

AMERICAN BAR ASSOCIATION

ORGANIZED 1878

COMMITTEE ON AMERICAN CITIZENSHIP

1933-1934

January 26th., 1934.

Hon. George Sutherland,
Supreme Court of the United States,
Washington, D.C.

My Dear Judge:

I am of course unknown to you, but as a member of the American Bar Association, and as a Lawyer who has taken for many years a deep interest in the Constitution I cannot refrain from expressing my appreciation of your dissenting opinion in the Minnesota moratorium case.

I have no desire to reflect on Judge Hughes for whom I have the highest respect, but a Lawyer friend of mine some what given to sarcasm expressed my view. He said "Judge Hughes wrote a decision, Judge Sutherland wrote an opinion". The majority opinion is to me startling. If I grasp it, it is based upon the existence of an emergency. Judge Hughes says the emergency does not create the power, merely calls it into action or exercise, and that the power is part of the reserved powers of the state. This is certainly a new doctrine. I never understood that the 10th Amendment retained to the states the right to alter or amend the Constitution by mere act of the Legislature. How quickly we forget.

Beginning in 1893, and lasting until 1898, we had a depression which fully equaled the present one; you will doubtless recall it, Banks were crumbling everywhere, there was vast unemployment, the roads were full of tramps, the unemployed commandeered railroad trains, Coxie's Army marched to Washington, the distress was general, wide spread considering our population then and now. In this emergency our Legislature amended our period of redemption, extending it from six months to a year and a half, and our Supreme Court upheld it. The Supreme Court of the United States reversed the case with the plain declaration that the remedies existing at the time of the contract could not be changed. This decision, in effect, is reversed, and wiped out. Heretofore it has universally been held that those entering into contracts did so with reference to existing laws and remedies that they afford. In effect such laws were written into the contract. That has been repeated over and over again.

Now such contracts, in effect, will read this way "the parties hereto bind themselves, their heirs, administrators, and assigns to the execution of this contract (to which it will be added) except in cases of emergency."

It throws a cloud, a doubt upon every contract executed in the future, and even upon existing contracts. The effect upon the business world, and especially upon the debtor

AMERICAN BAR ASSOCIATION

ORGANIZED 1878

COMMITTEE ON AMERICAN CITIZENSHIP

1933-1934

-2-

class will be deplorable. Few will care to loan money if the Legislature may declare an emergency and deny their remedy for one, two or three years. The result will be that the debtor will be compelled to go to the Government for a loan or do without. So the word "emergency" is very dangerous in my judgment. The Court rather timidly intimates that the Court would be the final Judge of an emergency. What one Court might consider an emergency, another might not, and here again arises confusion. The confusion that always arises when we evade the plain mandate of the Constitution.

Your picture of the background, and the setting out of which the Constitution and these questions emerged is wholly admirable. In my opinion the Bar generally will agree with your opinion rather than with the declaration of the Court.

I am, with high regard and sincere respect,

Sincerely yours,

F. DUMONT SMITH.

FDS
R