

on which the court could have relied in validating the pension adjustment. The court did rely, however, on an implied reserve power which was obviously a child of necessity. However, several more substantial rationales might have been employed. For instance, it is well established that legislatures can change the salaries of public employees. *State v. Board of Trustees*, 121 Wis. 44, 98 N.W. 954 (1904); *Taylor v. Beckham*, 178 U.S. 548 (1899). See also 2 Geo. Wash. L. Rev. 403 (1934). Therefore it might not be unreasonable to assume that the parties understood that the legislature intended that pension payments might also be altered. Such an understanding would make legislative control in implied term in the pension arrangement. Another suggestion, that pensions are deferred wages, would also reach the same result on the basis of the salary change rule. See 12 Encyc. Soc. Sci. 65 (1934). Cf. *Casserly v. City of Oakland*, 56 P. (2d) 237, 238 (Cal. 1936). A third approach would be to invoke the doctrine preventing a state from contracting away powers affecting public health, safety or morals. See *Denver & Rio Grande R.R. v. Denver*, 250 U.S. 241 (1919); *New Orleans Public Ser., Inc. v. New Orleans*, 281 U.S. 682 (1930). See also Merrill, Application of the Obligation of Contract Clause to State Promises, 80 U. of Pa. L. Rev. 639 (1932). This doctrine might well have been extended to invalidate long term contracts which would otherwise prevent a reasonable exercise of the police power. In the instant case, therefore, the court could more cogently have argued that the pension system promotes efficient public service the control of which is squarely within the police power, that frequently the maintenance of a pension system depends on its financial adjustment, and that therefore the state must retain the power to adjust pension payments.

However, whatever the rationale used to justify the change, the acceptance of the contract theory points to judicial review of the reasonableness of the adjustments rather than absolute legislative control in regard to changes in pension arrangements.

Corporate Reorganization—Allowance of Fees—Finality of State Court Decree in Subsequent § 77B Proceedings—[Federal].—In a state foreclosure proceeding a final decree of foreclosure was entered, providing, *inter alia*, that certain fees to the trustee and his counsel for “services rendered and to be rendered” should be allowed as prior liens upon the premises. A year later, the property not yet having been sold under the foreclosure decree, a petition for reorganization under § 77B of the Bankruptcy Act was filed. 48 Stat. 911 (1934); 11 U.S.C.A. 207 (1936). The trustee and his counsel, the appellants in this proceeding, claimed the full amount given them by the state court decree. After the plan had been accepted by the requisite number of creditors (not including the appellants), the district court reduced the appellants’ claims. On appeal, *held*, reversed. The district court was not at liberty to consider the reasonableness of the fees fixed by the state court. It had power to reduce only those fees allowed for “services to be rendered.” *In re De Luxe Apartment Hotel Bldg.*, 86 F. (2d) 772 (C.C.A. 7th 1936).

Full recognition of allowances made in prior proceedings will necessitate either an increase in the percentage of reorganized properties to be allocated for fees or a disproportionate reduction in fees allowed claimants for services performed in § 77B proceedings. Either result is unfortunate. Section 77B (i) authorizes the judge in reorganization to “make such orders as he may deem equitable . . . for the payment of such reasonable administrative expenses and allowances in the prior proceeding as

may be fixed by the court appointing said receiver or prior trustee." 48 Stat. 920 (1934); 11 U.S.C.A. § 207 (i) (1936). Thus the extent of the reorganization court's power to reduce such allowances depends upon judicial interpretation of this section. Where fees have not been allowed in the prior proceeding until after the petition for reorganization has been filed, lower federal courts have generally reduced fees, adding, however, that the prior allowance should be used as a guide in determining what is a reasonable fee. *In re New York Investors, Inc.*, 79 F. (2d) 182 (C.C.A. 2d 1935); *In re Allied Owners Corp.*, 79 F. (2d) 187 (C.C.A. 2d 1935). See *In re 211 E. Delaware Place Bldg. Corp.*, 7 F. Supp. 892, 896 (Ill. 1934) (reorganization court refused to make allowances for services in prior proceedings until state court fixed fees); *In re Davison Chem. Co.*, 14 F. Supp. 821, 840 (Md. 1936); *Hume v. Meyers*, 242 Fed. 827 (C.C.A. 4th 1917) (ordinary bankruptcy proceedings); 90 A.L.R. 1217 (1934); cf. *Louisville Trust Co. v. Comingor*, 184 U.S. 18 (1902); *Galbraith v. Vallely*, 256 U.S. 46 (1921). At the other extreme, where fees actually have been paid before the petition for reorganization is filed, the reorganization court is probably unable to compel the recipient to disgorge on the ground that the fee was unreasonable. *In re 7000 South Shore Drive Bldg. Corp.*, 86 F. (2d) 499 (C.C.A. 7th 1936). Within these limits, however, there exists little authority and less consideration of the control of reorganization courts over allowances made in prior proceedings. See *In re Kelly-Springfield Tire Co.*, 13 F. Supp. 724 (Md. 1935); 49 Harv. L. Rev. 1111, 1205 (1936).

The above-quoted language of § 77B (i) apparently puts no limitations on the power of a reorganization court to reduce prior allowances. The Supreme Court, however, in defining "equity receivership" for the purpose of determining jurisdiction within § 77B (a), has indicated that the words "receiver" and "trustee" in subsection (i) do not include foreclosure receivers or trustees. *Duparquet, Huot & Moneuse Co. v. Evans*, 297 U.S. 216 (1936); cf. Chandler Bill, H.R. 6439, 75th Cong., 1st session, p. 47 (1937). If this limited construction of subsection (i) were adopted, control over fees of these officers in foreclosure proceedings could only be obtained by a liberal construction of "representatives of creditors" in § 77B (c) (9), the subsection providing for fees in reorganization proceedings generally. But since in the principal case the fees in question were allowed in a foreclosure receivership, the court in countenancing a reduction of fees allowed for future services disregarded this *dictum* of the *Duparquet* case. Furthermore, the Supreme Court itself seems to consider the *Duparquet* case inapplicable in determining the scope of subsection (i). *Shulman v. Wilson-Sheridan Hotel Co.*, U.S. Sup. Ct. (April 26, 1937); see also, *In re 188 West Randolph Bldg. Corp.*, C.C.H. Bankr. Serv. § 4405 (C.C.A. 7th 1937). A more recent and more important limitation on the reorganization court's power to reduce fees was introduced by the Supreme Court in the *Wilson-Sheridan* case. Although the Court there held that the prior allowance was not a final order because it did not include a "direction to pay," it indicated that where the order allowing fees in the prior proceeding did include a "direction to pay," this allowance would not be reducible by the reorganization court. The Court has thus introduced not only a standard of uncertain definition but also one of which the lower federal courts have taken no account in considering their power to reduce prior allowances. See *In re Consolidation Coal Co.*, 14 F. Supp. 845 (Md. 1936); *In re Assoc. Telephone Utilities Co.*, C.C.H. Bankr. Serv. § 3926 (N.Y. 1936); *In re Davison Chem. Co.*, 14 F. Supp. 821 (Md. 1936). In the principal case, to sustain the conclusion of the court that a reorganization court has no power to reduce fees set

before the filing of the petition, the state court's order making the claims for fees "a prior lien upon the premises" must be considered equivalent to a "direction to pay." "Direction to pay" is a sensible concept only if it is limited to those cases in which the court in the prior proceeding intended its order to be executed before reorganization might ensue. Making a claim for fees a "lien upon the premises" can hardly be said to indicate an intention that the claim be paid in the immediate future. Thus if the "direction to pay" concept is to be retained, it should be limited to orders in which fees are to be paid out of cash on hand or the proceeds of a sale to be held at the same time. In approving the reduction of fees for "services to be rendered," the court in the principal case not only suggested a possible limitation on the "direction to pay" concept, but also indicated a possible loophole through which reorganization courts may find power to reduce prior allowances. As shown above, the court's order must be considered as a "direction to pay" to sustain its decision as to services already rendered. But to sustain the reduction of fees for "services to be rendered," it is necessary to hold that an allowance for future services cannot be a final order even if couched in terms constituting a "direction to pay." Furthermore, unless allowances in prior proceedings are clearly labeled as being for past services, reorganization courts may consider them as being for future services and therefore reducible.

Corporate Reorganization—Consideration of Plan in Conjunction with Foreclosure Sale—Statutory Redemption—[Illinois].—In a foreclosure proceeding brought by the trustee under a trust deed, a committee representing the majority bondholders bid in at the sale, and in addition bought the statutory redemption right of the mortgagor. The minority bondholders objected to the approval of the sale on the grounds that the price was too low and that the court had no jurisdiction to consider the reorganization plan submitted by the majority committee. On a certificate of importance to the supreme court, *held*, (1) The court has jurisdiction to consider the reorganization plan in order to avoid injustice to the parties concerned. The price was not too low when considered in conjunction with the plan, which was fair. (2) The sale of the redemption was valid, and by execution under the deficiency decree the trustee can recover the money paid to the stockholders of the mortgagor. *First Nat'l Bk. of Chi. v. Bryn Mawr Beach Bldg. Corp.*, 6 N.E. (2d) 654 (Ill. 1937).

In resolving a doubt which had culminated in two conflicting Illinois appellate decisions, this case approves a technique already established in the federal and many state courts by which injustice to majority as well as minority bondholders may be avoided. If the court will not scrutinize the plan, fairness to the minority compels the court to require a bid that will give the dissenter the full value of his interest, *i.e.*, a bid approximating the full going-concern value of the property. But if such a bid is required the premium on being a dissenter will be so great that it will be difficult to secure sufficient assenters to make reorganization financially possible. This dilemma of unfairness to the dissenter on the one hand, or the stagnation of property caused by the thwarting of reorganization on the other, can be resolved only if the court considers the fairness of the plan and bargains for as high a price as is consonant with the effectuation of the reorganization. For a fuller discussion of this problem see Katz, Protection of Minority Bondholders in Foreclosures and Receiverships, 3 *Univ. Chi. L. Rev.* 517 (1936) and especially pp. 524-32; see also, 1 Gerdes, *Corporate Reorganization* § 16 (1936).