Block Vs. Hirsch

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Appeal No. : 256 U.S. 135

Appellant : Block

Respondent : Hirsch

Judgement :

Block v. Hirsch - 256 U.S. 135 (1921)
U.S. Supreme Court Block v. Hirsch, 256 U.S. 135 (1921)

Block v. Hirsch

No. 640

Argued March 3, 1921

Decided April 18, 1921

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ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

SYLLABUS

The Act of October 22, 1919, c. 80, Title II, 41 Stat. 297, created a commission with power, upon notice and hearing, to determine whether the rent, service and other terms and conditions of the use and occupancy of apartments, hotels and other rental property in the District of Columbia, were fair and reasonable and, if found otherwise, to fix fair and reasonable rents, etc., in lieu; it provided that a tenant's right of occupancy should, at his option, continue, notwithstanding the expiration of his term, subject to regulation by the commission, so long as he paid the rent and performed the conditions fixed by his lease or as modified by the commission; reserved, however, to the owner his right to possession for actual *bona fide* occupancy by himself, his wife, children or dependents, upon giving

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a 30 days' notice to quit; made the commission's findings conclusive on matters of fact, but reviewable by the Court of Appeals of the District on matters of law; limited the regulation thus established to a period of two years, and declared that its provisions were made necessary by emergencies growing out of the War, resulting in rental conditions dangerous to the public health and burdensome to public officers, employees and accessories, and thereby embarrassing the Federal Government in the transaction of the public business. In an action in which an owner, ignoring this legislation, and without serving the required notice, sought to oust a tenant, holding over in violation of a lease made before the act was passed, and in which the act was relied on by the tenant, particularly its requirement of notice, but was declared unconstitutional by the court below --

Held: (1) That the legislative declaration of facts affording the ground for the regulation was entitled to great respect, and was confirmed by common knowledge. P. 256 U. S. 154 .

(2) That the exigency existing in the District clothed the letting of buildings there with a public interest so great as to justify regulation by law, *i.e.,* by the police power of Congress -- while such exigency lasts. P. 256 U. S. 155 .

(3) That, assuming the owner in this case did not desire the premises for his own use (as it might have turned out if the entire law had not been declared void) and treating the property as held for rent, the effect of the act, in allowing the tenant to retain possession at the rent stipulated in the expired lease or as it might be modified by the commission, was not, under the circumstances, an unconstitutional restriction of the owner's dominion and right of contract or a taking of his property for a use not public. P. 256 U. S. 156 .

(4) That such regulation was justified as a temporary measure, even though it might not be as a permanent change. P. 256 U. S. 157 .

(5) That it did not become otherwise if the "reasonable rent" it secured meant depriving the owner, in part at least, of the power of profiting by the sudden influx of people to Washington, caused by the needs of the Government and the War. P. 256 U. S. 157 .

(6) That the preference given to the tenant in possession was justified as an incident of the policy of the legislation. P. 256 U. S. 157 .

(7) That, the end being legitimate and the means reasonably related to it, the wisdom of the means was not for the courts to pass upon. P. 256 U. S. 158 .

(8) That the court was not prepared to say in this case that the law, being valid in its principal aspects, was invalid insofar as it might operate to deprive landlords and tenants of trial by jury on the right to possession. P. 256 U. S. 158 .

50 App.D.C. 56, 73; 267 Fed. Rep. 614, 631, reversed.

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ERROR to review a judgment of the court below holding unconstitutional the act regulating rents, etc., in the District of Columbia, in proceedings by a landlord to oust a tenant holding over. The facts are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the court.

This is a proceeding brought by the defendant in error, Hirsh, to recover possession of the cellar and first floor of a building on F Street in Washington which the plaintiff in error, Block, holds over after the expiration of a lease to him. Hirsh bought the building while the lease was running, and on December 15, 1919, notified Block that he should require possession on December 31, when the lease expired. Block declined to surrender the premises, relying upon the Act of October 22, 1919, c. 80, Title II -- "District of Columbia Rents"; especially 109, 41 Stat. 297, 298, 301. That is also the ground of his defence in this Court, and the question is whether the statute is constitutional, or, as held by the Court of Appeals, an attempt to authorize the taking of property not for public use and without due process of law, and for this and other reasons void.

By 109 of the act, the right of a tenant to occupy any hotel, apartment, or "rental property," *i.e.,* any building

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or part thereof, other than hotel or apartment (101), is to continue notwithstanding the expiration of his term, at the option of the tenant, subject to regulation by the Commission appointed by the act, so long as he pays the rent and performs the conditions as fixed by the lease or as modified by the Commission. It is provided in the same section that the owner shall have the right to possession "for actual and *bona fide* occupancy by himself, or his wife, children, or dependents . . . upon giving thirty days' notice in writing." According to his affidavit, Hirsh wanted the premises for his own use, but he did not see fit to give the thirty days' notice because he denied the validity of the act. The statute embodies a scheme or code which it is needless to set forth, but it should be stated that it ends with the declaration in 122 that the provisions of Title II are made necessary by emergencies growing out of the war, resulting in rental conditions in the District dangerous to the public health and burdensome to public officers, employees and accessories, and thereby embarrassing the Federal Government in the transaction of the public business. As emergency legislation, the Title is to end in two years

unless sooner repealed.

No doubt it is true that a legislative declaration of facts that are material only as the ground for enacting a rule of law, for instance, that a certain use is a public one, may not be held conclusive by the Courts. *Shoemaker v. United States,* 147 U. S. 282 , 147 U. S. 298 . *Hairston v. Danville & Western Ry. Co.,* 208 U. S. 598 , 208 U. S. 606 . *Prentis v. Atlantic Coast Line Co.,* 211 U. S. 210 , 211 U. S. 227 . *Producers Transportation Co. v. Railroad Commission,* 251 U. S. 228 , 251 U. S. 230 . But a declaration by a legislature concerning public conditions that, by necessity and duty, it must know, is entitled at least to great respect. In this instance, Congress stated a publicly, notorious and almost worldwide fact. That the emergency declared by the statute did exist

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must be assumed, and the question is whether Congress was incompetent to meet it in the way in which it has been met by most of the civilized countries of the world.

The general proposition to be maintained is that circumstances have clothed the letting of buildings in the District of Columbia with a public interest so great as to justify regulation by law. Plainly circumstances may so change in time or so differ in space as to clothe with such an interest what at other times or in other places would be a matter of purely private concern. It is enough to refer to the decisions as to insurance, in *German Alliance Insurance Co. v. Lewis,* 233 U. S. 389 ; irrigation, in *Clark v. Nash,* 198 U. S. 361 , and mining, in *Strickley v. Highland Boy Gold Mining Co.,* 200 U. S. 527 . They sufficiently illustrate what hardly would be denied. They illustrate also that the use by the public generally of each specific thing affected cannot be made the test of public interest, *Mt. Vernon-Woodberry Cotton Duck Co. v. Alabama Interstate Power Co.,* 240 U. S. 30 , 240 U. S. 32 , and that the public interest may extend to the use of land. They dispel the notion that what in its immediate aspect may be only a private transaction may not be raised by its class or character to a public affair. *See also Noble State Bank v. Haskell,* 219 U. S. 104 , 219 U. S. 110 , 219 U. S. 111 .

The fact that tangible property is also visible tends to give a rigidity to our conception of our rights in it that we do not attach to others less concretely clothed. But the notion that the former are exempt from the legislative modification required from time to time in civilized life is contradicted not only by the doctrine of eminent domain, under which what is taken is paid for, but by that of the police power in its proper sense, under which property rights may be cut down, and to that extent taken, without pay. Under the police power, the right to erect buildings in a certain quarter of a city may be limited to from eighty to one hundred feet. *Welch v.*

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Swasey, 214 U. S. 91 . Safe pillars may be required in coal mines. *Plymouth Coal Co. v. Pennsylvania,* 232 U. S. 531 . Billboards in cities may be regulated. *St. Louis Poster Advertising Co. v. St. Louis,* 249 U. S. 269 . Watersheds in the country may be kept clear. *Perley v. North Carolina,* 249 U. S. 510 . These cases are enough to establish that a public exigency will justify the legislature in restricting property rights in land to a certain extent without compensation. But if, to answer one need, the legislature may limit height to answer another, it may limit rent. We do not perceive any reason for denying the justification held good in the foregoing cases to a law limiting the property rights now in question if the public exigency requires that. The reasons are of a different nature, but they certainly are not less pressing. Congress has stated the unquestionable embarrassment of Government and danger to the public health in the existing condition of things. The space in Washington is necessarily monopolized in comparatively few hands, and letting portions of it is as much a business as any other. Housing is a necessary of life. All the elements of a public interest justifying some degree of public control are present. The only matter that seems to us open to debate is whether the statute goes too far. For, just as there comes a point at which the police power ceases and leaves only that of eminent domain, it may be conceded that regulations of the present sort, pressed to a certain height, might amount to a taking without due process of law. *Martin v. District of Columbia,* 205 U. S. 135 , 205 U. S. 139 . Perhaps it would be too strict to deal with this case as concerning

only the requirement of thirty days' notice. For although the plaintiff alleged that he wanted the premises for his own use, the defendant denied it, and might have prevailed upon that issue under the act. The general question to which we have adverted must be decided, if not in this, then in the next, case, and it should

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be disposed of now. The main point against the law is that tenants are allowed to remain in possession at the same rent that they have been paying, unless modified by the Commission established by the act, and that, thus, the use of the land and the right of the owner to do what he will with his own and to make what contracts he pleases are cut down. But if the public interest be established, the regulation of rates is one of the first forms in which it is asserted, and the validity of such regulation has been settled since *Munn v. Illinois,* 94 U. S. 113 . It is said that a grain elevator may go out of business, whereas here the use is fastened upon the land. The power to go out of business, when it exists, is an illusory answer to gas companies and waterworks, but we need not stop at that. The regulation is put and justified only as a temporary measure. *See Wilson v. New,* 243 U. S. 332 , 243 U. S. 345 , 243 U. S. 346 . *Fort Smith & Western R.R. Co. v. Mills,* 253 U. S. 206 . A limit in time, to tide over a passing trouble, well may justify a law that could not be upheld as a permanent change.

Machinery is provided to secure to the landlord a reasonable rent. 106. It may be assumed that the interpretation of "reasonable" will deprive him in part at least of the power of profiting by the sudden influx of people to Washington caused by the needs of Government and the war, and, thus, of a right usually incident to fortunately situated property -- of a part of the value of his property as defined in *International Harvester Co. v. Kentucky,* 234 U. S. 222 . *Southern Ry. Co. v. Greene,* 216 U. S. 400 , 216 U. S. 414 . But while it is unjust to pursue such profits from a national misfortune with sweeping denunciations, the policy of restricting them has been embodied in taxation, and is accepted. It goes little if at all farther than the restriction put upon the rights of the owner of money by the more debatable usury laws. The preference given to the tenant in possession is an almost necessary incident of the policy, and is traditional in English law. If the

tenant

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remained subject to the landlord's power to evict, the attempt to limit the landlord's demands would fail.

Assuming that the end in view otherwise justified the means adopted by Congress, we have no concern, of course, with the question whether those means were the wisest, whether they may not cost more than they come to, or will effect the result desired. It is enough that we are not warranted in saying that legislation that has been resorted to for the same purpose all over the world is futile or has no reasonable relation to the relief sought. *Chicago, Burlington & Quincy R.R. Co. v. McGuire,* 219 U. S. 549 , 219 U. S. 569 .

The statute is objected to on the further ground that landlords and tenants are deprived by it of a trial by jury on the right to possession of the land. If the power of the Commission established by the statute to regulate the relation is established, as we think it is, by what we have said, this objection amounts to little. To regulate the relation and to decide the facts affecting it are hardly separable. While the act is in force, there is little to decide except whether the rent allowed is reasonable, and upon that question the courts are given the last word. A part of the exigency is to secure a speedy and summary administration of the law, and we are not prepared to say that the suspension of ordinary remedies was not a reasonable provision of a statute reasonable in its aim and intent. The plaintiff obtained a judgment on the ground that the statute was void, root and branch. That judgment must be reversed.

Judgment reversed.

MR. JUSTICE Mc KENNA, with whom concurred THE CHIEF JUSTICE, MR. JUSTICE VAN DEVANTER and MR. JUSTICE Mc REYNOLDS, dissenting:

THE CHIEF JUSTICE MR. JUSTICE VAN DEVANTER, MR. JUSTICE Mc REYNOLDS and I dissent from the opinion

and judgment of the court. The grounds of dissent are the explicit provisions of the Constitution of the United States; the specifications of the grounds are the irresistible deductions from those provisions and, we think, would require no expression but for the opposition of those whose judgments challenge attention.

The National Government by the Fifth Amendment to the Constitution, and the States by the Fourteenth Amendment, are forbidden to deprive any person of "life, liberty, or property, without due process of law." A further provision of the Fifth Amendment is that private property cannot be taken for public use, without just compensation. And there is a special security to contracts in 10 of Article I in the provision that "No State shall . . . pass any . . . law impairing the obligation of contracts. . . ." These provisions are limitations upon the national legislation, with which this case is concerned, and limitations upon state legislation, with which *Marcus Brown Holding Co. v. Feldman, post* 256 U. S. 170 , is concerned. We shall more or less consider the cases together, as they were argued and submitted on the same day and practically depend upon the same principles, and what we say about one applies to the other.

The statute in the present case is denominated "The Rent Law," and its purpose is to permit a lessee to continue in possession of leased premises after the expiration of his term, against the demand of his landlord and in direct opposition to the covenants of the lease, so long as he pays the rent and performs the conditions as fixed by the lease or as modified by a commission created by the statute. This is contrary to every conception of leases that the world has ever entertained, and of the reciprocal rights and obligations of lessor and lessee.

As already declared, the provisions of the Constitution seem so direct and definite as to need no reinforcing words and to leave no other inquiry than does the statute under

review come within their prohibition? It is asserted, that the statute has been made necessary by the conditions resulting from the "Imperial German war." The thought instantly comes that the country has had other wars with resulting embarrassments, yet they did not induce the relaxation of constitutional requirements nor the exercise of arbitrary power. Constitutional restraints were increased, not diminished. However, it may be admitted that the conditions presented a problem and induced an appeal for government remedy. But we must bear in mind that the Constitution is, as we have shown, a restraint upon government, purposely provided and declared upon consideration of all the consequences of what it prohibits and permits, making the restraints upon government the rights of the governed. And this careful adjustment of power and rights makes the Constitution what it was intended to be and is, a real charter of liberty, receiving and deserving the praise that has been given it as "the most wonderful work ever struck off at any given time by the brain and purpose of man." And we add that more than a century of trial "has certainly proven the sagacity of the constructors, and the stubborn strength of the fabric."

The "strength of the fabric" cannot be assigned to anyone provision; it is the contribution of all, and therefore it is not the expression of too much anxiety to declare that a violation of any of its prohibitions is an evil -- an evil in the circumstance of violation, of greater evil because of its example and malign instruction. And against the first step to it this court has warned, expressing a maxim of experience -- " *Withstand beginnings.* " *Boyd v. United States,* 116 U. S. 616 , 116 U. S. 635 . Who can know to what end they will conduct?

The facts of this litigation point the warning. Recurring to them, we may ask, of what concern is it to the public health or the operations of the Federal Government who

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shall occupy a cellar, and a room above it, for business purposes in the City of Washington? -- (the question in this case); and why is it the solicitude of the police power of the State of New York to keep from competition an apartment in the City

of New York? -- (the question in the other case). The answer is to supply homes to the homeless. It does not satisfy. If the statute keeps a tenant in, it keeps a tenant out; indeed, this is its assumption. Its only basis is, that tenants are more numerous than landlords, and that, in some way, this disproportion, it is assumed, makes a tyranny in the landlord, and an oppression to the tenant, notwithstanding the tenant is only required to perform a contract entered into not under the statute, but before the statute, and that the condition is remedied by rent fixing -- value adjustment -- by the power of the Government. And this, it is the view of the opinion, has justification because "space in Washington is limited," and "housing is a necessary of life." A causative and remedial relation in the circumstances we are unable to see. We do see that the effect and evil of the statute is that it withdraws the dominion of property from its owner, superseding the contracts that he confidently made under the law then existing and subjecting them to the fiat of a subsequent law.

If such exercise of government be legal, what exercise of government is illegal? Houses are a necessary of life, but other things are as necessary. May they too be taken from the direction of their owners and disposed of by the Government? Who supplies them, and upon what inducement? And, when supplied, may those who get them under promise of return, and who had no hand or expense in their supply, dictate the terms of retention or use, and be bound by no agreement concerning them?

An affirmative answer seems to be the requirement of the decision. If the public interest may be concerned, as in the statute under review, with the control of any form

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of property, it can be concerned with the control of all forms of property. And certainly, in the first instance, the necessity or expediency of control must be a matter of legislative judgment. But, however, not to go beyond the case -- if the public interest can extend a lease, it can compel a lease; the difference is only in degree and boldness. In one as much as in the other, there is a violation of the

positive and absolute right of the owner of the property. And it would seem, necessarily, if either can be done, unoccupied houses or unoccupied space in occupied houses can be appropriated. The efficacy of either to afford homes for the homeless cannot be disputed. In response to an inquiry from the bench, counsel replied that the experiment had been tried or was being tried in a European country. It is to be remembered that the legality of power must be estimated not by what it will do, but by what it can do.

The prospect expands and dismays when we pass outside of considerations applicable to the local and narrow conditions in the District of Columbia. It is the assertion of the statute that the Federal Government is embarrassed in the transaction of its business, but, as we have said, a New York statute is submitted to us, and counsel have referred to the legislation of six other States. And there is intimation in the opinion that Congress, in its enactment, has imitated the laws of other countries. The facts are significant, and suggest the inquiry, have conditions come, not only to the District of Columbia, embarrassing the Federal Government, but to the world as well, that are not amenable to passing palliatives, so that socialism, or some form of socialism, is the only permanent corrective or accommodation? It is indeed strange that this court, in effect, is called upon to make way for it and, through the instrument of a constitution based on personal rights and the purposeful encouragement of individual incentive and energy, to declare legal a power exerted for their destruction.

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The inquiry occurs, have we come to the realization of the observation that "War, unless it be fought for liberty, is the most deadly enemy of liberty?"

But, passing that and returning to the Constitution, it will be observed, as we have said, that its words are a restraint upon power, intended as such in deliberate persuasion of its wisdom as against unrestrained freedom.

And it is significant that it is not restraint upon a "Governing One," but restraint upon the people themselves, and in the persuasion, to use the words of one of the

supporters of the Constitution, that "the natural order of things is for liberty to yield, and for government to gain ground." Sinister interests, its conception is, may move government to exercise; one class may become dominant over another; and, against the tyranny and injustice that will result, the framers of the Constitution believed precautions were as necessary as against any other abuse of power. And so careful is it of liberty that it protects in many provisions the individual against the magistrate.

Has it suddenly become weak -- become not a restraint upon evil government, but an impediment to good government? Has it become an anachronism, and is it to become "an archeological relic," no longer to be an efficient factor in affairs, but something only to engage and entertain the studies of antiquarians? Is not this to be dreaded -- indeed, will it not be the inevitable consequence of the decision just rendered? Let us see what it justifies, and upon what principle. But first and preliminary to that inquiry are the provisions it strikes down. We have given them, but we repeat them. By 10 of Article I, it is provided, "No State shall . . . pass any . . . law impairing the obligation of contracts, . . ." By the Fifth Amendment, no person can be deprived of property without due process of law. The prohibitions need no strengthening comment. They are as absolute as axioms. A contract existing, its obligation is impregnable.

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The elements that make a contract or its obligation we need not consider. The present case is concerned with a lease, and that a lease is a contract we do not pause to demonstrate either to lawyers or to laymen, nor that the rights of the lessor are the obligations of the lessee, and, of course, the rights of the lessee are the obligations of the lessor -- the mutuality constituting the consideration of the contract -- the inducement to it and its value, no less to the lessee than to the lessor.

What were the rights and obligations in the present case, and what was the right of Hirsh to control his property? Hirsh is the purchaser of a lot in the City of Washington; Block is the lessee of the lot, and he agreed that, at the end of his

tenancy, he would surrender the premises, and this and "each and every one of the covenants, conditions and agreements," he promised "to keep and perform." Hirsh at the end of the term demanded possession. It was refused, and against this suit to recover possession there was pleaded the statute. The defense prevailed in the trial court; the statute was declared unconstitutional in the Court of Appeals. It is sustained by the decision just announced.

It is manifest, therefore, that, by the statute, the Government interposes with its power to annul the covenants of a contract between two of its citizens and to transfer the uses of the property of one and vest them in the other. The interposition of a commission is but a detail in the power exerted -- not extenuating it in any legal sense -- indeed, intensifies its illegality, takes away the right to a jury trial from any dispute of fact.

If such power exist, what is its limit and what its consequences? And by consequences we do not mean who shall have a cellar in the City of Washington or who shall have an apartment in a million-dollar apartment house in the City of New York, but the broader consequences of unrestrained power and its exertion against property, having

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example in the present case, and likely to be applied in other cases. This is of grave concern. The security of property, next to personal security against the exertions of government, is of the essence of liberty. They are joined in protection, as we have shown, and both the National Government (Fifth Amendment) and the States (Fourteenth Amendment) are forbidden to deprive any person "of life, liberty, or property, without due process of law," and the emphasis of the Fifth Amendment is that private property cannot be "taken for public use, without just compensation." And, in recognition of the purpose to protect property and the rights of its owner from governmental aggression, the Third Amendment provides,

"No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law."

There can be no conception of property aside from its control and use, and upon its use depends its value. *Branson v. Bush,* 251 U. S. 182 , 251 U. S. 187 . Protection to it has been regarded as a vital principle of republican institutions. It is next in degree to the protection of personal liberty and freedom from undue interference or molestation. *Chicago, Burlington & Quincy R.R. Co. v. Chicago,* 166 U. S. 226 . Our social system rests largely upon its sanctity, "and that State or community which seeks to invade it will soon discover the error in the disaster which follows." *Knoxville v. Knoxville Water Co.,* 212 U. S. 1 , 212 U. S. 18 .

There is not a contention made in this case that this court has not pronounced untenable. An emergency is asserted as a justification of the statute and the impairment of the contract of the lease. A like contention was rejected in *Ex parte Milligan,* 4 Wall. 2. It was there declared (page 71 U. S. 120) "that the principles of constitutional liberty would be in peril unless established by irrepealable law." And it was said that

"the Constitution of the United States is a law for rulers and people, equally in war

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and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government."

But what is the power that is put in opposition to the Constitution and supersedes its prohibitions? It is not clear from the opinion what it is. The opinion gives to the police power a certain force, but its range is not defined. Circumstances, it is said, "have clothed the letting of buildings in the District of Columbia with a public interest so great as to justify regulation by law," though at other times and places such letting may be only of private concern, and the deduction is justified, it is said by analogy to the business of insurance, the business of irrigation, and the business of mining. *German Alliance Insurance Co. v. Lewis,* 233 U. S. 389 ; *Clark v. Nash,* 198 U. S. 361 ; *Strickley v. Highland Boy Gold Mining Co.,* 200

U. S. 527 . It is difficult to handle the cases or the assertion of what they decide. An opposing denial only is available.

To us, the difference is palpable between life insurance and the regulation of its rates by the State and the exemption of a lessee from the covenants of his lease with the approval of the State, in defiance of the rights of the lessor. And as palpably different is the use of water for mining or irrigation or manufacturing, and eminent domain exercised for the procurement of its means with the requirement of compensation, and as palpably different is eminent domain, with attendant compensation, exercised for railways and other means for the working of mines.

And there is less analogy in laws regulating the height of buildings in business sections of a city; or the requirement of boundary pillars in coal mines to safeguard the employees of one in case the other should be abandoned and allowed to fill with water; or the regulation of bill-boards

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in cities on account of their menace to morality, health and decency (in what way it is not necessary to specify); or the keeping clear of watersheds to protect the water reservoirs of cities from damage by devastating fires or the peril of them, from accumulation of "tree tops, boughs and lops" left upon the ground. *

The cases and their incidents hardly need explanatory comment. They justify the prohibition of the use of property to the injury of others, a prohibition that is expressed in one of the maxims of our jurisprudence. Such use of property is, of course, within the regulating power of government. It is one of the objects of government to prevent harm by one person to another by any conduct.

The police power has some pretense for its invocation. Regarding alone the words of its definition, it embraces power over everything under the sun, and the line that separates its legal from its illegal operation cannot be easily drawn. But it must be drawn. To borrow the illustration of another, the line that separates day from night cannot be easily discerned or traced, yet the light of day and the darkness of night are very distinct things. And as distinct in our judgment is the puissance of the

Constitution over all other ordinances of power, and as distinct are the cited cases from this case, and if they can bear the extent put upon them, what extent can be put upon the case at bar or upon the limit of the principle it declares? It is based upon the insistency of the public interest and its power. As we understand, the assertion is that legislation can regard a private transaction as a matter of public interest. It is not possible to express the possession or exercise of more unbounded or irresponsible power. It is true, in mitigation of this declaration and of the alarm that it causes, it is said that the declaration

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is not necessarily conclusive on the courts, but "is entitled, at least, to great respect." This is intangible to measurement or brief answer. But we need not beat about in generalities or grope in their indetermination in subtle search for a test of a legal judgment upon the conditions, or the power exerted for their relief. "The Rent Law" is brought to particularity by the condemnation of the Constitution of the United States. Call it what you will -- an exertion of police or other power -- nothing can absolve it from illegality. Limiting its duration to two years certainly cannot. It is what it does that is of concern. Besides, it is not sustained as the expedient of an occasion, the insistence of an emergency, but as a power in government over property based on the decisions of this court whose extent and efficacy the opinion takes pains to set forth and illustrate. And as a power in government, if it exist at all, it is perennial and universal, and can give what duration it pleases to its exercise, whether for two years or for more than two years. If it can be made to endure for two years, it can be made to endure for more. There is no other power that can pronounce the limit of its duration against the time expressed in it, and its justification practically marks the doom of judicial judgment on legislative action.

The wonder comes to us, what will the country do with its new freedom? Contracts and the obligation of contracts are the basis of its life and of all its business, and the Constitution, fortifying the conventions of honor, is their conserving power. Who can foretell the consequences of its destruction or even question of it? The case is concerned with the results of the German war, and we are reminded thereby that there were contracts made by the National Government in the

necessity or solicitude of the conduct of the war -- contracts into which patriotism eagerly entered, but, it may be, interest was enticed, by the promise of exemption

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from a burden of government. Burdens of government are of the highest public interest, and their discharge is of imperious necessity. Therefore, the provocation or temptation may come to those who feel them that the property of others (estimated in the millions, perhaps) should not have asylum from a share of the load. And what answer can be made to such demand within the principle of the case now decided? Their promises are as much within the principle as the lease of Hirsh is, for, necessarily, if one contract can be disregarded in the public interest, every contract can be; patriotic honor may be involved in one more than in another, but degrees of honor may not be attended to -- the public interest being regarded as paramount. At any rate, does not the decision just delivered cause a dread of such result and take away assurance of security and value from the contracts and their evidences? And it is well to remember that other exigencies may come to the Government making necessary other appeals. The Government can only offer the inducement and security of its bonds, but who will take them if doubt can be thrown upon the integrity of their promises under the conception of a public interest that is superior to the Constitution of the United States?

It comes to our recollection also that some States of the Union, in consummation of what is conceived to be a present necessity, have also entered into contracts of like kind. They, too, may come under a subsequent declaration of an imperious public interest, and their promises be made subject to it.

The prophecy is not unjustified. This court has at times been forced to declare particular state laws void for their attempted impairment of the obligation of contracts. To accusations hereafter of such an effect of a state law, this decision will be opposed, and the conception of the public interest.

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Indeed, we ask, may not the State have other interests besides the nullification of contracts, and may not its police power be exerted for their consummation? If not, why not? Under the decision just announced, if one provision of the Constitution may be subordinated to that power, may not other provisions be? At any rate, the case commits the country to controversies, and their decision, whether for the supremacy of the Constitution or the supremacy of the power of the States, will depend upon the uncertainty of judicial judgment.

* *Welch v. Swasey,* 214 U. S. 91 ; *Plymouth Coal Co. v. Pennsylvania,* 232 U. S. 531 ; *St. Louis Poster Advertising Co. v. St. Louis,* 249 U. S. 269 ; *Perley v. North Carolina,* 249 U. S. 510 .