

the statute of limitations has run at home. But such decisions when defensible stand on the ground that the limitation is only procedural and does not extinguish the duty. If the statute extinguishes the debt by lapse of time no foreign jurisdiction that intelligently understood its function would attempt to make the debtor pay.

I will not repeat what I said the other day in *Safe Deposit & Trust Co. v. Virginia*, ante, p. 83, concerning the attempt to draw conclusions from the supposed *situs* of a debt. The right to tax exists in this case because the party needs the help of Minnesota to acquire a right, and that State can demand a *quid pro quo* in return. *Southern Pacific Co. v. Kentucky*, 222 U. S. 63, 68. *Union Refrigerator Transit Co. v. Kentucky*, 199 U. S. 194, 206.

I do not dwell on the practical necessity of resorting to the State in order to secure payment of state or municipal bonds. Even if the creditor had a complete and adequate remedy elsewhere, I still should think that a correct decision of the case must rest on whether I am right or not about the theoretical dependence of the continued existence of the bonds upon Minnesota law.

*Blackstone v. Miller*, 188 U. S. 189, supports my conclusions and I do not think that it should be overruled. A good deal has to be read into the Fourteenth Amendment to give it any bearing upon this case. The Amendment does not condemn everything that we may think undesirable on economic or social grounds.

MR. JUSTICE BRANDEIS agrees with this opinion.

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THE CORN EXCHANGE BANK *v.* COLER, COMMISSIONER OF PUBLIC WELFARE.

APPEAL FROM THE COURT OF APPEALS OF NEW YORK.

No. 36. Argued November 27, 1929.—Decided January 6, 1930.

In view of its ancient origin, the New York procedure (Code, Cr. Pro., §§ 921-925) whereby the property of an absconding husband

may be taken over and applied to the maintenance of his wife or children through judicial proceedings, can not be held repugnant to the due process clause of the Fourteenth Amendment, with respect to the husband or to a bank in which his money was deposited, although no notice to the husband, either actual or constructive, is provided by the statute. *Ownbey v. Morgan*, 256 U. S. 94. P. 222.

250 N. Y. 136, affirmed.

APPEAL from a judgment of the Court of Appeals of New York which affirmed the Appellate Division of the Supreme Court in sustaining a proceeding by Coler, as Commissioner of Public Welfare of the City of New York, to reduce to his possession a deposit held by the bank, for the purpose of applying it to the maintenance of the wife and child of the depositor, who had absconded. See also, 132 Misc. Rep. 449.

*Mr. Spotswood D. Bowers*, with whom *Messrs. Henry M. Carpenter* and *Stewart W. Bowers* were on the brief, for appellant.

A statute which takes a person's property and turns it over to another, no matter under what guise it may be done, is, in the absence of a provision requiring notice to the owner of the property, unconstitutional. *Security Trust Co. v. Lexington*, 203 U. S. 323; *Stuart v. Palmer*, 74 N. Y. 183; *Windsor v. McVeigh*, 93 U. S. 273; *Twining v. New Jersey*, 211 U. S. 78; *Roller v. Holly*, 176 U. S. 398; *Ochoa v. Hernandez*, 230 U. S. 139; *Wuchter v. Pizzutti*, 276 U. S. 13; *McDonald v. Mabee*, 243 U. S. 90; *Kaukauna W. P. Co. v. Green Bay Co.*, 142 U. S. 254.

There is no similarity between the statute in question and warrants of attachment or sequestration proceedings in matrimonial actions, where notice following the seizure is provided for. *Matthews v. Matthews*, 240 N. Y. 28.

The mere so-called seizure of the debt due the alleged absconder was not sufficient notice to satisfy the constitutional requirement of due notice. *Miller v. Lautenberg*,

239 N. Y. 142; *Pennoyer v. Neff*, 95 U. S. 714; *Faling v. Multnomah County*, 46 Ore. 460; *Ackerman v. Ackerman*, 55 N. J. L. 422.

The antiquity of the statute is of no importance except in cases of ambiguity, when it may be considered in determining the proper construction of the statute. Where the language of the statute is clear and precise and the meaning evident, the statute will be declared unconstitutional no matter how long it has been in existence. *Fairbank v. United States*, 181 U. S. 283; *United States v. Graham*, 110 U. S. 219; *United States v. Tanner*, 147 U. S. 661.

*Mr. J. Joseph Lilly*, with whom *Messrs. Arthur J. W. Hilly and Martin H. Murphy* were on the brief, for appellee.

The appellant's depositor was not deprived of his property without due process of law. *Windsor v. McVeigh*, 93 U. S. 274; *The Mary*, 9 Cr. 126; *Miller v. Lautenberg*, 239 N. Y. 132; *Zimmerman Coal Co. v. Coal Trading Ass'n*, 30 F. (2d) 933; *The Ann*, 8 Fed. 923.

The statutes did not deny or attempt to deny the depositor a hearing (see *Zimmerman Coal Co. v. Coal Trading Ass'n*, 30 F. (2d) 933), or refuse him the right to appear (*Windsor v. McVeigh*, 93 U. S. 274). They did not even place a limit of time (See Code of Criminal Procedure § 924) upon his constitutionally protected right to appear and defend in person and with counsel, and upon proper proof or assurance, to receive back the property which was seized for the purpose of applying it to the maintenance of the child and wife he had abandoned.

The seized property did little more than stand as bail (*In re Mitchell*, 278 Fed. 707; *Bryan v. Bernheimer*, 181 U. S. 188) for satisfaction of the continuing duty to support and maintain the wife and child and keep them from becoming charges upon the public revenues.



There is nothing in the Constitution to prevent the States from defending their revenues in situations like this.

MR. JUSTICE McREYNOLDS delivered the opinion of the Court.

The Commissioner of Public Welfare complained to the Domestic Relations Court that, while residing with them in New York City, Raffaele De Stefano abandoned his wife and infant child and absconded from the State, leaving them without means and likely, unless relieved, to become public charges. Upon the wife's supporting affidavit two magistrates of the court issued a warrant authorizing seizure of all the absconding husband's right, title and interest in his deposit with appellant Bank and directing return to the County Court. After service and demand the Bank refused to pay. Thereupon, the Commissioner by complaint in the City Court sought to reduce the fund to his possession. The Bank moved for judgment upon the ground that the statute—basis of the warrant—failed to provide for notice, either actual or constructive, to the absconder, and could not be enforced without denying the due process of law guaranteed by both State and Federal constitutions. It prevailed in the City Court. The Appellate Term reversed that action and directed judgment for the Commissioner, and this was approved by the Court of Appeals.

Sections 921, 922, 923, 924, 925, New York Code of Criminal Procedure, under which the original warrant issued, provide in substance:—That the Commissioner of Public Welfare may apply to two magistrates for a warrant to seize the property of an absconding husband or father leaving wife or child likely to become charges on the public; that upon due proof of the facts, the warrant may be issued; that the officer receiving it may seize the

property wherever found within his county; and shall be vested with all the rights and title thereto which the person absconding then had; that return of all proceedings under the warrant shall be made to the next term of the County Court; that thereupon that court, upon inquiring into the circumstances of the case, may confirm or discharge the warrant and seizure; that in the event of confirmation the court shall from time to time direct what part of the property shall be sold, and how the proceeds shall be applied to the maintenance of spouse or children; and on the other hand that if the party against whom the warrant has issued shall return and support the spouse or children so abandoned, or give satisfactory security for such support, then the warrant shall be discharged, and the property restored.

The Court of Appeals ruled that jurisdiction of the magistrates to issue the warrant and of the County Court to enter a confirmatory judgment depend upon existence of the relation sought to be regulated; that "the victim of the seizure may nullify the whole proceeding, including any adjudication attempted in his absence, if there is lacking the jurisdictional relation which is the basis of his duty." Thus limited, it upheld the enactment as a proper regulation of family relation and affirmed the judgment in the Commissioner's favor for the amount claimed in his complaint.

The challenged procedure is an ancient one. In 1718 the Parliament of England enacted a statute reciting a like ill and prescribing like remedy. The New York Colonial Legislature passed a substantially similar law in 1773; the State Legislature in 1784, and again in 1788. This passed into the Revised Laws of 1813; afterwards, broadened to subject choses in action to seizure, into the Revised Statutes of 1829. Without material change it has continued in effect, and has been enforced unquestioned until the present action.

In *Ownbey v. Morgan*, 256 U. S. 94, 112, we upheld certain rather harsh legislation of the State of Delaware modeled on the custom of London and dating back to Colonial days. Its validity, challenged because of alleged conflict with the due process clause of the Fourteenth Amendment, was sustained because of the origin and antiquity of the provisions.

"However desirable it is that the old forms of procedure be improved with the progress of time, it cannot rightly be said that the Fourteenth Amendment furnishes a universal and self-executing remedy. Its function is negative, not affirmative, and it carries no mandate for particular measures of reform. For instance, it does not constrain the States to accept particular modern doctrines of equity, or adopt a combined system of law and equity procedure, or dispense with all necessity for form and method in pleading, or give untrammelled liberty to make amendments. Neither does it, as we think, require a State to relieve the hardship of an ancient and familiar method of procedure by dispensing with the exaction of special security from an appearing defendant in foreign attachment."

Following the reasoning of that cause we think the statute here under consideration cannot be said to offend the Federal Constitution.

That the appellant Bank under some remote possibility may be called upon to pay a second time is true; but when voluntarily contracting with the depositor it knew this and accepted the consequent responsibility. Under the approved practice there was abundant opportunity to make defense—to require proof of all essential facts. At all events, its position is not materially worse than that of a debtor who must pay one who holds letters testamentary issued upon proof of death, though in truth the creditor may be alive with power to repudiate the appointment. See *Scott v. McNeal*, 154 U. S. 34.

*Judgment affirmed.*