

The Minnesota Mortgage Case

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Recommended Citation

Bennett, John (1934) "The Minnesota Mortgage Case," *St. John's Law Review*: Vol. 8 : No. 2 , Article 14.
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol8/iss2/14>

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of equity has the power to issue interlocutory orders for the protection of an asserted lien, such orders must be auxiliary to the right to foreclose the lien." Under the *Prudence* decision it was made clear that if the mortgage had provided for relinquishment of possession on default or for the payment of rent then the power to fix occupational rent pending the foreclosure action would have been created. In the absence of such provision the power could not exist. It seems to me that the language of the mortgage was quite clear.²⁷ One must merely bear in mind that a receiver's possession for the purpose of preserving the mortgage security does not include within it the right to collect rents when none in fact accrue. His right is to collect whatever rents the mortgaged premises yield. That right comes from the language of the mortgage only. To grant the receiver greater rights would be to "accord the mortgagee rights beyond the stipulations of the mortgage" in direct violation of the *Prudence* decision.

There is no statutory authority for holding that a mortgagor in possession may be evicted from the mortgaged premises prior to a sale under a judgment of foreclosure and sale. The right of possession given to a receiver is incidental to the purpose for which the receiver is appointed, namely, the collection of the rents and profits. Actual possession being in one having the right of possession inherent in his ownership, no right of possession exists which may be conferred upon a receiver. To prevent the mortgagee from becoming possessory owner, equity will not compel the owner to pay occupational rent unless it is specifically contracted so to do. Thus, the decision in this case, in conformity with former decisions, reaches a definite conclusion and lays down the rule of law for similar situations in the future.

BEATRICE R. RAPOPORT.

THE MINNESOTA MORTGAGE CASE.

The present day has brought to this country conditions that never confronted the founders of our country and, it might be safely stated, never came within the purview of their great vision. It is a period in which the very foundations of the nation are being shaken. We all know that we are in the midst of a great economic depression which has brought with it great social questions. How have the states attempted to meet the situation?

One of the methods employed by the legislatures of the various states¹ is the enactment of statutes granting temporary relief to

²⁷ See *supra* note 25.

¹ Arizona, Arkansas, Illinois, Iowa, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, Vermont, West Virginia, Wisconsin.

debtors. Such an enactment is designated a "moratory statute," which is a statute granting a "moratorium." A moratorium may be defined as a period during which an obligor has a legal right to delay meeting an obligation.² Legislation of this type, which suspends or delays the creditor's right to enforce his remedy against the debtor at maturity, when applied to existing contracts, has heretofore been held unconstitutional, as being an impairment of the obligations of a contract.³

Still, a great number of the states have enacted statutes which have for their purpose the extension of the period of redemption from mortgage foreclosures.⁴ Perhaps the best known of these statutes is the act passed by the Minnesota Legislature which is called the Minnesota Mortgage Moratorium Law.⁵ In the preamble thereto the legislature stated that an emergency existed.⁶ In substance, the act authorized the district court of the county to extend the period of redemption from foreclosure sales "for such additional time as the Court may deem just and equitable" subject to certain limitations.⁷ In construing the constitutionality of the statute, the court was presented with the question as to whether the provision for temporary and conditional relief exceeded the power of the states by reason of the "contract clause" of the Federal Constitution.⁸

The Supreme Court of Minnesota, in the *Blaisdell* case,⁹ conceded that the enactment was in conflict with the "contract clause." But they upheld the validity of the act on the ground that said statute was a proper exercise of the police power, in view of the public emergency. From this decision the defendant in the action appealed to the Supreme Court of the United States.

There, Chief Justice Hughes,¹⁰ writing for the majority of the Court, in affirming the state court, refused to hold that the act impaired the obligation of the contract and, hence, there was no violation of the Constitutional provision.¹¹ He contended that the police power of the state was a power reserved; that in an emergency

² (1920) 9 A. L. R. 6.

³ *Ibid.*

⁴ *Supra* note 1.

⁵ Laws of Minnesota (1933) c. 339.

⁶ Stated low prices of commodities, consequent lowering of income and the danger of a great majority of the people losing their homes because of an inability to pay their interest on mortgages.

⁷ *Supra* note 5, pt. 1, §4. Extension was to be granted, on notice to the court, for an order determining the reasonable value of the income of the property, or, if it has no income, the reasonable rental value, and directing the mortgagor "to pay all or a reasonable part of such income or rental value, in or toward the payment of taxes, insurance, interest, mortgage indebtedness at such times and in such manner as the court may direct."

⁸ Art. 1, §10. "No state * * * shall pass any law impairing the obligations of contracts."

⁹ *Blaisdell v. Home Building & Loan Association*, 249 N. W. 334, 893 (1933).

¹⁰ *Home Building & Loan Association v. Blaisdell*, 54 Sup. Ct. 231 (1934).

¹¹ *Supra* note 8.

of the type that confronted the state such power was properly exercised; and that all contracts made by an individual are not only subject to the laws in being, at the time of the making of the contract, but also to the proper use of this power of the state when invoked under extraordinary circumstances.

In attempting any review of the cases in the Supreme Court concerning the contract clause, it is necessary to bring out just what is meant by the statement that "No state, * * * shall pass any law impairing the obligations of contracts."¹² A contract is a compact between two or more parties, and is either executed or executory.¹³ And the obligation of a contract is the law which binds the parties to perform their agreement.¹⁴ But where to draw the line, or how to limit the words "obligation of contracts" will be found a subject of extreme difficulty.¹⁵ Still, the clause must be construed in light of its general intent and should not be subjected to a severe literal interpretation.¹⁶

Early decisions held that a mere change of remedy did not impair the obligation.¹⁷ But if said acts so change the nature and extent of existing remedies, as to prevent a recovery, or, to effect seriously the value of it, they are unconstitutional.¹⁸ This Court has held that a stay law, similar to the Minnesota law, violates the constitutional prohibition inasmuch as it impairs the obligations of existing contracts.¹⁹

We have seen that an act that merely effects the remedy is not unconstitutional. Let us see whether the police power of the state gives to it authority to go further.

The police power of the state embraces the protection of the lives, health and property of citizens, the maintenance of good order, and the preservation of good morals.²⁰ Such power is one that is reserved to the states; emergency does not create it.²¹ And the use of this power is not unconstitutional, as impairing the obligations of contracts, merely because it contravenes the provisions of a private contract between individuals.²² But the use thereof must be reasonable

¹² *Ibid.*

¹³ *Fletcher v. Peck*, 6 Cranch 87 (U. S. 1810).

¹⁴ *Ogden v. Saunders*, 12 Wheat. 213 (U. S. 1827).

¹⁵ *Supra* note 13.

¹⁶ "But to assign to contracts, universally, a literal purport, and to exact for them a rigid literal fulfilment, could not have been the intent of the Constitution. It is repelled by a hundred examples. Societies exercise a positive control as well over the inception, construction, and fulfilment of contracts, as over the form and measure of relief." *Supra* note 14, at 286.

¹⁷ *Supra* note 14; *Sturges v. Crowninshield*, 4 Wheat. 122 (U. S. 1819).

¹⁸ *Green v. Biddle*, 8 Wheat. 1 (U. S. 1823).

¹⁹ *Bronson v. Kinzie*, 1 How. 507 (U. S. 1843); *Barnitz v. Beverly*, 163 U. S. 118, 16 Sup. Ct. 1042 (1895).

²⁰ *Barbier v. Connolly*, 113 U. S. 27, 5 Sup. Ct. 357 (1885).

²¹ *Supra* note 10.

²² *Manigault v. Springs*, 199 U. S. 472, 26 Sup. Ct. 127 (1905); *Hudson County Water Co. v. McCarter*, 209 U. S. 349, 28 Sup. Ct. 529 (1908);

and have a reasonable connection to the public welfare.²³ The extent of the police power is not unalterable, but may be modified to fit changed conditions, as necessities dictate;²⁴ and the state has a wide discretion in the use thereof.²⁵ And the state cannot alien such power even by express grant.²⁶

In dealing with contracts the Court has said that contracts involved must be "affected with the public interest."²⁷ And circumstances may so change in time and space as to clothe with a public interest what formerly was a matter of merely private concern.²⁸ Because of the widespread distress and the number of homes and people involved, the contracts affected here are clothed with the public interest.²⁹ And being affected with the public interest, the state in the legitimate exercise of its police power may interfere with private contracts without coming into conflict with the Constitution.³⁰ The Court has said:

"It must suffice to satisfy the most sceptical or belated investigator that the right of private contract must yield to the exigencies of the public welfare when determined in an appropriate manner by the authority of the State."³¹

Summing up, it may be stated that private contracts are subject to the exercise of the police power, and the exercise of the said power does not impair the obligations of the contract, if

- (1) the contract under consideration is affected with the public interest;³²
- (2) there is an emergency to justify the use thereof;³³
- (3) such use is reasonable and the method adopted is reasonably directed toward the end to be attained;³⁴
- (4) such legislation is temporary.³⁵

Atlantic Coast Line R. R. v. City of Goldsboro, 232 U. S. 548, 34 Sup. Ct. 364 (1914).

²³ Bloch v. Hirsh, 256 U. S. 135, 41 Sup. Ct. 458 (1920); Penn Coal Co. v. Mahon, 260 U. S. 393, 43 Sup. Ct. 158 (1922); Society of Sisters v. Pierce, 268 U. S. 510, 45 Sup. Ct. 511 (1925).

²⁴ Terrace v. Thompson, 263 U. S. 197, 44 Sup. Ct. 15 (1923).

²⁵ Weller v. People of New York, 268 U. S. 319, 45 Sup. Ct. 556 (1925).

²⁶ Providence Bank v. Billings, 4 Pet. 514 (U. S. 1830); West River Bridge v. Dix, 6 How. 507 (U. S. 1848).

²⁷ Munn v. Illinois, 94 U. S. 113 (1876); German Alliance Insurance Co. v. Kansas, 233 U. S. 389, 34 Sup. Ct. 612 (1914).

²⁸ Brown v. Feldman, 256 U. S. 170, 41 Sup. Ct. 465 (1921); Levy v. Siegel, 258 U. S. 242, 42 Sup. Ct. 289 (1921).

²⁹ *Supra* note 10.

³⁰ *Ibid.*

³¹ Union Dry Goods Co. v. Georgia Public Service Corp., 248 U. S. 372, 39 Sup. Ct. 117 (1919).

³² *Supra* note 6.

³³ *Supra* note 10.

³⁴ *Supra* note 23.

³⁵ *Supra* note 10.

And all contracts are made in subordination to the future exercise of the police power of the state when the above conditions are present.³⁶

In conclusion, it may be said that in the present case the Court has been carrying out the prevailing tendency when confronted with great social questions. They believe that the State itself is the best judge of what measures are necessary to preserve its existence.³⁷ To foretell future decisions of the Court, from this case, in regard to the New Deal legislation is a difficult matter as the temporary feature of the statute is emphasized³⁸ and a great deal of the *Rooseveltian* policies are to be permanent. Still, the upholding of temporary legislation has previously given the Court an opening in order to take up new and permanent legislation.³⁹ All that may be said, at present, is that the Court is sensitive to the great social and economic questions confronting the country and it appears that they will attempt to uphold all new legislation unless it is positively unconstitutional.

JOHN BENNETT.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Hepburn v. Griswold*, 8 Wall. 603 (U. S. 1869); *Knox v. Lee*, 12 Wall. 457 (U. S. 1870); *Julliard v. Greeman*, 110 U. S. 421, 4 Sup. Ct. 122 (1884).