Supreme Court of the United States

OCTOBER TERM, 1933.

No. 370.

HOME BUILDING AND LOAN ASSOCIATION, A CORPORATION,
Appellant,

vs.

JOHN H BLAISDELL AND ROSELLA BLAISDELL, HIS WIFE,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA.

APPELLANT'S SUPPLEMENTAL BRIEF.

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APPELLANT'S SUPPLEMENTAL BRIEF.

INTRODUCTION.

In appellant's prior brief[1] (pp. 27, 28), it was shown that both the court below and the appellees concede that Chapter 339, Laws of Minnesota, 1933, Page 514, is invalid, as appellant contends, because it violates the provisions of the federal Constitution, but, nevertheless, they claim that the Act is valid as emergency legislation under the police power. Independently of that concession, appellant believes that the invalidity of the Act is established conclusively and without any exceptions in favor of the police power, in emergencies or otherwise, by the decisions (hereinafter called the "prior"

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[1]All references herein to the "Brief" refer to the appellant's brief filed with the Clerk of the Supreme Court of the United States on October 20th, 1933

cases, Brief, pp. 23, 24) of this Court which were cited by the appellant.

In view of the claim of the appellees, however, this supplemental brief will be addressed only and very briefly to the issue thus raised.

THE CLAIM OF THE APPELLEES.

In view of the concession by the appellees that under the prior decisions, the Act is void, and in view of the claim nevertheless made by the appellees, relying on the later Rent Cases (Brief, p. 28), that the Act is valid as a legitimate exercise of the police power in an emergency, their argument may be reduced to the following: Either (a) this Court in the prior decisions made a reservation in favor of the police power in emergencies, or (b) this Court, in the later cases, reversed, overruled or modified the prior decisions.

THE CLAIM OF THE APPELLANT.

The appellant believes that such claim of the appellees cannot be sustained. Appellant claims that its challenge of Chapter 339 is consistent with, and in accord with, the opinions and decisions of this Court in the Rent Cases.

ARGUMENT.

With respect to the claim of appellees, (a) above, it is obvious and beyond contradiction, that in the prior cases, this Court did not make any *express* reservation in favor of the police power, in emergencies or otherwise; nor can any such *implied* reservation be claimed, because in those cases the mortgage moratorium laws and stay laws involved were enacted under and in the exercise of the police power, and

during economic depressions. It was the intention of the framers of the Constitution, as stated by this Court in those cases, that under depression conditions like those now prevailing, laws of the type of Chapter 339 should be forever prohibited, whether enacted under the police power, or any other power[2]. The legislative acts involved in those cases were expressly and unequivocally declared void by this Court.

With respect to appellees' further argument, (b) above, that this Court in the later cases reversed, overruled or modified the prior cases, appellant will repeat here what has been said before (Brief, p. 28) and will follow with the argument to support the statement:

> "We have been unable, ourselves, to find any decision of this Court, and none has been cited by them [the court below and the appellees], to show that this Court has reversed the decisions or retracted any of the applicable principles laid down in the cases cited by appellant. It would be absurd to claim that this Court has done so *expressly*. And we submit that this Court has not done so by *implication*, or *indirectly*—not even in the Rent Cases."

Limitations in the Federal Constitution on the Police Power of the States.

We have elsewhere[3] considered the claim of the appellees, that the police power, as the inherent power of the states, is superior to all limitations, and we have pointed out that

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[2]Edwards vs Kearzey (1878), 96 U S (6 Otto) 595, 604, 605 and 606, 24 L Ed 793, see also Brief, p 20

[3]See· Brief, p 27, and Footnote 3.

the decisions of this Court to the contrary are innumerable. It cannot be denied that many provisions of the federal Constitution are intended to be, and are, limitations on such power. The contract clause, the due process clause, and the equal protection of the laws clause are all such limitations. The police power is no exception to the powers of the state which are limited by applicable provisions of the federal Constitution. It is clear and expressly decided that the power of taxation is so limited[4]; and that the power of eminent domain is so limited[5]. The court below and the appellees concede, that the police power is so limited. But they assert that the "emergency" suspends the limitations. This Court has stated positively and squarely, in a case involving an actual emergency arising during the Civil War, that even the war power of the federal government is not without limitations, and that such an emergency does not suspend constitutional limitations and guaranties.

Ex parte Milligan (1866), 71 U. S. (4 Wall.) 2, 120, 121, 18 L. Ed. 281, 295.

The Judicial Review of Legislation.

The appellees argue, in reliance to a great extent, on the Rent Cases, that the courts have no power to review or to question the legislative declaration (a) of the existence of the emergency, and (b) that the relationship of mortgagor and mortgagee and the conduct of the business of lending

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4Iowa Des Moines Nat'l Bank vs Bennett (1931), 284 U S 239, 52 S Ct. 133, 76 L Ed 265

5Madisonville Traction Co vs St. Bernard Min Co. (1905), 196 U S. 239, 25 S Ct. 251, 49 L. Ed. 402;
Delaware L & W R Co vs. Morristown (1928), 276 U. S 182, 48 S Ct 276, 72 L. Ed. 523.

money on the security of real estate, and the relationship of creditor and debtor, are sufficiently affected with a public interest as to warrant regulation by the state in the exercise of its police power.

On the contrary, appellant submits that this Court has determined to the contrary, and that this Court has the power, in the case at bar, to review the legislative declarations: (a) as to the existence of emergency, because its existence is the basis upon which the validity of Chapter 339 depends[6], and (b) as to the existence and extent of the "public interest"[7].

The appellant submits further that this Court unquestionably has the power to review the legislative enactment: (c) to ascertain whether the object thereof comes within the legitimate scope of the police power[8]; (d) to ascertain whether the classification, if any, is reasonable and proper[9]; (e) to ascertain whether the rules and standards provided,

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[6]See Art 4, Sec. 33, Minn Const (Brief, p. 49, appendix C) and reference thereto by the trial court (R 15) Chastleton Corp vs Sinclair (1924), 264 U S. 543, 547, 44 S Ct 405, 406, 68 L Ed 841, in which Mr Justice Holmes explains what was said in reference to the existence of an emergency in Block vs Hirsh See also Statement relative to emergencies by Mr Chief Justice Taft in Wolff Packing Company vs. Court of Industrial Relations (1923), 262 U S 522, 542, 43 S Ct. 630, 635, 67 L Ed 1103, 27 A L R 1280.

[7]See. Statement by Mr Chief Justice Taft in the Wolff case, Footnote 6, supra, at pages 535 and 536 of Vol 262 U S. Rep , and Pages 632 and 633 of Vol 43 S Ct. Rep.

[8]See· Statement by Mr. Chief Justice Taft in the Wolff case at Pages 539 to 542 of Vol 262 U S Rep , and Pages 634 and 635 of Vol 43 S Ct. Rep

[9]See Statement by Mr. Justice Brandeis in Louisville Gas and Electric Co vs Coleman (1928), 277 U S 32, 42, 43, 48 S. Ct 423, 427, 72 L Ed 770, in Footnote 1 therein.

if any, are reasonably definite and certain[10], and (f) to ascertain whether the extent and effect of the legislation are such as to reasonably and properly accomplish a legitimate object within the police power[11].

Police Power of the States.

It is apparent from the many decisions of this Court in cases involving the validity of state laws enacted under the police power, that no attempt by the appellant to make an all-inclusive definition of the police power could be successful; that a definition can be made only with respect to the circumstances presented in a given case.

In the case at bar, as has been indicated above, the claim of the appellees, in view of their reliance on the Rent Cases, amounts, in substance, to the assertion that the transaction involved is affected with a public interest. With this situation in mind, the appellant believes that it is necessary to start with a definition of the police power applicable to the case at bar.

If, from all of the powers of the state governments, those of taxation and of eminent domain are segregated, substantially all of the balance comprise the police power. The latter is the power to preserve the existence of the state and to promote the general welfare of the people in the state. The protection of life, health, safety and morals of the people is unquestionably, and from any view, within that power. The

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10See Statement by Mr Justice Van Devanter in Small Co vs. American Sugar Refg Co (1925), 267 U S 233, 240, 241, 242, 45 S Ct 295, 297, 298, 69 L Ed 589, in which, referring to and distinguishing the Levy Leasing Co vs Siegel case, he states that the rules and standards provided by the rent laws were sufficiently definite and certain.

11See· Footnote 8, supra

promotion of the convenience and comfort of the people is more debatable.

Limitations on the police power, as on all other powers of the state governments, are imposed both by the federal Constitution, as shown above, and by the state constitutions.

With respect to the limitations so imposed by the federal Constitution, those for the benefit of the individual citizen: the contract clause, the due process clause and the equal protection clause, are here material. The limitations imposed by the contract clause have been fully presented in appellant's brief. In view of the issue now under consideration, namely: how far the state may regulate, in an emergency, a business conceded to be a private business, and hence, under the due process and equal protection clauses, not subject to regulation under ordinary conditions, we suggest the following definition:

> "While there is no such thing as absolute freedom of contract, and it is subject to a variety of restraints, they must not be arbitrary or unreasonable. Freedom is the general rule and restraint the exception. The legislative authority to abridge can be justified only by exceptional circumstances. * * *
>
> "Businesses said to be clothed with a public interest justifying some public regulation may be divided into three classes:
>
> "(1) Those which are carried on under the authority of a public grant of privileges. * * *
>
> "(2) Certain occupations regarded as exceptions, the public interest attaching to which [was] recognized from earliest times, * * * [the common callings]. * * * Such are those of the keepers of inns, cabs and grist mills. * * *
>
> "(3) Businesses which, though not public at their

> inception, may be fairly said to have reason to be such and have become subject in consequence to some government regulation. They have come to hold such a peculiar relation to the public that this is superimposed upon them. In the language of the cases, the owner by devoting his business to the public use, in effect grants the public an interest in that use and subjects himself to public regulation to the extent of that interest, although the property continues to belong to its private owner and is entitled to protection accordingly."
>
> *Wolff Packing Company vs. Court of Industrial Relations* (1923), 262 U. S. 522, 534, 535, 43 S. Ct 630, 632, 633, 67 L. Ed. 1103.

A state cannot, "under the guise of protecting the public, arbitrarily interfere with private business or private lawful occupation, or impose unreasonable and unnecessary restrictions upon them."

> "Determination by the Legislature of what constitutes proper exercise of police power is not final or conclusive, but is subject to supervision by the courts * * *."
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> *Burns Baking Company vs. Bryan* (1924), 264 U. S 504, 513, 44 S. Ct 412, 413, 68 L. Ed. 813, 32 A. L. R. 661.
>
> *Meyer vs Nebraska* (1923), 262 U. S. 390, 399, 400, 43 S. Ct. 625, 627, 67 L Ed. 1042.

The relationship of mortgagor and mortgagee arising out of the business of lending money on the credit of real estate, and the enforcement of the agreed remedies therein, are clearly private matters and are not affected with a public interest. As such they cannot be regulated as is here attempted by Chapter 339. In the case at bar, the Act is aimed only

at regulating, by preventing, the exercise of the agreed remedies in existing mortgages. It does not, and is not intended to, regulate the business of lending money on security of real estate. The only business regulated by the Act, is the business, if it be one, of enforcing the mortgage security in existing mortgages. This is shown by the fact that mortgages executed after the enactment of Chapter 339, or existing mortgages extended to come due after May 1st, 1934, are specifically exempted in the Act (Brief, pp. 17, 18). No attempt whatever is made in the Act to regulate the business of lending money on the security of real estate; no prohibition is made; no licensing is provided; no regulation of interest (*i. e.,* rates charged) is made. Moreover, it is conceded, in the case at bar, that the transaction involved is absolutely lawful in all respects (Brief, p. 24, par. 2). The court below and the appellees concede this; but the appellees argue, as the legislature declared, that nevertheless, under the circumstances, the transaction can be regulated by the state under its police power. But, as we have shown, the Act does not regulate the business of lending money on the security of real estate, or of any business. The Act is aimed only at preventing the mortgagees from exercising their agreed remedies under existing mortgage contracts. Hence, the argument of the appellees, based on the Rent Cases, is reduced to claiming that the enforcement of the agreed remedies in the case at bar is "a business" and "a business affected with a public interest."

Appellant, of course, denies this, and most strenuously. We submit that the mere enforcement of existing and agreed remedies cannot be said to be "a business," or "a business affected with a public interest."

The appellant submits, for the reasons set out in appellant's brief, at pages 22 and 24, that Chapter 339 is invalid

because: (a) the object sought to be obtained is not within the scope and legitimate exercise of the police power within the definition above made; (b) that the enforcement of remedies under existing mortgages is not "affected with a public interest"; (c) the classification is invalid for the reasons set out in the brief, pages 14, 17, 18, 29 and 30; (d) the rules and standards provided are not reasonably definite and certain, as set out in the brief, page 14; and (e) that the extent and effect of the legislation is not a proper exercise of the police power and does not reasonably tend to accomplish a legitimate object within the police power.

Analysis of the Rent Cases.

The Rent Cases expressly held that substantial rights of the parties therein were involved and claimed to be invaded by the rent laws, and that the parties could maintain an action to vindicate those rights[12].

These cases unquestionably went to the extreme in sustaining as valid the exercise of the police power therein involved. The opposite extreme is presented by the case of *Pennsylvania Coal Company vs. Mahon*[13]. The rent laws

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[12]See· Statement by Mr Justice Holmes in Chastleton Corp. vs Sinclair, supra, at Page 547 of Vol. 264 U. S Rep , and 406 of Vol 44 S Ct Rep ; Statement by Mr Justice Brandeis in the case of Morrison vs Work (1925), 266 U. S 481, 486, 487, 45 S Ct. 149, 151, 152, and 69 L Ed 394; See· Statement by Mr Justice Stone in his dissenting opinion in the case of Tyson & Brothers vs Banton (1927), 273 U S 418, 452, 47 S Ct 426, 436, 71 L Ed 718, in which he states, after referring to the Rent Cases, that "self-interest is not permitted to invoke constitutional protection at the expense of the public interest and reasonable regulation of prices."

[13](1922) 260 U S. 393, 43 S Ct 158, 67 L Ed 322. See· Statement by Mr. Justice Holmes in Frost Trucking Co vs Railroad Commission (1926), 271 U. S 583, 601, 46 S Ct 605, 610, 70 L. Ed 1101, in which the statement quoted in substance in the text is made

were upheld only because there was presented the following combination of circumstances[14]:

(a) An emergency[15] was declared by the legislature and found by the court to exist; (b) The duration of the laws was limited to the estimated duration of the emergency[16]; (c) There was, in fact and in law, no deprivation of property without due process of law, because the landlords and owners were assured a reasonable compensation[17]; (d) Reasonable and definite standards and rules were provided to accomplish such object[18]; and (e) The legislation was in-

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14See· Statement by Mr Justice Holmes, who wrote the majority opinions in two of the rent cases and concurred in the others, in the case of Pennsylvania Coal Co vs Mahon (Footnote 13 above), in which Mr Justice Holmes states, at Page 416, of Vol 260 U S Rep., and Page 160 of Vol 43 S Ct Rep , that the rent cases "went to the verge of the law " See similar statement by Mr Justice Holmes in the Frost case (Footnote 13 above) See Statement by Mr Justice Stone in Tyson & Brothers vs Banton (1927), 273 U S 418, 451, 452, 47 S. Ct 426, 435, 436. 71 L Ed 718, referring to the Rent Cases as presenting, in substance, a condition approaching monopoly and other circumstances See also Mr Justice Stone's statement in Ribnik vs McBride (1928), 277 U S 350, 361, 375, 48 S. Ct 545, 547, 552, 72 L Ed 913, in which he states, in substance, that but for the circumstances presented in the Rent Cases, the rent laws would not have been upheld

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15See: Footnote 14 and statement by Mr Justice Brandeis in his dissenting opinion in New State Ice Co vs Liebmann (1932), 285 U S 262, 305, 306, 52 S Ct 371, 384 and 385, 76 L Ed. 747, and statement by Mr. Justice Sutherland in Tyson & Brothers vs Banton (1927), 273 U. S. 418, 437, 438, 47 S Ct. 426, 430 and 431, 71 L Ed. 718, in which he states that unless the emergency existed (and the court so found), the renting of houses would not be a business affected with a public interest

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16See. Statement to that effect by Mr. Justice Holmes in the Pennsylvania Coal Company vs. Mahon case, at Page 416, Vol. 260 U S., and Page 160 of 43 S. Ct. Rep.

17See: Footnote 10, supra, and Footnote 16, supra

18See: Footnote 10, supra.

tended to apply and did apply to *residence* property only, that is, rented residence property.

In the case at bar, aside from the contents of the legislative declaration in the Preamble of the Act (Appendix "A," Brief, p. 32), there is (a) absolutely nothing before this Court to show the existence of any emergency[19], nor (b) any rational basis for the period of two years prescribed in the Act, and there is nothing to show that the Act may not be continued indefinitely by succeeding Minnesota legislatures. Moreover, there is (c) no reasonable compensation, and in many cases absolutely no compensation, provided or assured by the Act to mortgagees and other creditors under the Act (see Brief, pp. 14, 15); (d) there are no reasonable and definite standards for applying the Act (see Brief, pp. 14, 15); and (e) the Act is not limited to the protection of residences, that is homesteads as such, but applies indiscriminately to all real property, whether vacant, unimproved, agricultural or urban, and whether used for purposes of residence, investment or speculation (see Brief, p. 5).

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[19]See: Footnotes 14 and 15, supra. See also briefs filed in the Levy Leasing Company vs Siegel case, 258 U. S 242, showing that over a period of five or six years preceding and following the enactment of the rent laws, investigations by successive and continuous committees, some appointed by the legislature, some by the governor and some by the Mayor of the City of New York, resulted in accurate and voluminous reports showing, in detail, the facts found with reference to the conditions upon which the determination of an emergency was made in the first instance by the legislature and upheld thereafter by the courts These briefs also show that there were many reports by medical officers of the State and City showing that as a result of the wholesale evictions and threats of eviction there were actual physical results causing actual injury to public health, sanitation and morals

CONTROLLING DISTINCTION IN THE RENT CASES.

Appellant has stated above, that its challenge of Chapter 339, is consistent with the opinions and decisions of this Court in the Rent Cases. That claim is submitted in view of the following facts:

In addition to the distinctions above made, it conclusively appears that in the Rent Cases, the exercise by the landlords of their rights and remedies to terminate the leases and to recover possession of the premises, was under the circumstances: (1) not contemplated by the parties, at least, not by the tenants; (2) not usual; (3) not agreed between the parties, or, if agreed, agreed in many cases under duress and coercion; (4) inequitable and unjust, because the circumstances presented substantially a condition of monopoly in which the tenants, as parties to the contracts, had little, if any, choice; (5) inimical to society and oppressive because: (a) the rents charged were flagrantly excessive and extortionate and the wholesale evictions were unprecedented in number and constituted abuse of process; and (b) resulted in serious and actual injury[20] to the public health, safety and morals.

In the case at bar, on the other hand, the exercise by the mortgagees of their rights and remedies in foreclosing the mortgages, are: (1) contemplated by the parties; (2) usual; (3) freely agreed between the parties, under no coercion of person or circumstance; (4) fair; (5) not inimical to society, and are lawful in all things: (a) there are no excessive charges, no profiteering or extortion, no abuse of process and (b) no menace or injury to the public health, safety or morals.

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[20]See Footnote 19

It is submitted, therefore, that in the Rent Cases, the real basis and controlling reason for upholding the rent laws was that they restrained and prevented inequitable and oppressive conduct by the landlords, and that such conduct was in fact injurious to the public health, safety and morals, and that to prevent and cure all these evils, the business of letting dwellings was regulated under the police power by fixing a reasonable compensation (*i. e.,* rates) and preventing the exercise of the agreed remedies, because under the circumstances, they were inequitable and an abuse of process. This is eminently proper, for such conduct is always subject to the police power. No provision of the federal Constitution, whether contract clause, due process clause, or any other restraint on the states, limits or is intended to limit the police power of the states when exercised for such purposes. Such purposes are unquestionably legitimate from whatever angle viewed, whether during an emergency or otherwise. Mr. Justice Holmes, speaking for the court, in *Brown Holding Company vs. Feldman* (1921), 256 U. S. 170, 41 S. Ct. 465, 65 L. Ed. 877, said, at Page 198:

> "But contracts are made subject to this exercise of the power of the state when *otherwise justified,* as we have held this to be."

Moreover, no one can seriously claim that the Constitution, in any provision, confers or guarantees the right to anyone to engage in such conduct. Neither the contract clause, nor the due process clause, nor any other provision of the Constitution gave the landlords the right to coerce, extort and abuse the people of New York and to commit such actual injuries to the public health, safety and morals.

CONCLUSION.

For all of the foregoing reasons and on the authority of the decisions of this Court, the appellant submits:

First: That the claim of the appellees with respect to the Rent Cases is erroneous and cannot be sustained;

Second: That the decisions of this Court relied upon by the appellant, are in full force and effect, and that the Rent Cases are entirely consistent therewith;

Third: That these decisions sustain the claims of the appellant;

Fourth: That Chapter 339 is, therefore, void under the federal Constitution, because repugnant to, and in violation of, the contract clause, the due process clause and the equal protection of the laws clause thereof; and

Fifth: That the court below erred in holding to the contrary, and in sustaining the validity of Chapter 339.

Appellant respectfully submits, therefore, that this Honorable Court should declare Chapter 339 to be null and void, as unconstitutional under the federal Constitution, and should reverse the decision below.

Respectfully submitted,

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