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The Constitutionality of Banking Relief Measures

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The agreement of compromise must be complete in itself and not a mere plan looking to future adjustment of details.²⁰ The agreement should be in writing, signed and sealed by all the parties in interest; it should be designated as a "family agreement"; it should contain a recital of events leading up to the agreement and the purpose to be effectuated; a statement that all the debts of the testator have been fully paid and satisfied; and that the settlement is based upon a "valuable consideration"; it should recite that it is intended to be a full, final and immediate settlement of all matters in controversy.

In the construction of these agreements the courts will seek the real intention of the parties.²¹ If the estate consists of real property have the agreement acknowledged by the parties and recorded in the office of the Recorder of Deeds of the county wherein the property is situated. Even though such agreement be executed, the heirs must see that an appraisement is made of the property and an inventory filed in the office of the Register so that the Death Transfer tax may be properly assessed.

Leo F. Dodson.

THE CONSTITUTIONALITY OF BANKING RELIEF MEASURES

Within the past few months almost all of the states have taken drastic steps for the relief of banks. Supplementing these steps was the Couzens Resolution in the recent Short Session of Congress providing for concurrent action as to national banks by the Federal Comptroller of the Currency. The decree by President Roosevelt on March 5th closing all banks throughout the country climaxed these relief measures. The question has been asked, "What is the source of authority for these legislative and executive acts?"

²¹Cocker's Estate, 1 Dist. Rep. 158 (1892).

²⁰Wister's Appeal, 180 Pa. 484 (1876).

The "bank holiday" has been accomplished in a variety of ways. In some states the banks were closed by executive decree; in others, by emergency legislation; in others, while banks were not closed, withdrawals of deposits were limited. Finally, the Proclamation of President Roosevelt was an executive decree, differing from the decrees of the governors of the several states in that the former closed state banks as well as national banks.

The following relief measures have affected banks in Pennsylvania:

1. The Resolution of February 27th of the Pennsylvania Legislature¹ authorizing the Secretary of Banking *not* to take possession of any banking institution because of the decision of such institution not to meet in full its liabilities for deposits. (Thus allowing banks to limit withdrawals.)
2. Senate Bill No. 527 (The Sordoni Bill) approved by the Governor March 8, 1933, which was passed to more fully effectuate the Resolution of February 27th.
3. Proclamation of Governor Pinchot of March 4th, closing Pennsylvania state banks on Saturday and Monday, March 4th and 6th.
4. The Couzens Resolution passed by Congress during the week of February 24th which gave the Federal Comptroller of the Currency authority to regulate national banks in a given state in the same

¹Resolved (if the House of Representatives concur), That the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, hereby authorize and direct the Secretary of Banking not to take possession of any banking institution under the supervision of the Department of Banking of this Commonwealth because of the decision of such institution not to meet in full its liabilities for deposits made prior to the passage of this resolution or prior to any future date fixed by such institution, if such institution shall have accepted such terms as the Secretary of Banking shall have imposed, which terms shall include the segregation of new deposits in a separate fund available for withdrawal without limitation by the depositors making such deposits and invested only in liquid assets.

Further resolved, That this resolution shall be effective immediately upon its approval by the Governor.

manner in which that particular state regulated its own state banks.

5. The Proclamation of President Roosevelt of March 5th which closed all banks, national and state, and placed the regulation of all in the Secretary of the Treasury.

The Resolution of February 27th of the Pennsylvania Legislature was passed for the purpose of avoiding the necessity of a bank holiday in Pennsylvania. It changed the existing law of Pennsylvania in that where it was formerly the *duty* of the Secretary of Banking to close banks which could not meet their obligations, the Secretary of Banking is by virtue of the Resolution authorized to allow them to remain open for current business though limiting the amount of deposits which may be withdrawn. The Resolution further provided that a bank is not entitled to this relief until it shall accept "such terms as the Secretary of Banking shall have imposed." The Legislature also declared its intention to follow up this Resolution with appropriate legislation. An analysis of the text of the Resolution, and of the Bill of Senator Sordani, as well as of the rules prescribed by Dr. Gordon, Secretary of Banking, which must be accepted by all banks who wish to avail themselves of this relief measure, discloses that the Resolution and supplementary legislation are for the purpose of protecting creditors of banks which are insolvent, or whose solvency is threatened, from preferences in the distribution of assets. It sets up the machinery for the administration of the estates of insolvent banks, or banks whose solvency is threatened, just as our Federal bankruptcy laws set up the procedure for administration of the estates of insolvent individuals and private corporations and associations. The administration of the affairs of an insolvent bank really falls within the scope of our Federal bankruptcy laws, but because of the peculiar nature of the banking business Congress specifically excludes banks from the operation of the bankruptcy laws.² The administration of the affairs of an insolvent bank is one of those rights over which Congress

²Section 4, Federal Bankruptcy Act.

may take jurisdiction when it sees fit, and over which the state may take jurisdiction in the absence of Federal action. The constitutionality of the power of a state to administer the affairs of an insolvent state bank has not been questioned. In normal times when a state bank fails and the Department of Banking closes it and pro-rates the assets among the creditors, the depositors are frequently not paid in full, yet the act of the state is not assailed as being an impairment of the obligation of contracts and thus repugnant to Section 10 of the Federal Constitution. The act of the state is no more unconstitutional than our Federal bankruptcy laws, which enable the Federal courts to take jurisdiction of a debtor's estate in certain instances and pro-rate assets among creditors. Here, again, creditors are not paid in full and yet we do not regard it as a violation of the property right of contract guaranteed under the Fifth Amendment of the Constitution.

Before a bank may avail itself of the Resolution and of the new Act, it must submit to certain fixed rules as laid down by Dr. Gordon, Secretary of Banking, and these rules clearly indicate that the whole procedure is one for the protection of assets for the benefit of creditors and not an impairment of the obligation of contracts. For example, the bank must agree to be bound by the "rules and regulations from time to time imposed by the Secretary," and that he alone shall determine the interpretation thereof. No dividends may be paid to stockholders, and directors and committees are not entitled to fees. New loans are prohibited and all new accounts must be kept completely separate from the old accounts, must be held in cash or invested in government securities, and must be paid in full at any time on demand. Thus, as to new deposits the bank is really only a trustee or bailee. It has no right to do a general banking business. The bank must supply monthly or more often to the Secretary of Banking a complete statement of the institution's financial condition. At all times the Secretary of Banking has the right to say to what extent withdrawals may be limited. The Secretary of Banking may compel reduction of expenses and the decreasing of person-

nel and the salaries of officers and employees. Only old depositors may make deposits in the new fund, with certain exceptions. From this examination of the rules it is apparent that the state is not impairing the obligations of contract but is *protecting* the parties to the contract. It is practically closing the bank so far as distribution of assets is concerned. It is conserving the assets for the benefit of the depositors. If the bank is actually insolvent, the depositors will get their proportionate share of the assets just as if the bank had been closed outright. On the other hand, if the bank is not insolvent but takes advantage of the relief measure because its solvency has been threatened, the depositors will be paid in full as per their contracts. At most, the measure postpones payment as per the contract, (or proportionate share thereof in the case of insolvency) and by no means can be said to impair the obligation of the contract.

The Resolution of February 27th and the subsequent legislation does not impair the obligation of contracts any more than does the prior law which required the Secretary of Banking to close an insolvent bank. In both instances the bank is insolvent, or its solvency is threatened, and depositors are required to "stand by" until the assets may be marshalled and pro-rated. In neither event is the contract impaired in the sense that the amount due is lowered. The purpose of both is to prevent a few depositors from being paid in full to the exclusion of the general depositors. The official act of a state in preventing preferences among creditors where assets cannot meet liabilities is not an impairment of the obligation of contracts within the meaning of Section 10 of the Constitution.

Contemporaneous with the relief statutes of the various states was the Couzens Resolution of Congress passed during the week of February 24th which gave the Federal Comptroller of the Currency authority to regulate national banks in a given state in the same manner in which that particular state regulated its own state banks. This was to promote uniformity as well as to protect national banks from "runs" in districts where the state banks were closed

by state action. If the Resolution of February 27th of the Pennsylvania Legislature is unconstitutional, regulation of national banks by the Comptroller of the Currency under the Couzens Resolution is also unconstitutional, as being a deprivation of the property right of contract without due process of law, thus violating the Fifth Amendment of the Constitution. Both resolutions are probably valid, however, as neither goes further than to prevent preferences to creditors of banks which are insolvent, or whose solvency is threatened.

The Resolution of February 27th of the Pennsylvania Legislature indicated an intention of the General Assembly to "enact suitable legislation more fully to effectuate this Resolution". In pursuance thereof, the Sordoni Bill, (Senate No. 527) was drafted and became law upon the signature of the Governor on March 8th, to be effective as of February 27th, the date of the Resolution. The preamble of the Act is as follows:

"Whereas the stress of economic conditions throughout the country has resulted in the closing of many banking institutions with resultant loss to the depositors thereof, and,

Whereas the moratoria declared in other jurisdictions and the widespread fear of further loss is causing certain depositors in banking institutions in this commonwealth to seek a preference by abnormally withdrawing funds therefrom, thereby threatening the closing of such institutions with attendant disaster to the remaining depositors and the community generally, and,

Whereas in order to insure fair and impartial treatment of all depositors to the preference or prejudice of none and to safeguard the banking institutions of this commonwealth"

The Act then provides that the Secretary of Banking in his discretion may extend the period of time deposits of any bank; he may postpone the payment of demand deposits; and he is "authorized and directed not to take possession of any institution under his supervision for failure immediately to meet its deposit liabilities" This

power terminates after six months, but the Governor may extend it for a period not exceeding two years. The Secretary of Banking is authorized to set up certain rules which must be accepted by the banks before they are entitled to the benefits of the Act.

It will be seen, therefore, that this Act does not impair the obligations of contract but merely protects assets for the benefit of creditors in the manner indicated above in the discussion of the Resolution of February 27th. The Resolution and the Act may be regarded as one and the same measure, and taking them with the rules laid down by the Secretary of Banking, the entire procedure is quite consistent with the Federal Constitution.

The Proclamation by Governor Pinchot of March 4th closing Pennsylvania state banks on Saturday and Monday, March 4th and 6th respectively, may be justified on the same ground. The right to regulate state banks is in the police power of the state. His act of closing the banks is no more a violation of Section 10 of the Federal Constitution than the Resolution and Act above discussed. It had the same effect and purpose, namely, to conserve assets and prevent preferences. Whether he had the authority under the Pennsylvania Constitution is not our question here. He acted for the State of Pennsylvania and inasmuch as contract rights were not violated it cannot be said that the State of Pennsylvania has impaired the obligation of contracts.

As for the Proclamation of President Roosevelt of March 5th closing all banks, national and state, and providing for their regulation by the Secretary of the Treasury, his act was probably valid so far as the violation of the property right of contract is concerned. The only question is as to whether he had the authority under the Constitution to close the banks of the nation without some authorization from Congress. It is true that within a few days after the Proclamation was issued Congress in special session ratified his action. Does this ratification so relate back as to supply authority for the unauthorized Act of March 5th? Under the law of agency we know that an unauthor-

ized act may be ratified and that the ratification supplies the authority which was lacking at the time the act was done. Whether the President of the United States may be regarded as an agent of Congress to the extent that an act such as his Proclamation may be ratified at a later date is a problem which will not be here discussed. We know that the regulation of our currency is a Federal problem and that, where the entire financial structure of the country is in jeopardy, Congress would have authority under the Constitution to regulate the banks both Federal and state.³ Legislative authority for the President's Proclamation has been based upon the "Trading with the Enemy Act" of October 6, 1917,⁴ which, though passed as a war measure, gave the President sufficient authority to allow him to close banks. The law was not repealed, and the act of the President might well be justified thereunder. Even in the absence of such legislative authority the proposition has been advanced that the Proclamation might be sustained as an exercise of an inherent right in the Chief Executive to exercise extraordinary powers in periods of national crisis.⁵

C. M. Strouss.

THE PURCHASE MONEY TRUST ACT OF 1901 IN THE LIGHT OF THE RECORDING ACTS

The Act in question provides that purchase money trusts shall be void against bona fide creditors, and mortgages and purchasers of or from the holder of the legal title unless such takers had notice of the trust.¹

³Federal Constitution, Article I, Section 8. *McCulloch v. Maryland*. (Supreme Court of the United States, 1819. 4 Wheat. 316, 4 L. ed. 579).

⁴40 Stat. L. 411.

⁵*Wilson v. New*, 243 U. S. 332, 345, 346; *Block v. Hirsh*, 256 U. S. 135.

¹Section 1 of The Act of 1901, P. L. 425; 21 *Purd. Stat. Sec. 601* provides: "Whenever hereafter a resulting trust shall arise with respect