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## Effect of Police Power on Due Process Clause

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was caused or could have been caused by the accident, insurer, in absence of such evidence, being entitled to a directed verdict."

"Presumptions of fact proceeding from other facts in proof are rebuttable or disputable as a matter of course, and, since they merely amount to an assumption of what may be true, may be entirely overcome or removed from the case by competent proof going to supply the fact presumed."

*Mayfield v. Montana Life Ins. Co., et al.* (Montana), 205 Pac. Rep., p. 669. "Where general agent of an insurance company who had done considerable profitable business for the company, and who made it a practice to represent to prospective patrons that insurance taken out through him would be binding on the company from the date of the first year's premium, and the passing of a satisfactory medical examination, told an applicant who was particularly desirous of having his life insured at the time of the application by reason of a contemplated journey that the insurance would take effect from the payment of premium and the passing of a satisfactory medical examination, the conditions of the receipt issued providing that the insurance should not effect until approval of application at the company's home office were waived."

*Camden Fire Ins. Assn. v. Prezioso* (Court of Chancery of New Jersey), 116 Atl. Rep., 694: "An insurance company's right against a tort-feasor, through whose negligence loss occurred, to recover the amount paid on the policy covering such loss, is not barred by a settlement between the latter and the insured for a sum less than such tort-feasor's liability, though insured gave a full release; such release being a fraud on the insurer."

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#### EFFECT OF POLICE POWER ON DUE PROCESS CLAUSE.

An interesting case in which these two constitutional points were considered was *Pennsylvania Coal Company, Ptf. in error, v. H. J. Mahon et al.*, decided Dec. 11, 1922, and reported at U. S. S. C. Adv. Ops. 1922-23, p. 154. The Pennsylvania Coal Company owned a certain parcel of ground which they conveyed, by deed, to plaintiffs in this case in 1878. In the deed the Coal Company reserved the right to remove all the coal under the land—the plaintiffs taking the premises with the risk and waiving all claim for damages that might arise from mining out the coal. On May 27, 1921, an Act of Pennsylvania, commonly known there as the Kohler Act, was approved by the legislature. This Statute, or Act, prohibited the mining of anthracite coal in such way as to cause a subsidence of, among other things, a human habitation, with certain exceptions, including among them land where the surface is owned by the owner of the underlying coal, and is distant more than 150 feet from any improved property belonging to any other person. After the passage of this Act the grantees of the above property, *H. Mahon et al.*, sought by a bill in equity, to prevent the Pennsylvania Coal Company from mining under their property in such a way as to remove the supports and cause a subsidence of the

surface and of their house. The grantees were, of course, relying upon the Kohler Act while the Pennsylvania Coal Company was relying upon the reservation it had expressly made in the deed whereby it conveyed the land to H. Mahon *et al.* The Court of Common Pleas held that the Kohler Act, if applied to this case, would be unconstitutional. However, upon an appeal to the State Supreme Court it was held that while the Pennsylvania Coal Company had contract and property rights protected by the Constitution of the United States still the statute was a legitimate exercise of the police power of the State. The question arises—was this a proper exercise of the police power by the State or was it taking property without due process of law? It is well understood that certain values or rights which we enjoy are subject to implied limitations and must yield to the police power, but such limitations must have certain limits or the contract and due process clause are of no value. When the diminution reaches a certain magnitude it must be an exercise of eminent domain plus just compensation. Mr. Justice Holmes, who delivered the opinion of the Supreme Court of the United States, after the case had been taken to said court, said, "For practical purposes, the right to coal consists in the right to mine it." When you take away the right to mine it it has almost the same effect for constitutional purposes as appropriating or destroying it: This would be the result of the Kohler Act. While, as a general rule, property may be regulated to a certain extent, if it goes too far it will constitute a taking. Whenever there is such a taking it is presumed that it is wanted for a public use and even then it is not taken without compensation. The statute in this case did not contemplate the taking of property for a public use; neither did it contemplate giving compensation to the one whose rights would be impaired. It could scarcely be said to be a taking for public interest since the case involved only a single house—and, since only a single private house was liable to be damaged it could not be considered a public nuisance. It was upon such reasoning as shown above that the Supreme Court of the United States (Mr. Justice Brandeis dissenting) held the statute unconstitutional—a realization that the statute did not disclose a public interest sufficient to warrant so extensive a destruction of the defendants' constitutionally protected rights.

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#### PENALTIES UNDER REVENUE STATUTES—CONSTRUCTION—EFFECT OF GOOD FAITH.

A proper understanding of the case subsequently cited makes necessary the setting out of certain revenue statutes. That is to say, Sec. 311 of the Munition Tax Act of Sept. 8, 1916 (39 Stat. 782), provides that: "All administrative, special and general provisions of law, relating to the assessment of taxes not specifically repealed, are hereby made to apply to this title so far as applicable and not inconsistent with its provisions." And Sec. 3176 R. S., as amended by Sec. 16 of the Revenue Act of 1916 (39 Stat. 773), reads in part as follows: "In case of any failure to make and file a return or list within the time prescribed by law or by the Collector, the Commissioner of Internal Revenue shall add to the tax fifty per cent of its amount, except that when a return is voluntarily and