretation. He said: "Emergency does not create power. Emergency does not increase granted power or remove or diminish the restrictions imposed upon power granted or reserved." But emergency may "furnish the occasion for the exercise of power." This is the traditional view as set out in *Wilson v. New*.² He pointed out that the contracts clause is one of those general clauses which "afford a broad outline," and is not to be read with "literal exactness like a mathematical formula." It is conceded that the contracts clause was put into the Constitution in a time of emergency and was intended to prevent legislation designed to relieve the debtor class. But this objection was dismissed with the remark that a statement to the effect that the great clauses of the Constitution must be interpreted today as the framers interpreted them with the condition and outlook of their time "carries its own refutation." In the dissenting opinion, delivered by Mr. Justice Sutherland, it is said that the Constitution "does not mean one thing at one time and an entirely different thing at another time. If the contract clause, when framed and adopted, meant that the term of a contract for the payment of money could not be altered in invitum by a state statute enacted for the relief of hardly pressed debtors to the end and with the effect of postponing payment or enforcement during and because of an economic emergency, it is but to state the obvious to say that it means the same now."³ As contemporary documents show that the framers of the Constitution intended the contracts clause to prevent the type of legislation presented by this statute, if it impaired contract obligations, this statute must be held invalid. The dissenting judges admitted that the remedy to enforce a contract may be changed without impairing its obligations, but held that the extension of redemption authorized by this enactment affected the right and not merely the remedy.⁴ In view of the fact that the majority of the

¹ 32 MICH. L. REV. 71 (1933).

² 243 U. S. 332, 37 Sup. Ct. 298, 61 L. ed. 755, L. R. A. 1917E 938 (1917).

³ The dissenting Justices considered the emergency question directly later in the opinion, and definitely drew away from the majority's doctrine that an emergency may justify the exercise of a living power of the nature necessary to sustain this legislation. The dissenters said that emergencies may call for the exercise of a power granted by the Constitution, such as the power to carry on war, but does not call for the relaxation of an absolute restriction on the power of the States such as the contracts clause imposes.

⁴ On this point the majority opinion seems to be slightly obscure. Chief Justice Hughes referred to the line of distinction as indefinite. He referred to the decision of the Minnesota court and expressed doubt as to whether or not that court admitted

Court placed particular emphasis upon the conditional nature of the statute in question, and upon the provisions made to compensate the mortgagee for the time the redemption period was extended, this case must be regarded as definitely limited to the situation in hand, and not indicative, except in a very general way, of the Court's attitude toward other legislation of similar import.

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that the statute impaired the obligation of contracts to a certain degree, and yet held it constitutional. Counsel in the argument before both courts admitted that the statute did impair the obligation of contracts, but contended that the degree of impairment was not sufficiently great to render the law invalid in view of the emergency. This was asking the courts to read the word "unreasonably" into the contracts clause although the written language is unqualified. The Supreme Court did not take so bold a step. But in view of Chief Justice Hughes' hesitancy to deal directly with the traditional method of approach, perhaps his opinion can be treated as interpreting the contracts clause as if it read: "unreasonably impairs the obligation of contracts."