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## STAY AND EXEMPTION LAWS.

THE constitutionality of "Homestead" and "Exemption" laws was sufficiently treated of in the article published in this journal in March of last year, and as the subjects of our caption are so nearly related in principle in this respect, we shall only incidentally refer to the constitutionality of such laws.

We purpose speaking more particularly of their policy and morality, and perhaps of what we deem experience to have shown should have been the construction of that clause of the Constitution of the United States prohibiting the passage of laws impairing the obligation of contracts.

We are satisfied that a very mistaken view prevails among the public, if not among legislators, as to the practical working of stay laws, even when they are not retroactive. They are always ostensibly passed for the benefit of the poor, as a means of their protection against the rapacious rich; whereas they practically serve as a shield to those who deserve and need it least, and fail to protect those for whose especial benefit they are claimed to be intended. BRONSON, C. J., took a correct view of legislation of this character when he said that "such laws sometimes have their origin in a sympathy for unfortunate debtors, and a feeling of kindness toward the poor. But it will, I think, be found that they more commonly spring from a desire to escape the just punishment of idleness, extravagant living, and gambling specu-

lations. They do little for the poor beyond depriving the honest tradesman, mechanic, and laborer of the just reward of their industry. It is those who live at ease, and sometimes in splendor, that usually reap the fruits of such laws, and not the more humble portion of the community who toil for the bread they eat."

Let us illustrate the practical working of stay laws in most cases. A. is a man possessed of considerable real property, and is a creditor of B., who has little property. Such as the latter has is almost certain not to be of that kind that enables him, on its security, to take the benefit of a stay of execution. B. is therefore denied the benefit of the act. If, on the other hand, C., a man also possessed of considerable real property, becomes indebted to B., and the latter recovers judgment on his claim, the former can at once invoke the stay law in his favor on the security which the statute requires, and thus deprive his poor creditor of what is his just due, and perhaps the necessary means of paying the debt he owes A., and of saving himself from bankruptcy.

If, instead of the debtor's relying on his own property as a means of securing a stay of execution, he resorts to the assistance of his friends, it will be easily understood that the man well able to pay his debts will much more readily find the required aid than he whose ability to pay is doubtful. In this way is the poor debtor postponed in his efforts to recover his own just dues and yet obliged to pay his obligations with his legitimate source of securing the means to that end cut off, or else he suffers a sale of his property on execution—a calamity to himself and the state that might have been avoided had it not been for the law ostensibly passed for his especial benefit, and also from motives of public policy—the benefit of the Commonwealth.

But this is not the worst feature of stay laws.

They stand as monuments of the moral obliquity of the community they govern, and invite to a breach of faith on the part of every citizen who enters into an obligation involving the payment of money. Instead of holding out a threat of punishment to those who break their promise to pay their obligations at a "time certain," the law itself invites to a breach of contract, and rewards the infractor of his word and faith. *It should be a primary purpose of every law to elevate the moral tone of the community where it prevails, and one that falls short of that aim, is neither*

*wise nor just.* The attainment of strict justice in any particular case is even secondary to the former object, though the one effect will almost invariably accompany the other. *Lex citius tolerare vult privatum damnum quam publicum malum.* It is to the interest of the Commonwealth that litigation should cease, and nothing will so conduce to that end as the elevation of the moral tone of the contestants and the creation of a high regard for their commercial integrity.

How shocking would it be to the sense of justice of one who had never heard of stay laws, after witnessing all the embarrassments thrown in the way by "practice laws" of the recovery of a judgment for a sum of money which the defendant could not deny to be due, to hear the same court which pronounced its tardy decree, announce at its close that the defendant might still refuse to pay his debt for a still further period of time if it were made to appear that he was possessed of real estate sufficient to secure the judgment!

This last fact would seem to constitute the very best reason why the debtor should the sooner pay, and a stranger to the system might well say that such a law should be denominated "An Act to legalize forced loans." Surely such laws, in the words of the Federalist, "are contrary to the first principles of the social compact, and to every principle of sound legislation, and are prohibited by the spirit and scope of our fundamental charter." Not that they are prohibited by the letter of the Constitution, in the sense in which it is now to be read with the adjudicated cases in view, but in the broader and juster sense—by its spirit and moral intent. How are such laws to be reconciled with the declaration that justice should be administered without "sale, *denial,* or *delay,*" or with Justinian's definition of justice, that it is "the *constant and perpetual* desire of giving to every man that which is due." Let it be remembered that the value of a promise to pay consists not alone in the *amount* to be paid, but in the certainty of payment on the day stipulated for. As soon as the time of the execution of a contract becomes uncertain or more remote than its terms provide for, its value is impaired; and the state can with as much justice take a part of one man's property and give it to another, as it can provide that one need not pay the other his claim at the *time* he contracted to pay him.

We cannot but agree with MARSHALL, C. J., that the Constitution of the United States in prohibiting the passage of laws impairing the obligation of contracts, was intended to apply as well to prospective as to retroactive laws, and that the former can be, and have been made scarcely less mischievous than the latter. The experience of the country, we think, has shown that at all events such a construction would have been promotive of the honor and well-being of the people; and the belief is now forced upon us that "whatever respect may have been felt for state sovereignty, it is not to be disguised that the framers of the Constitution viewed, with evident apprehension, the violent acts which might grow out of the feelings of the moment; and the people of the United States in accepting that judgment * * manifested a determination to shield themselves and their property from the effects of the sudden and strong passions to which men are exposed."

The legislators who have exercised themselves, under their solemn oaths, in passing laws which infract the spirit of the Constitution, whilst they conform to the judicial construction of its letter, are not such as command our highest regard for their patriotism or enlarged views of right and justice. Especially would it seem that those legislators, whose constituents seem to feel most keenly the disregard of what they deem their constitutional rights, should be very circumspect in their recognition of the constitutional rights of others. But the Southern and Western States seem to have been of late years in unenviable rivalry in passing stay and exemption laws which have the effect to deprive creditors of their just rights and undisputed dues. Their object would seem to be twofold: First, to protect their own citizens from the enforced payment of their debts; and secondly, to invite immigration to their borders by the advantages of citizenship in such a Commonwealth!

How has the former experience of the country which induced this protective clause of the Constitution been repeated—when laws were passed by "state legislatures [that seemed] to break in upon the ordinary intercourse of society, and destroy all confidence between man and man, * * impair commercial intercourse, * * threaten the existence of credit, * and sap the morals of the people, and destroy private faith."

*It would seem to be a proposition deserving of universal accept-*

*ance, that the state should only interfere with the contracts of persons for the purpose of construing and enforcing them, except so far as they may affect the public welfare.* But stay laws are a plain violation of this principle, for they *force* upon one party a contract he never made without a compensatory advantage to the state—indeed, without any advantage to the state. A stay law will not, in any considerable proportion of cases, serve as a barrier to bankruptcy. If a debtor is not able to pay on the day when execution is due against him, he will seldom be able to pay on some other, though it be a later day. But even if he should be so able, the cost of the delay should not be borne by another who has already been unjustly punished by the loss of time incident to suit and fees necessarily paid to counsel in prosecuting his claim to judgment. It should rather be the purpose of the law to make a debtor understand and feel that he is in fact the trustee of his property for his creditors, and that the same good faith should be used toward them as if he were such in *form* also—not their natural enemy. If a debtor possesses the means of securing a stay of execution, under any law wearing the semblance of justice, he has in that same means the source of obtaining a *voluntary loan* by which to pay his debt when due. Or, if he has not, it is because another, scarcely less unwise law, prevents a lender from recovering the loan with the true value of its use—that is, what it will bring in the loan market. But of "usury laws" we may speak more fully on another occasion. Instead of giving the defaulting debtor further time for meeting his contract—contrary to its terms, and in disregard of the creditor's rights—we would subject such a debtor to the full costs of plaintiff's recovery, and *oblige him to pay on his overdue debt a rate of interest increasing with every month of his delay, unless by the verdict of a jury it is made to appear that the delay in payment was not occasioned by a spirit of factiousness, spite, or indifference.* Our experience has been, in the majority of cases where a debtor takes the benefit of the stay law, that either the creditor loses his claim, or the surety of the debtor is obliged to pay it. In most instances, the former is the result; for as no state, so far as we are aware, subjects the surety's property to the lien of the judgment against his principal, the surety himself ceases to have attachable property by the time the stay expires, if the principal debtor is likely to fail in payment.

There are, too, beside the stay laws strictly so called, still other enactments in the form of "practice laws," that serve to effect even greater delays in the administration of justice, because of their more frequent application, than the stay laws. We are working under nearly the same system, so far as the speedy—or rather the tardy—administration of justice is concerned as was in force before railroads were in general use, before the telegraph was invented, and when mails were only weekly visitors to our county towns. There is no reason why the plaintiff, in every case where he claims a liquidated sum of money, or a sum capable of being made certain by the terms of his contract, the claim being supported by oath, should not have judgment in his favor as soon as the defendant has a reasonable time for stating his defence under oath, unless that defence raises an issue of law or fact for determination. But there are a multitude of actions now brought daily to which there is no pretence of defence when the day of trial comes, and yet the plaintiff must wait a weary term or two before he can have a hearing as to his right to recover judgment. This claim may be based upon an express contract for the wages of a laborer, and yet he must wait his turn in line to hear the jury pronounce the magic words, "We find for the plaintiff," before he can go his way assured that he is to realize the reward of his labor.

Not a few of the foregoing remarks are applicable to exemption as well as stay laws, though the reasons against prospective laws of the former kind, when the amount exempted is reasonable, are not as cogent as those against prospective laws of the latter description.

It is to be expected that a debtor will invoke the protection of an exemption law to save his family from being pauperized, and the welfare of the state, indeed, requires that he should do so; nor can such a privilege be said to encourage a breach of faith on the part of a debtor.

But this is not true of stay laws.

Neither are prospective exemption laws obnoxious to the criticism of being, in any sense, as it seems to us, unconstitutional. But in the enactment of such laws it should be kept in view that their only ultimate object is the public good. Any exemption law which is retroactive in character, or which exempts more property of debtors than is conducive to the prevention of suffer-

ing and pauperism, is alike unjust and unwise. The exemptions at common law were of such articles as were requisite to keep families from suffering and save them from poverty, and the subjects of exemption should only be extended as a change occurs in the social condition and requirements of the people.

It is best for the debtor that he should feel the necessity of a performance of his contract. "It stimulates," says Chancellor KENT, "to industry, economy, temperance and wakeful vigilance, and tends to procure credit for the honest poor man at moderate prices for the articles needed by him in his family or for purposes of business."

But these laws being dictated by motives of public policy, should not be subject to waiver by the debtor. If they are, they will be of no avail in the most necessitous cases. Few legislatures, however, have recognised this principle, and in its oversight they have shown the erroneous views which have chiefly induced the enactment of exemption laws.

But of those states which have passed retroactive laws, and yet claim them to be constitutional as only affecting the remedy, whilst they exempt property to such an amount as enables debtors to live in comfortable idleness, we cannot speak in terms sufficiently reprehensible. They surely betoken a sorry condition of the moral sense of those who enact them, if not of the legislator's constituents, "and are justly chargeable," to again quote BRONSON, C. J., "with some one of those vices which when committed without the sanction of legal enactments never receive a milder name than fraud, and are sometimes denominated theft and robbery."

Laws of this character do nothing less than take the property of one man without his consent and give it to another. Any state which, like Georgia, has only one-third of the territory to which her citizens are entitled under her retroactive exemption laws, is not likely to excite the envy of just minds.

There is hope, however, for even such a Commonwealth when among her own citizens are found those who are the first and most earnest in their denunciation of such legislation.

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