Supreme Court of the United States
Washington, D. C.

January 4, 1934.

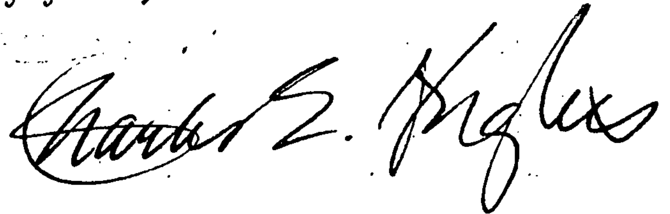
No.370.- Home Building & Loan Association v. Blaisdell.

Dear Justice Stone:

In view of the reasoning of Justice Sutherland's dissent, and on the suggestion of Justice Cardozo, I propose to amplify the opinion in this case by adding the paragraphs enclosed. They have been approved by Justice Cardozo. They are to be inserted in the opinion at the point where I close the review of our decisions.

If you, and the other Justices concurring in the opinion, approve this addition, I will print and recirculate at once.

Faithfully yours,



Mr. Justice Stone.

Enclosures.

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No.370.

It is manifest from this review of our decisions that there has been a growing appreciation of public needs and of the necessity of finding ground for a rational compromise between individual rights and public welfare. The settlement and consequent contraction of the public domain, the pressure of a constantly increasing density of population, the inter-relation of the activities of our people and the complexity of our economic interests, have inevitably led to an increased use of the organization of society in order to protect the very bases of individual opportunity. Where, in earlier days, it was thought that only the concerns of individuals or of classes were involved, and that those of the State itself were touched only remotely, it has later been found that the fundamental interests of the State are directly affected; and that the question is no longer merely that of one party to a contract as against another, but of the use of reasonable means to safeguard the economic structure upon which the good of all depends.

It is no answer to say that this public need was not apprehended a century ago, or to insist that what the provision of the Constitution meant to the vision of that day it must mean to the vision of our time. If by the statement that what the Constitution meant at the time of its adoption it means to-day, it is intended to say that the great clauses of the Constitution must be confined to the interpretation which the framers, with the conditions and outlook of their time, would have placed upon them, the statement carries its

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own refutation. It was to guard against such a narrow conception that Chief Justice Marshall uttered the memorable warning - "We must never forget that it is a constitution we are expounding" (McCulloch v. Maryland, 4 Wheat.316,407) - "a constitution intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs". Id., p.415. When we are dealing with the words of the Constitution, said this Court in Missouri v. Holland, 252 U. S. 416, 433, "we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. * * The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago".

Nor is it helpful to attempt to draw a fine distinction between the intended meaning of the words of the Constitution and their intended application. When we consider the contract clause and the decisions which have expounded it in harmony with the essential reserved power of the States to protect the security of their peoples, we find no warrant for the conclusion that the clause has been warped by these decisions from its proper significance or that the founders of our Government would have interpreted the clause differently had they had occasion to assume that responsibility in the conditions of the later day. The vast body of law which has been developed was unknown to the fathers but it is believed to have preserved the essential content and the spirit of the Constitution. With a growing recognition of

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public needs and the relation of individual right to public security, the court has sought to prevent the perversion of the clause through its use as an instrument to throttle the capacity of the States to protect their fundamental interests. This development is a growth from the seeds which the fathers planted. It is a development forecast by the prophetic words of Justice Johnson in Ogden v. Saunders, already quoted. And the germs of the later decisions are found in the early cases of the Charles River Bridge and the West River Bridge, supra, which upheld the public right against strong insistence upon the contract clause. The principle of this development is, as we have seen, that the reservation of the reasonable exercise of the protective power of the State is read into all contracts and there is no greater reason for refusing to apply this principle to Minnesota mortgages than to New York leases.

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