the Commission, the Court held that it had no jurisdiction to review the order; that the statute authorizing such review violated the constitutional provision limiting the appellate jurisdiction, and that the cause must be transferred to the appropriate Court of Appeals. There being no constitutional issue going to the merits of the case, and there being no "amount in dispute" involved, the contention for upholding jurisdiction was that a state officer was a party. Citing and following its prior decisions as to the Workmen's Compensation Commission and the Highway Commission,[6] the Court held that even though the members of the Commission are State officers the Commission is a separate and distinct entity existing apart from its individual members and is not a state officer within the provision in the constitution conferring jurisdiction where a state officer is a party.

While ordinarily it would be true that the absence of appellate jurisdiction in the Supreme Court would necessarily make proper a removal to a Court of Appeals, the action in this case would appear doubtful since the statute reads in part "no court of this state, except the circuit courts to the extent herein specified and the Supreme Court on appeal, shall have jurisdiction to review, reverse, correct or annul an order or decision of the Commission. . . ."[7] This would seem specifically to exclude the Courts of Appeals from exerciseing any jurisdiction over the orders of the Commission. Logically, the combination of the constitutional and statutory provisions would seem to preclude any appellate review in those cases where the jurisdictional requirements of the constitution did not inhere in a cause.

The decision does not, of course, invalidate the statutory appeal to the Supreme Court in all cases, but only in those not within the constitutional classification. The decision seems to defeat the statutory scheme intended by the Legislature. It must be recognized that it is generally impossible to determine the "amount involved" in cases like the instant one.

R. S. L. '36.

CONSTITUTIONAL LAW—BANKRUPTCY—MUNICIPAL BANKRUPTCY ACT.—The respondent water improvement district in a farming area of Texas, tax ridden and insolvent, presented a plan of final settlement on $800,000 in improvement bonds proposing a payment of 49.8 cents on the dollar under sections 78, 79 and 80 of the Bankruptcy Act, which were added by an amendment of 1934.[1] The amendment provides for the readjustment of the indebtedness of state subdivisions which are in the financial predicament of the respondent and authorizes a federal court to require objecting bondholders to accept offers to scale down or repudiate indebtedness without the surrender of any property by the subdivisions. *Held*, the amendment is an unconstitutional exercise of congressional power amounting to an impairment of state sovereignty. The majority of the court was of the opinion

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[6] State ex rel. Goldman v. Missouri Workmen's Compensation Commission et al. (1930) 325 Mo. 153, 27 S. W. (2d) 1026; State Highway Commission v. Day (1931) 327 Mo. 122, 35 S. W. (2d) 37.

[7] R. S. Mo. 1929, sec. 5234.

[1] (May 24, 1934) 48 Stat. 798; 11 U. S. C. A. sec. 301, et seq.

that "the power 'to establish—uniform state laws on the subject of bankruptcies'[1a] can have no higher rank or importance in our scheme of government than 'the power to lay and collect taxes.'[2] Both are granted by the same section of the Constitution and we can find no reason for saying that one is impliedly limited by the necessity of preserving independence of the states, while the other is not." And, continuing, "Neither the consent or submission of the State can enlarge the powers of Congress, none can exist other than those which are granted." Nor, says the majority, can the states impair contracts indirectly by "granting any permission necessary to enable Congress to do so." A consent by Mr. Justice Cardozo was concurred in by the Chief Justice, Mr. Justice Brandeis, and Mr. Justice Stone.[3]

It would seem that the federal power over brankruptcy should not be used to supersede the states' power over expenditures by their local governmental units.[4] It is submitted that the majority of the court reached a sound result since the bankruptcy idea is an outgrowth of the law merchant and was only applicable originally to private *traders*.[5] It is historically inapplicable to local or public corporations, for over these the state has always been thought to have complete control.[6]

The situation might well be different in case the financial structure of the whole government comes to depend on the status of municipal financing, that is, if a majority of all bonds become defaulting municipal issues.[7] In such an instance the federal power might well be invoked, but it would not be exercised under the bankruptcy clause but rather under the power to regulate the currency. Such a situation would be analogous to those presented in the recent gold decisions handed down by the Supreme Court.[8]

The holding of the majority in the principal case is also significant in that it would seem to indicate rather clearly that the recent Minnesota

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[1a] U. S. Const. Art. I, sec. 8, clause 4.

[2] U. S. Const., Art I.

[3] Ashton v. Cameron County Water Improvement District (1936) 56 S. Ct. 892.

[4] Note, State Control Over Local Finance Under the N. I. R. A., 19 ST. LOUIS L. REV., at 60, where that writer refers to the problem here involved. At p. 59 it is pointed out how difficult it is to draw the line between the power of the states to control local governmental affairs on the one hand and the right of Congress to provide for the general welfare of the other. The conclusion is reached that "the power of municipalities to borrow money and incur indebtedness is essential to their existence and, therefore, one of the most important subjects of control by the state."

[5] 2 Bl. Com. 471. 34 & 35 Hy. VIII, chap. 4 (1543) the first English bankruptcy statute, was directed against fraudulent debtors. It was not until 1841 that private persons other than *tradesmen* were able to take advantage of the bankruptcy laws. The statute, 24 & 25 Vict. chap. 134 (1861) while largely a codification of former statutes on the subject, extended the bankruptcy provision to non-traders.

[6] See Meriwether v. Garrett (1880) 102 U. S. 472.

[7] For authority that such a contingency is more than a mere possibility see Mr. Justice Carodozo's dissent in the principal case. Also see Lashly, 21 A. B. A. J. at 235. The problem of municipal embarrassment is becoming alarmingly acute on many fronts.

[8] Norman v. B. & O. R. Co. (1935) 294 U. S. 240.

moratorium case[9] did not render the contract-impairment clause of the constitution unimportant. It would seem that the moratorium case merely holds that the state may alter remedies and for that reason is to be distinguished from the earlier decision in *Bronson v. Kinzie*[10] where the right was impaired as the statute provided for a minimum of two-thirds of the indebtedness against the property on foreclosure sale of the mortgaged premises. L. H. F. '36.

Editor's Note.—By an order signed June 18, 1936, by Mr. Justice Roberts the decision in the instant case has been stayed and a rehearing will probably be granted.

CONSTITUTIONAL LAW—DUE PROCESS: FREEDOM OF CONTRACT—MINIMUM WAGE LAWS.—The Supreme Court, once again, has refused to remove the impediment it placed in the path of minimum wage legislation thirteen years ago.[1] In the most recent case[2] the court has declared unconstitutional the New York Minimum Wage Law for women and children.[3] The case arose on an application for a writ of habeas corpus by the relator, a laundry operator, who was arrested and charged with having paid a woman employee less than the "minimum fair wage" set by the Industrial Commissioner. The official was ordered by the law to establish a "minimum fair wage" rate where he found an oppressive wage to exist in any industry or trade, excluding domestic and farm occupations. The Act defined an unreasonable and oppressive wage as one which is less than the fair value of the employee's services and insufficient to meet the cost of living. Adequate standards to guide in the establishment of the wage rate were provided. The relator's attack upon the Act was based solely on the invalidity of wage-regulation as such. The state sought to distinguish the instant law from that which was declared unconstitutional in the *Adkins* case.[4] *Held*, four justices dissenting, that the law was unconstitutional in that it deprived employers and employees of that freedom of contract guaranteed by due process of law.

While it is important to preserve to persons the freedom to contract about their affairs, it is likewise necessary to prevent the abuse of this liberty so that it may not be used to defeat all public interests and thereby destroy the very freedom of opportunity which it is designed to safeguard. The guaranty of liberty of contract simply implies the absence of arbitrary restraint, not immunity from reasonable regulation and prohibitions designed to promote public welfare.[5]

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[9] Home Bldg. & L. Ass'n v. Blaisdell (1934) 290 U. S. 398, 88 A. L. R. 1481.

[10] (1840) 1 How. 311, 11 L. ed. 143.

[1] Adkins v. Children's Hospital (1923) 261 U. S. 525.

[2] Morehead v. Tipaldo, People ex rel. (June 1, 1936) 56 S. Ct. 918. Affirming 270 N. Y. 233, 200 N. E. 799.

[3] Laws of 1933, chap. 584.

[4] (1918) 40 Stat. 960.

[5] Chicago, etc. R. R. v. McGuire (1911) 219 U. S. 549, 567; German Alliance Ins. Co. v. Lewis (1914) 233 U. S. 389, 417.