

Constitutional Law--Police Power--Validation of the New York Unemployment Insurance Law (Chamberlain v. Andrews, 271 N.Y. 1 (1936))

St. John's Law Review

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Recommended Citation

St. John's Law Review (1936) "Constitutional Law--Police Power--Validation of the New York Unemployment Insurance Law (Chamberlain v. Andrews, 271 N.Y. 1 (1936))," *St. John's Law Review*: Vol. 11 : No. 1 , Article 12.
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol11/iss1/12>

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A crude provision of the Act, justifiably attacked by the majority, was the delegation of power to certain producers and mine workers authorizing them to fix wages and hours. In the light of *Panama Oil Refining Co. v. Ryan*¹⁶ and *Schechter Poultry Corp. v. United States*,¹⁷ the provision was a display of poor judgment and policy. The delegation was to a body, not impartial, but consisting of members having conflicting interests with few defined standards to guide its action.¹⁸ Conceding this weakness in the Act, the decision as a whole, nevertheless, is unfortunate for its sweeping assertion of "fundamental principles" which if applied literally will predestine most future social legislation to death at inception.

T. B.

CONSTITUTIONAL LAW—POLICE POWER—VALIDATION OF THE NEW YORK UNEMPLOYMENT INSURANCE LAW.—Complainant at Special Term sought a declaratory judgment nullifying the Unemployment Insurance Law of New York¹ as unconstitutional and wholly void under both federal and state constitutions.² In acquiescing to complainant's request the question whether complainant was

¹⁶ *Panama Oil Refining Co. v. Ryan*, 293 U. S. 388, 55 Sup. Ct. 241 (1935).

¹⁷ *Schechter Poultry Corp. v. United States*, 295 U. S. 495, 55 Sup. Ct. 837 (1935).

¹⁸ Note (1931) 31 MICH. L. REV. 786 (delegation of federal legislative power to executive or administrative agencies); Note (1935) 48 HARV. L. REV. 798; Baesler, *A Suggested Classification of the Decisions on Delegation of Legislative Power* (1935) 15 B. U. L. REV. 507.

¹ N. Y. LABOR LAW (1936) §§ 502-531. In general its main features embrace a 3% payroll tax on all employers who maintain a staff of at least four persons for a period of thirteen or more calendar weeks of the year in any employment in which all or the greater part of the work is to be performed within the state. The assessments will be pooled into a single fund, payments from which will begin in two years. To entitle an applicant to its benefits, he must register and subject himself to a three-week waiting period. If he has had ninety days of employment in the preceding twelve months or one hundred and thirty in the twenty-four months prior to the time his benefits are to commence, eligibility is his. Any employee whose unemployment was through his own wrongful conduct or other industrial controversy is penalized an additional seven weeks waiting period. A recipient of its benefits, who refuses an offer of employment for which he is fitted, is disqualified provided that acceptance would not require him to join a union, or become involved in an industrial dispute, or cause him to travel unreasonable distances or work for a salary far less than paid in similar work. Payments of benefits are made in the ratio of one week of benefits for every fifteen days of employment. These payments shall be made at the rate of fifty per centum of employee's full time weekly wage but in no event to be more than fifteen dollars per week or less than five. See Legis. (1935) 10 ST. JOHN'S L. REV. 147.

² U. S. CONST. Amend. 14, § 1; N. Y. CONST. art. 1, § 6.

deprived of his property without due process of law came direct to the Court of Appeals pursuant to the Civil Practice Act.³ *Held*, the legislature faced with the widespread distress of unemployment which affects the body politic can exercise the reserved power of the state and enact as a practical solution, the New York Unemployment Insurance Law. *Chamberlain v. Andrews*, 271 N. Y. 1, 2 N. E. (2d) 22 (1936).

The history and development in this country of unemployment insurance has been brief,⁴ and since its incorporation into law for the economic stability of the working class it has received widespread support. But federal and state courts of late have invalidated several statutes which were enacted to improve the general welfare and to give greater social security.⁵ This judicial trend as far as the New York courts are concerned would seem to have undergone a change since Unemployment Insurance, the most significant advance since the Workmen's Compensation Law has been sustained. Unfortunately it is that the majority opinion does not analyze and distinguish cases seemingly *contra* to the instant case.⁶ The Supreme Court of the United States⁷ in declaring unconstitutional a District of Columbia statute fixing a minimum wage has said "*The feature of this statute which, perhaps more than any other puts upon it the stamp of invalidity is that it exacts from the employer an arbitrary payment for a purpose and upon a basis having no casual connection with his business or the contract or the work the employee engages to do.*" To those who harbor the opinion that unregulated industry is not the cause of unemployment, it must seem that unemployment insurance is a compulsory exaction from the employer for the support of indigent persons for whose welfare society and not the employer is responsible.⁸ In a recent case,⁹ a federal statute compelling railroads to contribute to a common fund from which payments would be made to retired railroad employees was held to be unconstitutional. The constitutional limitations are not to be broken down nor is legislation to go on unhampered by a finding that the basis for public welfare laws is in expediency and therefore a valid exercise of the police

³ N. Y. CIV. PRAC. ACT § 588, 3.

⁴ See Legis. (1935) 10 ST. JOHN'S L. REV. 147.

⁵ *Hammer v. Daggenghart*, 247 U. S. 251, 38 Sup. Ct. 529 (1918); *Bailey v. Drexel Furniture Co.*, 259 U. S. 20, 44 Sup. Ct. 499 (1922); *Adkins v. Children's Hospital*, 261 U. S. 525, 43 Sup. Ct. 393 (1923); *United States v. Schechter Poultry Corp.*, 295 U. S. 495, 55 Sup. Ct. 837 (1935); *Tipaldo v. Morehead*, 270 N. Y. 233, 200 N. E. 799 (1936).

⁶ *Railroad Retirement Board et al. v. The Alton Railroad Co. et al.*, 295 U. S. 330, 55 Sup. Ct. 758 (1935); *Adkins v. Children's Hospital*, 261 U. S. 525, 43 Sup. Ct. 393 (1923).

⁷ *Adkins v. Children's Hospital*, 261 U. S. 525, 43 Sup. Ct. 393 (1923).

⁸ 3 LAW AND CONTEMPORARY PROBLEMS (1936) 139, 147; *Chamberlin v. Andrews*, 271 N. Y. 1, 2 N. E. (2d) 22 (1936) Hubbs, J., dissenting opinion.

⁹ *Railroad Retirement Board et al. v. The Alton Railroad Co. et al.*, 295 U. S. 330, 55 Sup. Ct. 758 (1935).

power.¹⁰ It is of no importance how strong the public desire is, fulfillment of this doctrine can only be achieved by a constitutional amendment.¹¹ Opposed to the doctrine espoused by these cases¹² the constitutionality of assessing banks a percentage of their deposits so as to create a common fund guaranteeing these deposits has found affirmance in the highest tribunal in the land.¹³ In a similar vein to force employers to make payments to a pool-fund and to disburse these funds in compensation for injuries for which the employers are not at fault has been deemed a valid exercise of the police power.¹⁴ Instances of pool-fund contributions are many.¹⁵ The exigency for such legislation must exist in a great public need.¹⁶ The right to do so lies in the power of the state to regulate their own domains in legislating for the public safety, morals and welfare.¹⁷ That the object of unemployment insurance is within the reserved power of the state is unquestionable.¹⁸ The difficult barrier is whether the statute is a reasonable approach toward that end and it is with great interest that the final outcome is awaited in the Supreme Court of the United States.

M. McC.

CONTRACT—CONSTRUCTION—INDEFINITE AS TO TIME.—The plaintiff corporation was granted exclusive right to service all accounts acquired by defendant, a corporation engaged in the business of soliciting customers who required the extermination of vermin.

¹⁰ *Truax v. Corrigan*, 257 U. S. 312, 42 Sup. Ct. 124 (1921); *Pennsylvania Coal Co. v. Mahon*, 210 U. S. 393, 416, 43 Sup. Ct. 158 (1922).

¹¹ *Pennsylvania Coal Co. v. Mahon*, 210 U. S. 393, 416, 43 Sup. Ct. 158 (1922).

¹² *Adkins v. Children's Hospital*, 261 U. S. 525, 43 Sup. Ct. 393 (1923); *Railroad Retirement Board et al. v. The Alton Railroad Co. et al.*, 295 U. S. 330, 55 Sup. Ct. 765 (1935).

¹³ *Noble State Bank v. Haskell*, 219 U. S. 104, 31 Sup. Ct. 186 (1911).

¹⁴ *Hawkins v. Bleakly et al.*, 243 U. S. 210, 37 Sup. Ct. 255 (1916); *New York Central Railroad Co. v. White*, 243 U. S. 188, 37 Sup. Ct. 247 (1916); *Mountain Timber Co. v. Washington*, 243 U. S. 219, 37 Sup. Ct. 260 (1916).

¹⁵ *Head Money Cases*, 112 U. S. 580, 5 Sup. Ct. 247 (1884); *Cooley v. Board of Wardens*, 12 How. 299 (U. S. 1851); *Noble State Bank v. Haskell*, 219 U. S. 104, 31 Sup. Ct. 225 (1916); *Hawkins v. Bleakly et al.*, 243 U. S. 210, 37 Sup. Ct. 255 (1916); *New York Central Railroad Co. v. White*, 243 U. S. 188, 37 Sup. Ct. 247 (1916); *Mountain Timber Co. v. Washington*, 243 U. S. 219, 37 Sup. Ct. 260 (1916); *Dayton-Goose Creek Co. v. U. S.*, 263 U. S. 456, 44 Sup. Ct. 169 (1924); *R. R. Retirement Board et al. v. Alton R. Co. et al.*, 295 U. S. 495, 55 Sup. Ct. 837 (1935); *U. S. v. Butler*, 3 U. S. Law Week 373, 56 Sup. Ct. 312 (1936); *State v. Cassidy*, 32 Minn. 312 (1875).

¹⁶ *Noble State Bank v. Haskell*, 219 U. S. 104, 31 Sup. Ct. 186 (1911).

¹⁷ *House v. Mayes*, 219 U. S. 270, 282, 31 Sup. Ct. 234 (1911).

¹⁸ *Brown, Due Process of Law, Police Power and the Supreme Court* (1927) 40 HARV. L. REV. 943; *Legis.* (1935) 10 ST. JOHN'S L. REV. 147, 155; 3 LAW AND CONTEMPORARY PROBLEMS (1936) 138.