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Article 10

Fraud: State Law Creating Presumption of; As to Every Insolvency; Due Process

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stitution of the United States, in another exacted of its members an oath to shield and preserve *white supremacy,* and in still another declared any person actively opposing its principles to be *a dangerous ingredient in the body politic of our country and an enemy to the weal of our national commonwealth;* that it was conducting a crusade against Catholics, Jews, and negroes, and stimulating hurtful religious and race prejudice; that it was striving for political power, and assuming a sort of guardianship over the administration of local, state, and national affairs; and that at times it was taking into its own hands the punishment of what some of its members conceived to be crimes.

It is plain that the action of the courts below in holding that there was a real and substantial basis for the distinction made between the two sets of associations or orders was right and should not be disturbed.

Criticism is made of the classification on the further ground that the regulation is confined to associations having a membership of twenty or more persons. Classification based on numbers is not necessarily unreasonable. There are many instances in which it has been sustained. It is not unreasonable in this instance. With good reason the legislature may have thought that an association of less than twenty persons would have only a negligible influence, and be without the capacity for harm that would make regulation needful.

CHAS. S. SHANE

Fraud; State Law Creating Presumption of, as to every Insolvency; Due Process

The United States Supreme Court, in the recent case of *Manley* v. *State of Georgia,* 49 S.Ct. 215, had occasion again to defend the Fourteenth Amendment. The difficulty arose over the interpretation of section 28, art. 20 of the State Banking Act of 1919 (Acts Ga. 1919, p. 219) which is worded:

Every insolvency of a bank shall be deemed fraudulent, and the president and directors shall be severally punished by imprisonment and labor in the penitentiary for not less than one (1) year nor longer than ten (10) years; provided, that the defendant in a case arising under this section, may repel the presumption of fraud by showing that the affairs of the bank have been fairly and legally administered, and generally, with the same care and diligence that agents receiving a commission for their services are required and bound by law to observe; and upon such showing the jury shall acquit the prisoner.

This statute became of peculiar significance because of the adoption of a new definition of insolvency in that year:

A bank shall be deemed to be insolvent, first, when it cannot meet its liabilities as they become due in the regular course of business;

second, when the actual cash market value of its assets is insufficient to pay its liabilities to depositors and other creditors; third, when its reserve shall fall under the amount herein required and it shall fail to make good such reserve within thirty (30) days after being required to do so by the superintendent of banks.[1]

In 1927, section 28 was construed in the light of the above definition to mean that upon proof of insolvency, presumption of fraud on the part of the president and directors followed naturally and they were presumed to be guilty, no proof thereof on the part of the state being necessary, the burden resting upon the officers to prove themselves innocent, rebutting the presumption by showing they were in no way responsible, and bringing to light the facts causing such insolvency.[2]

These presumptions, attorneys for Manley contended successfully, violated the Fourteenth Amendment because they were so unreasonable and arbitrary as to amount to a denial of due process of law, since mere inability to pay created the inference of crime and guilt without any proof thereof being established, for the Supreme Court so found.

Presumption in railroad accident: Not all presumptions, however, have been found to violate the Fourteenth Amendment. In *Mobile, Jackson and Kansas City R.R. Co.* v. *Turnipseed, Adm.* 219 U. S. 35, 55 L.Ed. 78, 31 S.Ct. 36, 32 L.R.A. (N.S.) 226, Ann. Cas. 1912A, 463, a Mississippi statute putting railroad companies in a class by themselves, the court said: (quoting the statute in question)

Injury to persons or property by railroads prima facie evidence of want of skill, etc. In all actions against railroad companies for damages done to persons or property, proof of injury inflicted by the running of locomotives or cars of such company shall be *prima facie* evidence of want of reasonable skill and care on the part of the servants of the company in reference to such injury. This section shall also apply to passengers and employees of railroad companies. . . . . The statutory effect of the rule is to provide that evidence of an injury arising from the actual operation of trains shall create an inference of negligence, which is the main fact in issue. The only legal effect of this inference is to cast upon the railroad company, the duty of producing some evidence to the contrary . . . . it is not an unreasonable inference that a derailment of railway cars is due to some negligence, either in construction or maintenance of the track, or trains, or some carelessness in operation . . . . the application of the act to injuries resulting from the running of locomotives and cars is not an arbitrary classification, but one resting upon considerations of public policy arising out of the character of the business.

And the presumption of negligence was deemed not unconstitutional nor in any way a violation of the Fourteenth Amendment.

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[1] Section 5 Article 1, Banking Act of 1919, (Ga.)

[2] 166 Ga. 578, 579; 144 S.E. 178.

Presumption of crime upon failure to carry out labor contract: The Thirteenth Amendment also is to be considered in connection with presumptions created by statute where one party fails to perform his part of a contract for personal service, and fails also to pay back a sum of money given as consideration by the other party for the faithful performance of such contract. Alabama had a statute declaring such a state of affairs as above indicated, to be prima facie evidence of a criminal intent and punishable accordingly. In *Bailey* v. *Alabama,* 219 U.S. 219, 31 S.Ct. 45, 55 L.Ed. 191, the Supreme Court made its position very clear in these words:

The act of Congress deprives of effect all legislative measures of any state through which, directly or indirectly, the prohibited thing, to wit, compulsory service to secure the payment of a debt may be established or maintained, and we conclude that sec. 4730, as amended by the Code of Alabama, insofar as it makes the refusal or failure to perform the act or service, without refunding the money, or paying for the property, prima facie evidence received of the commission of the crime which the section defines, is in conflict with the Thirteenth Amendment, and the legislation authorized by that Amendment, and is therefore invalid.

Presumption of monopoly: The Supreme Court expanded the amount of territory covered by the above statement, in a later case by saying:

"It is not within the province of a legislature to declare an individual guilty or presumptively guilty of a crime."[3] And that the scope embodied in the word crime is far reaching, is evidenced by the fact that the statute causing the above statement was one making the closing of a refinery for a year or more, or the consistent purchase of sugar at a price lower than in other states, *prima facie* evidence of a monopoly, and outlining the punishment for its perpetration. Again the presumption was deemed void as a violation of the Fourteenth Amendment.

Thus we see, that even though monopolies, our much heralded bugaboo, are feared as a giant automaton crushing life and vigor out of industry as exemplified by competition, yet ever watchful is our august arbiter that presumption of crime may not invade our rights as defined by the Fourteenth Amendment, and to a not much less extent its twin brother, the Thirteenth Amendment, and not even the mention of that powerful monster, Monopoly, can deter its vigilence, and the attention given to these presumptions can thereby be, to some degree, gauged and measured.

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[3] *McFarland* v. *American Sugar Refining Co.,* 241 U.S. 79, 36 S. Ct. 498, 60 L.Ed. 899.