Michigan Law Review

Volume 41 | Issue 2

1942

CONSTITUTIONAL LAW - IMPAIRING THE OBLIGATION OF CONTRACTS - NEW YORK DECEDENTS' ESTATE LAW

Robert Walsh
University of Michigan Law School

CONSTITUTIONAL LAW — IMPAIRING THE OBLIGATION OF CONTRACTS — NEW YORK DECEDENTS' ESTATE LAW — By a premarital agreement executed in 1922 the wife of decedent waived all rights in his estate. The waiver was signed but not acknowledged. In August, 1930, decedent executed a will leaving $2,000 to his wife. In September, 1930, there went into effect an

amendment of the Decedents' Estate Law of New York, which gave to a widow an election to take under or against the will of her husband and provided that such election could be waived only by an instrument signed and acknowledged.[1] The statute applied only to wills executed after September, 1930. The decedent executed a codicil to his will after 1930 and hence the will came within the provisions of the statute.[2] Decedent's executor claimed that so far as the statute invalidated the premarital waiver for lack of an acknowledgement, it was an impairment of the obligation of a contract and was void under the Constitution of the United States.[3] On certiorari to the United States Supreme Court, *held*, a state may impose any conditions on the power to dispose of property by will; the will was brought within the provisions of the statute by the act of the decedent, and the statute was therefore constitutional. *Irving Trust Co. v. Day*, 314 U. S. 556, 62 S. Ct. 398 (1942).

The principal case is in accord with the well-established rule that succession to property and the power to dispose of property by will are under the control of the state,[4] and that the legislature may impose any condition upon this testamentary power.[5] The Court holds that the decedent could not take advantage of the power of testamentary disposition given by the statute without submitting to the conditions attached to the exercise of that power, and since he could retain his rights under the waiver by retaining the will executed prior to the new statute, execution by the decedent of a new will under the conditions attached by the new statute is a voluntary act which deprives him of the rights of the waiver. Although it is now well established that the prohibitions of the contracts clause must give way to a reasonable exercise of the police power,[6] and the provisions of the New York statute might be construed as an exercise of the police power,[7] the basis of the decision in the principal case appears to be that there is no impairment of contract obligations rather than that the impairment

[1] 13 N. Y. Consol. Laws (McKinney, 1939), § 18.

[2] Id., § 2: "The term 'will,' as used in this chapter, shall include all codicils, as well as wills." For cases holding that the will and codicil are to be construed together as of the date of the codicil, see Driver v. Driver, 187 Ark. 875, 63 S. W. (2d) 274 (1933); Buchanan v. National Savings & Trust Co., 57 App. D. C. 386, 23 F. (2d) 994 (1928).

[3] U. S. Constitution, art. I, § 10.

[4] Mager v. Grima, 8 How. (49 U. S.) 490 (1850); United States v. Perkins, 163 U. S. 625, 16 S. Ct. 1073 (1896); Armstrong v. Lear, 8 Pet. (33 U. S.) 52 (1834); 28 R. C. L. 68 (1921).

[5] Stebbins v. Riley, 268 U. S. 137, 45 S. Ct. 424 (1925); Frederickson v. Louisiana, 23 How. (64 U. S.) 445 (1859).

[6] Manigault v. Springs, 199 U. S. 473, 26 S. Ct. 127 (1905); Marcus Brown Holding Co. v. Feldman, 256 U. S. 170, 41 S. Ct. 465 (1921); Home Bldg. & Loan Assn. v. Blaisdell, 290 U. S. 398, 54 S. Ct. 231 (1934); 6 R. C. L. 347 (1915); 32 COL. L. REV. 476 (1932). The result of these cases seems to be to place the contracts clause on much the same basis as the due process clause so far as the operation of the police power is concerned.

[7] See Re Greenberg, 261 N. Y. 474 at 478, 185 N. E. 704 (1933). The court speaks of the interest of the public and "the new public policy which no longer permits a testator to dispose of his property as he pleases."

is justified under police power.[8] The decision in the principal case cannot be construed to mean that where the legislature has full power over a subject matter it can act directly to change or avoid contracts dealing with that subject matter.[9] The New York statute does not attempt to act directly against antenuptial agreements, but operates to limit the right of a testator to dispose of his property by will. The contract of waiver could not operate to defeat the power of the legislature to act with respect to the transfer of property by will, nor do parties to a contract generally have the right to have laws respecting the subject matter of the contract free from change.[10] A statute which does not immediately impair contract rights, but operates against the property which is the subject matter of the contract, does not violate the contracts clause.[11] These doctrines form some precedent for the decision in the principal case, since the New York statute does not act against the rights secured by the contract, but is a withdrawal of power from the testator operating prospectively only. Any will executed under the new delineation of testamentary power must conform to the statute, since a prior contract cannot operate to withdraw the testamentary power of the decedent from the operation of the statute under which the will is made.[12]

Robert Walsh

[8] Justice Jackson speaks of the execution of a will under the new statute as being equivalent to a voluntary bequest to the widow. See also the same case below, Matter of McGlone, 284 N. Y. 527 at 533, 32 N. E. (2d) 539 (1940). The New York court assumes "that any contractual rights created by that instrument [waiver] are within the protection of the constitutional guaranty that the state may not impair the obligations of contracts. . . ."

[9] See Doyle v. Gleason, 153 Misc. 641, 274 N. Y. S. 183 (1934), affd. 244 App. Div. 52, 278 N. Y. S. 802 (1935). The court holds that a statute invalidating oral contracts to make a will would not be interpreted to apply to contracts entered into before the passage of the statute since such a retroactive interpretation would impair the obligation of contracts and would render the statute invalid.

[10] Truax v. Corrigan, 257 U. S. 312, 42 S. Ct. 124 (1921); Harsha v. Detroit, 261 Mich. 586, 246 N. W. 849 (1933); Fitzgerald v. Grand Trunk Ry., 63 Vt. 169, 22 A. 76 (1891).

[11] Charles River Bridge v. Warren Bridge, 11 Pet. (36 U. S.) 420 (1837); State v. Clement Nat. Bank, 84 Vt. 167, 78 A. 944 (1911), affd. Clement Nat. Bank v. Vermont, 231 U. S. 120, 34 S. Ct. 31 (1913); Savings Bank of Baltimore v. Weeks, 110 Md. 78, 72 A. 475 (1909).

[12] The New York Court of Appeals seems to adopt this view in the same case, Matter of McGlone, 284 N. Y. 527, 32 N. E. (2d) 539 (1940). The court says that the decedent's right of disposal is subject to change by the legislature, and the parties cannot contract to make the decedent's power to dispose of his property by will immune to future changes and limitations on that right by the legislature. The parties cannot waive or destroy a possible future limitation by a method which would be prohibited by the future statute.