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CONSTITUTIONAL LAW—VALIDITY OF STATUTE EXEMPTING INSURANCE BENEFITS FROM PROCESS FOR DEBTS—*C*, a judgment creditor of *W*, instituted garnishment proceedings to recover the amount of the judgment out of moneys owed by the *X* insurance company to *W* as beneficiary of *H's* life insurance. Subsequently the Arkansas legislature passed a statute exempting all moneys paid or payable to any resident of the State as the insured or beneficiary designated under any life, sickness, or accident insurance policy, from liability or seizure under judicial process, and provided that such benefits should not be subjected to the payment of any debt. *Held*, by a unanimous decision of the United States Supreme Court, that the exemption of insurance money from claims of existing creditors with no limitation as to time, amount, circumstances, or need, constitutes an unwarrantable interference with the obligation of contracts and has no reasonable relation to any legitimate end to which the State is entitled to direct its legislation. *W. B. Worthen Co. v. Thomas*, (U. S. 1934) 1 UNITED STATES LAW WEEK, index p. 865 (May 29, 1934).

I.

The majority opinion, which was written by Chief Justice Hughes and adopted by the same Justices who concurred with him in the Minnesota *Mortgage Moratorium* case,[1] would indicate that the instant case is a timely counterpart to the Minnesota case in that it enables

[1] Home Building & Loan Ass'n v. Blaisdell, 290 U. S. 398, 54 Sup. Ct. 231 (1934).

the Court to complete the constitutional pattern formulated in the decision on mortgage moratorium statutes. In a concurring opinion, Mr. Justice Sutherland, as spokesman for the dissenting Justices in the Minnesota case, suggests that there is no essential difference between these two cases and that the majority is merely avoiding the inevitable result to which the logic of the Minnesota case leads them. Both the majority and the minority of the Court start with the statement of Chief Justice Marshall in *Sturges v. Crowninshield*[2] that the contract was formulated with a view to all future acquisitions and, therefore, a release of any such acquisitions from liability would be an impairment of the obligation of contract. With this as a major premise, the majority of the Court found no difficulty in drawing distinctions between the Arkansas and the Minnesota legislation. It is pointed out that the so-called "emergency" doctrine is inapplicable because the Arkansas statute is not limited in effect to the period of emergency and is not limited by reasonable conditions appropriate to the emergency.[3] From this it is concluded that the statute is not a proper exercise of the reserve power of the State to legislate as to contracts in order to promote public welfare.

2.

The difficulty with the Court's analysis arises when one comes to consider the validity of the major premise that the obligation of contracts is impaired. What contract is impaired? [4] Obviously there has never been any transaction by which the debtor has agreed to pay this insurance money to his creditor. If there were such an agreement the creditor's right would be saved by the explicit exemption in the Arkansas statute and it would be protected by equitable lien from all other dispositions which might be made of the fund. Unquestionably, the only true contract obligation between the parties is the obligation of the debtor to pay to the creditor the amount of the debt. The duty to fulfill that obligation is as complete and alive now as on the day it arose. But the creditor's right to collect the debt from one particular source has been cut off by the statute. That right was not contractual in nature but was implied by law, and it has been removed by statute. It is true that early in our constitutional history the Court held that any law substantially changing the remedy on the contract constitutes

[2] 4 Wheat (17 U. S.) 122 (1819).

[3] Block v. Hirsh, 256 U. S. 135, 41 Sup. Ct. 458 (1921); Home Building & Loan Ass'n v. Blaisdell, 290 U. S. 398, 54 Sup. Ct. 231 (1934); *Cf.* Chastleton Corp. v. Sinclair, 264 U. S. 543, 44 Sup. Ct. 405 (1924).

[4] See Kauper, "What is a 'Contract' Under the Contracts Clause of the Federal Constitution?", 31 MICH. L. REV. 187 (1932).

an impairment of the obligation.[5] However, this interpretation was adopted at a time when the Court was groping for a basis to prevent what it conceived to be flagrant inroads on vested rights.[6] The passage of the Fourteenth Amendment offered an answer to the problem in its most difficult aspects but very little attempt has been made to re-analyze this particular question except insofar as the dissenting opinion of Mr. Justice Cardozo in *Coombes v. Getz*[7] may be said to do so. It would seem that Justice Cardozo and Justices Brandeis and Stone, who concurred in the dissenting opinion in *Coombes v. Getz,* might well have pressed the point that the contracts clause does not cover the instant case.

3.

It must be remembered that the real question before the Court was whether or not an insurance fund which had become payable could be subsequently exempted from the claims of the beneficiary's creditors. But the Court as a result of treating the statute as a violation of the contracts clause rather than the due process clause takes a mistaken view of the question before it. It treats the question as one of the application of the statutory exemption to existing debts, saying: "Such an exemption, applied in the case of debts owing before the exemption was created by the legislature, constitutes an unwarrantable interference with the obligation of contracts in violation of the constitutional provision." Instead, it is submitted, the Court should consider whether or not this fund could be withdrawn from the beneficiary's creditors once it had vested in him. The Court's conclusion should not depend on the *existence* of the debt before the statute, but on the *vesting* of the fund before the statute. As it stands, the Court's statement embraces insurance proceeds later to accrue, as well as those payable when the statute was passed. This seems unjustified. Until the insured dies, the beneficiary's interest is a most precarious one. The insured can, during his life, change the beneficiary under the usual policy[8] and thus deprive both the beneficiary and his creditors of any claim to the insurance proceeds. If the insured is able by his act to deprive both beneficiary and creditors of these proceeds, there is no

[5] *Cf.* Gunn v. Barry, 15 Wall. (82 U. S.) 610 (1872); Edwards v. Kearzey, 96 U. S. 595 (1877); Bank of Minden v. Clement, 256 U. S. 126, 41 Sup. Ct. 408 (1920).

[6] Compare Kauper, "What is a 'Contract' Under the Contracts Clause of the Federal Constitution?", 31 MICH. L. REV. 187 (1932), with Smith, "Retroactive Laws and Vested Rights," 5 TEX. L. REV. 231 (1927).

[7] 285 U. S. 434, 52 Sup. Ct. 435 (1932).

[8] There is no showing of the provision of this particular policy but it is assumed that the policy is of the ordinary type suggested.

reason why the State cannot on proper grounds withdraw these assets from the beneficiary's creditors. Again, it seems that the insured, instead of changing beneficiaries, could create a spendthrift trust of the insurance proceeds. Cannot the State itself establish an analogous exemption? The point is that the beneficiary's creditors seem to have no certain claim to these contingent funds. The case is quite like the case of an expectant heir. If an heir makes a contract with *X* obligating himself to pay money, and even if the contract were made on the faith of the expectant heirship, this contract would not prevent the ancestor from making a will leaving his property to some other person. No more should it stand in the way of state legislation changing lines of descent. There are in fact some important contingent interests such as inchoate dower which are irrevocable by the owner of property but which the State may take away.[9] And is it to be assumed that the creditors of the heir or dowress are in a better position than their debtor? Is it to be assumed that the creditors of the beneficiary of an insurance policy have some vested claim in his mere expectancy?

4.

Reverting to the question which the facts of the case actually present for consideration, we are confronted with the problem of whether or not "due process of law" prevents application of the Arkansas statute to a fund which has already become payable. The federal Constitution does not void all retroactive laws; but it does void such retroactive laws as take life, liberty or property without due process of law in violation of the Fourteenth Amendment.[10] It has been said that this prevents the States from interfering with vested rights, but when one seeks to discover what rights are vested one discovers that those rights are vested which are protected by the due process clause.[11] Space does not permit a consideration of the cases, but the results will be found to constitute a series of interesting paradoxes and the reasoning defies any attempt to formulate specific rules.[12] One can only attain a vague standard such as the proposition that legislation must not be unreasonable or arbitrary.

[9] Randall v. Krieger, 23 Wall. (90 U. S.) 137, 23 L. ed. 124 (1875); 1 TIFFANY, REAL PROPERTY, 2d ed., sec. 230 (1920). For further examples, see note to Bass v. Roanoke Navigation and Water Power Co., 111 N. C. 277, 19 L. R. A. 247 (1892).

[10] Smith, "Retroactive Laws and Vested Rights," 5 TEX. L. REV. 231 (1927) and 6 TEX. L. REV. 409 (1928).

[11] 2 AUSTIN, JURISPRUDENCE (Campbell Notes), sec. 1138 (1875).

[12] Smith, "Retroactive Laws and Vested Rights," 5 TEX. L. REV. 231, 237-240 (1927).

5.

In considering the question of due process it might be well, at this point, to consider certain objections which the Court raises to applying the "emergency" doctrine to this particular legislation. It is said that there is no limitation as to amount nor as to beneficiaries. One is forced to observe that there was no limitation as to amount in the Minnesota legislation. And as to the Arkansas statute, it is questionable if there would be many cases where the amount of the insurance exempted would be unreasonable or excessive or beyond the needs of the intended beneficiary. Persons seldom take out more insurance for their dependents than is needed. Furthermore, it is difficult to see any reason for distinguishing between classes of beneficiaries since the legislation would obviously only be a protection to the impoverished beneficiary.

The Court also points out that the legislature did not put a time limit on the statute for the period of emergency. Can it be that legislation which was unreasonable yesterday but reasonable today must contain a limitation saying that it is only to be operative until conditions change again? It would seem that the Court is placing the legislature's ability to predict above its own ability to protect. It is submitted that the Court would have done much better to have adopted Mr. Justice Roberts' philosophy in the *Nebbia* case [13] and left the door open to a consideration of the realities of the situation. Such an approach would bring the Court face to face with the problem of whether or not due process of law is violated by a statute which attempts to secure to the unfortunate their only means of bridging the gap between misfortune and restoration of earning power.

J. C. W.

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[13] Nebbia v. People, (U. S. 1934) 54 Sup. Ct. 505, 78 L. ed. 563.