Volume 43 | Issue 4 Article 9

June 1937

Constitutional Law--Bankruptcy--Constitutionality of the Amended Frazier-Lemke Act

H. A. W.
West Virginia University College of Law

case such a result is impossible. The only solution of this problem seems to be a definite statutory enactment by the legislature, permitting attachment of the property of a nonresident respondent in a divorce action. Such statutes exist in a number of states, a good example being that in Massachusetts,[9] and it is suggested that the West Virginia legislature should enact such a statute.

J. E. C.

CONSTITUTIONAL LAW — BANKRUPTCY — CONSTITUTIONALITY OF THE AMENDED FRAZIER-LEMKE ACT. — Wright, a Virginia farmer, petitioned for relief under the amended Frazier-Lemke Act,[1] providing for a three-year debt moratorium for insolvent farm owners. A mortgagee moved that the case be dismissed on the ground that the Act was unconstitutional in that it effected a deprivation of creditors' property without due process of law. The district court sustained the motion,[2] and the judgment was affirmed by the circuit court of appeals.[3] The Supreme Court granted *certiorari*. *Held,* that the amended Frazier-Lemke Act is constitutional, not being in violation of the Fifth Amendment. Judgment reversed. *Wright v. Vinton Branch of the Mountain Trust Bank of Roanoke, Va.*[4]

The first Frazier-Lemke Act[5] provided that if a farmer were unable to obtain a composition under Section 75 of the Bankruptcy Act,[6] his property should be appraised, and he might, if the creditor consented, purchase the property at the appraised value, agreeing to make deferred payments of the purchase price. If the creditor refused his assent, all proceedings should be stayed for five years, the debtor retaining possession of the property under the supervision of the court, paying a reasonable rental. At the end of five years the debtor might pay into court the appraised value of the property and be discharged. The Supreme Court held this Act unconstitutional in *Louisville Joint Stock Land Bank v.*

---

[9] "Upon a libel by a wife for divorce for a cause accruing after marriage, the real and personal property of the husband may be attached to secure suitable support and maintenance to her and to such children as may be committed to her care and custody." Mass. Gen. Laws 1932, c. 208, § 12.

---

[1] 49 Stat. 943-955 (1935), 11 U. S. C. A. § 203 (s) (1927).
[2] *In re* Sherman, 12 F. Supp. 297 (1935).
[3] Wright v. Vinton Branch of the Mountain Trust Co. of Roanoke, Va., 85 F. (2d) 973 (C. C. A. 4th, 1936).
[4] 57 S. Ct. 556 (1937).
[5] BANKRUPTCY ACT § 75(s), 48 Stat. 1289 (1934).
[6] 11 U. S. C. A. § 203 (1927).

Radford,[7] on the ground that it violated the due process clause of the Fifth Amendment.

Shortly after the *Radford* case, the Frazier-Lemke Act was amended, the essential changes being: (1) the provision as to creditors' assent was abolished; (2) it was specifically stated that the creditor's lien should not be impaired; (3) whether the debtor in any specific instance was entitled to relief was left within the discretion of the district court; and (4) the moratorium was reduced from five to three years. The new Act also provided, (5) that at the end of the three year period the debtor might pay into court the appraised value and keep the property, this section being followed by a proviso which proved a little troublesome to interpreters, *i.e., "Provided,* That upon request in writing by any secured creditor or creditors, the court shall order the property upon which such secured creditors have a lien to be sold at public auction," the debtor being given a ninety days equity of redemption. There was a question as to whether the creditor might do this at any time or only after the expiration of the three year stay. It is now settled that the creditor may exercise this power only at the end of the moratorium.[8] The last paragraph of the Act states that the Act is an emergency measure and if the emergency ceases to exist, the court may, in its discretion, shorten the stay of proceedings provided for.

The *Radford* case[9] enumerated five property rights given to the creditor by the state law of which he was deprived by the original Frazier-Lemke Act. They were: (1) the right to retain the lien until the indebtedness thereby secured was paid; (2) the right to realize upon the security by a judicial public sale; (3) the right to determine when such sale should be held, subject only to the discretion of the court; (4) the right to protect its interest in the property by bidding at such sale whenever held, and thus to assure having the mortgaged property devoted primarily to the satisfaction of the debt, either through receipt of the proceeds of

[7] 295 U. S. 555, 55 S. Ct. 854 (1935).

[8] See *In re* Chilton, 16 F. Supp. 14 (1936) holding that the provision should be interpreted to give the creditor the right to an immediate sale, abrogating the three year moratorium, on the ground that this construction is consonant with its constitutionality. *Contra*: *In re* Young, 12 F. Supp. 30 (1935), in which it is pointed out that if the creditor could immediately demand a sale, the debtor could himself complain of unconstitutionality in that his equity of redemption would be reduced from the time given by the state statute (one year in this case) to ninety days.

[9] Louisville Joint Stock Land Bank v. Radford, 295 U. S. 555, 55 S. Ct. 854 (1935).

a fair competitive sale or by taking the property itself; (5) the right to control meanwhile the property during the period of default, subject only to the discretion of the court, and to have the rents and profits collected by a receiver for the satisfaction of the debt. It was generally agreed that the amended Act secured rights numbered (1), (2), and (4), but a majority of the district and circuit courts seemed to be of the opinion that the creditor was deprived of the right to determine when the sale should be held and the right to control the property during the period of default, and these courts also interpreted the *Radford* case to mean that deprivation of any one of the five enumerated property rights would invalidate the Act.[10] Mr. Justice Brandeis, referring, in the *Wright* case,[11] to the *Radford* case, states: "The opinion enumerates five important substantive rights in specific property which had been taken. It was not held that the deprivation of any one of these rights would have rendered the Act invalid, but that the effect of the statute in its entirety was was to deprive the mortgagee of his property without due process of law."

Until the passage of the first Frazier-Lemke Act, Bankruptcy legislation had normally operated to discharge the debt, leaving the security for the debt unaffected. This Act was held unconstitutional in that it impaired the security to too great an extent by depriving the creditor of five rights in the security. The case holding the Act unconstitutional[12] seemed to create the impression that the impairment of any of these rights would not be tolerated. but it was held in the *Wright* case that the creditor might constitutionally be deprived of two of the enumerated rights. Somewhere between these two decisions lies the verge of constitutionality, in so far as disturbing these security rights is concerned. Whether one or more of the rights remaining to the creditor may be taken singly or in combination with those of which he has already been deprived remains to be answered.

H. A. W.

[10] Wright v. Vinton Branch of the Mountain Trust Bank of Roanoke, 85 F. (2d) 973 (C. C. A. 4th, 1936); LaFayette Life Ins. Co. v. Lowmon, 79 F. (2d) 887 (C. C. A. 7th, 1935); United States National Bank of Omaha v. Pamp, 83 F. (2d) 493 (C. C. A. 8th, 1936); Steverson v. Clark, 86 F. (2d) 330 (C. C. A. 4th, 1936); Knott v. First Carolinas Joint Land Bank, 86 F. (2d) 551 (C. C. A. 4th, 1936); McWilliams v. Blackard, 86 F. (2d) 328 (C. C. A. 8th, 1936); *In re* Young, 12 F. Supp. 30 (1935); *In re* Lindsay, 12 F. Supp. 625 (1935); *In re* Weise, 12 F. Supp. 871 (1935); *In re* Davis, 13 F. Supp. 221 (1936); *In re* Diller, 13 F. Supp. 249 (1935); *In re* Tschoepe, 13 F. Supp. 371 (1936); *In re* Schoenleber, 13 F. Supp. 375 (1936); *In re* Wogstad, 14 F. Supp. 72 (1936); *In re* Maynard, 15 F. Supp. 809 (1936); *In re*