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Constitutional Law - Due Process - Fixing of Minimum Prices in Barbering Business

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extended to permit attack on the property itself in those situations wherein the ancestor accomplishes his simulation by buying from a third party in the name of his donee (the rights of subsequent purchasers always being protected). Such sweeping changes could not be accomplished without action of the legislature, but their need is indicated by the possible injustices revealed in *Drewett v. Carnahan.*

C. O'Q.

CONSTITUTIONAL LAW—DUE PROCESS—FIXING OF MINIMUM PRICES IN BARBERING BUSINESS—Act 48 of 1936 grants the Board of Barber Examiners[1] the power to fix in each Judicial District the minimum prices which may be charged by the barbers of that district. The official prices are to be ascertained from price agreements submitted to the Board by a group of at least three-fourths of the barbers in each district. The purpose of the act is declared in section 1 to be to "protect the public welfare, public health and public safety." The orders of the Board are given the force and effect of law and their violation is made a criminal offense. The defendant Parker charged less than the minimum price set for his district and his license was suspended for six months by order of the Board. He disregarded this order. Thereupon, suit was instituted to enjoin him from conducting his barbershop.[2] The defendant contended that Act 48 of 1936 violates the due process clauses of both the Federal and the State Constitutions. *Held,* on rehearing, with two justices dissenting, that Act 48 of 1936 is a proper exercise of the police power of the state. *Board of Barber Examiners v. Parker,* 182 So. 485 (La. 1938).

It is a truism of constitutional law that the police power of the state enables it, with certain limitations,[3] to regulate private business in order to protect the public health, safety, morals and general welfare.[4] And it was early held by the United States

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Ann. 33 (1883). The equality among forced heirs is protected by Art. 2444, La. Civil Code of 1870.

1. The Board of Barber Examiners was created by Act 247 of 1928, § 20, as amended by Act 126 of 1932, § 1 [Dart's Stats. (1932) § 9386].

2. A criminal proceeding, State of Louisiana v. Guchereau, 182 So. 515 (La. 1938), having substantially the same facts, was consolidated with this action on the rehearing and the cases were argued together.

3. Voight v. Wright, 141 U.S. 62, 11 S.Ct. 855, 35 L.Ed. 638 (1891); Bailey v. People, 190 Ill. 28, 60 N.E. 98 (1901); People v. Murphy, 195 N.Y. 126, 88 N.E. 17 (1909); State v. Clausen, 65 Wash. 156, 117 Pac. 1101 (1911).

4. Slaughter House Cases, 83 U.S. 36, 21 L.Ed. 394 (1873); Chicago B. & Q.

Supreme Court in *Munn v. Illinois*[5] that regulation by price control is a proper exercise of this power. The language of the *Munn* case was broad. Yet subsequent decisions[6] soon restricted the rule of that case to apply only to businesses "affected with a public interest." Just when a business comes within that category is difficult to determine. For example, price regulation of businesses concerned with insurance,[7] employment,[8] handling and selling leaf tobacco,[9] grain elevators,[10] railroads,[11] and housing[12] has been upheld on the ground that such businesses were "affected with a public interest." On the contrary the validity of statutes regulating prices to be charged in the cleaning and dyeing trade,[13] employment agencies,[14] gasoline,[15] ice[16] and meat packing[17] indus-

Ry. Co. v. Illinois, 200 U.S. 561, 26 S.Ct. 341, 50 L.Ed. 596 (1906); Pacific Gas and Electric Co. v. Police Court, 251 U.S. 22, 40 S.Ct. 79, 64 L.Ed. 112 (1919).

5. Munn v. Illinois, 94 U.S. 113, 24 L.Ed. 77 (1877).

6. Budd v. New York, 143 U.S. 517, 12 S.Ct. 468, 36 L.Ed. 247 (1892); German Alliance Insurance Co. v. Lewis, 233 U.S. 389, 34 S.Ct. 612, 58 L.Ed. 1011, L.R.A. 1915C, 1189 (1914). See the three-fold classification of businesses "affected with a public interest" in Wolff Packing Co. v. Court of Industrial Relations, 262 U.S. 522, 535, 43 S.Ct. 630, 67 L.Ed. 1103, 27 A.L.R. 1280 (1923); Hale, the Constitution and the Price System; Some Reflections on Nebbia v. New York (1934) 34 Col. L. Rev. 401. For an excellent article on the gradual development in meaning of the phrase, see Hamilton, Affectation With Public Interest (1930) 39 Yale L. J. 1089.

7. German Alliance Insurance Co. v. Lewis, 233 U.S. 389, 34 S.Ct. 612, 58 L.Ed. 1011, L.R.A. 1915C, 1189 (1914); O'Gorman & Young v. Hartford Fire Insurance Co., 282 U.S. 251, 51 S.Ct. 130, 75 L. Ed. 324 (1931).

8. Abbye Employment Agency v. Robinson, 166 Misc. 820, 2 N.Y. Supp. (2d) 947 (1938). A definite liberal trend can be seen mirrored in this New York Court's refusal to follow Ribnik v. McBride, 277 U.S. 350, 48 S.Ct. 545, 72 L.Ed. 913, 56 A.L.R. 1327 (1928) which held a similar New Jersey statute invalid on the ground that the employment business was not affected with a public interest. The New York court found a slight distinction in the statutes, but based its decision mainly upon the fact that the Ribnik Case, supra, relied upon Adkins v. Children's Hospital, 261 U.S. 525, 43 S.Ct. 394, 67 L.Ed. 785, 24 A.L.R. 1238 (1923), the principles of which have been repudiated by West Coast Hotel Co. v. Parrish, 300 U.S. 379, 57 S.Ct. 578, 81 L.Ed. 703, 108 A.L.R. 1330 (1937).

9. Townsend v. Yeomans, 301 U.S. 441, 57 S.Ct. 842, 81 L.Ed. 1210 (1937).

10. Munn v. Illinois, 94 U.S. 113, 24 L.Ed. 77 (1877); Brass v. North Dakota, 153 U.S. 391, 14 S.Ct. 857, 38 L.Ed. 757 (1894).

11. Dillon v. Erie R. Co., 19 Misc. 116, 43 N.Y. Supp. 320 (1897); Smyth v. Ames, 169 U.S. 466, 18 S.Ct. 418, 42 L.Ed. 819 (1898).

12. Block v. Hirsh, 256 U.S. 135, 41 S.Ct. 458, 65 L.Ed. 865, 16 A.L.R. 165 (1921).

13. Kent Stores of N. J. v. Wilentz, 14 F. Supp. 1 (D.C. N.J. 1936).

14. Ribnik v. McBride, 277 U.S. 350, 48 S.Ct. 545, 72 L.Ed. 913, 56 A.L.R. 1327 (1928).

15. Williams v. Standard Oil Co. of Louisiana, 278 U.S. 235, 49 S.Ct. 115, 73 L.Ed. 287, 60 A.L.R. 596 (1929).

16. New State Ice Co. v. Liebmann, 285 U.S. 262, 52 S.Ct. 371, 76 L.Ed. 747 (1932).

17. Wolff Packing Co. v. Court of Industrial Relations, 262 U.S. 522, 43 S.Ct. 630, 67 L.Ed. 1103, 27 A.L.R. 1280 (1923).

tries has been denied. However, in *Nebbia v. New York*,[18] the Supreme Court, throwing off its self-imposed limitations, abandoned the old theory that only businesses affected with a public interest may be so regulated and cast price control into the category of other forms of regulation.[19] Nonetheless, subsequent to the *Nebbia* case price fixing statutes pertaining to the barber trade have been held invalid in the states of Iowa,[20] Alabama,[21] and Florida,[22] and statutes regulating the hours[23] barbers may work have met a similar fate. These last named price regulating cases were, however, decided prior to the far reaching *Minimum Wage* case,[24] wherein the Supreme Court, in overruling the principles announced in *Adkins v. Children's Hospital*,[25] found a reasonable relation between the public health and the wages which women receive for their labor.[26] By way of analogy, it appears that there exists a similar reasonable relation between public health and the prices which barbers receive for their labor.[27] Therefore, by way of summary, it may be said that since barbering

18. Nebbia v. New York, 291 U.S. 502, 54 S.Ct. 505, 78 L.Ed. 940, 89 A.L.R. 1469 (1934).

19. "Price control, like any other form of regulation, is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty," Nebbia v. New York, 291 U.S. 502, 539, 54 S.Ct. 505, 78 L.Ed. 940, 89 A.L.R. 1469 (1934). See Duane, Nebbia v. People: A Milestone (1934) 82 U. of Pa. L. Rev. 619, 620.

20. Duncan v. City of Des Moines, 222 Iowa 218, 268 N.W. 547 (1936).

21. City of Mobile v. Rouse, 233 Ala. 622, 173 So. 266, 111 A.L.R. 349 (1937).

22. State v. Ives, 123 Fla. 401, 167 So. 394 (1936).

23. Amitrano v. Barbaro, 1 A. (2d) 109 (R. I. 1938); Chaires v. Atlanta, 164 Ga. 755, 139 S.E. 559, 55 A.L.R. 230 (1927); City of Alexandria v. Hall, 171 La. 595, 131 So. 722 (1930); State ex rel. Pavlik v. Johannes, 194 Minn. 10, 259 N.W. 537 (1935); Knight v. Johns, 161 Miss. 519, 137 So. 509 (1931); State ex rel. Newman v. City of Laramie, 40 Wyo. 74, 275 Pac. 106 (1929). Contra: Falco v. Atlantic City, 99 N.J. 19, 122 Atl. 610 (1923) where the court reasoned that "to allow barber shops to remain open to the public at all hours of the night might well be regarded as rendering ready and adequate inspection inconvenient or difficult, or even impossible, and consequently detrimental to public health."

24. West Coast Hotel Co. v. Parrish, 300 U.S. 379, 57 S.Ct. 578, 81 L.Ed. 703, 108 A.L.R. 1330 (1937).

25. Adkins v. Children's Hospital, 261 U.S. 525, 43 S.Ct. 394, 67 L.Ed. 785, 24 A.L.R. 1238 (1923).

26. The Louisiana Supreme Court, in the instant case, 182 So. 485, 511, distinguishes the contrary decisions reached in Iowa, Alabama, and Florida (notes 20, 21, and 22, supra) by stating that those decisions were based substantially upon the Adkins Case, and that the principles of that case had been overruled by the West Coast Hotel decision.

27. If the wages which women receive in any type or kind of business are subject to regulation, it would appear that the prices which barbers may charge (which in effect determine their "wages") should be subject to regulation inasmuch as barbering requires necessary sanitary measures closely connected with the public health.

can be regulated in the interest of public health,[28] that since such a business need not technically be affected with a public interest in order that price fixing be regulated,[29] and that since the prices which barbers may charge appear to be (particularly in view of the Minimum Wage decision)[30] not "demonstrably irrelevant"[31] to public health, we believe that the Louisiana Supreme Court reached a legally correct and socially desirable conclusion.

H. M. S.

CONSTITUTIONAL LAW—EMINENT DOMAIN—STATE SLUM CLEARANCE HOUSING PROJECTS—The "Slum Clearance" Act[1] represents one of the most recent pieces of social legislation enacted by the Louisiana legislature. The Act authorizes the creation of public corporations in cities having population in excess of 20,000, with power to investigate living and housing conditions and to develop projects for clearing, replanning and reconstructing slum areas in order to provide housing accommodations for persons of low income.[2] To test the constitutionality of the act, the Attorney General of the State brought suit[3] to enjoin the City of New Orleans and the newly created New Orleans Housing Authority from proceeding with the proposed slum clearance project. *Held,* that the Act is constitutional since it has for its object the expropriation of land and expenditure of public funds for the public use.[4] *State ex rel Porterie, Attorney General v. New Orleans Housing Authority,* 182 So. 725 (La. 1938).

It is a matter of common knowledge that slums exist throughout the United States.[5] It is equally undoubted that there is a close relationship between slums and disease, crime delinquency

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28. State ex rel. Newman v. City of Laramie, 40 Wyo. 74, 275 Pac. 106 (1929); State v. Zeno, 79 Minn. 80, 81 N.W. 748 (1900); State v. Armeno, 29 R. I. 431, 72 Atl. 216 (1909); State v. Walker, 48 Wash. 8, 92 Pac. 775 (1907).

29. Nebbia v. New York, 291 U.S. 502, 54 S.Ct. 505, 78 L.Ed. 940, 89 A.L.R. 1469 (1934).

30. West Coast Hotel v. Parrish, 300 U.S. 379, 57 S.Ct. 578, 81 L.Ed. 703, 108 A.L.R. 1330 (1937).

31. See note 19, supra.

1. La. Act 275 of 1936 [Dart's Stats. (Supp. 1937) §§ 6280.1-6280.26].

2. Id. § 8 [Dart's Stats. (Supp. 1937) § 6280.8].

3. In virtue of La. Const. of 1921, Art. VII, § 56.

4. La. Const. of 1921, Art. X, §§ 1, 5.

5. Engle, Housing Conditions in America, as Revealed by The Real Property Inventory (1934) 17; Wood, Slums and Blighted Areas in the United