THE CONSTITUTIONALITY OF SMALL LOAN LEGISLATION

BY
FRANK R. HUBACHEK
MEMBER OF THE BAR
MINNEAPOLIS, MINNESOTA

NEW YORK
RUSSELL SAGE FOUNDATION
1931

TABLE OF CONTENTS

PAGE

PREFACE 9

I. THE SMALL LOAN BUSINESS SUBJECT TO REGULATION UNDER POLICE POWER 11

II. REGULATION RESTRAINED IN PART BY STATE AND FEDERAL CONSTITUTIONS 15

III. SMALL LOAN LEGISLATION VALID UNDER PRINCIPLE OF CONSTITUTIONAL CLASSIFICATION, DESPITE RESTRAINTS 15

A. Control of Small Loan Business through Optional System of License and Regulations 17

B. Restriction of Scope of Small Loan Laws to Loans of Certain Size 21

C. Discrimination in Interest Rates between Licensed and Unlicensed Lenders 24

D. Prohibition of the Sale of Wages (Section 16 of the Uniform Small Loan Law) 29

1. Prohibition of Absolute Sale of Wages . . . 30

2. Protection for Persons Other Than Wage-Earners. 36

3. Limiting Amount of Assigned Wages . . . 38

E. Exemptions under the Small Loan Laws and Limitation of Operation of These Acts to Localities . 40

1. Persons 40

2. Localities 42

IV. MISCELLANEOUS CONSTITUTIONAL REQUIREMENTS . . 46

V. WHO MAY RAISE QUESTIONS ON THE CONSTITUTIONALITY OF STATUTES AND GENERAL PRINCIPLES FOLLOWED BY COURTS IN DETERMINING THEM 49

TABLE OF CASES

		PAGE
Assaria State Bank v. Dolley	219 U.S. 121 (1911)	17, 26
Allgeyer v. Louisiana	165 U.S. 578 (1897)	31
Badger v. State	154 Ga. 443 (1922)	24, 29, 38
Barbier v. Connolly	113 U.S. 27 (1885)	16, 41
Beneficial Loan Soc. v. Cobb	Law and Eq. Ct. Richmond	29
Booth v. Illinois	184 U.S. 425 (1902)	34
Brand v. State	3 S.W. 2nd (Tex.) 439 (1927)	29
Brazee v. Michigan	241 U.S. 340 (1916)	14
Brodnax v. Missouri	219 U.S. 285 (1911)	19
Buchanan v. Warley	245 U.S. 60 (1917)	31
Budd v. New York	143 U.S 517 (1892)	13
Caldwell v. Sioux Falls Stock Yards Co.	242 U.S. 559 (1917)	19, 32
Chicago & Erie Ry. Co. v. Ebersole	173 Ind. 332 (1910)	36
Cargill Co. v. Minnesota	180 U.S. 452 (1901)	17
Carroll v. Greenwich Insurance Co.	199 U.S. 401 (1905)	23
Comm. v. Alger	7 Cush. (Mass.) 53 (1851)	11
Comm. v. Puder	261 Pa. St. 129 (1918)	24, 29, 48
Dewey v. Richardson	206 Mass. 430 (1910)	29
Dominion Hotel, Inc., v. Arizona	249 U.S. 265 (1919)	23, 32
Dunn v. Ohio	U.S. Sup. Ct., Oct. 27, 1930	39, 40
Dunn v. State	122 Ohio St. 431 (1930)	30, 35, 36, 40
Eaker v. Bryant	24 Cal. App. 87 (1914)	29, 38
Edwards v. State	62 Fla. 40 (1911)	29
Engel v. O'Malley	219 U.S. 128 (1911)	14, 17, 24
Fay v. Bankers Surety Co.	125 Minn. 211 (1914)	36
Fisher Flouring Mills v. Brown	109 Wash. 680 (1920)	34
German Alliance Ins. Co. v. Lewis	233 U.S. 389 (1914)	13
Goodowsky v. Rubenstein	225 Mass. 448 (1917)	20
Griffith v. Connecticut	218 U.S. 563 (1910)	14, 27, 31
Hall v. Geiger-Jones Co.	242 U.S. 539 (1917)	14, 41
Halter v. Nebraska	205 U.S. 40 (1907)	11
Hawkins v. Bleakly	243 U.S. 210 (1917)	17, 26, 28
Hayes v. Missouri	120 U.S. 68 (1887)	44
Hebe Co. v. Shaw	248 U.S. 297 (1919)	32
Heller & Lingston v. Lutz	254 Mo. 704 (1914)	36, 38
Holden v. Hardy	169 U.S. 366 (1898)	13
Home Discount Co., Re	147 Fed. 538 (1906)	43
House v. Mayes	219 U.S. 270 (1911)	16
Household Fin. Corp. v. Smith	No. 133943 Cir. Ct., Wayne Co., Mich.	29

TABLE OF CASES—*Continued*

		PAGE
Interstate Commerce Commission v. Goodrich Transit Co.	224 U.S. 194 (1912)	20
International Harvester Co. v. Kentucky	234 U.S. 216 (1914)	38
International Text-Book Co. v. Weissinger	160 Ind. 349 (1902)	36
Jeffrey Mfg. Co. v. Blagg	235 U.S. 571 (1914)	17, 26, 27, 34
Keokee Consol. Coke Co. v. Taylor	234 U.S. 224 (1914)	13
King v. State	136 Ga. 709 (1911)	29
Knoxville Iron Co. v. Harbison	183 U.S. 13 (1901)	13
Lehigh Valley Ry. Co. v. Woodring	116 Pa. St. 513 (1887)	36
Leitch v. Northern Pacific Ry. Co.	95 Minn. 35 (1905)	36
Lemieux v. Young	211 U.S. 489 (1909)	32
Lenon v. City of Atlanta	242 U.S. 53 (1916)	14
Lindsley v. Natural Carbonic Gas Co.	220 U.S. 61 (1911)	21, 32, 42
Louisville and Nashville Ry. Co. v. Melton	218 U.S. 36 (1910)	37
Lowry v. Collateral Loan Association	172 N.Y. 394 (1902)	43
McWhite v. State	143 Tenn. 222 (1920)	33
Mason v. Rollins	Fed. Cas. 9252 (1869)	33
Massie v. Cessna	239 Ill. 352 (1909)	37
Merrick v. Halsey & Co.	242 U.S. 568 (1917)	32
Middleton v. Texas Power & Light Co.	249 U.S. 152 (1919)	26, 28
Montgomery, In Re	163 Cal. 457 (1912)	43
Morgan v. Georgia	281 U.S. 691 (1930)	39, 40
Morgan v. Lowry	168 Ga. 723 (1929)	29, 40, 47, 48, 50
Mugler v. Kansas	123 U.S. 623 (1887)	32
Munn v. Illinois	94 U.S. 113 (1876)	13, 14
Murphy v. California	225 U.S. 623 (1912)	12
Murray v. Board	81 Minn. 359 (1900)	45
Mutual Loan Co. v. Martell	222 U.S. 225 (1911)	19, 24, 29, 31, 36, 41, 44, 45
New York v. Hesterberg	211 U.S. 31 (1908)	33
Nichols v. Walter	37 Minn. 264 (1887)	45
Noble State Bank v. Haskell	219 U.S. 104 (1911)	14
Ohio ex rel. Lloyd v. Dollison	194 U.S. 445 (1904)	43
O'Neill v. American Fire Insurance Co.	166 Pa. St. 72 (1895)	48
Otis v. Parker	187 U.S. 606 (1903)	32, 34
Palmore v. Baltimore & Ohio Ry. Co.	156 Md. 4 (1928)	29, 35, 36, 38, 40
People v. Budd	117 N.Y. 1 (1889)	43
People v. Mahaney	13 Mich. 481 (1865)	47
People v. Stokes	281 Ill. 159 (1917)	19, 24, 29, 37, 47, 48
People ex rel. Armstrong v. Warden	183 N.Y. 223 (1905)	43, 44
Powell v. Pennsylvania	127 U.S. 678 (1888)	34
Price v. Illinois	238 U.S. 446 (1914)	32
Purity Extract Co. v. Lynch	226 U.S. 192 (1912)	32, 33, 34

TABLE OF CASES—*Concluded*

		PAGE
Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy Ry. Co.	257 U.S. 563 (1922)	20
Rast v. Van Deman & Lewis Co.	240 U.S. 342 (1916)	41, 42, 45
Reagan v. District of Columbia	41 App. D.C. 409 (1914)	20, 24, 29
Rice v. Franklin Loan and Finance Co.	258 Pac. (Colo.) 223 (1927)	20, 29, 47
Rideout v. Knox	148 Mass. 368 (1889)	35
Rosenbush v. Fry	136 Atl. (N. J.) 711 (1927)	33, 39
St. John v. New York	201 U.S. 633 (1906)	20, 33
Shallenberger v. First State Bank	219 U.S. 114 (1911)	14
Solon v. State	114 S.W. (Tex.) 349 (1908)	34
Southern Ry. Co. v. United States	222 U.S. 20 (1911)	20
Spicer v. King Bros. & Co.	136 Tenn. 408 (1916)	43, 45
Standard Stock Food Co. v. Wright	225 U.S. 540 (1912)	49
State v. Cooley	56 Minn. 540 (1893)	16
State v. Hill	168 La. 761 (1929)	24, 29, 35, 36, 40, 49, 50
State v. Sherman	18 Wyo. 169 (1909)	24, 29
State ex rel. Beek v. Wagener	77 Minn. 483 (1899)	14
State v. Ware	79 Ore. 367 (1916)	29
State v. Wickenhoefer	6 Penn. (Del.) 120 (1906)	24, 29, 42, 45
Sweat v. Comm.	152 Va. 1041 (1929)	29, 35, 36, 38, 40
Tollison v. George	153 Ga. 612 (1922)	33
United States v. Doremus	249 U.S. 86 (1919)	34
Warner v. People	71 Colo. 559 (1922)	29
Wight v. Baltimore & Ohio Ry. Co.	146 Md. 66 (1924)	33, 35, 36, 38
Workmen's Compensation Board v. Abbott	278 S.W. (Ky.) 533 (1925)	34
Yick Wo v. Hopkins	118 U.S. 356 (1886)	19

PREFACE

THIS study of The Constitutionality of Small Loan Legislation, by Frank R. Hubachek, a member of the Minneapolis bar, will later form part of the legal section of a general survey of small loans prepared for the Russell Sage Foundation under the direction of Dr. Louis N. Robinson. The legal section will be published as one of the Small Loan Series of the Department of Remedial Loans of the Foundation. Of this series The Regulation of Pawnbroking, by R. Cornelius Raby, and Ten Thousand Small Loans, by Dr. Louis N. Robinson and Maude E. Stearns, have already been published.

Mr. Hubachek wishes to thank Henry Rottschaefer, professor of law at the University of Minnesota, and Frank Brookes Hubachek, of the Minneapolis and the Chicago bar, for their valuable assistance.

LEON HENDERSON, *Director*
Department of Remedial Loans

THE CONSTITUTIONALITY OF SMALL LOAN LEGISLATION

I. THE SMALL LOAN BUSINESS SUBJECT TO REGULATION UNDER POLICE POWER

THE right to acquire property and the right to contract with reference to it are natural rights which men in the rudest state of nature exercise at will; but when they enter into a social compact these rights are to a very great extent placed under the control of the government thus formed.

This control is included in the term "police power," a definition of which is difficult. The language of a great jurist in this respect has often been adopted:

> We think it a settled principle, growing out of the nature of well ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it . . . shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. . . . The power we allude to is . . . the police power, the power vested in the legislature by the constitution to make, ordain and establish all manner of wholesome and reasonable laws, statutes, and ordinances . . . as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same.[1]

The legitimate objects of the exercise of the police power have been stated in broad terms, as follows:

> Another vital principle is that, except as restrained by its own fundamental law, or by the Supreme Law of the Land, a State possesses all legislative power consistent with a republican form of government; therefore each State, when not thus restrained and so far as this court is concerned, may, by legislation, provide not only for the health, morals and safety of its people, but for the common good, as involved in the well being, peace, happiness and prosperity of the people.[2]

The fact that the business of lending money is a lawful and useful calling does not prevent its control by legislation.

[1] Shaw, C. J., in Comm. v. Alger, 7 Cush. (Mass.) 53, 84 (1851).
[2] Halter v. Nebraska, 205 U.S. 40 (1907).

CONSTITUTIONALITY OF SMALL LOAN LEGISLATION

The Fourteenth Amendment protects the citizen in his right to engage in any lawful business, but it does not prevent legislation intended to regulate useful occupations which, because of their nature or location, may prove injurious or offensive to the public.[1]

As indicated in this excerpt, the nature of a perfectly lawful business may be such as to require regulation to prevent public injury. The constitutional power to regulate extends at least to the prevention of those evils that grow out of the business.

The unregulated small loan business has in fact produced a chain of evil consequences. Of this, experience has furnished conclusive demonstration. Borrowers have almost invariably been poor people at times of their most exigent needs. Untrained in the refinements of business negotiations, usually ignorant of the existence of usury laws, and incapable of using the rights which the law gave them, they have often fallen easy victims of unconscionable money lenders. The lenders, on the other hand, have generally been persons endowed with a shrewd business sense for profitable opportunities, and in many cases have been more devoid of respect for usury statutes than the more responsible lenders of larger sums. Frequently this has been due not so much to the inordinate greed of lenders, as to the fact that the usury laws assumed risk and expense factors in lending much below those in the small loan business. Whatever its cause, the result has been to subject a considerable body of the public to oppressive and illegal interest exactions. The sufferers have been the economically weak. The conditions under which lender and borrower met lacked that equality of bargaining power essential to just business transactions. That the state has a right to prevent the stronger from pressing his advantage to the point where it entails injurious social results has been recognized by the courts in the following language:

The legislature has also recognized the fact, which the experience of legislators in many States has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employes, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors

[1] Murphy *v.* California, 225 U.S. 623, 628 (1912).

lay down the rules, and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may properly interpose its authority. . . . But the fact that both parties are of full age, and competent to contract, does not necessarily deprive the State of the power to interfere—where the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself.[1]

It is to be noted that the very fact that parties do not stand upon an equality is held to justify the state's interposition. The right of a state to regulate insurance rates was supported in part by a reference to the inequality of bargaining power of the insurer and the insured.[2] The whole purpose of regulating the rates of public utilities is to prevent them from fully realizing the economic advantages of their monopolistic position.[3]

Such statutes, too, limit the right of one party to a business transaction to secure the full advantage of his economic position. The same principle is involved in those statutes that prohibit the payment of wages in orders on a company store not redeemable in cash. These statutes have been upheld as a valid exercise of the police power.[4]

In all these cases the court has sustained the power of a state to limit the individual's freedom of contract and right to transact business so as to prevent the evils incident to an unlimited use by one party to a business transaction of the superior advantages of his position. In some of them, as the regulation of public utility rates and the usury statutes, the ultimate end has been to prevent such use of economic power. In other cases that end has been to prevent other injurious consequences to the general welfare that experience has shown followed from unregulated dealings between those in unequal positions. It follows, therefore, that state and federal constitutions interpose no obstacle to the regulation of the small loan business, even if the only evil aimed at were the unconscionable use of superior economic power. The protection of the weak against the exactions of the strong is itself an ingredient of that general welfare that constitutes a legitimate end of the police power.

[1] Holden v. Hardy, 169 U.S. 366, 397 (1898).

[2] German Alliance Ins. Co. v. Lewis, 233 U.S. 389 (1914).

[3] Munn v. Illinois, 94 U.S. 113 (1876); Budd v. New York, 143 U.S. 517 (1892).

[4] Knoxville Iron Co. v. Harbison, 183 U.S. 13, 18 (1901); Keokee Consol. Coke Co. v. Taylor, 234 U.S. 224 (1914).

There are, however, other evils incident to the unregulated small loan business that justify the interposition of the government's regulatory powers. Experience has demonstrated that, as usually conducted, this business inevitably leads to social deterioration of the borrowers, and accentuates the bad social effects of poverty. The general welfare is thereby detrimentally affected. Furthermore, it is this business that presents the most flagrant and frequent violations and evasions of existing usury laws. It may be stated without qualification that those laws do not in practice protect the small borrower dealing with the money lender. Yet the small borrower, of all persons, needs protection most. The state therefore has a constitutional power to substitute a general scheme of regulation, the validity of which can no longer be questioned, for the ineffective prohibitions of existing usury laws. It has a like power to promote the general welfare by controlling the activities of a business which has invariably aggravated poverty.

All question as to the state's power to regulate the small loan business is set at rest by a mere enumeration of those businesses which have been held subject to government regulation. Banking may be prohibited except on such conditions as the state may prescribe, such as incorporation;[1] the business of receiving deposits for safe keeping, or for transmission, may be prohibited unless a license is procured;[2] so with the business of selling securities,[3] of conducting employment agencies,[4] of acting as a private detective,[5] of operating grain elevators,[6] and of selling agricultural products on commission.[7]

Finally it is settled law, both federal and state, that statutes fixing rates of interest on money and defining usury are within the police power.

It is elementary that the subject of the maximum amount to be charged by persons or corporations subject to the jurisdiction of a State for the use of money loaned within the jurisdiction of the State is one within the police power of such State.[8]

[1] Noble State Bank v. Haskell, 219 U.S. 104 (1911); Shallenberger v. First State Bank, 219 U.S. 114 (1911).
[2] Engel v. O'Malley, 219 U.S. 128 (1911).
[3] Hall v. Geiger-Jones Co., 242 U.S. 539 (1917).
[4] Brazee v. Michigan, 241 U.S. 340 (1916).
[5] Lenon v. City of Atlanta, 242 U.S. 53 (1916).
[6] Munn v. Illinois, 94 U.S. 113 (1876).
[7] State ex rel. Beek v. Wagener, 77 Minn. 483 (1899).
[8] Griffith v. Connecticut, 218 U.S. 563, 569 (1910).

II. REGULATION RESTRAINED IN PART BY STATE AND FEDERAL CONSTITUTIONS

This control of the natural rights of property is subject, however, to those reservations contained in the various bills of rights and in certain provisions of many of the state constitutions which, in substance, declare that all men are equal in their rights; that none shall have exclusive privileges; that all laws shall be general and uniform in their operation; and that no special law shall be passed regulating the rate of interest on money.

Upon such control of natural property rights by state governments various restraints are also imposed by the federal Constitution, the particular restraint important here being the Fourteenth Amendment, which provides:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

This amendment operates upon the states alone, while the Fifth Amendment similarly restrains action by Congress, by providing that "no person . . . shall be deprived of life, liberty or property, without due process of law."

III. SMALL LOAN LEGISLATION VALID UNDER PRINCIPLE OF CONSTITUTIONAL CLASSIFICATION, DESPITE RESTRAINTS

Notwithstanding the constitutional guarantees of equality and uniformity and the prohibitions against special laws, it is manifest that a law may be just and equitable when applied to one state of facts and unjust and inequitable under an entirely different state of facts, and that to require each law to operate alike upon every person and every place and every thing is quite impossible.

Therefore it is a settled principle in the United States that, notwithstanding the constitutional restraints already referred to, a legislature in enacting a law may divide a subject into classes and apply different rules to the different classes, provided it adopts a proper basis of classification and that the law enacted operates alike upon all the subjects of the class; and that when it does this, the law is not a special law, but a general law.

Class legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment.[1]

A law is general, in the constitutional sense, which applies to and operates uniformly upon all members of any class of persons, places, or things requiring legislation peculiar to itself in matters covered by the law.[2]

We have already shown that the purposes sought to be obtained by controlling the small loan business are valid police power ends. The question in each case, as to small loan laws, is as to the validity of the means employed to secure those ends. Their validity depends upon whether they have a real and substantial relation to the objects of the statute and do not go unreasonably beyond the necessities of the case:

It is with the state to devise the means to be employed to such ends, taking care always that the means devised do not go beyond the necessities of the case, have some real or substantial relation to the objects to be accomplished, and are not inconsistent with its own constitution or the Constitution of the United States. The cases which sanction these principles are numerous, are well known to the profession, and need not be here cited.[3]

We can judge of the validity of the means in each case only by examination of the given small loan act. Practically all small loan laws enacted in recent years or approved by bodies interested in securing the enactment of such laws contain certain general regulatory features and certain details of regulation through which the purposes of such laws are intended to be accomplished. We will now briefly examine the more prominent of these in an effort to demonstrate that such laws may be framed on a constitutionally sound basis. They may be grouped as follows:

A. Control of the small loan business through an optional system of license and regulations;
B. Restriction of the scope of small loan laws to loans of a certain size;

[1] Barbier v. Connolly, 113 U.S. 27, 32 (1885).
[2] State v. Cooley, 56 Minn. 540, 543 (1893).
[3] House v. Mayes, 219 U.S. 270, 282 (1911).

C. Discrimination in interest rates between licensed and unlicensed lenders;
D. Prohibition of the absolute sale of wages, within fixed limits (Section 16);
E. Exemptions from operation of the laws.

A. Control of Small Loan Business through an Optional System of License and Regulations

A state can constitutionally require a license as a condition to engaging in a business that it has a right to regulate.[1] It therefore follows that the state may require all those wishing to engage in the small loan business to take out a license. It does not, however, impose a system of compulsory licenses, but provides an optional plan. No one is forbidden to engage in the small loan business; no one is required to take out a license. Neither the Fourteenth Amendment nor any of the state constitutions prohibit a state from making its regulatory system optional, nor from creating a situation in which motives of private advantage will induce those intended to be regulated to come within the regulatory scheme. In Assaria State Bank v. Dolley, 219 U. S. 121 (1911), which involved the validity of the Kansas Bank Depositors Guaranty Act, the argument had been advanced that the optional character of the law invalidated it as an exercise of the police power. Holmes, J., disposed of this contention in the following language:

> We cannot agree to such a limitation. If, as we have decided, the law might compel the contribution on the grounds that we have stated, it may try to bring about the same result by the creation of motives less compulsory than command and of disadvantages in holding aloof less peremptory than an immediate stop. (p. 127.)

The same principle has been upheld in the case of state voluntary workmen's compensation acts in which pressure was put upon employers to join the plan by depriving non-consenting employers of their right to rely on the usual common law defenses against liability for injury to employes.[2]

[1] Engel v. O'Malley, 219 U.S. 128 (1911); Cargill Co. v. Minnesota, 180 U.S. 452 (1901).
[2] Hawkins v. Bleakly, 243 U.S. 210 (1917); Jeffrey Mfg. Co. v. Blagg, 235 U.S. 571 (1914).

These cases establish that an optional system, coupled with "the creation of motives less compulsory than command and of disadvantages in holding aloof less peremptory than an immediate stop," constitutes a valid form of regulation, immune to Fourteenth Amendment objections. The general plan of regulation of the Uniform Small Loan Law, so called, is therefore constitutional.

As the Uniform Small Loan Law is the latest expression of small loan legislation, the validity of some of the principal details of regulation will be briefly considered here, as typical of small loan acts. The power to require a license carries with it power to impose a reasonable license fee. The requirement for a bond, with sureties, is reasonable. It has a tendency to promote the observance of the law, and to protect those injured by its violation. These are valid ends, and the requirements are not oppressive. Limiting the conduct of a licensee's business to one place for each license increases the probability of successful supervision. In view of the fact that the law places no limit on the number of licenses any person may secure, these provisions limit no one's right to engage in the business as extensively as he may desire, except in so far as the requirement for a license may operate. But, as already shown, the requirement for a license could be imposed in the first instance; a fortiori it can be imposed as a condition of the conduct of business in more than one place by those who have voluntarily submitted to the licensing system in respect of the conduct of business at one place. This in no way discriminates in favor of unlicensed lenders where right to operate is not thus restricted, since licensees are accorded certain advantages in return for submitting to regulation. It would be unreasonable for them to insist that such regulation stop short of what is reasonably required to make it effective. The advantage given licensees is given them in part in return for submitting to effective regulation. By securing a license they submit to all those provisions of the act reasonably necessary to secure such regulation.

The law requires licensees to deliver to the borrower at the time of making a loan what is in substance a written memorandum of the essential elements of the loan transaction; to deliver written receipts for all payments made on the loan; and, when the loan has been repaid, to indicate in writing the fact of payment upon all papers signed by the borrower. These provisions are all intended to protect the borrower against the oppression of false claims. The

state has the constitutional power to require such formalities in connection with its regulation of a business.[1]

The same considerations support those provisions which forbid licensees to take any note, promise to pay, or security that does not state the actual amount of the loan, the time for which made, and the interest rate. The prohibition against the taking by the licensee of any confession of judgment or power of attorney is clearly intended to protect borrowers, and is reasonably adapted to secure that end. It therefore meets the constitutional test of validity. The provisions dealing with assignments of wages are valid under the rule of Mutual Loan Co. *v.* Martell, 222 U.S. 225 (1911), and many other cases.

The Uniform Small Loan Law also requires licensees to keep certain books and records to enable the state to determine whether the provisions of the law are being complied with. Similar provisions are contained in the South Dakota blue sky law and were sustained.[2]

The provisions with reference to examination by the state of the licensee's business are valid; public authorities are constitutionally entitled to such information; the methods provided are reasonably adapted to make probable the success of the regulation of the business and go no farther than necessary to facilitate the enforcement of the law.

The provision as to revocation of license is constitutional. Due process requires only that the statute does not permit arbitrary suspension or revocation.[3]

The Uniform Small Loan Law permits suspension or revocation only in cases where the licensee has violated some provision of the act. In construing the Uniform Small Loan Law of Illinois the Supreme Court of that state pointed out that if a licensee were aggrieved "he would have an unquestioned right to resort to the courts to compel a restoration of his license and have his rights in the premises adjudicated by a court of law irrespective of the determination of the Department of Commerce and Labor in the premises."[4]

[1] Brodnax *v.* Missouri, 219 U.S. 285 (1911).
[2] Caldwell *v.* Sioux Falls Stock Yards Co., 242 U.S. 559 (1917).
[3] Yick Wo *v.* Hopkins, 118 U.S. 356 (1886).
[4] People *v.* Stokes, 281 Ill. 159, 176 (1917).

The provision that no person shall, except as authorized by the Uniform Small Loan Law, charge more than the general contract rate of interest is intended to apply to isolated transactions. The state has a right to regulate the small loan business. This carries with it the right to do any reasonable thing necessary or proper to insure the effectiveness of that regulation. That right is not restricted to the enacting of provisions applicable solely to the field principally regulated. Although the federal government has no direct power over intrastate commerce, it has the right to control intrastate commerce in order to insure the effective enforcement of the policy it intends to apply to interstate commerce.[1]

The principle deducible from the cases is this: the power to regulate a given business implies a power to control transactions not within the field to which the regulation is intended primarily to apply, if the control of such transactions has a reasonable tendency to increase the effectiveness of the regulation of the given business, or is reasonably necessary or proper thereto. If this is true even in a case where the federal powers do not directly extend to intrastate commerce, a fortiori it is true where the transactions incidentally controlled are directly within the power of the state. Such is the case where the state regulates isolated loans of $300 or less, as an incident to the control of the business of making such loans. The whole question is whether the control of such isolated transactions is a reasonably necessary or proper incident to the regulation of the small loan business. It is clearly so, for it effectively closes one loophole for the evasion of the act. "Not only the final purpose of the law must be considered, but the means of its administration—the ways it may be defeated."[2]

Although not within the scope of this discussion, it is of interest that the Supreme Judicial Court of Massachusetts has held that when a small loan act purports to regulate the business of small loans, but contains no prohibition against a single, isolated transaction, such a transaction does not offend the act.[3]

[1] Railroad Commission of Wisconsin v. Chicago, Burlington and Quincy Ry. Co., 257 U.S. 563 (1922); Interstate Commerce Commission v. Goodrich Transit Co., 224 U.S. 194 (1912); Southern Ry. Co. v. United States, 222 U.S. 20 (1911).

[2] St. John v. New York, 201 U.S. 633, 637 (1906); Reagan v. District of Columbia, 41 App. D.C. 409 (1914); Rice v. Franklin Loan and Finance Co., 258 Pac. (Colo.) 223 (1927).

[3] Goodowsky v. Rubenstein, 225 Mass. 448 (1917).

B. Restriction of Scope of Small Loan Laws to Loans of Certain Size

Small loan acts generally apply only to loans of a certain amount, usually $300 or less, and not even to all of them. This raises two questions of classification, only one of which will be considered under this heading.[1]

The effects of this restriction are twofold: lenders who make loans for more than the stated maximum are denied all opportunity to avail themselves of the higher rates permitted by the act, while those who lend sums within that maximum, but do not comply with the law, are also denied such opportunity.

The validity of these differences depends on the reasonableness of the classification, and the relation of those differences to the purposes and ends for which the classification was made. The first question to be determined is the validity of the classification, which applies one set of rules to loans for $300 or less, and another to those in excess of $300. The general principles which are applicable in settling questions of classification under the Fourteenth Amendment and are universally recognized were thus stated by the Supreme Court of the United States:

> The rules by which this contention must be tested, as is shown by repeated decisions of this Court, are these: 1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis, and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety, or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary.[2]

Unless, therefore, it can be shown that there is no reasonable basis for the classification, and that no conceivable state of facts exists under which it could be deemed reasonable, the classification

[1] The other is that involved in the exemptions created by such acts and will be specially treated under "E," p. 40.

[2] Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911).

is valid. Reliance on any such negative grounds is not, however, necessary. It can be affirmatively established that there exists a reasonable basis for the classification, and that not only a conceivable, but an actual, state of facts exists under which its reasonableness is beyond question.

The existence of the evil aimed at by the act is sufficiently notorious not to require extended comment. The exaction of oppressive and usurious interest by certain lenders constitutes such an invariable characteristic of the business as to have the quality of practical certainty. Another equally well-known fact is that the loans made by the class indicated are not for large amounts. This is, of course, owing to the fact that the needs of the borrower at any one time are seldom large. Experience has shown that $300 represents a reasonable maximum limit. Furthermore, the needs of these small borrowers are usually supplied by a fairly well defined class of lenders, who in fact constitute a class as distinct almost as the borrowers themselves. In short, the lines that divide both the lenders and the borrowers of this type from the rest of the community of lenders and borrowers are drawn with the same degree of distinction that characterizes any of the ordinary classifications of human society.

The legislature therefore does not create these classes; it merely recognizes the fact that they exist. Finding them, it has inevitably to adopt some practical way of defining them which will not be so vague as to defeat effective enforcement of the law. The distinctive factor that almost invariably defines them is the size of the loan transaction. Selecting the size of the loans as a criterion for defining this class of borrowers and lenders is therefore natural and quite necessary. It constitutes a standard that has a natural relation to the problem with which the law deals. Fixing the limit at $300, as most of the present day laws do, rather than at some other figure, is clearly warranted. The purpose of the law is to protect the small necessitous borrower against oppression. It is certainly not beyond the limits of valid legislative discretion to fix a limit certain to cover most, if not all, of the loan transactions in which such borrowers usually engage. The court has frequently held that where the validity of classifications adopted by state laws may depend on local conditions, it will accord the greatest deference to the legislative judgment.

The deference due to the judgment of the legislature on the matter has been emphasized again and again. Of course, this is especially true when local conditions may affect the answer, conditions that the legislature does but that we cannot know.[1]

Fixing the exact point at which a given line dividing classes shall be drawn is a matter affected by local conditions. This is peculiarly true of the case under consideration, where only local experience can determine just what constitutes the general limits of dealings between a recognized class of lenders and borrowers. The test adopted is clearly not arbitrary.

The classification is valid because it is reasonably adapted to the particular evil at which the law was directed.

It was pressed that there is no justification for the particular selection of fire insurance companies for the prohibitions discussed. . . . Again, if an evil is specially experienced in a particular branch of business, the Constitution embodies no prohibition of laws confined to the evil, or doctrinaire requirement that they should be couched in all embracing terms. . . . And if this is true, then in view of the possible teachings to be drawn from a practical knowledge of the business concerned, it is proper that courts should be very cautious in condemning what legislatures have approved.[2]

It follows therefore that unless the judgment of the legislature in fixing the limit at $300 is so unreasonable as to amount to arbitrary action, it is valid. If its determination that the existing evils and the practical needs of the situation would be met by adopting that limit is not arbitrary, its selection of that limit is reasonable, and the resulting classification constitutional.

The facts that are the common property of those familiar with the business clearly support the inference that the field selected for regulation is that in which experience has shown the evil to be most felt.

The classification in question is valid even though seemingly based on size alone. The circumstances under which size constitutes a valid basis of classification have been thus stated:

Again, it is argued that the statute makes unconstitutional discriminations by excepting the classes mentioned in Section 29(d) above, especially those in whose business the average amount of each sum received is not less

[1] Dominion Hotel, Inc., v. Arizona, 249 U.S. 265, 268 (1919).
[2] Carroll v. Greenwich Insurance Co., 199 U.S. 401, 410 (1905).

than $500, and those who give a bond of $100,000 or $50,000. But the former of these exceptions has the manifest purpose to confine the law as nearly as may be to the class thought by the legislature to need protection, and the latter merely substitutes a different form of security, as it well may. Legislation which regulates business may well make distinctions depend upon the degree of evil. It is true, no doubt, that where size is not an index to an admitted evil, the law cannot discriminate between the great and the small. But in this case size is an index. Where the average amount of each sum received is not less than $500 we know that we have not before us the class of ignorant and helpless depositors, largely foreign, whom the law seeks to protect.[1]

Size is therefore a valid basis for classification if it is an index of an existing evil. State courts have in several cases given judicial sanction to the reasonableness of the legislative judgment in adopting a fixed limit of size of the loan as the basis of classification in the field of small loan legislation.[2]

C. Discrimination in Interest Rates between Licensed and Unlicensed Lenders

Small loan acts produce discriminations of several kinds between licensed and unlicensed lenders, depending upon the provisions of the acts themselves and the general interest laws of the states in which they are enacted.

In nearly all states the rate of interest that may be contracted for was fixed by statute before any small loan law was enacted; the rate generally is from 6 to 8 per cent per annum. Most of the small loan acts provide that on loans within their scope (generally $300 or less) no person shall charge more than the contract rate already fixed by statute, unless he takes out a license and otherwise complies with the small loan acts; and they all provide that persons who comply with them may contract for a much higher rate.

In three states the discrimination works somewhat differently. Maine, for one, has no statute limiting the rate of interest that may

[1] Engel v. O'Malley, 219 U.S. 128, 137 (1911).

[2] Mutual Loan Co. v. Martell, 222 U.S. 225 (1911); State v. Wickenhoefer, 6 Penn. (Del.) 120 (1906); State v. Sherman, 18 Wyo. 169 (1909); Reagan v. District of Columbia, 41 App. D. C. 409 (1914); People v. Stokes, 281 Ill. 159 (1917); Comm. v. Puder, 261 Pa. St. 129 (1918); Badger v. State, 154 Ga. 443 (1922); State v. Hill, 168 La. 761 (1929).

be contracted for; persons may contract for any rate they choose. In Massachusetts on loans of less than $1000, 18 per cent per annum may be contracted for and in Rhode Island, with exceptions not important herein, persons may contract for 30 per cent per annum. The Uniform Small Loan Law is in existence in Maine and Rhode Island, and in Massachusetts a similar law is in force which fixes the rate of interest at not to exceed 3 per cent per month. In these three states the small loan acts provide that persons who do not comply with such acts, in making loans within their scope ($300 or less) may charge only 12 per cent per annum. The result is that on loans of $300 or less, in these three states, lenders who make loans within the scope provided by these small loan acts and who do not choose to comply with them, not only may not contract for as high a rate as the licensed lenders, but may not contract for as high a rate as they could before the small loan acts took effect or as high as lenders of sums in excess of $300 may charge. The question presented in these three states is therefore somewhat different from that presented in other states, but the difference is one of degree only.

The question is as to the legality of this discrimination. In so far as the economic problem is presented to a legislature, there are ample reasons for the discrimination. The credit and financial responsibility of the borrower and the value of the security, if there is any, are always much less than in ordinary loan transactions; the risk therefore is greater. The overhead expense of making and collecting small loans and the losses upon them are greater. Hence the rate of interest should be greater.

But in examining the constitutionality of the discrimination, the court may not inquire into the problem that presented itself to the legislature, except in so far as it may take judicial notice of facts that are commonly and generally known; it must be guided by the legal principles that govern the question; it is the province of the legislature to make laws and of the court to construe them. Whether these discriminations are valid depends upon the validity of the classification and the reasonableness of this difference in treatment.

There is no doubt that the state may offer advantages to those who accept regulation under its optional plan, or may subject those who refuse to disadvantages. We have seen that an optional

system of regulation is valid.[1] It is equally valid to provide a reasonable difference in treatment for different members of the regulated group according as they do or do not submit to control, in order to insure the general acceptance of the plan of control.

This same general question has been several times passed upon in cases dealing with the constitutionality of optional workmen's compensation laws. These laws divided employers into consenting and non-consenting classes; some of them made a like classification of employes. All these laws penalized non-consenting employers by depriving them of the usual common law defenses, in some cases in all personal injury actions brought by employes, in others only where the action was by a consenting employe. The usual pressure relied on to induce employes to assent was to cut down their common law rights of action against consenting employers. The situation is therefore exactly analogous to that presented by the classification of small loan dealers into licensed and unlicensed lenders. The decisions and reasoning of the courts in those cases thus furnish the principles applicable to the question now under consideration. Such laws have invariably been sustained against objections founded on both the due process and equal protection clauses of the Fourteenth Amendment.[2]

In Hawkins *v.* Bleakly, 243 U.S. 210 (1917), a case under the Iowa optional law, the court answered as follows an objection based on the due process clause:

> Some of the appellant's objections are based upon the ground that the employer is subjected to a species of duress in order to compel him to accept the compensation features of the Act, since it is provided that an employer rejecting those features shall not escape liability for personal injury sustained by an employee, arising out of and in the usual course of the employment because the employee assumed the risks of the employment, or because of the employee's negligence, unless this was wilful and with intent to cause the injury, or was the result of intoxication, or because the injury was caused by the negligence of a co-employee. But it is clear, as we have pointed out in New York C. R. Co. *v.* White, No. 320, decided this day (243 U. S. 188, 1917), that the employer has no vested right to have these so-called common law defenses perpetuated for his benefit, and that the Fourteenth Amendment does not prevent a state from establishing

[1] Assaria State Bank *v.* Dolley, 219 U.S. 121 (1911).

[2] Hawkins *v.* Bleakly, 243 U.S. 210 (1917); Jeffrey Mfg. Co. *v.* Blagg, 235 U.S. 571 (1914); Middleton *v.* Texas Power & Light Co., 249 U.S. 152 (1919).

a system of workmen's compensation without the consent of the employer, incidentally abolishing the defenses referred to. (p. 213.)

The small loan laws limit the unlicensed lenders—those who fail to submit to regulation—to interest charges lower than those enjoyed by licensees, lower than lenders of sums beyond those covered by the laws, and lower than the rates allowed before the laws took effect. The language of the court in the workmen's compensation case cited above is therefore in point in determining whether the provisions of the small loan acts so limiting the rates of unlicensed lenders violate the due process clause. The argument implied in the quotation is that the state may constitutionally prescribe for those who refuse to submit to regulation any rule of law which it might prescribe for all. It is undeniable that a state might, as far as due process is concerned, prescribe a 6 per cent, or 12 per cent or any other reasonable rate, for all small loans.[1] Hence, it may also prescribe such rate for those of that class of dealers who refuse to accept the regulatory small loan act. This feature of the small loan acts does not therefore violate the due process clause of the Fourteenth Amendment.

The same class of cases is equally decisive on the issue of classification. Although in but one of them did the court touch on an objection based on discrimination between members of the included classes, the principles on which it decided all of them clearly justify the distinction between licensed and unlicensed lenders. The true approach to this question was indicated in Jeffrey Mfg. Co. *v.* Blagg, 235 U.S. 571, 578 (1914), as follows:

> This is not a statute which simply declares that the defense of contributory negligence shall be available to employers having less than five workmen, and unavailable to employers with five or more in their service. This provision is part of a general plan to raise funds to pay death and injury losses, by assessing those establishments which employ five and more persons and which voluntarily take advantage of the law. Those remaining out and who might come in because of the number employed are deprived of certain defenses which the law might abolish as to all if it was seen fit to do so.

From the above excerpt it follows that the validity of the classification now under discussion, like that of all classifications, must be judged in the light of the fact that it is but one part of a general

[1] Griffith *v.* Connecticut, 218 U.S. 563 (1910).

plan of regulation. That general plan is valid, and the part is equally so if it has a reasonable relation thereto and is not purely arbitrary. That part now in question clearly bears such relation to the general plan of the small loan acts, since it is a reasonable, and in fact the only practicable method for insuring success to an optional scheme of regulation.

In addition it may be said that, in a state which does not limit the contract rate, the small loan act must necessarily place some limit of rate on those who lend sums within the scope of the act without complying with it; otherwise the act would be worthless.

In Hawkins *v.* Bleakly, 243 U.S. 210 (1917), which involved the Iowa voluntary Workmen's Compensation Act, the court overruled an objection based on the difference in treatment between employers and employes for the simple reason that "all employers are treated alike." The Iowa law differentiated between consenting and non-consenting employers by depriving the latter of the common law defenses. The equality of treatment accorded all employers consisted therefore in giving all an opportunity to assent, and subjecting all to the same disadvantages for failure to do so. The small loan acts similarly treat all small loan dealers equally. All are given an opportunity to take out a license and submit to regulation and secure the advantages that go with that act; all are subjected to the same disadvantages for failure to submit. Judged by the test of the Hawkins case, this scheme provides a constitutional procedure and classification. An even stronger case is that of Middleton *v.* Texas Power & Light Co., 249 U.S. 152 (1919). In that case an employe objected to the Texas voluntary Workmen's Compensation Act because it deprived employes of consenting employers of their common law right of action irrespective of their own assent to the plan, while employes of non-consenting employers were given a right of action freed from the usual common law defenses. This therefore involved a division of the employes who were within the terms of the act into two classes, one of which received more favorable treatment than the other. The court, in answering the objection, said:

> The discrimination that results from the operation of the act as between employees of different employers engaged in the same kind of work, where one employer becomes a subscriber and another does not, furnishes no ground of constitutional attack upon the theory that there is a denial of

the equal protection of the laws. That the acceptance of such a system may be made optional is too plain for question; and it necessarily follows that differences arising from the fact that all of those to whom the option is open do not accept it must be regarded as the natural and inevitable result of a free choice, and not as a legislative dicrimination. (p. 159.)

In this case the act of choice which produced the discrimination was not even that of the party against whom the discrimination operated. If under such circumstances the resulting discrimination does not constitute a denial of equal protection, then it surely does not when the choice producing the difference in treatment is the act of the person subjected to the discrimination. The difference in treatment under the Uniform Small Loan Law between licensees and unlicensed lenders in the matter of the rate legally chargeable is clearly one which, under these principles, must be regarded as the "inevitable result of a free choice, and not as a legislative discrimination." It is therefore not a denial of the equal protection of the laws; and the courts of many states have justified the discrimination.[1]

D. Prohibition of the Sale of Wages (Section 16 of Uniform Small Loan Law)

It has always been a favorite method of defeating usury laws to clothe the transaction in the form of a sale. Small loans at exorbitant rates of interest to necessitous wage-earners, in which the transaction takes the form of a purchase of their wages, have increased so rapidly in late years that public attention has been attracted. To combat this growing evil the small loan laws of several states and the general form of the Uniform Small Loan Law, so called, which is urged for general enactment by many civic welfare bodies, contain this provision:

[1] Mutual Loan Co. v. Martell, 222 U.S. 225 (1911); State v. Wickenhoefer, 6 Penn. (Del.) 120 (1906); State v. Sherman, 18 Wyo. 169 (1909); Reagan v. District of Columbia, 41 App. D.C. 409 (1914); People v. Stokes, 281 Ill. 159 (1917); Comm. v. Puder, 261 Pa. St. 129 (1918); Badger v. State, 154 Ga. 443 (1922); State v. Ware, 79 Ore. 367 (1916); Eaker v. Bryant, 24 Cal. App. 87 (1914); Dewey v. Richardson, 206 Mass. 430 (1910); Edwards v. State, 62 Fla. 40 (1911); King v. State, 136 Ga. 709 (1911); State v. Hill, 168 La. 761 (1929); Warner v. People, 71 Colo. 559 (1922); Palmore v. Baltimore & Ohio Ry. Co., 156 Md. 4 (1928); Sweat v. Comm., 152 Va. 1041 (1929); Rice v. Franklin Loan and Finance Co., 258 Pac. (Colo.) 223 (1927); Morgan v. Lowry, 168 Ga. 723 (1929), appeal dismissed in Morgan v. Georgia, 281 U.S. 629 (1930); Brand v. State, 3 S.W. 2nd (Tex.) 439 (1927); Beneficial Loan Soc. v. Cobb, Law and Eq. Ct. Richmond, Va.; Household Fin. Corp. v. Smith, No. 133943 Cir. Ct. Wayne Co., Mich.

The payment of $300 or less in money, credit, goods or things in action as a consideration for any sale, assignment or order for the payment of wages, salary, commissions or other compensation for services, whether earned or to be earned, shall be deemed a loan within the provisions of this Article secured by such assignment, and the amount by which such assigned compensation exceeds such payment shall be deemed interest upon such loan from the date of such payment to the date such compensation is payable. Such loan and such assignment shall be governed by and subject to the provisions of this Article.[1]

This provision is commonly known as Section 16 and for brevity and convenience will be so called in this discussion. Issues are raised by this section which do not generally arise where the small loan laws apply to transactions wherein the parties in fact intended a loan. These issues may be stated as follows:

1. The validity of the prohibition of an absolute sale of wages within the limits fixed by Section 16;
2. The validity of the inclusion of other forms of personal compensation than wages;
3. The validity of limiting the amount of assigned wages that borrowers may give and lenders take.

1. Prohibition of Absolute Sale of Wages

It has been held that Section 16 does not prohibit absolute sales of wages.[2] A careful examination of the language of the section discloses that it merely classifies certain purchases of wages with loans for the purpose of subjecting them to the regulatory provisions of the Small Loan Law without necessarily changing their essential character from sales to loans.

Nevertheless, it is also sometimes contended that Section 16 completely prohibits certain absolute sales of wages. Under this construction the section is more difficult to defend against an attack on constitutional grounds and, accordingly, its constitutionality will be discussed herein on the theory that the section does work a complete prohibition of certain absolute sales of wages.

The constitutional provisions involved are the due process clause of the Fourteenth Amendment and the provisions of the constitutions of the states in which Section 16 may be challenged.

[1] Bagby's (2) Ann. Code (Md.), Art. 58A, Sec. 16.

[2] Dunn v. State, 36 Ohio App. 170, 173 N.E. 22, affirmed in 122 Ohio St. 431 (1930) and appeal dismissed in Dunn v. Ohio, U.S. Sup. Ct., Oct. 27, 1930.

The prohibition in question must be considered (a) in its application to wages already earned and, (b) in its application to future earnings.

a. Earned Wages. Applied to past earnings, within the limits of Section 16, the prohibition of assignments is valid. By "limits fixed by Section 16," we refer to the features of Section 16 which limit the transaction to $300 and leave the wage-earner free to transfer his wages as security for a loan.

The property protected by due process and similar clauses includes not only the res itself, but also the power to acquire, use and dispose of it.[1] The liberty protected includes the right to make all contracts proper for the free enjoyment of all a person's faculties.[2] To prohibit the owner of past earnings from making an absolute disposal thereof, and to limit him to transfers by way of security for a loan, does take from him a property right that he theretofore had and does deprive him of a part of the liberty that was his. Whether it does so without due process of law depends on whether it transcends the legitimate scope of the state's police power.

In this discussion we will not consider Section 16 as standing alone. We will consider it as part of the small loan law, the objects of which are to prevent exploitation of necessitous persons and to regulate the business of making small loans to such persons.

The evils incident to the small loan business have frequently been referred to by the courts. The same is true of the evils connected with the assignment of wages. It is elementary that the lending of money at interest and the assignment of wages are proper subjects of regulation under the police power of the state.[3] We have herein already shown that it has been frequently held that courts will sustain legislation if any state of facts reasonably can be conceived under which it can be sustained; that they will accord great deference to the legislative judgment that conditions warranted the enactment, and refuse to hold the legislation invalid unless they can declare "the judgment to have been wholly without foundation"; and that due process requires only that the means adopted to remedy the evils have a real and substantial relation to the attainment of that object.

[1] Buchanan v. Warley, 245 U.S. 60, 74 (1917).

[2] Allgeyer v. Louisiana, 165 U.S. 578 (1897).

[3] Griffith v. Connecticut, 218 U.S. 563, 569 (1910); Mutual Loan Co. v. Martell, 222 U.S. 225 (1911).

These principles and the pronouncements of courts themselves on the evils of unrestricted powers of assigning wages make it certain that the courts will respect and follow the legislative judgment that conditions warranted the legislation against those evils.[1]

The means adopted to limit the evils referred to, namely the prohibition of absolute transfers of wages within the limits of Section 16, are evidently reasonable; they strike at the source of the evils by prohibiting the acts from which they may result. The Supreme Court of the United States has recognized that decided cases involving similar or analogous limitations of individual rights are important factors in deciding questions of due process.

It said in Merrick *v.* Halsey & Co. 242 U.S. 568 (1917):

> Every new regulation of business or conduct meets challenge, and, of course, must sustain itself against challenge and the limitations that the Constitution imposes. . . . We may feel the difficulties of the new applications which are invoked, the strength of the contentions and arguments which support or oppose them, but our surest recourse is in what has been done, and in the pending case we have analogies if not exact examples to guide us. (p. 586.)

The decisions have sustained many prohibitions and limitations on the right to dispose of one's property where this was a reasonable means for coping with an existing or threatened evil. The sale of intoxicants may be prohibited even though owned at the time the law took effect; the sale of food preservatives containing boric acid may be forbidden; the blue sky laws, which bristle with prohibitions of the sale of certain securities and which amount to a complete denial of the right to sell, have been sustained against due process objections; also the sale of condensed skimmed milk and of stocks of goods in bulk.[2]

The cases referred to involved complete or partial prohibitions on the power to dispose of property. Cases dealing with other phases of "property" protected by due process reveal a similar trend of judicial opinion. The right to possess property lawfully acquired and owned may be absolutely prohibited. A state in carrying out

[1] Lindsley *v.* Natural Carbonic Gas Co., 220 U.S. 61, 78 (1911); Dominion Hotel, Inc. *v.* Arizona, 249 U.S. 265 (1919); Otis *v.* Parker, 187 U.S. 606, 610 (1903).

[2] Mugler *v.* Kansas, 123 U.S. 623 (1887); Price *v.* Illinois, 238 U.S. 446 (1914); Caldwell *v.* Sioux Falls Stock Yards Co., 242 U.S. 559 (1917); Hebe Co. *v.* Shaw, 248 U.S. 297 (1919); Purity Extract Co. *v.* Lynch, 226 U.S. 192 (1912); Lemieux *v.* Young, 211 U.S. 489 (1909).

its policy to protect wild game within its borders may prohibit the possession of game acquired outside the state even where it could readily be distinguished from the domestic variety; a state may prohibit the use of land for the construction of a distillery within a certain distance of a rectifying plant. The cases clearly show that there is no element of the property protected by our constitutions the exercise of which cannot be limited or completely prohibited without violating the due process clause if reasonably necessary to secure proper governmental ends. The only requirement is that the limitation or prohibition be a reasonable means for meeting the existing or threatened evil.[1]

It is well known that the device of a sale and purchase of wages is being employed to circumvent those small loan laws that do not contain Section 16 and is also being used as a substitute for transactions includible within such laws.[2]

The result in either case is to defeat to a considerable extent the purpose of such laws. The reasonableness of a regulation, and hence its conformity to due process, can best be determined by considering its relation to an efficient administration of the governmental policy: "not only the final purpose of the law must be considered, but the means of its administration—the ways it may be defeated."[3] Due process does not require the exemption of harmless beverages from the scope of a prohibition law which exemption "would facilitate subterfuges and frauds and fetter the enforcement of the law."[4]

The end aimed at by the small loan laws is clearly a valid governmental policy. The state can therefore adopt such means for realizing it as will prevent its defeat by both evasion and substitution. It can prohibit those acts which defeat its administration of that policy. Since the sale of wages threatens that very result and is a most effective way by which the laws may be defeated, the prohibition thereof is valid under the principles set forth.

This conclusion is reinforced by the well recognized principle

[1] New York v. Hesterberg, 211 U.S. 31 (1908); Mason v. Rollins, Fed. Cas. No. 9252 (1869).

[2] Wight v. Baltimore & Ohio Ry. Co., 146 Md. 66 (1924); Tollison v. George, 153 Ga. 612 (1922); McWhite v. State, 143 Tenn., 222 (1920); Rosenbush v. Fry, 136 Atl. (N.J.) 711 (1927).

[3] St. John v. New York, 201 U.S. 633, 637 (1906).

[4] Purity Extract Co. v. Lynch, 226 U.S. 192, 204 (1912).

validating particular legislative provisions that are an integral part of a more comprehensive plan, because of their relation thereto.[1] This principle sustains the extensive regulations of the Harrison Anti-Narcotic Act, which, but for that relation, were clearly beyond the powers of Congress.[2]

It is immaterial that the prohibited act, considered by itself, is innocent of the particular evil aimed at by the broader legislative policy. The prohibition of the sale of non-intoxicating liquors was held not to violate due process because it was reasonably necessary for the enforcement of a prohibition law; the prohibition of the sale of oleomargarine, which is in fact not injurious to health, does not violate due process, when involved in a health measure; margin sales of stock, though not in themselves objectionable, may be forbidden in a statute aimed at gambling; the sale of non-injurious food stuffs may be thus prohibited, and so with lending money to a voter to pay his poll tax, even though such loans might be perfectly innocent.[3]

As stated in Purity Extract Co. *v.* Lynch, 226 U.S. 192, 201 (1912):

> When a state exerting its recognized authority undertakes to suppress what it is free to regard as a public evil, it may adopt such measures having reasonable relation to that end as it may deem necessary in order to make its action effective. It does not follow that because a transaction, separately considered, is innocuous it may not be included in a prohibition the scope of which is regarded as essential in the legislative judgment to accomplish a purpose within the admitted power of the Government.

Courts have uniformly sustained legislative restrictions upon the power of wage-earners to assign earned wages. Compromises of sums due under workmen's compensation acts may be prohibited, Workmen's Compensation Board *v.* Abbott, 278 S.W. (Ky.) 533 (1925). A Maryland statute that subjected assignments of wages to burdensome restrictions was recently held not to violate any of the guarantees of the state or federal constitutions even as applied to a

[1] Jeffrey Mfg. Co. *v.* Blagg, 235 U.S. 571 (1914).

[2] United States *v.* Doremus, 249 U.S. 86 (1919).

[3] Purity Extract Co. *v.* Lynch, 226 U.S. 192 (1912); Powell *v.* Pennsylvania, 127 U.S. 678 (1888); Otis *v.* Parker, 187 U.S. 606 (1903); Booth *v.* Illinois, 184 U.S. 425 (1902); Fisher Flouring Mills Co. *v.* Brown, 109 Wash. 680 (1920); Solon *v.* State, 114 S.W. (Tex.) 349, 357 (1908).

transaction which was admittedly a sale of wages, Wight *v.* Baltimore & Ohio Ry. Co., 146 Md. 66 (1924).

The prohibition of absolute sales of wages within the limits fixed by Section 16 is certainly no more severe than a prohibition of all assignments without the consent of those whose consent cannot be compelled. Furthermore, the prohibition of absolute sales in Section 16 still leaves their owner free to transfer them as security for a loan, thus enabling him to realize every purpose of their sale as fully as would such sale itself. He is thus deprived only of a technical legal power while being permitted to retain the substance. Such slight diminutions of previously existent rights of property may be imposed for the sake of preventing manifest evils without effecting any infringement on constitutional rights, Rideout *v.* Knox, 148 Mass. 368 (1889). This, coupled with the fact that the property involved is choses in action upon whose assignment courts have developed numerous limitations on the score of public policy, makes it certain that the prohibition in question will be uniformly sustained as a reasonable exercise of the state's police power.

It follows that the prohibition of absolute transfers of wages, within the limits fixed by Section 16, is in no sense violative of due process, because it is a reasonable means for preventing evils connected with the prohibited acts; is reasonably justified as an integral part of the small loan acts; is a reasonable means for preventing evasions of said acts and for making their administration effective; and is supported by the authority of decided cases involving identical or analogous prohibitions.[1] Furthermore, if Section 16 be regarded as merely regulating sales of wages instead of prohibiting them, a fortiori it is constitutional, since the power to prohibit necessarily carries with it the power to regulate.

b. Future Wages. The prohibition of absolute transfers of future earnings, within the limits of Section 16, is valid. The constitutional right here involved is freedom of contract. As we have already shown, there is no such thing as absolute freedom of contract; due process requires only that legislation on it be reasonable and not arbitrary. The reasoning employed to establish the validity of the prohibition of absolute sales of past

[1] Palmore *v.* Baltimore & Ohio Ry. Co., 156 Md. 4 (1928); Sweat *v.* Comm., 152 Va. 1041 (1929); State *v.* Hill, 168 La. 761 (1929); Dunn *v.* State, 122 Ohio St. 431 (1930), appeal dismissed in Dunn *v.* Ohio, U.S. Sup. Ct., Oct. 27, 1930.

earnings is equally applicable here and alone would sustain this restriction on freedom of contract. But additional arguments sustain it. The right to assign future earnings has always been severely limited by the courts, which have held such assignments void as against public policy if without limit as to time or amount.

The element of public policy involved is stated by the Pennsylvania Supreme Court as follows:

> Should the law be declared to be that such an assignment is valid, it is not difficult to see that it would open the door to improvidence and profusion on the part of the assignor and in the end to utter and hopeless poverty. . . . A man may not sell himself into slavery.[1]

A married man may be prohibited from assigning his future wages, even by way of security for a loan, without the consent of his wife, even though such consent could not be legally compelled.

The legislative power to prescribe other limitations which experience has shown necessary is clear. The decided cases bear it out.[2]

Indiana has sustained a statute absolutely prohibiting the assignment of future wages as a reasonable means for protecting the wage-earner from fraud, extortion and oppression; Missouri has sustained a similar statute.[3]

The Supreme Courts of Maryland, Louisiana, Virginia and Ohio have sustained statutes identical with Section 16 in respect of wages to be earned in the future.[4]

It follows that the prohibition of the absolute transfer of future earnings, within the limits of Section 16, leaving their owner free to transfer them by way of security for loans, is a reasonable exercise of the state's police power and is free from constitutional objection.

2. *Protection for Persons Other Than Wage-Earners*

It has sometimes been held that the evils at which restrictions on the power to assign earnings aim are more likely to exist in the

[1] Lehigh Valley Ry. Co. v. Woodring, 116 Pa. St. 513 (1887); Leitch v. Northern Pacific Ry. Co., 95 Minn. 35 (1905).

[2] Mutual Loan Co. v. Martell, 222 U.S. 225 (1911); Fay v. Bankers Surety Co., 125 Minn. 211 (1914); Wight v. Baltimore & Ohio Ry. Co., 146 Md. 66 (1924).

[3] International Text-Book Co. v. Weissinger, 160 Ind. 349 (1902); Chicago & Erie Ry. Co. v. Ebersole, 173 Ind. 332 (1910); Heller & Lingston v. Lutz, 254 Mo. 704 (1914).

[4] Palmore v. Baltimore & Ohio Ry. Co., 156 Md. 4 (1928); Sweat v. Comm., 152 Va. 1041 (1929); State v. Hill, 168 La. 761 (1929); Dunn v. State, 122 Ohio St. 431 (1930).

case of wage-earners than in the case of those who receive other forms of compensation, such as salaries or commissions, because not so many of the latter are compelled by circumstances to resort to money lenders for small loans.[1] This fact, while it might justify, does not require the exclusion of the latter classes. These come under the intent of the law. The principle involved was considered in Louisville & Nashville Ry. Co. *v.* Melton, 218 U.S. 36 (1910). The railroad objected to the inclusion of employes not engaged in train operation within the provisions of a statute which deprived the railroad of the right to plead the fellow-servant rule in cases against it for injuries to such employes; that is, its objection was not to the narrowness of a classification but to its breadth. The court held this did not deny the equal protection of the law and characterized as destructive of the whole power of classification the railroad's argument that

> . . . the states are prohibited from exerting their legitimate police powers upon grounds of the generic distinction obtaining between persons and things, however apparent such distinction may be; but, on the contrary, must legislate upon the basis of a minute consideration of the distinctions which may arise from accidental circumstances as to the persons and things coming within the general class provided for.

The quotation is the court's language in stating the contention of the railroad. The principle deducible is that it does not deny equal protection to include within a class all cases presenting the general conditions with reference to which the classification is made, and that it is not required to apply special rules to each conceivable sub-class into which the ingenuity of counsel might divide the general class.

It is not true today, when many wage-earners receive as much or more compensation than many salaried persons or those who work for commissions, that a distinction primarily based on the manner of payment determines the propriety of a classification for the purpose of coping with an evil that is independent of the method in which the compensation is paid. The evils are the same whether the compensation of the victim be wages, salary, or other forms of personal compensation.

The Illinois Small Loan Act which limited the amount of wages or salary which might be assigned was sustained in People *v.*

[1] Massie *v.* Cessna, 239 Ill. 352 (1909).

Stokes, 281 Ill. 159, and the objections urged against the inclusion of salaries, on the basis of Massie v. Cessna, were overruled because those objections had been adequately met by limiting the amount assignable to $300. Section 16 contains the same limitation and hence is sustained by this decision. Other statutes regulating wage assignments and sales have been sustained, though applicable to salaries and other forms of compensation.[1]

Furthermore these provisions merely make the prohibitions of Section 16 co-extensive with the other provisions of the small loan laws, which apply irrespective of the form in which the borrower receives compensation and which have often been sustained in the cases already cited. Section 16 therefore is not invalid because too inclusive.

3. Limiting Amount of Assigned Wages

It is valid to limit the amount of assigned wages that a borrower may give and a lender take. The provision of Section 16 that the difference between the amount paid and the assigned compensation shall be deemed interest on the loan is an essential part of the section. Due process requires that the standard of conduct on which civil or criminal liability depends (and violations of Section 16 entail both kinds) shall be sufficiently definite fairly to advise those subject to the law as to what conduct is required or prohibited.[2]

Transactions of the kind at which Section 16 aims exclude by their very nature all reference to the items of principal and interest. Since the section declares these transactions to be loans, some principle must be fixed for determining what shall constitute principal and interest items in a loan that assumes this form. Failure to furnish any doctrine whatever might be held to make the section void for uncertainty. The legislature has removed that danger by stating the tenet in clear terms, adapted to the character in which the parties have chosen to frame their transaction. The only question is whether the principle actually adopted is reasonable. That it is so is evident from the fact that courts in substance adopt the same principle in determining whether transactions, in which the

[1] Heller & Lingston v. Lutz, 254 Mo. 704 (1914); Wight v. Baltimore & Ohio Ry. Co., 146 Md. 66 (1924); Eaker v. Bryant, 24 Cal. App. 87 (1914); Badger v. State, 154 Ga. 443 (1922); Palmore v. Baltimore & Ohio Ry. Co., 156 Md. 4 (1928); Sweat v. Comm., 152 Va. 1041 (1929).

[2] International Harvester v. Kentucky, 234 U.S. 216 (1914).

parties intended a loan but sought to conceal it under the guise of a purchase, are usurious.[1] It follows that this provision does not violate due process in so far as it defines the method for determining the principal and interest items in the loan.

It has the direct effect, however, of limiting the amount of security in the form of assigned wages which a borrower may give and a lender take, in so far as it requires that that form of security shall exactly equal the principal of the loan and the permissible interest thereon. This provision thus involves a limitation on the power of an owner to dispose of his property by limiting the amount thereof that he can dispose of for any given amount of consideration. This is no more than any usury statute does. Section 16 can be sustained on the same general principles upon which the constitutionality of usury legislation ordinarily is sustained, not only because the character of the evils aimed at by both is the same, but especially because the scheme of regulation provided by Section 16 is intended primarily as a means of preventing evasions of the broader usury statute of which it is a part.

In this connection it is important to note that the United States Supreme Court not only has held that Section 16 does not violate any provision of the federal Constitution, but also, in so holding, it apparently has regarded Section 16 as a usury regulation. This is evidenced by the fact that in dismissing the appeals in the two cases where the question of the constitutionality of a state's attempt to regulate sales of credit and of wages, respectively, has been presented to that court, the cases relied on in support of the court's determination that no substantial federal question was presented involved usury statutes. These two cases are Dunn *v.* Ohio, U.S. Supreme Court, October 27, 1930; and Morgan *v.* Georgia, 281 U.S. 691 (1930).

The Dunn case involved an appeal from a decision of the Ohio Supreme Court in which the constitutionality of the section of its small loan law corresponding to Section 16 had been sustained. The Morgan case involved an appeal from a decision of the Georgia Supreme Court sustaining the constitutionality of the Georgia Small Loan Law. The Georgia law did not contain a provision exactly identical with Section 16 but it did purport to regulate the "sale" of credit, and this fact was stressed by the appellant.

[1] Rosenbush *v.* Fry, 136 Atl. (N.J.) 711 (1927).

Likewise state courts of last resort in considering the constitutionality of Section 16 have recognized that its primary purpose was to prevent evasions of a usury act.[1]

However, the constitutionality of this rate-fixing feature of Section 16 does not necessarily depend upon establishing that that section is a usury measure. Its constitutionality is sufficiently established by the fact that on every occasion where the question has been presented to a court of last resort the constitutionality of Section 16 in its entirety has been sustained. In some of the cases this conclusion is arrived at without giving particular consideration to the question whether or not Section 16 is a usury measure.[2]

E. Exemptions under the Small Loan Laws and Limitation of Operation of These Acts to Localities

1. Persons

Certain persons and concerns are exempt from the operation of small loan laws. These generally are banks, trust companies, building and loan associations and some other corporations, and pawnbrokers. The effect of these exemptions is that licensed lenders are subject to one set of rules while the exempted classes are subject either to the general interest laws, or, as is often the case with pawnbrokers and other exempted persons or concerns, to laws passed for their own specific cases.

What is the effect of these exemptions upon the constitutionality of these acts? The same question is involved in considering the classification between persons making loans within the named scope of the act and those making loans of a greater amount.

The purpose of the Uniform Small Loan Law is to provide a system of regulation for the small loan business. It has already been shown that it may constitutionally be restricted to loans for $300 or less. The question now in issue is whether it is legal to limit it to less than all the loans of that size.

[1] State v. Hill, 168 La. 761 (1929); Dunn v. State, 122 Ohio St. 431 (1930).

[2] Palmore v. Baltimore & Ohio Ry. Co., 156 Md. 4 (1928); Sweat v. Comm., 152 Va. 1041 (1929); State v. Hill, 168 La. 761 (1929); Dunn v. State, 122 Ohio St. 431 (1930); Dunn v. Ohio, U.S. Supreme Court, Oct. 27, 1930.

See also: Morgan v. Lowry, 168 Ga. 723 (1929); Morgan v. Georgia, 281 U.S. 691 (1930).

> Class legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment.[1]

If, therefore, the exempted classes are not in a similar situation with the small loan dealers, the classification is valid. The decided cases furnish some of the tests by which the court determines similarity of situation in questions of this kind. In Hall *v.* Geiger-Jones Co., 242 U.S. 539 (1917), the court answered as follows a claim of illegal classification because of exemptions:

> If a class is deemed to present a conspicuous example of what the legislature seeks to prevent, the Fourteenth Amendment allows it to be dealt with although otherwise and merely logically not distinguishable from others not embraced in the law. (p. 557.)

In Mutual Loan Co. *v.* Martell, 222 U.S. 225 (1911), when the same claim was made, because of exemptions, it said:

> Legislation may recognize degrees of evil without being arbitrary, unreasonable or in conflict with the equal protection provision of the Fourteenth Amendment to the Constitution of the United States. (p. 235.)

These cases show that there is sufficient dissimilarity in situation to support a classification if an evil is present in one case and not in another, or, if present in both, if it exists to a greater degree in the one than in the other.

A second set of tests is furnished by the adoption of the court's own definition of what is meant by "evils" in cases of this kind. In Rast *v.* Van Deman & Lewis Co., 240 U.S. 342 (1916), it said, "It is the duty and function of the legislature to discern and correct evils, and by evils we do not mean some definite injury, but obstacles to a greater public welfare." (p. 357.)

If, therefore, there exist some obstacles to the public welfare in the case of the small loan dealers that are not present in the case of the exempted classes, there is a sufficient dissimilarity in their situation to warrant a difference in treatment. The legislative judgment that such evils or obstacles exist in the one case and not in the other, or that they are present in both, but in different degrees, will not be overthrown by the courts unless it is clearly and palpably arbitrary and utterly without reasonable basis.

[1] Barbier *v.* Connolly, 113 U.S. 27, 32 (1885).

It makes no difference that the facts may be disputed or their effect opposed by argument and opinion of serious strength. It is not within the competency of the courts to arbitrate in such contrariety.[1]

If any state of facts reasonably can be conceived that would sustain a classification, the existence of that state of facts at the time the law was enacted must be assumed, and the classification sustained.[2]

The evils at which the small loan acts were aimed were the oppressive and illegal practices of a definite class of lenders in loan transactions with poor and necessitous borrowers, and the injurious social consequences thereof. Banks and trust companies do not as a general rule make loans of the size usually required by such borrowers; furthermore, the borrowers whom the law was intended to protect do not generally resort to such institutions for the obvious reason that they cannot generally meet the conditions those institutions impose. Building and loan associations do not generally seek this class of necessitous borrowers, and the legal restrictions upon their lending powers effectually prevent them from meeting the needs of these borrowers. Pawnbroking is a well-known and distinct class of loans economically and legally different from any other, and is generally supervised by the police under state laws or municipal ordinances.

The evils at which the small loan acts are aimed are not present in the exempted classes or, if present, are there to a lesser degree; and some of the exempted classes are regulated by laws enacted for them especially. Therefore under the established principles of constitutional classification already discussed the exemptions are valid.[3]

2. Localities

Small loan laws, restricted in their operation to portions of a state, have occasionally been enacted and their validity for that reason challenged. Delaware sustained such a law which applied to one county only in State v. Wickenhoefer 6 Penn. (Del.) 120 (1906), against the objection that it violated the equality and due process clauses of the Fourteenth Amendment and a provision of

[1] Rast v. Van Deman & Lewis Co., 240 U.S. 342, 357 (1916).

[2] Rast v. Van Deman & Lewis Co., 240 U.S. 342 (1916); Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78 (1911).

[3] See cases cited in footnote on p. 29.

the Delaware Constitution that a person shall not be deprived of property contrary to the law of the land. Tennessee, in Spicer v. King Bros. & Co., 136 Tenn. 408 (1916), held such a law invalid, which applied only to counties of 50,000 population, on the ground that it was obnoxious to Section 8 of Article 11 of the state constitution forbidding the passage of local laws. That section, however, did not in terms refer to local laws; it provided that the legislature should have no power "to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunities, or exemptions other than such as may be, by the same law, extended to any member of the community, who may be able to bring himself within the provision of such law." The court said that money is lent on personal property in counties of less than 50,000 and that such loans do not exist alone at the centers of population; the Delaware court proceeded on the theory that the legislature had the right to determine where and by whom the injurious business at which the law was aimed was engaged in.

In New York a small loan act which exempted two counties from its operation was enforced in Lowry v. Collateral Loan Association, 172 N.Y. 394 (1902). The federal court sitting in Alabama, in re Home Discount Co., 147 Fed. 538 (1906), enforced an Alabama wage assignment law which applied to only four counties. In neither of these cases was the precise point argued or discussed.

Minnesota enacted a small loan law applicable only to cities of a certain size (Laws 1913, Ch. 439) and Michigan has enacted two such laws (Laws 1907, No. 337, and Laws 1915, No. 228), but as to none of these has the question been raised.

The effect of such restriction of operation has been considered as to local option laws which have generally been sustained;[1] also as to laws regulating business such as handling of grain, explosives, employment agencies and others.[2] In many, if not all such cases, however, features which do not enter into the consideration of a small loan law, such as the public health or morals, or the validity of processes of legislation, were involved, and for that reason they are not on all fours with the case of small loan laws.

[1] Ohio ex rel. Lloyd v. Dollison, 194 U.S. 445 (1904). See also The Police Power, by Ernst Freund, Callaghan & Co., Chicago, 1904, p. 205.

[2] People v. Budd, 117 N.Y. 1 (1889), affirmed in 143 U.S. 517 (1892); People ex rel. Armstrong v. Warden, 183 N.Y. 223 (1905); In re Montgomery, 163 Cal. 457 (1912).

It is felt that there is not ample warrant in case law for laying down any positive rule as to the effect of such restriction in small loan laws, but we shall refer to the general principles which should guide in the determination of the question as to any given small loan act. The validity or invalidity of any given act because of such restriction of application to a locality must rest upon the construction of the Fourteenth Amendment and of the prohibitions, if any, against such restriction in the constitution of the state by which the law was enacted.

As to the Fourteenth Amendment the rule is quite clear; the Delaware court in 6 Pennewell 120, 129 (1906) stated it rather too broadly when it said that "those parts of the 14th Amendment . . . which relate to 'due process of law' and 'the equal protection of the laws' are subject to the rightful exercise of the police power of the State and were not designed to restrict such power." We believe the rule is more correctly stated by the Supreme Court of the United States in Hayes *v.* Missouri, 120 U.S. 68, 71 (1887), as follows: "The Fourteenth Amendment does not prohibit legislation which is limited either in the objects to which it is directed, or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed"; and again in People ex rel. Armstrong *v.* Warden, 183 N.Y. 223, 225 (1905) "the equality within the contemplation of the Fourteenth Amendment does not necessarily include territorial equality."

Therefore, it may be laid down as a settled principle that the Constitution of the United States, in securing due process of law and the equal protection of the laws, does not prohibit state legislation which is limited as to the territory within which it is to operate, if not palpably arbitrary and if uniform within the class which is created. (Mutual Loan Co. *v.* Martell, 222 U.S. 225 [1911]; 6 Ruling Case Law, p. 388.)

As to prohibitions, if any, in state constitutions, against such territorial restrictions, the rule is not so clear. There are a variety of requirements in state constitutions that may be claimed to amount to such prohibitions; to decide whether or not they are such is the problem as to the law of any given state.

The constitutional requirements that will generally be relied on

to defeat such restrictions are those which provide that laws shall be equal; that they shall confer no exclusive privileges; that they shall have uniform operation throughout the state; that local or special laws affecting certain given subjects shall not be enacted; and that no special law shall be enacted where a general law could be made applicable.

In the Delaware case (State v. Wickenhoefer, 6 Penn. [Del.] 120 [1906]), while objection to the law was made under a prohibition of the state constitution against taking property contrary to the law of the land, the court did not discuss that objection but treated the case as if the Fourteenth Amendment alone were involved; while in the Tennessee case (Spicer v. King Bros. & Co. 136 Tenn. 408 [1916]) the question of classification, which is the real question involved, was given but scant consideration.

What is equality, what is uniformity of operation, what is general and what is special has been defined in many cases to which we have already called attention. We repeat, a law is general and uniform which operates equally upon all the subjects within the class of subjects for which the rule is adopted.[1] For the purpose of applying the rule the legislature has the power to make classifications, to some of which classes the law may apply and to others of which the law may apply in a different way or not at all. In making the classification, the legislature cannot adopt a mere arbitrary method, but the classification must be based upon matters which are germane to the objects or purposes to be effected by the law; it must be suggested by such a difference in the situation and circumstances of the subjects placed in the different classes as to disclose the necessity or propriety of different legislation in respect thereto. If a class is deemed to present a conspicuous example of what the legislature seeks to prevent, it may be dealt with, although otherwise and merely logically it is not distinguishable from other classes not embraced in the law. Legislation may recognize degrees of evil without being arbitrary, and by evils we mean not some definite injury but obstacles to a greater public welfare. Finally, "it makes no difference that the facts may be disputed or their effect opposed by arguments of serious strength. It is not within the competency of the courts to arbitrate in such contrariety."[2]

[1] Nichols v. Walter, 37 Minn. 264, 271 (1887).

[2] Mutual Loan Co. v. Martell, 222 U.S. 225 (1911); Rast v. Van Deman & Lewis Co., 240 U.S. 342 (1916); Murray v. Board, 81 Minn. 359, 361 (1900).

Our question here will be whether there is any natural reason why a law regulating small loans should apply to cities or counties or other localities, either of a designated population or of other designated characteristics or of no designated characteristics, and exclude other localities? The correct application of the foregoing principles to any given small loan law will result in the correct solution of the question whether the restriction of the application of such law to a locality is constitutional or unconstitutional.

IV. MISCELLANEOUS CONSTITUTIONAL REQUIREMENTS

Small loan laws, like all other laws, may need to be examined in the light of various other constitutional requirements, failure to comply with which is frequently urged. Some of these will be briefly considered.

Many state constitutions provide that no law shall embrace more than one subject and that this subject shall be expressed in its title. The objection that a statute includes more than one subject and that the title does not express the subject is one which is frequently urged and seldom sustained. The constitutional requirement has frequently been under consideration, and the reasons governing its application are well established.

The object of the provision is not to hinder legislation or require that the title of an act should be a complete index to the subject matter which follows and minutely and exactly express every related matter which was included in the act, but it is for the purpose of apprising the legislature and the public, through the title of the act, of the general subject matter with which it deals and to secure a separate consideration of each distinct legislative measure. To constitute duplicity of subject, an act must embrace two or more dissimilar and discordant subjects that by no fair intendment can be considered as having any legitimate connection with or relation to each other. All that is necessary is that the act should embrace some one general subject; and by this is meant, merely, that all matters treated should fall under some one general idea, should be so connected with or related to each other, either logically or in popular understanding, as to be parts of or germane to one general subject. This may be done either by expressing in the title a brief, general statement of the objects and purposes of the act, or by so

framing the title as to express the principal features of the act more in detail. Either method will answer the requirements of the constitution so long as the general subject matter of the legislation is fairly indicated. This constitutional provision is to be liberally construed and all doubts resolved in favor of the sufficiency of an act adopted by the legislature.[1]

The federal and probably all state constitutions prescribe formalities for the legislature to comply with in enacting a bill into law. These vary greatly in different constitutions. Among them are that every bill shall be read a certain number of times on different days; that it shall be enrolled after having passed both houses; that it shall be signed by certain officials; that it shall be presented to the executive within a certain time.

While these requirements are designed to safeguard the orderly passage of bills, they are in a sense technical, and some of them may be waived; if objection is made to an act because of noncompliance with such requirements, it is often necessary to follow the measure from the time of its introduction into the legislature, and resort must be had to the legislative journals and records to ascertain whether these formalities have been complied with.

Some state constitutions provide that no law shall be revived or amended by reference to its title only, but that the law revived or amended shall be inserted at length in the new act. Objection was made to the Uniform Small Loan Law of Illinois upon this ground, the claim being made that it was an amendment to the general interest law of Illinois.

This constitutional requirement is not violated when the act in question is a complete law within itself and not merely an amendment of some other statute. The Illinois court held that the object of the Uniform Small Loan Law of that state was not to regulate the rate of interest but to regulate the business of making loans of small sums of money; that the provision as to the rate of interest was inserted only as an incident of such regulation, and that the constitutional requirement therefore was not offended.[2]

[1] People v. Stokes, 281 Ill. 159 (1917); Morgan v. Lowry, 168 Ga. 723 (1929); Rice v. Franklin Loan and Finance Co., 258 Pac. (Colo.) 223 (1927).

[2] People v. Stokes, 281 Ill. 159 (1917); People v. Mahaney, 13 Mich. 481 (1865).

All American constitutions, either by specific provision or from the nature of the instruments, separate the sovereign powers of the state into three departments, the legislative, the executive, and the judicial, and forbid, either directly or by necessary implication, that any department should exercise the powers of the others. Sometimes a statute violates this requirement by conferring on one department of the government powers and duties that properly belong to another. Because the claim that this has been done in any particular case entails careful examination of the subject and of adjudicated cases, we shall not here go into the matter extensively.

The Uniform Small Loan Law of Illinois was attacked upon the ground that it conferred judicial powers upon the head of the banking department of that state (there called the Department of Commerce and Labor), with respect to requiring additional bonds, because it vested him with the power to revoke licenses and because it empowered him to call and examine persons under oath for the purpose of ascertaining whether or not the licensee was complying with the law. The court said:

> The sole power granted is to license and regulate the business, which carries with it as a necessary incident, the right to determine whether or not the applicant for such license possesses the qualifications required by law and is a fit person to conduct such business. While the determination of such questions requires the exercise of judgment and discretion, and to that extent is of a judicial nature, it is not judicial power as contemplated by the provisions of the constitution. . . . The granting of such powers to ministerial officers has never been held to vest them with judicial powers within the meaning of our constitution. . . . If any licensee deems himself aggrieved by the acts of the department in revoking his license and contends that his license has been revoked without proper cause, he would have an unquestioned right to resort to the courts to compel a restoration of his license and have his rights in the premises adjudged by a court of law irrespective of the determination of the Department of Commerce and Labor in the premises.[1]

The same objection was made to the Small Loan Act of Pennsylvania and was likewise overruled.[2]

[1] People v. Stokes, 281 Ill. 159 (1917).

[2] Comm. v. Puder, 261 Pa. St. 129 (1918); O'Neill v. American Fire Insurance Co., 166 Pa. St. 72 (1895); Morgan v. Lowry, 168 Ga. 723 (1929).

V. WHO MAY RAISE QUESTIONS ON THE CONSTITUTIONALITY OF STATUTES AND GENERAL PRINCIPLES FOLLOWED BY COURTS IN DETERMINING THEM

It is always of importance to know who may raise a constitutional question. It is the rule that only those whose rights are directly affected can properly question the constitutionality of a statute and invoke the jurisdiction of the courts in respect thereto. Mr. Justice Hughes laid down the rule as follows:

> One who would strike down a state statute as a violation of the Federal Constitution must bring himself by proper averments and showing within the class as to whom the act thus attacked is unconstitutional. He must show that the alleged unconstitutional feature of the law injures him, and so operates as to deprive him of rights protected by the Federal Constitution.[1]

We have discussed only the general principles applicable to the constitutionality of small loan laws. If the constitutionality of any particular small loan law is challenged it must be examined in the light of those principles and must stand or fall upon its own provisions; it can be judged by other small loan laws only as the same or similar provisions in them have been construed by the courts.

There are certain general principles that courts follow in determining constitutional questions, some of which have already appeared in this discussion; but it will not be amiss again to refer to them in conclusion. They are so generally recognized and their wisdom is so apparent that nothing more is required than the mere statement of them.

Courts will take judicial notice of all facts commonly and generally known; of the general business affairs of life and the manner in which business is ordinarily conducted; of all facts bearing upon the constitutionality of a law under consideration.

There is a presumption of constitutionality that attaches to all legislative acts. The burden is on him who assails the validity of the act, and that burden is not discharged if any reasonable doubt remains as to whether the law is or is not constitutional. It is only in the clearest cases of conflict between the legislative act and the fundamental law that courts will declare the former void.

[1] Standard Stock Food Co. v. Wright, 225 U.S. 540, 550 (1912); State v. Hill, 168 La. 761 (1929).

Courts will not substitute their judgment on the expediency of the law for that of the legislature. If any state of facts can be reasonably conceived under which the law would be valid, its constitutionality will be sustained. Courts invariably bear in mind the fact that local conditions, with which the legislature was familiar, but of which they themselves can scarcely know, may justify legislative action which on its face might appear unreasonable.

Where a part only of a statute is unconstitutional the court will not declare the entire act void if otherwise good, unless the unconstitutional part is essentially and inseparably connected in substance with the whole.[1]

While these general principles do not determine the specific issues as to any concrete law, they do furnish a valuable guide to the approach to such issues and assist in defining the limits within which the legislative machinery may move without offending the fundamental law.

[1] Lewis-Sutherland Statutory Construction, I, 576 Chicago, 1904; Morgan v. Lowry, 168 Ga. 723 (1929); State v. Hill, 168 La. 761 (1929).