

THE PHILIPPINE AMERICAN LIFE INSURANCE COMPANY, PETITIONER, VS. THE AUDITOR GENERAL, RESPONDENT.

G.R. No. L-19255. January 18, 1968

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Broadly stated, petitioner's appeal challenges the Correctness of the Auditor General's ruling that "[r]emittances of premia on insurance policies issued or renewed on or after July 16, 1959, or even if issued or renewed before the said date, but their reinsurance was effected only thereafter, are not exempt from the margin fee, even if the reinsurance treaty under which they are reinsured was approved by the Central Bank before July 16, 1959." So stated, the case calls into question the applicability of Section 3 of the Margin Law (Republic Act 2609, approved on July 16, 1959) which exempts certain obligations from payment of the margin fee, thus:

"SEC. 3. The provisions of this Act shall not apply to the liquidation of drafts drawn under letters of credit nor of contractual obligations calling for payment of foreign exchange issued, approved and outstanding as of the date this Act takes effect and the extension thereof, with the same terms and conditions as the original contractual obligations: Provided, That the repayment of loans contracted by the government of the Philippines with foreign governments and/or private banks and the importation of machineries and equipment by provinces, cities or municipalities for the exclusive use in the operation of public utilities fully-owned and maintained by them shall likewise be exempted from the operation of this Act."

Appropriate to state here is that - except as otherwise in the law stated - the Margin Law subjects all sales of foreign exchange by the Central Bank and its authorized agent banks to a uniform margin of not more than forty per cent (40%) over the banks' selling rates.[1] The Monetary Board is empowered to fix the margin "at such rate as it may deem necessary to effectively curtail any excessive demand upon the international reserve." [2] Such margin, however, "shall not be changed oftener than once a year except upon the recommendation of the National Economic Council and the approval of the President." [3] The Monetary Board has pegged the margin fee at 25%. [4]

Following are the facts that gave rise to the present controversy:

On January 1, 1950, Philippine American Life Insurance Company [Philamlife], a domestic life insurance corporation, and American International Reinsurance Company [Airco] of Pembroke, Bermuda, a corporation organized under the laws of the Republic of Panama, entered into an agreement - reinsurance treaty - which provides in its paragraph 1, Article I, the following:

"ARTICLE I On and after the 1st day of January 1950, the Ceding Company [Philamlife] agrees to reinsure with AIRCO the entire first excess of such life insurance on the lives of persons as may be Written by the Ceding Company under direct application over and above its maximum limit of retention for life insurance, and AIRCO binds itself, subject to the to terms and provisions of this agreement, to accept such reinsurances on the same terms and for an amount not exceeding its maximum limit for automatic acceptance of life reinsurance. x x x."

By the third paragraph of the same Article I, it is also stipulated that even though Philamlife "is already on a risk for its maximum retention under policies previously issued, when new policies are applied for and issued [Philamlife] can cede automatically any amount, within the limits x x x specified, on the same terms on which it would be willing to accept the risk for its own account, if it did not already have its limit of retention."

Reinsurances under said reinsurance treaty of January 1, 1950 may also be had facultatively upon other cases pursuant to Article II thereof, whereby Airco's liability begins from acceptance of the risk, These cases include those set forth in paragraph 2 of the treaty's Article I which expressly excludes from automatic reinsurance the following: (a) any application for life insurance with Philamlife which, together with other papers containing information as to insurability of the risk, shows that "the total amount of life insurance (including accidental death benefit) applied for to or already issued by all com-panies [other life insurance companies which had previously accepted the risk] exceeds the equivalent of Five Hundred Thousand Dollars (\$500,000) United States currency;" and (b) any life on which Philamlife "retains for its own account less than its regular maximum limit of retention for the age, Sex, plan, rating and occupation of the risk."

Every life insurance policy reinsured under the aforecited agreement "shall be upon the yearly renewable term plan for the amount at risk under the policy reinsured." [5] Philamlife agrees to pay premiums for all reinsurances "on an annual premium basis." [6]

It is conceded that no question ever arose with respect to the remittances made by Philamlife to Airco before July 16, 1959, the date of approval of the Margin Law.

The Central Bank of the Philippines collected the sum of P268,747.48 as foreign exchange margin on Philamlife remittances to Airco purported totalling \$610, 998.63 and made subsequent to July 16, 1959.

Philamlife subsequently filed with the Central Bank a claim for the refund of the above sum of P268,747.48. The ground therefor was that the reinsurance premiums so remitted were paid pursuant to the January 1, 1950 reinsurance treaty, and, therefore, were pre-existing obligations expressly exempt from the margin fee.

On June 7, 1960, the Monetary Board in line with the opinion of its Acting Legal Counsel - resolved that "reinsurance contracts entered into and approved by the Central Bank before July 17, 1959 are exempt from the payment of the 35% foreign exchange margin, even if remittances thereof are made after July 17, 1959," because such remittances "are only made in the implementation of a mother contract, a continuing contract which is the reinsurance treaty." [7]

The foregoing resolution notwithstanding, the Auditor of the Central Bank, on April 19, 1961, refused to pass in audit Philamlife's claim for refund.

On May 17, 1961, Philamlife sought reconsideration with the Auditor General.

On October 24, 1961, the request for reconsideration was denied. The Auditor General in effect expressed the view that the existence of the reinsurance treaty of January 1, 1950 did not place reinsurance premia - on reinsurance effected on or after the approval of the Margin Law on July 17, 1959 - out of the reach of said statute. [8]

Hence, the present petition for review.

1. The thrust of petitioner's argument is that the premia remitted were in pursuance of its reinsurance treaty with Airco of January 1, 1959 a contract antedating the Margin Law, which took effect only on July 16.

But the validity of such claim must be tested by the provisions of Section 3 of the Margin Law quoted earlier in this opinion. Said Section expressly withholds the enforcement of the provisions of said Act on "contractual

obligations calling for payment of foreign exchange issued, approved and outstanding as of the date this Act takes effect and the extension thereof, with the same terms and conditions as the original contractual obligations."

True, the reinsurance treaty precedes the Margin Law by over nine years. Nothing in that treaty, however, obligates Philamlife to remit to Airco a fixed, certain, and obligatory sum by way of reinsurance premiums. All that the reinsurance treaty provides on this point is that Philamlife "agrees to reinsure." The treaty speaks of a probability; not a reality. For, without it reinsurance, no premium is due. Of course the reinsurance treaty lays down the duty to remit premiums - if any reinsurance is effected on the covenants in that treaty written. So it is that the reinsurance treaty per se cannot give rise to a contractual obligation calling for the payment of foreign exchange "issued, approved and outstanding as of the date this Act (Republic Act 2609) takes effect."

For an exemption to come into play, there must be a reinsurance policy or, as in the reinsurance treaty provided, a "reinsurance cession"[9] which may be automatic or facultative. [10]

There should not be any misapprehension as to the distinction between a reinsurance treaty, on the one hand, and a reinsurance policy or a reinsurance cession, on the other. The concept of one and the other is well expressed thus:

"x x x A reinsurance policy is thus a contract of indemnity one insurer makes with another to protect the first insurer from a risk it has already assumed. x x x. . In contradistinction, a reinsurance treaty is merely an agreement between two insurance companies whereby one agrees to cede and the other to accept reinsurance business pursuant to provisions specified in the treaty. The practice of issuing policies by insurance companies includes, among other things, the issuance of reinsurance policies on standard risks and also on substandard risks under special arrangements. The lumping of the different agreements under a contract has resulted in the term known to the insurance world as 'treaties.' Such a treaty is, in fact, an agreement between insurance companies to cover the different situations described: Reinsurance treaties and reinsurance policies are not synonymous. Treaties are contracts for insurance; reinsurance policies or cessions x x x are contracts of insurance." [11]

Philamlife's obligation to remit reinsurance premiums becomes fixed and definite upon the execution of the reinsurance cession. Because, for every life insurance policy ceded to Airco, Philamlife agrees to pay premium.[12] It is only after a reinsurance cession is made that payment of reinsurance premium may be exacted, as it is only after Philamlife seeks to remit that reinsurance premium that the obligation to pay the margin fee arises.

Upon the premise that the margin fee of P268,747.48 was collected on remittances made on reinsurance effected on or after the Margin Law took effect, refund thereof does not come within the coverage of the exemption circumscribed in Section 3 of the said law.

2. Nor will the argument that the Margin Law impairs the obligation of contract - constitutionally proscribed - under the reinsurance treaty, carry the day for petitioner.

Petitioner's point is that if the Margin Law were applied, it "would have paid much more to have the continuing benefit of reinsurance of its risks than it has been required to do so by the reinsurance treaty in question" and that "the theoretical equality between the contracting parties x x x would be disturbed and one of them placed at a distinct disadvantage in relation to the other."

This pose at once loses potency on the face of the rule long recognized that existing laws form part of the contract "as the measure of the obligation to perform them by the one party and the right acquired by the other." [13] Stated otherwise, "[t]he obligation does not inhere, and subsist in the contract itself, *proprio vigore*, but in the law applicable to the contract." [14] Indeed, Article 1315 of the Civil Code gives out the precept that parties

to a perfected contract "are bound x x x to all the consequences which, according to their nature, may be in keeping with x x x law."

Accordingly, when petitioner entered into the reinsurance treaty of January 1, 1950 with Airco, it did so with the understanding that the municipal laws of the Philippines at the time said treaty was executed, became an unwritten condition thereof. Such municipal laws constitute part of the obligation of contract. It is in this context that we say that Republic Act 265, the Central Bank Act, enacted on June 15, 1948 - previous to the date of the reinsurance treaty - became a part of the obligation of contract created by the latter. And under Republic Act 265, reasonable restrictions may be imposed by the State through the Central Bank on all foreign exchange transactions "in order to protect the inter-national reserve of the Central Bank during an exchange crisis." [15] The Margin Law is nothing more than a supplement the Central Bank Act; it is a reasonable restriction on transactions in foreign exchange. It, too, is an additional arm given the Central Bank to attain its objectives, to wit: (1) "[t]o maintain monetary stability in the Philippines;" and (2) "[t]o preserve the international value of the peso and the convertibility of the peso into other freely convertible currencies." [16] On top of all these is that that statute was enacted in a background of "dangerously low international reserves." [17]

The following explanatory note by the Committee on Banks, Currency and Corporations on House Bill No. 3663, which later became the Margin Law; Republic Act 2609, is expressive of the purpose of the law, namely, to reduce the excessive demand on and prevent further decline of our international reserves; viz:

"The international reserves of the Philippines have reached such a low level as to require remedial action beyond that provided in Republic Act No. 265, in spite of exchange controls which have been in force since 1949. The decline in the level of our international reserves has persisted. The means and the measures presently authorized in the Charter of the Central Bank for dealing with the balance of payments problem have been found inadequate.

The purpose of this Bill is to provide the Central Bank with an additional instrument for effectively coping with the problem and achieving domestic and international stability of our currency. The additional instrument of Central Bank action provided for by this bill consists of a cost restriction on all imports, as well as invisibles, to reduce the excessive demand for foreign exchange. The proceeds that may accrue to the Central Bank from the margin will be distributed in accordance with the provisions of section 41 of the Bank's Charter."

That some such law as Republic Act 2609 was envisioned by the contracting parties, Philamlife and Airco, when the January 1, 1950 reinsurance treaty was executed, may be gleaned from the provisions of Article VI of said treaty whereunder "[e]xcept in those instances where AIRCO is taxed directly and independently on premiums collected by it from the Ceding Company, AIRCO shall reimburse the Ceding Company for the tax paid on reinsurance premiums, paid AIRCO by the Ceding. Company which are not allowed the Ceding Company, as a deduction in the tax statement of the Ceding Company."

Petitioner complains that reinsurance contracts abroad would be made impractical by the imposition of the 25% margin fee. Reasons there are which should deter us from giving in to this view. First, there is no concrete evidence that such imposition of the 25% margin fee is unreasonable. Second, if really continuance of the existing reinsurance treaty becomes unbearable, that contract itself provides that petitioner may potestatively write finis thereto on ninety days' written notice. [18] In truth, petitioner is not forced to continue its reinsurance treaty indefinitely with Airco.

3. Another roadblock is astride petitioner's route to refund.

To maintain domestic and international stability in currency is a primary concern of the State; it is in pursuance of

the constitutional mandate, in the preamble ordained, to "promote the general welfare"; it is a Matter of public policy. This could mean action to forestall a currency debacle, to improve the low international reserve, or to conserve and even increase such reserve.

The Margin Law, Republic Act 2609, it is well to remember, is a remedial currency measure. It was thus passed to reduce as far as is practicable the excessive demand for foreign exchange. Petitioner's stand that because it had a continuing - though revocable - reinsurance treaty with Airco, all remittances of reinsurance premia made by it to its foreign reinsurer should be withdrawn from the operation of the Margin Law, we are constrained to state, is at war with the State's economic policy of preserving the stability of our currency. Petitioner may not, in the words of the Solicitor General, "tie the hands of the State and render it powerless to impose certain margin or cost restrictions on its remittances of reinsurance premia in foreign exchange to fall due as policies become reinsurable under said treaty, whenever such remittances would constitute an excessive demand on our international reserves."

Viewed from this focal point, there cannot be an impairment of the obligation of contracts. For, the State may, through its police power adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose.[19] We have, in *Abe vs. Foster Wheeler Corporation*[20] declared that: "The freedom of contract, under our system of government, is not meant to be absolute. The same is understood to be subject to reasonable legislative regulation aimed at the promotion of public health, morals, safety and welfare. In other words, the constitutional guaranty of non-impairment of obligations of contract is limited by the exercise of the police power of the State, in the interest of public health, safety, morals and general welfare." It has been said, and we believe correctly, that "the economic interests of the State may justify the exercise of its continuing and dominant protective power notwithstanding interference with contracts." [21] It bears repetition to state at this point that the Margin Law is part of the economic "Stabilization Program" of the country.[22]

Tersely put then, "the [constitutional] obligation of contracts provision does not bar a proper exercise of the state's police power." [23] *Nebbia vs. New York*[24] reasons out that: "Under our form of government the use of property and the making of contracts are normally matters of private and not of public concern. The general rule is that both shall be free of governmental interference. But neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm. Equally fundamental with the private right is that of the public to regulate it in the common interest." As emphatic, if not more, is the following from *Norman vs. Baltimore & Ohio Railroad Company*, [25] thus: "Contracts, however express, cannot fetter the constitutional authority of the Congress. Contracts may create rights of property, but when contracts deal with a subject matter which lies within the control of the Congress, they have a congenital infirmity. Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them." More. In another case, pronouncement was made that: "Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order. The policy of protecting contracts against impairment presupposes the maintenance of a government by virtue of which contractual relations are worth while, - a government which retains adequate authority to secure the peace and good order of society." [26]

For the reasons given, the petition for review is hereby denied, and the ruling of the Auditor General of October 24, 1961 denying refund is hereby affirmed.

Costs against petitioner.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Castro, and Angeles, JJ., concur.
Fernando, J., concurs in a separate opinion.

[1] Section 1, R.A. 2609.

[2] Id.

[3] Id.

[4] Central Bank Circular No. 95 of July 17, 1959.

[5] Article VI, Reinsurance Treaty.

[6] Article VII, Id.

[7] Resolution 824 of the Monetary Board.

[8] See petitioner's motion for reconsideration of May 17, 1961 filed with the Auditor General, Rollo, p. 34.

[9] Article V, Reinsurance Treaty.

[10] Articles I and II, Id.

[11] Pioneer Life Insurance Co. vs. Alliance Life Insurance Co., 30 N.E. 2d 66, 72; emphasis supplied. See also: Maurer vs. International Reinsurance Corporation, 74 A 2d 822, 828.

[12] Articles VI and VII, Reinsurance Treaty.

[13] I Cooley's Constitutional Limitations, 8th ed., p. 582.

[14] Ogden vs. Saunders, 6 L. ed., pp. 606, 642 (Opinion of Mr. Justice Trimble).

[15] Sec. 74, Republic Act 265.

[16] Sec. 2, Id.

[17] Sponsorship speech of Senator Sabido, Congressional Record, Senate, June 10, 1959, Vol. II, No. 8, p. 110.

[18] Article XVI, Reinsurance Treaty.

[19] Savage vs. Martin, 91 P 2d 273, 280, citing Nebbia vs. New York, 78 L. ed. 957.

[20] L-14785 and L-14923, November 29, 1960.

[21] Home Building & Loan Association vs. Blaisdell, 78 L. ed. 413, 428, cited in Rutter vs. Esteban, 93 Phil. 68, 73.

[22] Congressional Record, Senate, June 10, 1959, Vol. II, No. 8, p. 112.

[23] 16 Am. Jur. 2d, p. 780.

[24] 291 U.S. 502, 523, 78 L. ed. 940, 948-949.

[25] 294 U.S. 240, 307-308, 79 L. ed. 885, 902.

[26] Home Building & Loan Association vs. Blaisdell, *supra*, at p. 427; emphasis supplied.

In pari materia, the following from the Government's brief may be cited:

"x x x Even in the field of taxation, authorities are numerous to the effect that a lawful tax on a new subject, or an increased tax on an old one, interferes not with a contract or impairs its obligation within the meaning of the Constitution, even though such taxation may affect particular contracts so as to increase the debt of one party or lessen the security of another, or impose additional burdens upon one class and release the burdens of the other class (*La Insular v. Machuca Go-Tauco*, 39 Phil. 567, and authorities cited therein). Thus, the imposition of a tax under a statute passed after a contract has been entered into was held not an impairment of the obligation of contract even if the immediate consequence of the tax is to make the contract less profitable to one of the parties (*Kehrer v. Stewart*, 197 U S 60, 49 L. ed. 663; *Tanner v. Little*, 240 U.S. 369, 60 L. ed. 691; *La Insular v. Machuca Go-Tauco*, supra), the reason being that all contracts are made subject to the taxing powers of the government (*Clement National Bank v. State of Vermont*, 231 U.S. 120, 58 L. ed. 148)."

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CONCURRING OPINION

FERNANDO, J.:

Let me make clear at the outset that I join the rest of my colleagues in giving assent to the opinion of the Court distinguished by the usual high standard invariably associated with the pen of Justice Sanchez. No possible objection exists either as to the statement of the legal issue posed or the result arrived at.

This opinion deals solely with the possible unconstitutional application of Section 3 of the Law in view of the command of the non-impairment clause. It is undeniable that the claim made by petitioner Philamlife as to its applicability cannot be sustained. It is equally accurate to affirm that "the State may through its police power, adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adopted to its purpose." In that sense necessarily, the guarantee against non-impairment as the majority opinions so aptly states "does not bar a proper exercise of the police power."

Such a statement provokes further thought. It cannot be said without rendering nugatory the constitutional guarantee of non-impairment, and for that matter both the equal protection and due process clauses which equally serve to protect property rights, that at the mere invocation of the police power, the objection on non-impairment grounds automatically loses force. Here, as in other cases where governmental authority may trench upon property rights, the process of balancing, adjustment or harmonization is called for.

It is not then the formulation of the applicable constitutional principle which, as above stated, has been set forth with clarity and accuracy that invites further scrutiny. It is rather the process by which the disposition of a controversy whenever the protection of the contract clause is sought that, to my mind, needs additional emphasis. Hence this concurring opinion.

1. The Constitution provides: No law impairing the obligation of contracts shall be passed.[1] The above constitutional provision is self-explanatory. This Court had occasion once to look upon it as implementing the constitutional right to freedom of contract. [2] A similar provision exists in the Constitution of the United States

as a restriction against any state legislation of that character.[3] It serves as an added protection to pro-property rights. That such is its aim and intent is made clear by an excerpt from the opinion of Chief Justice Hughes in the leading case of *Home Building & Loan Association v. Blaisdell*:[4] "In the construction of the contract clause, the debates in the Constitutional Convention are of little aid. But the reasons which led to the adoption of that clause, and of the other prohibitions of section 10 of article 1, are not left in doubt, and have frequently been described with eloquent emphasis. The widespread distress following the revolutionary period and the plight of debtors had called forth in the States an ignoble array of legislative schemes for the defeat of creditors and the invasion of contractual obligations. Legislative interferences had been so numerous and extreme that the confidence essential to prosperous trade had been undermined and the utter destruction of credit was threatened. 'The sober people of America' was convinced that some 'through reform' was needed which would 'inspire a general prudence and industry, and give a regular course to the business of society.' The *Federalist*, No. 44. It was necessary to interpose the restraining power of a central authority in order to secure the foundations even of 'private faith.'" The framers of the Constitutional Convention chose to incorporate such a provision in our Constitution. Our people voiced their agreement. It should not be reduced to a barren form of words.

2. *Rutter v. Esteban*[5] lends support to such an approach. In that leading case, the continued operation and enforcement of the Moratorium Act[6] which allowed an eight-year period of grace for the payment of prewar obligations on the part of debtors who suffered as a consequence of World War II was, in a 1953 decision, held "unreasonable and oppressive, and should not be prolonged a minute longer" for being violative of the constitutional provision prohibiting the impairment of the obligation of the contracts "and, therefore, * * should be declared null and void and without effect." [7] This is one conspicuous instance then, where notwithstanding the admission earlier in the opinion that police power could be relied upon to sustain its validity at the time of its enactment in 1948, in view of the serious economic condition faced by the country upon liberation and the state of penury that then afflicted a greater portion of the Filipino people, could by 1953 be rightfully considered as an infringement of the non-impairment clause, as the economy had in the meanwhile considerably changed for the better. There is no clearer instance then of the process of harmonization and balancing which is incumbent upon the judiciary to undertake whenever a regulatory measure under the police power is assailed as violative of Constitutional guarantees, whether of non-impairment, due process or equal protection, all of which are intended to safeguard property rights.

In the opinion of Justice Bautista Angelo in *Rutter v. Esteban*, there was this categorical declaration: "There are at least three cases where the Supreme Court of the United States declared the moratorium laws violative of the contract clause of the Constitution because the period granted to debtors as a relief was found unwarranted by the contemplated emergency." [8] Further on, in his opinion, was the following: "In addition, we may cite leading state court decisions which practically involved the same ruling and which reflect the tendency of the courts towards legislation involving modification of Mortgage or monetary contracts which contains provisions that are deemed un-reasonable or oppressive." [9]

It may be out of excess of caution, but I feel that no such overtone or nuance should be considered as emanating from our decision today, the effect of which would be to diminish the force and cogency of the *Rutter* holding insofar as the continued vitality of the non-Impairment clause in appropriate situations is concerned.

3. The opinion of the Court is strengthened and fortified by a citation of three leading decisions of the United States Supreme Court, *Home Building & Loan Association v. Blaisdell*, [10] *Nebbia v. New York*, [11] and *Norman v. Baltimore and Ohio Railroad Co.* [12]

All of the above decisions reflect the view that an enactment of a police power measure does not per se call for the overruling of objections based on either due process or non-impairment grounds. There must be that balancing, or

adjustment, or harmonization of the conflicting claims posed by an exercise of state regulatory power on the one hand and assertion of rights to property, whether of natural or of juridical persons, on the other. That is the only way by which the constitutional guarantees may serve the high ends that call for their inclusion in the Constitution and thus effectively preclude any abusive exercise of governmental authority.

Parenthetically, it may be observed that the above three decisions, the *Blaisdell* case upholding the validity of the Minnesota Mortgage Moratorium Law, the *Nebbia* case sustaining the constitutionality of a price-fixing statute to protect the dairy industry of New York dealing as it does with such a vital but perishable commodity as milk, and the *Norman* decision affirming a lower court decree deciding that the joint Resolution of June 5, 1933 of the American Congress to the effect that a requirement as to payment in gold or in a particular kind of coin or currency is against public policy and that every obligation theretofore or thereafter incurred should be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts, all deal with emergency legislation necessitated by the grave economic situation then confronting the United States in the thirties, faced as she was with a major business depression. The Margin Law,[13] which called for interpretation in this case was likewise a response to an economic problem, perhaps not as grave but sufficiently serious in character.

But enough of generalities. In the opinion of *Blaisdell* case, penned by the then Chief Justice Hughes, there was this understandable stress on balancing or harmonizing, which is called for in litigations of this character. Thus: "The policy of protecting contracts against impairment presupposes the maintenance of a government by virtue of which contractual relations are worthwhile - a government which retains adequate authority to secure the peace and good order of society. This principle of harmonizing the constitutional prohibition with the necessary residuum of state power has had progressive recognition in the decisions of this Court." [14] Also to the same effect: "Undoubtedly, whatever is reserved of state power must be consistent with the fair intent of the constitutional limitation of that power. The reserved power cannot be construed so as to destroy the limitation, nor is the limitation to be construed to destroy the reserved power in its essential aspects. They must be construed in harmony with each other. This Principle precludes a construction which would permit the State to adopt as its policy the repudiation of debts or the destruction of contracts or the denial of means to enforce them. But it does not follow that conditions may not arise in which a temporary restraint of enforcement may be consistent with the spirit and purpose of the constitutional provision and thus be found to be within the range of the reserved power of the State to protect the vital interests of the community." [15] Further on, Chief Justice Hughes likewise stated: "It is manifest from this review of our decisions that there has been a growing appreciation of public needs and of the necessity of finding ground for a rational compromise between individual rights and public welfare." [16]

It was also Chief Justice Hughes, who spoke for the Court in *Norman v. Baltimore and Ohio Railroad Co.* What was emphasized there by him reflected with fidelity this particular approach. Thus: "Despite the wide range of the discussion at the bar and the earnestness with which the arguments against the validity of the Joint Resolution have been pressed, these contentions necessarily are brought, under the dominant principles to which we have referred, to a single and narrow point. That point is whether the gold clauses do constitute an actual interference with the monetary policy of the Congress in the light of its broad power to determine that policy. Whether they may be deemed to be such an interference depends upon an appraisal of economic conditions and upon determinations of questions of fact. With respect to those conditions and determinations, the Congress is entitled to its own judgment. We may inquire whether its action is arbitrary or capricious, that is whether it has reasonable relation to a legitimate end. If it is an appropriate means to such an end, the decision, of the Congress as to the degree of the necessity for the adoption of that means, is final." [17]

It was Justice Roberts' turn to announce the opinion of the Court in *Nebbia v. New York*. According to him: "The

Fifth Amendment, in the field of federal activity, and the Fourteenth, as respects State action, do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained. It results that a regulation valid for one sort of business, or in given circumstances, may be invalid for another sort, or for the same business under other circumstances, because the reasonableness of each regulation depends upon the relevant facts." [18] That a process of balancing or harmonization is the medium through which the requirement of reasonableness could be met was stressed later in his opinion by Justice Roberts in these words: "It is clear that there is no closed class or category of business affected with a public interest, and the function of courts in the application of the Fifth and Fourteenth Amendments is to determine in each case whether circumstances vindicate the challenged regulation as a reasonable exertion of governmental authority or condemn it as arbitrary or discriminatory. The phrase 'affected with a public interest' can, in the nature of things, mean no more than that an industry, for adequate reason, is subject to control for the public good." [19]

4. If emphasis be therefore laid, as this concurring opinion does, on the pressing and inescapable need for such an approach whenever a possible collision between state authority and an assertion of constitutional right to property may exist, it is not to depart from what sound constitutional orthodoxy dictates. It is rather to abide by what it compels. In litigations of this character then, perhaps much more so than in other disputes, where there is a reliance on a constitutional provision, the judiciary cannot escape what Holmes fitly referred to as the sovereign prerogative of choice, the exercise of which might possibly be impugned if there be no attempt, however slight, at such an effort of adjusting or reconciling the respective claims of state regulatory power and constitutionally protected rights.

[1] Art. III, Sec. 1, Clause 10.

[2] *Gabriel v. Monte de Piedad*, 71 Phil. 497 (1941).

[3] Article 1, Sec. 10; a typical constitutional provision is that of the State of Maine followed by 24 states: "The legislature shall pass no bill of attainder, ex post facto law, no law impairing the obligation of contracts. * * *."

[4] 290 US 398 (1934) To the same effect is this statement by Professor Hale: "The framers of the Constitution were resolved to prevent, if they could, a repetition of attacks which state legislatures had from time to time made upon property. With an apprehension of 'the violent acts which might grow out of the feelings of the moment', the 'people,' in adopting the Constitution, 'manifested a determination to shield themselves and their property from the effects of those sudden and strong passions to which men are exposed' - as Marshall expressed it." Hale, *The Supreme Court and the Contract Clause*, 57 Harv. Law Rev., 512 (1944).

[5] 93 Phil. 68 (1953).

[6] Rep. Act No. 342.

[7] At p. 82.

[8] *Worthen Co. v. Thomas*, 292 US 426 (1934); *Worthen Co. v. Kavanaugh*, 295 US 56 (1935); *Louisville Joint Stock Land Bank v. Radford*, 295 US 555 (1935).

[9] *Pouquette v. O'Brien*, 100 Pac. 2nd series 979 (1940); *First Trust Joint Stock Land Bank of Chicago v. Adolph Arp et al.*, 283 N. W. 441, 120 A.L.R. 932 (1939); *First Trust Co. of Lincoln v. Smith et al.*, 277 N. W. 762

(1938); *Milkint v. McNeely*, Clerk of Court, et al., 169 S.E. 790 (1933); *Haynes v. Treadway*, 65 Pac. 892 (1901); *Swinburne v. Mills*, 50 Pac. 489 (1897).

[10] 290 US 398(1934).

[11] 291 US 502 (1934).

[12] 294 US 240 (1935).

[13] Republic Act No. 2609 (1959).

[14] At p. 435.

[15] At p. 439.

[16] At p. 442.

[17] At p. 311, citing *M'Culloch v. Maryland* (4 Wheat, 421, 423, 4 L. ed. 605); *Legal Tender Case* (*Juilliard v. Greenman*) (110 US 450, 28 L. ed. 215, 4 S. Ct. 122); *Stafford v. Wallace*, 258 US 495, 521, 66 L. ed. 735, 743, 42 S. Ct. 397, 23 A.L.R. 229; *James Everard's Breweries v. Day*, 265 US 545, 559, 562, 68 L. ed. 1174, 1179, 1181, 44 S. Ct. 628.

[18] At p. 525, citing as to the Fifth Amendment, *Addyston Pipe & Steel Co. v. United States* 175 US 211, 228, 229, 44 L. ed. 136, 142, 143, 20 S. Ct. 96 and as to the Fourteenth, *Barbier v. Connolly*, 113 US 27, 21, 28 L. ed. 923, 924, 5 S. Ct. 357; *Chicago, B & Q. R. Co. v. Illinois*, 200 US 561, 592, 50 L. ed. 596, 609, 26 S. Ct. 341, 4 Ann. Cas. 1175.

[19] At p. 536.

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