

## Constitutional Law—Police Power—Due Process (*Nebbia v. People*, 54 S. Ct. 505 (1934))

St. John's Law Review

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

---

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact [selbyc@stjohns.edu](mailto:selbyc@stjohns.edu).

## RECENT DECISIONS

Editor—SYLVESTER B. SINACORE

CONSTITUTIONAL LAW—POLICE POWER—DUE PROCESS.—By virtue of L. 1933, Chapter 158, there was established in New York State a Milk Control Board having the power, among others, of regulating retail milk prices.<sup>1</sup> By order,<sup>2</sup> such price was set at a minimum of 9¢ per quart. Defendant violated said order by selling two quarts of milk and a five cent loaf of bread for 18¢. He was indicted and convicted after properly putting into controversy the question of the constitutionality of the enactment. On appeal from an affirmation of the conviction, *held*, affirmed, that the regulation and control so authorized by the statute is not violative of the guarantee of due process afforded by the 14th Amendment. *Nebbia v. People*, — U. S. —, 54 Sup. Ct. 505 (1934).

Without interval since 1862,<sup>3</sup> the milk industry has been the subject of regulation and control by the legislature of New York State. Repeatedly, unsuccessful attempts have been made to have such legislation judicially declared unconstitutional,<sup>4</sup> the courts, by virtue of such decisions, thereby necessarily recognizing that "public interest" is affected by the industry.<sup>5</sup> The establishment of such fact is the equivalent of declaring the industry to be "subject to the exercise of the police power."<sup>6</sup> Uniformly, the courts have refused to limit by definition the scope of the police power.<sup>7</sup> Indeed, it has been declared to be the "least limitable of the powers of government."<sup>8</sup> Obviously, if rate regulation and/or price fixing is to be upheld, it must be sustained, if at all, on the ground that such legis-

---

<sup>1</sup> L. 1933, c. 158, §312, subd. e: "After the board shall have fixed the prices to be charged or paid for milk in any form \* \* \* it shall be unlawful for a milk dealer to sell or buy milk at any price less or more than such price \* \* \* and no method or device shall be lawful whereby milk is bought or sold at a price less or more than such price. \* \* \*"

<sup>2</sup> Official Order 5, effective April 17, 1933.

<sup>3</sup> L. 1862, c. 467.

<sup>4</sup> Instant case.

<sup>5</sup> See *People v. Teuscher*, 248 N. Y. 454, 162 N. E. 484 (1928).

<sup>6</sup> *Smith v. Texas*, 233 U. S. 630, 34 Sup. Ct. 681 (1913); instant case.

<sup>7</sup> WORDS AND PHRASES, 1st, 2d, 3rd series, *sub. nom.* "police power."

It is true that the courts have indicated what would come within its scope. 6 R. C. L. §184. But it is best said that it extends to any or all public needs, necessities and safeguards. *Canfield v. United States*, 167 U. S. 518, 17 Sup. Ct. 864 (1896).

<sup>8</sup> *District of Columbia v. Brooke*, 214 U. S. 138, 149, 29 Sup. Ct. 560 (1908); *People v. Perratta*, 253 N. Y. 305, 171 N. E. 72 (1930); see *Eubank v. Richmond*, 226 U. S. 137, 33 Sup. Ct. 76 (1912); *People v. Nebbia*, 262 N. Y. 259, 188 N. E. 132 (1933).

lation is a valid exercise of the inherent<sup>9</sup> and inalienable<sup>10</sup> police power.<sup>11</sup> That its exercise in such cases is valid and not violative of the due process clause has been conclusively decided by *Munn v. Illinois*.<sup>12</sup> Moreover, emergencies will extend its scope so that "A legitimate public purpose may always be served without regard to the constitutional limitations of due process and equal protection."<sup>13</sup> Even though it be admitted that the more recent trend had been toward conservatism,<sup>14</sup> the proposition has been reiterated by the courts at various intervals.<sup>15</sup>

These thoughts and others have been expressed in, and the reader is referred to, the last preceding issue of this review.<sup>16</sup>

W. E. S.

#### CORPORATIONS—STOCKHOLDERS' REPRESENTATIVE ACTIONS.—

The defendants, directors of the corporation, have wrongfully wasted and dissipated the assets of the corporation. The plaintiff, stockholders, bring this action to recover the value of the assets wrongfully wasted by the directors, alleging specific acts of misconduct. Similar actions were started previously by other stockholders. The defendant made a motion to dismiss this action on the ground that there were similar actions pending. *Held*, a derivative action accrues to the stockholders of a corporation when its directors have wrongfully depreciated its assets even though a prior action had been commenced. *Dresdner, et al. v. Goldman, Sachs Trading Corp. et al.*, — App. Div. —, 269 N. Y. Supp. 360 (2d Dept. 1934).

<sup>9</sup> *Town of East Hartford v. Hartford Bridge Co.*, 51 U. S. (10 How.) 511 (1850).

<sup>10</sup> *Goszler v. Corporation of Georgetown*, 19 U. S. (6 Wheat.) 593 (1821); *Boyd v. Alabama*, 94 U. S. 645 (1876); *Boston Beer Co. v. Massachusetts*, 97 U. S. 25 (1877); *Atlantic Coast Line R. Co. v. City of Goldsboro*, 232 U. S. 548, 34 Sup. Ct. 364 (1913).

<sup>11</sup> 6 R. C. L. §§252, 211, and cases cited. See also *Lemieux v. Young*, 211 U. S. 489, 29 Sup. Ct. 174 (1908); *cf. Wright v. Hart*, 182 N. Y. 330, 75 N. E. 404 (1905) (regulation of sale prices held to be an invalid exercise of police power), overruled, *Klein v. Maravelas*, 219 N. Y. 383, 114 N. E. 809 (1916).

<sup>12</sup> 94 U. S. 113 (1876).

<sup>13</sup> *People v. Perratta*, *supra* note 8, citing *People ex rel. Durham Realty Co. v. La Fetra*, 230 N. Y. 429, 130 N. E. 601 (1921); *New York ex rel. Bryant v. Zimmerman*, 278 U. S. 63, 49 Sup. Ct. 61 (1928).

<sup>14</sup> Note (1933) 8 ST. JOHN'S L. REV. 82, 84.

<sup>15</sup> *German Alliance Ins. Co. v. Kansas*, 233 U. S. 389, 34 Sup. Ct. 612 (1913); *O'Gorman & Young, Inc. v. Hartford Fire Ins. Co.*, 282 U. S. 251, 51 Sup. Ct. 130 (1931); *Stephenson v. Binford*, 287 U. S. 251, 53 Sup. Ct. 181 (1932); see *People v. Nebbia*, *supra* note 8, at 268.

<sup>16</sup> Note (1933) 8 ST. JOHN'S L. REV. 82.