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Charles A. Reynard

the rules governing the review proper might well be interpreted as granting a trial de novo since provision is simply made that "the order complained of shall be taken as prima facie valid" and "all pertinent evidence with respect to the validity and reasonableness of the order of the commissioner complained of shall be admissible."[11] If the commissioner is to have primary jurisdiction over "post-order" evidence, it will evidently take more than the words of the present statutory provisions to assure it.

CONSTITUTIONAL LAW

*Charles A. Reynard**

The past term produced but three cases in the field of constitutional law, two of which dealt with impairment of the obligation of contract and the third involving the equal protection clauses of the state and federal constitutions.

The contract clause cases, one alleging impairment by a federal statute, and the other by a state act, were actually disposed of upon the ground that no impairment in fact occurred. It is the dicta of the cases which are of interest, however, illustrating as they do that the clause serves as a limitation only upon the legislative powers of the states and not upon Congress. The state act, challenged in *Fireside Mutual Life Insurance Company v. Martin*,[1] was Act 195 of 1948 amending the Insurance Code,[2] which reads in part as follows:

> "All life, health and accident insurers on cooperative assessment plan organized and authorized to do business in this state as of 12:00 noon of October 1, 1948, may continue to operate provided, that from and after December 31, 1950, all policies issued by such insurers shall be subject to and in accordance with the laws and regulations of this state relative to industrial life insurance, and especially

11. La. R.S. 1950, 30:12. Even in the context of a trial de novo granted by statute, the United States Supreme Court has, however, indicated scope for the doctrine of primary jurisdiction. See, e.g., Justice Brandeis' comments in Great Northern R. Co. v. Merchants Elevator Co., 259 U.S. 285, 291 (1922). And see generally Davis, Administrative Law § 197.

* Professor of Law, Louisiana State University.

1. 66 So. 2d 511 (La. 1953).

2. La. R.S. 1950, 22:391.

> subject to the provisions of this Code relative to domestic industrial insurers, with the same insuring powers which they have on such date. The operation of such insurers shall be governed by the provisions of this Part, and by all the applicable provisions of this Code not in conflict herewith."

Plaintiff, an insurer doing business on the co-operative or assessment basis and therefore subject to the act, contended that the enactment impaired the obligations of its charter contract with the state.[3] In his opinion for a unanimous court, Justice Moise denied the claim on the ground that "there is no impairment of the obligation of the contract of the company [because] the measure is a regulation as to the form of policy the company must write in the future."[4] Although this conclusion of "no impairment" might be debated as a theoretical proposition, such impairment as in fact occurred is quite clearly permissible under the state's reserved police power to regulate an activity so closely related to the public welfare, a facet of the case with which Justice Moise deals at length elsewhere in his opinion. It has been the settled jurisprudence of the federal cases since 1880 that the legislature cannot bargain away the police power of a state,[5] despite the language of Article I, Section 10, of the Federal Constitution providing that "No State shall . . . pass any . . . law impairing the obligation of contracts."

The other decision involving the contract clause, *Probst v. Nobles*,[6] was a case arising under an act of Congress, the Housing and Rent Act of 1947.[7] The plaintiff-lessor sought to obtain possession of property which had been leased to the defendant in 1948 for a term of five years at a stipulated monthly rental of $175. In 1950 the Housing Expediter of the City of New Orleans, in the course of administering the federal statute, directed that the rental be reduced to $77.50,[8] and plaintiff then sought to terminate the lease prior to the expiration of the five-year term. In support of his claim, the plaintiff asserted that the action of the federal official caused a termination of

3. There was also a claim that the amendatory provision was void for irreconcilability with other portions of the Insurance Code which was rejected.

4. 66 So. 2d 511, 514 (La. 1953).

5. Stone v. Mississippi, 101 U.S. 814, 817-818 (1880).

6. 66 So. 2d 609 (La. 1953).

7. 50 U.S.C.A. App. § 1881 et seq. (1951).

8. The rental was further reduced by the Expediter on April 25, 1952, to the sum of $61.50.

the lease by rendering performance of its provisions impossible as a matter of law, despite the fact that regulations issued under and pursuant to the federal act contained a specific provision to the contrary.[9] In the alternative, it was contended that if the lease did not terminate as a matter of law, then the federal enactment constituted an impairment of the obligation of the lease contract. The principal contention was rejected because of the clear and unmistakable language of the regulations which declared that leases were not to terminate as a result of action taken under the act. The contract clause contention was overruled because it was found that no impairment had in fact occurred, the lease having been entered into subsequent to the date of the enactment of the statute and, therefore, with full knowledge of its existence and notice that such action might be taken. In this view of the case it was unnecessary for the court to consider which, if any, constitutional provisions operate as a limitation upon the legislative powers of Congress in the area of impairment of contract. The contract clause, by its terms, is limited to state laws and hence is not applicable to such a case. However, the Supreme Court of the United States has always recognized a contract clause concept as a part of due process of law guaranteed by the Fifth Amendment to the Federal Constitution; and during the heyday of substantive due process of law it served to invalidate congressional enactments aimed at social reform.[10] With the shrivelling of substantive due process during the era of the Roosevelt-Truman Court, however, there has been a growing tendency to sustain legislative enactments of the Congress which represent the exercise of specifically granted powers despite the fact that they operate incidentally to restrict liberty of contract. This trend has been extended to cover contracts to which the government itself is a party.[11] The Louisiana court recognized this broad power of Congress to effect some impairment, for after concluding that no actual impairment resulted in the subject case, it went on to say: "However, the result would be the same

9. Section 61, Chapter 21, Title 32A, C.F.R.

10. See, e.g., Adair v. United States, 208 U.S. 161 (1908) invalidated on act of Congress outlawing the use of the so-called "Yellow-dog Contract," in employment on interstate railroads.

11. Lichter v. United States, 334 U.S. 742 (1948) (sustaining legislation authorizing the renegotiation of government contracts); Norman v. Baltimore & O. R.R. Co., 294 U.S. 240 (1935) and Perry v. United States, 294 U.S. 330 (1935) (the famous "gold clause" cases which grew out of legislation devaluing the dollar).

if the legislation had been enacted subsequently to the written lease, for it is well settled that Congress does not run afoul of any constitutional prohibition if in the valid exercise of its war powers it incidentally impairs private contracts or obligations."[12]

The case of *Simmons v. City of Shreveport*[13] posed the issue of equal protection and in the opinion of the writer was incorrectly decided. In that case the city adopted an ordinance forbidding the sale of liquor in "neighborhood commercial" zoning districts with the proviso that all persons who had been properly licensed to make such sales in these districts one year prior thereto[14] might continue their nonconforming use subject to existing licensing regulation. Plaintiff had been lawfully engaged in the retail selling of packaged liquor goods for a period of less than three months at the time of the adoption of the ordinance. He was requested by the city to surrender his license and sued to have the ordinance declared void for denial of equal protection of the laws. The court sustained his claim, concluding that the ordinance was "arbitrary, unreasonable, discriminatory and confiscatory, and . . . denies . . . equal protection of the laws." Admittedly the ordinance is discriminatory and, as applied here, retrospective as well. However, no provision of the state or federal constitutions forbids the enactment of retrospective laws in the regulation of civil affairs. Insofar as equal protection is concerned, discrimination alone is insufficient to invalidate legislation. Indeed, the very process of classification—concededly permissible despite the equal protection clause—contemplates discriminatory action by legisla-

12. 66 So. 2d 609, 610-611 (La. 1953).

13. 221 La. 902, 60 So. 2d 867 (1952).

14. The actual provision of the challenged ordinance, adopted on February 8, 1949, is as follows: "Section 1. . . . In no case shall intoxicating liquor be sold on any premise zoned 'D-2' Neighborhood Commercial District, provided, however, that in the 'D-2' Neighborhood Commercial District the lawful sale of liquor allowed one year prior to the time and passage of Ordinance No. 28 of 1948 (adopted May 25, 1948) may be continued although such sale does not conform with the provisions hereof, and such sale of liquor may be continued unless and until this use (sale of liquor) of the property is discontinued for a period of 6 months. In the event the sale of liquor is discontinued for a period of 6 months, no further license may be issued for the sale of liquor at such locations in the 'D-2' Neighborhood Commercial District."

Hence it follows that the monopolistic "grandfather clause" of the ordinance actually reached back over a period of more than 20 months. Plaintiff had in fact been operating his place of business (a drug store) for three years, and had not obtained a license to sell liquor until November 26, 1948, which was renewed for calendar year 1949 during the month of January, 1949.

tive bodies. It is only when the criteria of classification have no reasonable or rational relation to the object of the regulatory enactment that the legislation may be said to be invalid. Or, to state the proposition affirmatively, classification which is wholly unreasonable, arbitrary or capricious constitutes a denial of equal protection of the laws.

There was no naive disregard for this settled principle by the court in the instant case, but there is room for wide difference of opinion over the manner in which the principle was applied. In this case the legislative body had obviously concluded that the public interest in the effective regulation of liquor dictated that no further licenses be issued in the "neighborhood commercial" zones of Shreveport. Admittedly this action constituted discrimination in favor of existing establishments. But in view of the special nature of the liquor traffic and its attendant problems which subject it to detailed regulation, discrimination of this precise type has been sustained in practically all jurisdictions which have encountered the issue.[15] It has been the settled jurisprudence of the Supreme Court of the United States since 1890 that regulation of the sale of liquor which discriminates in favor of existing establishments does not offend the equal protection clause;[16] and in reaching that result the Court distinguished its decision in the famous case of *Yick Wo v. Hopkins*[17] (cited and relied upon by the Louisiana court in the instant case) upon the ground that the business there regulated (laundries) was "a business harmless in itself and useful to the community . . . [whereas] In the present case the business is not one that any person is permitted to carry on without a license, but one that may be entirely prohibited or subjected to such restrictions as the governing authority of the city may prescribe."[18]

Prior Louisiana jurisprudence on the point, while not free from doubt, would seem to have pointed to a different conclusion in the subject case as well. In the 1906 decision of *New Orleans v. Smythe*[19] the actual point decided was that in the course of regulating the selling of liquor New Orleans had not infringed the equal protection clause by discriminating in favor

15. See annotation in 6 L.R.A. (N.S.) 722 (1907).
16. Crowley v. Christensen, 137 U.S. 86 (1890).
17. 118 U.S. 356 (1886).
18. 137 U.S. 86, 94 (1890).
19. 116 La. 685, 41 So. 33 (1906).

of persons previously engaged in the traffic at the time of the adoption of the ordinance. The *Smythe* case and its contemporary jurisprudence is discussed in an annotation in 6 L.R.A. (N.S.) 722 (1907).

LEGISLATION

*Charles A. Reynard**

Six of the cases decided by the court at last term involved significant applications of rules governing enactment and interpretation of legislation.[1] These cases fell into two groups: the first, consisting of two cases, posed the problem of the Legislature's disregard for its own rules of procedure, while the second group, consisting of four cases, presented the always troublesome question of the latest expression of legislative will.

State v. Lawrence[2] and *State v. Gray*[3] were criminal prosecutions in which the defendants were charged with violating the provisions of the state's Uniform Narcotics Drug Law[4] as amended by Act 30, First Extra Session of 1951. In both cases the defendants contended that the amendatory act was invalid for non-compliance by the Senate with the state constitutional requirement that "no bill shall be considered for final passage unless it . . . has been reported on by a committee."[5] The undisputed facts showed, however, that the bill subsequently emerging as the act in question had been favorably reported by the Senate's Committee on Finance and that would seem to have foreclosed the defense which was urged. But the defendants in both cases argued that the constitutional require-

* Professor of Law, Louisiana State University.

1. There were, of course, numerous other cases involving settled principles of statutory construction arising in substantive fields of the law. Many of these cases are dealt with elsewhere in this Symposium. See, e.g., Mataya v. Delta Life Insurance Company, 222 La. 509, 62 So. 2d 817 (1953) which is discussed under the Insurance title, infra p. 167.

In the case of State v. Wilson, 221 La. 990, 60 So. 2d 897 (1952) the court held that the savings clause of an act repealing a local option statute served to continue in existence and effect any ordinance adopted prior to local option laws. This subject is discussed in symposium, The Work of the Supreme Court for the 1950-1951 Term, 12 LOUISIANA LAW REVIEW 125-127 (1952).

2. 221 La. 861, 60 So. 2d 464 (1952).

3. 221 La. 868, 60 So. 2d 466 (1952).

4. La. R.S. 1950, 40:961 et seq.

5. La. Const. of 1921, Art. III, § 24.