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Planters' Bank Vs. Sharp

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Appellant : Planters' Bank

Respondent : Sharp

Judgement :

Planters' Bank v. Sharp - 47 U.S. 301 (1848)
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Planters' Bank v. Sharp

47 U.S. (6 How.) 301

ERROR TO THE HIGH COURT OF ERRORS

AND APPEALS OF THE STATE OF MISSISSIPPI

SYLLABUS

Where a bank was chartered with power to

"have, possess, receive, retain, and enjoy to themselves and their successors, lands, rents, tenements, hereditaments, goods, chattels, and effects of what kind soever, nature, and quality, and the same to grant, demise, alien, or dispose of for the good of the bank,"

and also "to receive money on deposit and pay away the same free of expense, discount bills of exchange and notes, and to make loans," &c.;, and, in the course of business under this charter, the bank discounted and held promissory notes, and then the legislature of the state passed a law declaring that

"It shall not be lawful for any bank in the state to transfer by endorsement or otherwise any note, bill, receivable, or other evidence of debt, and if it shall appear in evidence, upon the trial of any action upon any such note, bill receivable, or other evidence of debt that the same was transferred, the same shall abate upon the plea of the defendant,"

this statute conflicts with the Constitution of the United States, and is void.

These were kindred cases, and were argued together. Although the Court pronounced an opinion in each case separately, yet the dissenting opinion of MR. JUSTICE DANIEL treats them as they were argued, and hence it becomes necessary to blend the two cases together. The facts in each case will be stated, then the arguments of counsel, and then the opinions of the Court, with the separate opinion of MR. JUSTICE Mc LEAN and the dissenting one of MR. JUSTICE DANIEL.

PLANTERS' BANK v. SHARP

On 10 February, 1830, the Legislature of Mississippi

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passed "An act to establish a Planters' Bank in the State of Mississippi."

The sixth section of the charter enacts, among other things, that the bank

"shall be capable and able in law to have, possess, receive, retain, and enjoy to themselves and their successors, lands, rents, tenements, hereditaments, goods, chattels, and effects, of what kind soever, nature, and quality, not exceeding in the whole six millions of dollars, including the capital stock of said bank, and the same to grant, demise, alien, or dispose of for the good of said bank."

The seventeenth section gives power

"to receive money on deposit and pay away the same free of expense, discount bills of exchange and notes, with two or more good and sufficient names thereon, or secured by a deposit of bank or other public stock, and to make loans to citizens of the states in the nature of discount on real property, secured by mortgage,"

&c.;

The twenty-second section enacted, "that it shall not be lawful for said bank to discount any note or notes which shall not be made payable and negotiable at said bank."

By a supplement to the charter passed in 1831 and accepted by the bank, it was provided that "such promissory notes shall be made payable and negotiable on their face at some bank or branch bank."

On 24 May, 1839, Sharp, Engelhard, and Bridges gave their promissory note to the Planters' Bank for one thousand dollars, due twelve months after date. A copy of the note is not to be found in the record, but the declaration states it to have been "payable and negotiable at the office of the Planters' Bank of the State of Mississippi, at Monticello."

On 21 February, 1840, the Legislature of Mississippi passed "An act requiring the several banks of the state to pay specie, and for other purposes," the seventh section of which was as follows:

"It shall not be lawful for any bank in this state to transfer, by endorsement or otherwise, any note, bill receivable, or other evidence of debt, and if it shall appear

in evidence, upon the trial of any action upon any such note, bill receivable, or other evidence of debt that the same was transferred, the same shall abate upon the plea of the defendant."

In October, 1841, the Planters' Bank brought a suit upon the note in the Circuit Court of Lawrence County (state court). The defendants pleaded the general issue and a jury was sworn. The declaration and note having been read, the defendants filed the following plea:

"And now at this day -- that is to say on the second day of the term aforesaid, until which day this cause was last continued -- come the said plaintiffs by attorney and the said defendants

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by attorney, and the said defendants say that since the last continuance of this cause -- that is to say since the sixth day of the May term, 1842, of this Court, from which day this cause was last continued, and before this day, that is to say, on 10 June in the year 1842, at the county aforesaid -- the said plaintiffs then and there being the owners of the said note sued on in this cause and then and there being a bank within the State of Mississippi, and within the intent and meaning of the statute of this state, entitled, 'An act requiring the several banks in this state to pay specie, and for other purposes,' transferred the aforesaid note to the United States Bank of Pennsylvania contrary to the statute in such cases made and provided, and this the said defendants are ready to verify; wherefore they pray judgment if the said plaintiffs ought further to be answered in this said action, and that the same may abate."

"Personally appeared in open court Thomas L. Sharp, one of the defendants in the above-stated case, who, being duly sworn, upon his oath says, that the matters and things set forth in the above plea are true in substance and fact. Sworn to and subscribed in open court."

"THOMAS L. SHARP"

The plaintiffs demurred to this plea upon the following grounds:

1st. Because said plea is not assigned by counsel.

2d. Because said plea does not state the day, year, time, and place of the transfer of said note.

3d. Because the plaintiffs have a right by law to deal in promissory notes, bills of exchange &c.;, secured by charter.

4th. Because the statute, the title of which is recited in said plea, is, so far as relates to transfers of notes, bills receivable, or other evidence of debt, unconstitutional.

5th. The said plea does not state to what term said cause was continued.

6th. That said plea does not allege that said note was transferred for value received.

7th. That said plea is a plea in bar of this action, but does not conclude in manner and form as provided by law.

8th. That said plea was not presented until issue joined under the plea of *nonassumpsit,* and the declaration and note read, and a jury empanelled to try said issue.

9th. That the statute referred to in said plea does not affect the plaintiffs.

10th. That the said defendants did not tender the costs of suit in said case, up to the time of their tendering said plea, with said plea.

11th. That said plea is not entitled in this cause.

12th. That the affidavit subjoined to said plea is not sufficient.

The defendants having joined in demurrer, the court, after argument, overruled it, and leave being granted to the plaintiffs to reply to the plea, an issue was joined in short by consent, and the cause proceeded, when the jury found a verdict for the defendants.

A bill of exceptions was taken by the plaintiffs' counsel, as follows, *viz.:*

"Be it remembered that on the trial of the above cause at the term aforesaid, after the case was submitted to the jury and after the plaintiff had introduced his evidence upon the issue joined, the defendant introduced a witness who proved that since the suit in the above case was instituted, the note had been transferred to the United States Bank of Pennsylvania, the defendants offered a plea, in the words and figures following, to-wit: [Then followed the plea above recited.]"

"To the reception of said plea the counsel for the plaintiffs objected, which objection was overruled; to which opinion of the court the counsel for plaintiffs except, and having reduced their exceptions to writing before the jury retired, pray the same may be signed [and] sealed."

"Given under my hand and seal this 6th December, 1842."

"[Signed] A. G. BROWN [SEAL]"

Upon this exception, the case was carried up to the High Court of Errors and Appeals, which, at December term, 1842, pronounced the following judgment:

"This cause having been submitted at a former term of this court and the same having been duly considered by the court, it is ordered and adjudged that the judgment of the Circuit Court of Lawrence county, rendered against the plaintiffs in error at the December term thereof, A.D. 1842, be and the same is hereby reversed because rendered as a judgment in bar, and this Court, proceeding to render the judgment that should have been pronounced by the court below, doth order and adjudge that the plaintiffs in error, the plaintiffs in the court below, take nothing by their writ, and that the suit be abated."

To review this judgment, a writ of error brought the case up to this Court.

BALDWIN, VAIL, & HUFTY v. JAMES PAYNE

Matthias W. Baldwin George Vail, and George W. Hufty, co-partners, brought this action on 15 April, 1841, in the

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Circuit Court of Jefferson County, Mississippi, against James Payne Abner E. Green, and Robert Y. Wood, the makers, and the Mississippi Railroad Company, the endorsers, of two certain promissory notes, each in the sum of $6,283.95, payable at the Merchants' Bank, New Orleans, the first, sixty days after December 4, 1839, and the other ninety days thereafter. The notes were without date on their face, and were discounted, at the instance of Payne one of the makers, by the Mississippi Railroad Company, under their banking powers, on 4 December, 1839, to whose order they were made payable, and were by said company, on 1 April, 1841, endorsed over, transferred, and delivered to the plaintiffs, for a valuable consideration.

The defendants, Payne Green, and Wood, were served with process, and appeared and pleaded the general issue. They also pleaded the following special plea, *viz.:*

"That the said promissory notes, in the declaration of the said plaintiffs mentioned, were executed and delivered by them, the said defendants, to, and discounted by, the Mississippi Railroad Company, on 4 December, in the year 1839, at the county aforesaid, and thereby became and were the property of the said Mississippi Railroad Company, to-wit, on the day and year aforesaid, at the county aforesaid, and that the said promissory notes continued to be and were the property of the Mississippi Railroad Company from the day and year last aforesaid until and after 26 April, in the year 1840, at the county aforesaid; after which 26th April, in the year 1840, to-wit, on 1 April, in the year 1841, at the county aforesaid, the said Mississippi Railroad Company, by their endorsement thereon, transferred the said two promissory notes, in the said declaration mentioned, to the said plaintiffs; and this they are ready to verify. Wherefore they pray judgment, if the said plaintiffs

ought to have or maintain their aforesaid action thereof against them."

To this special plea the plaintiffs demurred, and the defendants joined in demurrer.

The circuit court, on 11 November, 1842, sustained the demurrer, and awarded judgment of respondent ouster, but the defendants refusing further to plead, the court thereupon gave judgment upon said demurrer to the second plea for the plaintiffs.

On the same day, the cause, being dismissed as to the Mississippi Railroad Company, came on for trial before a jury, on the general issue, against the other defendants; and a special verdict was found, as follows, *viz.:*

"We the jury, find that defendants, James Payne Abner E. Green, and Robert Y. Wood,

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executed the two several promissory notes (described in the plaintiffs' declaration) on 4 December, 1839, and on the same day delivered the said notes to the Mississippi Railroad Company, to be discounted for and on account of said James Payne; one of which said notes is for the sum of $6,283.95, payable sixty days after the said 4 December, 1839, to the order of the said Mississippi Railroad Company, at the Merchants' Bank in the City of New Orleans; and the other of the said notes is for the sum of $6,283.95, also payable ninety days after the said 4 December, 1839, to the order of the said Mississippi Railroad Company, at the Merchants' Bank in the City of New Orleans. That said two notes were discounted by said Mississippi Railroad Company, under their banking powers, on the said 4 December, 1839, at the instance of the first drawer, said James Payne and the proceeds thereof were received by him, and the said company thereby became the holder of said notes. That the said notes, or either of them, were not paid at maturity, and were presented for payment at maturity, and protested for nonpayment, and that no part of them, nor any interest, has been paid by said defendants, or either of them. That the Mississippi Railroad Company, on 1 April, 1841, being indebted to the plaintiffs, Baldwin Vail, and Hufty, transferred and

delivered said two several promissory notes to said plaintiffs, for a valuable consideration, in payment of said debts. If, upon the facts, the court is of opinion that the law is in favor of the plaintiffs, we find for the plaintiffs, and assess their damages at $15,300.90. But if, upon these facts, the court is of opinion that the law is for the defendants, Payne Green, and Wood, then we find in their favor."

The circuit court gave judgment upon this special verdict in favor of the plaintiffs, and the defendants thereupon took a writ of error to the High Court of Errors and Appeals. The cause was argued in the court of errors, and on 11 November, 1844, the said court rendered their final judgment, *viz.:*

"That the judgment of the Circuit Court of Jefferson County be reversed and for nothing held, and that the defendants in error, the plaintiffs below, take nothing by their writ, and that the suit is abated."

The charter of the Mississippi Railroad Company was conferred by an Act of the Legislature of Mississippi approved February 26, 1836, entitled "An act to incorporate the Mississippi Railroad Company." By the first section of a Supplementary Act passed May 12, 1837, the company were

"authorized and empowered to exercise all the usual rights, powers, and privileges of banking which are permitted to banking

institutions within this state, subject to the limitations and restrictions hereinafter mentioned."

And by section eighth of said supplementary act, the company were, among other things, made capable

"to purchase and sell real and personal estate and to hold and enjoy the same to any amount not exceeding in value at any time $500,000 over and above the property in and necessarily connected with said railroad."

By the same section, its "banking privileges, rights, and powers were secured to said company until 30 December, 1858."

The Planters' Bank of the State of Mississippi was an incorporated banking institution existing within said state at the date of the foregoing charter.

From the above statement of these two cases it is apparent that in the first one, *viz.,* that of the Planters' Bank, the suit was in the name of the original payees of the note, and in the second it was in the name of the endorsees, being brought in both cases against the makers of the notes. The main question in both was the constitutionality of the statute of Mississippi passed on 21 February, 1840.

MR. JUSTICE WOODBURY delivered the opinion of the Court.

PLANTERS' BANK v. SHARP ET AL.

The question to be considered in this case is whether an Act of the Legislature of Mississippi passed February 21, 1840, impaired the obligation of any contract which the state or others had previously entered into with the Planters' Bank.

If it did, the clause in the Constitution of the United States expressly prohibiting a state from passing any such law has been violated, and the plaintiffs in error are entitled to judgment.

But on the contrary, if that act does not impair the obligation of any contract, the judgment below in favor of the defendants must be affirmed.

In considering this question, no peculiar liberality of construction in favor of a corporation, so as to render that an encroachment on its rights which is not clearly so, seems to be demanded of us by any more sacredness in the character of a

corporation or its rights than in that of an individual; but rather that its charter as a public grant is not to be construed beyond its natural import. 8 Pet. 738; 28 U. S. 3 Pet. 289; 29 U. S. 4 Pet. 168, 29 U. S. 514 . The inviolability of contracts, however, and the faithful protection of vested rights, are due to the one no less than the other, and are both involved in the present inquiry, so far as affecting, by way of principle or precedent, all the various and vast interests of this kind existing over the whole Union.

Mr. Madison denounced laws impairing the obligation of contracts as among those not only violating the Constitution, but "contrary to the first principles of the social compact and to every principle of sound legislation." Federalist, No. 44.

Again, in *Payne v. Baldwin,* 3 Smedes & Marshall 677, one of the cases now before us, it is truly admitted that "in a government like ours, such power is totally out of the range of legislative authority."

At the same time it is to be recollected that our legislatures stand in a position demanding often the most favorable construction for their motives in passing laws, and they require a fair, rather than hypercritical, view of well intended provisions in them. Those public bodies must be presumed to act from public considerations, being in a high public trust, and when their measures relate to matters of general interest and can be vindicated under express or justly implied powers, and more especially when they appear intended for improvements made in the true spirit of the age or for salutary reforms in abuses, the disposition in the judiciary should be strong to uphold them.

Certainly it will be only when they depart from limitations or qualifications of this character, and so use their own rights as to impair the prior rights of others, that a check must be used, however unpleasant to us, by declaring that the constitutional restrictions of the general government must control a statute of a state conflicting with them, and thus, for harmony and uniformity, make the former supreme, in compliance with the injunctions imposed by the people and the states themselves in the Constitution. Governed by such views, we proceed to the examination of the questions arising here by ascertaining first what powers the Legislature of

Mississippi granted to the plaintiffs, and then what powers it has taken away from them.

On 10 February, 1830, "An act to establish a Planters' Bank in the State of Mississippi" passed, and among other privileges, in the sixth section, granted that the bank

"shall be capable and able, in law, to have, possess, receive, retain, and enjoy to themselves and their successors lands,

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rents, tenements, hereditaments, goods, chattels, and effects of what kind soever, nature, and quality, not exceeding in the whole six millions of dollars, including the capital stock of said bank, and the same to grant, demise, alien, or dispose of, for the good of said bank."

The seventeenth section gives power also

"to receive money on deposit, and pay away the same free of expense, discount bills of exchange and notes, with two or more good and sufficient names thereon, or secured by a deposit of bank or other public stock, and to make loans to citizens of the states in the nature of discount on real property, secured by mortgage,"

&c.;

Doing business with these powers, amounting, as it has been repeatedly settled, to a contract in the charter for the use of them (*see* cases in the *West River Bridge,* at this term), the bank, on 24 May, 1839, took the promissory note on which the present suit was instituted and, on 10 June, 1842, transferred it to the United States Bank, having first commenced this action on it 11 October, 1841.

But in the meantime, after the execution of the note, though before its transfer, the Legislature of Mississippi, on 21 February, 1840, passed a law the seventh section of which is in these words:

"It shall not be lawful for any bank in this state to transfer by endorsement or otherwise any note, bill receivable, or other evidence of debt, and if it shall appear in evidence upon the trial of any action upon any such note, bill receivable, or other evidence of debt that the same was transferred, the same shall abate upon the plea of the defendant."

See acts of 1840, p. 15. This law constitutes the only defense to a recovery in the present case by the plaintiffs. But they contend it is invalid because, by the Constitution, art. 1, 10, "no state" shall pass any law "impairing the obligation of contracts," and this law does impair it, in this instance, in two respects. First in the obligation of the contract in the charter with the state, and secondly in the obligation of the contract made by the signers of the note declared on with the bank.

To decide understandingly these questions, it will be necessary to go a little further into the true extent of those two contracts under the powers held by the bank, and likewise into the true extent of the subsequent act of the legislature affecting them.

That promissory notes are to be regarded as either goods, chattels, or effects within the sixth section of the charter can hardly be questioned when it includes these "of what kind soever, nature, and quality." This addition evidently meant to remove any doubt or restriction as to the meaning of those

terms, as sometimes employed in connection with peculiar subjects, and to extend the description by them to every kind of personal property belonging to the bank. This construction would go no further than sometimes has been done in England, holding the words goods and chattels to include choses in action as well as other personal property, 12 Coke 1; 1 Atkins 1182, and by the word "goods" alone in a bequest it has been held that a bond will pass, *Anonymous,* 1 P.Wms. 127.

So in respect to "effects" it has been held, when the word is used alone or *simpliciter,* it means all kinds of personal estate. 13 Ves. 39, 47, note; *Michell v. Michell,* 5 Madd. 72; *Hearne v. Wigginton,* 6 Madd. 119; Cowp. 299. But if there

be some word used with it restraining its meaning, then it is governed by that or means something *ejusdem generis.* Here, however, instead of restraining terms being used with it, those most broad and enlarging are added, being "effects of what kind soever, nature, and quality." *Hotham v. Sutton,* 15 Ves. 326; *Campbell v. Prescott,* 15 Ves. 500; 3 Ves. 212, note.

The same rule prevailed in the civil law under the term " *bona mobilia.* " 1 P.Wms. 267. And by that law as well as the common law, promissory notes or choses in action come under the category of movable goods or personal property, as they accompany the person. 2 Bl.Comm. 384, 398.

The bank was allowed, also, by the seventeenth section "to discount bills of exchange and notes," and in truth promissory notes usually constitute a large portion of the property of such institutions. Such notes also, not only by general usage and established forms, are in most cases made to run to banks or their order, and must be expected to run so when the banks please; but it is expressly provided by the twenty-second section of this charter that "it shall not be lawful for said bank to discount any note or notes which shall not be made payable and negotiable at said bank," &c.; And again, by an amendatory act accepted by the bank it was provided, on 9 December, 1831, "that such promissory notes shall be made payable and negotiable on their face at some bank or branch bank."

But why made negotiable if no right was to exist to negotiate or transfer them? The bank, then, as the legal holder of such notes, possessed a double right "to dispose" of them -- first from the express grant in the charter itself empowering them, as to their "goods, chattels, and effects, of what kind soever, nature, and quality," "the same to grant, demise, alien, or dispose of, for the good of said bank" (sixth section); secondly, by an implied authority, incident to its charter and business, and the express requirement that the notes should be

"negotiable on their face." We do not refer to the next ground because it is necessary to resort to implication or analogy to establish an authority in the bank

under its charter to make a transfer of its notes, when it possesses that authority by the very words and spirit of the contract made in the charter by the state.

But to make the correctness of this conclusion from the specific words of the charter stronger and undoubted, it will be found to be the natural, useful, and proper view of its powers as a bank under all sound analogy and necessarily implied authority.

To reach this end, it is not indispensable to hold that corporations in modern times possess numerous incidental powers, equal to those of individuals, as was once the doctrine. Kyd on Corp. 108; 2 Kent Comm. 281, and cases in those treatises, but seems now in some respects overruled. *Earle v. Bank of Augusta,* 13 Pet. 519, 38 U. S. 587 , 38 U. S. 153 ; 6 U. S. 2 Cranch 167; 25 U. S. 12 Wheat. 64. But merely to hold, as it often has been in late years, that what is necessary and proper to be done to carry into effect express grants, and which is nowhere forbidden, may in most cases be lawful.

Though such a power as this last to Congress is expressly added in the Constitution of the United States, yet it has been considered by some that it would exist as a reasonable incident, under reasonable limitations, without any such express addition. 2 Kent Comm. 298, and cases there cited.

Thus, a corporation, if once organized, has the implied power to make contracts connected with its business and debts, and through agents and notes as well as under its seal. *Bank of Columbia v. Patterson's Adm'r,* 7 Cranch 299; 21 U. S. 8 Wheat. 338; 25 U. S. 12 Wheat. 64; 36 U. S. 11 Pet. 588.

So it may hold and dispose of property even in trust, if not inconsistent and unconnected with its express duties and objects. *Vidal v. Girard's Ex'rs,* 2 How. 127.

Hence a power to dispose of its notes as well as other property may well be regarded as an incident to its business as a bank to *discount notes,* which are required to be in their terms assignable, as well as an incident to its right of holding them and other property, when no express limitation is imposed on the authority to

transfer them.

Not that a banking corporation has under its charter a constructive power to follow another independent branch of business, such as manufacturing or foreign trade, but merely the business of banking, and to do such acts as are necessary and proper or usual to carry that business into effect, and such as are in harmony with the letter and spirit of its charter.

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Nor even that it can adopt any course as an incident, and as necessary and proper, which is merely convenient, or which is expressly forbidden by the charter, or so forbidden by any previously existing laws in the state of a general character.

But in discounting notes and managing its property in legitimate banking business, it must be able to assign or sell those notes when necessary and proper, as for instance to procure more specie in an emergency, or return an unusual amount of deposits withdrawn, or pay large debts for a banking house and for any "goods and effects" connected with banking which it may properly own. It is its duty to pay in some way every debt. 6 Gill & Johns. 219. This Court, in the *United States v. Robertson,* 5 Pet. 650, has expressly recognized the authority of a bank to give bonds and assignments to pay its deposit debtors. In that case,

"the directors agree to pledge to the government of the United States the entire estate of the corporation as a security for the payment of the original principal of the claim,"

&c.; And such a pledge or transfer was held there to be valid.

It is said in opposition to this why should a bank be considered as able to incur debts? or why to do any business on credit, requiring sales of its notes or other property to discharge its liabilities? Such inquiries overlook the fact that the chief business and design of most banks -- their very vitality -- is to incur debts as well as have credits. All their deposit certificates or bank book credits to individuals are debts of the bank and which it is a legitimate and appropriate part of its business

as a bank to incur and to pay. The same may be said also of all its bank notes, or bills, they being merely promises or debts of the bank, payable to their holders, and imperative on them to discharge. *See* *Bank of Columbia v. Patterson's Adm'r,* 7 Cranch 307; 38 U. S. 13 Pet. 593.

It may, to be sure, independent of justifications like these, not be customary for banks to dispose of their notes often. But in exigencies of indebtedness and other wants under pressures like those referred to, it may not only be permissible but much wiser and safer to do it than to issue more of its own paper, too much of it being already out, or part with more of its specie on hand, too little being now possessed for meeting all its obligations. Indeed, its right to sell any of its property, when not restricted in the charter or any previous law, is perhaps as unlimited as that of an individual, if not carried into the transaction of another separate and unauthorized branch of business. Angell & Ames on Corp., 104, 9; 4 Johns.Ch. 307; 2 Kent Comm. 283; 11 Serg. & R. 411. Both may sell notes to liquidate their debts, both sell their lands

acquired under mortgages foreclosed, or acquired under the extent of executions not redeemed. Both, too, must be able to sell all kinds of their property when proceeding to close up their business or find it impracticable. Nor is there any pretense here that any clause in the charter of this bank restricted it from selling its notes or other property under any circumstances, and much less under those, connected with indebtedness and with banking, which have just been referred to. It will be seen in this way that all analogies seem to sustain the right which exists by the express grant in this charter, to *"alien and dispose of"* all its "goods, chattels, and effects, of what kind soever, nature, and quality, for the good of said bank." But to avoid differences of opinion, we place the right here solely on the express grant. It ought perhaps to be added that the courts of Mississippi once put a more limited construction on this charter. *Baldwin v. Payne,* 3 Smedes & Marshall 661.

But as that very case is now before us for revision on the ground that it was erroneous, we feel obliged, for that and other reasons which need not be here

enumerated, to put such construction on the charter and on the law supposed to violate it as seems right according to our own views of their true intent.

Having thus ascertained the extent of the contract made by the state with the bank in the charter, we proceed next to examine the character and scope of the contract between the maker of the note and the bank.

We have already seen that the bank was not only authorized but expressly required to discount notes which were negotiable, or in other words which contained a contract or stipulation to pay them to any assignee. Nor is it pretended there was any law of Mississippi, when this charter was given or when this note was taken, which prohibited selling it and passing to an assignee all the rights, either of property or of bringing a suit in his own name, which then existed with individuals and other banking institutions.

What law existed on this point when the note was actually transferred is not the inquiry, but what existed when it was made and its obligations as a contract were fixed. The law which existed at the transfer so far from being the test of the force of a contract made long before, and under different legal provisions, is the violation of it and the very ground of complaint in the present proceeding.

This contract, then, by the bank with the maker, when executed, enabled the former to sell or assign it and the endorsee to collect it, not only by its express terms but by the general law of the state, then allowing transfers of negotiable paper

and suits in the name of endorsees. Howard and Hutchinson's Laws 373.

Indeed, independent of the last circumstance, it is highly probable that by the principles of the law of contracts and commercial paper, such choses in action may be legally assigned or transferred everywhere when not expressly prohibited by statute. This was done before the Statute of Anne, in England. And it is done since, as to paper both negotiable and not negotiable, independent of that statute.

If such notes cannot be sued in the name of the endorsee, when running to order, without the help of a statute, they certainly can be sued in the name of the payee for the benefit of the endorsee when the transfer is legal in its consideration and form.

The state itself, by passing this law prohibiting the transfer of notes by banks, recognizes the previous right, as well as custom, to transfer them; otherwise the law would not be necessary to prevent it. Nor is this law supposed to have been founded on any prior abuse of power in negotiating or selling its notes, which, if existing, might obviate the above inference. But it is understood from the record and opinions of the state court that the design of the law was to secure another provision of statute, not previously existing, but made by the legislature at the same time, requiring banks to receive their own notes in payment of their debtors, though below par. That design, too, would still recognize the prior authority to sell or transfer.

We are not prepared to say that a state, under its general legislative powers, by which all rights of property are held and modified as the public interest may seem to demand, might not, where unrestricted by Constitutions or its own contracts, pass statutes prohibiting all sales of certain kinds of property, or all sales by certain classes of persons or corporations. 39 U. S. 14 Pet. 74. Such has often been the legislation as to property held in mortmain or by aliens or certain proscribed sects in religion.

This is, however, very invidious legislation when applied to classes or to particular kinds of property before allowed to be held generally. Legislation for particular cases or contracts, without the consent of all concerned, is of very doubtful validity. *Merrill v. Sherburne,* 1 N.H. 199. Under our system of government and the abuses to which in various ways and to various extents that kind of legislation might lead, several of the state constitutions possess clauses prohibitory of such a course where it affects contracts or vested rights, and more especially does the Constitution of the United States expressly forbid any such legislation whenever it goes to impair

the obligation of a contract. Hence, the general powers which still exist under other governments or might once have prevailed here in the states to change the tenure and rights over property, and especially the *jus disponendi* of it, cannot now, under the federal Constitution, be exercised by our states to an extent affecting the obligation of contracts.

The next and final question, then, is did the act in question impair the obligation either of the contract by the state with the bank or of the contract by the maker of the note with the bank?

We have already ascertained the true extent of both of these contracts before this act passed; that by the state with the bank clearly allowing it to take negotiable notes and to sell or transfer them, and that with the maker clearly enabling the bank to assign his note and a recovery to be had on it after a transfer by the assignee. In this condition of things, with this note taken and held, accompanied by such rights and obligations, the Legislature of Mississippi passed the law already quoted and now under consideration. It expressly took away the right of the bank to make any transfer whatever of its notes, and virtually deprived an assignee of them of the right to sustain any suit, either in his own name or that of the bank, to recover them of the maker.

The new law also conferred in substance on the maker a new right to defeat any action so brought, which he would otherwise have been liable to. These results vitally changed the obligation of the contract between him and the bank to pay to any assignee of it, as well as changed the obligation of the other contract between the state and the bank in the charter to allow such notes to be taken and transferred. It is true that this new law might bear a construction, that the transfer was only a voidable act, and not void, and that, if cancelled or waived, a recovery might afterwards be had on the note by the bank, and this seems to have been the view of some of the court in 3 Smedes & Marshall 681, as well as in *Hyde v. Planters' Bank,* 8 Robinson 421. Yet the state court in Mississippi appears finally to have thought it meant otherwise, and to have decided that no suit at all can be

sustained on such a note by any body after a transfer. This was the view which they think influenced the legislature. *See Planters' Bank v. Sharp,* 4 Smedes & Marshall 28. We are disposed to acquiesce in the correctness of this construction, as it seems to conform nearest to the real designs of the legislature. But this view is not adopted, because a decision by a state court on a state statute, though generally governing us, is to control here in the very cases which, on account of that decision, are brought here by appeal or writ of error.

The rights of a party under a contract might improperly be narrowed or denied by a state court without any redress if their decision on the extent of them cannot be reviewed and overruled here in cases of this kind, while their decision, if restricting or enlarging the prohibitory act, might more safely stand, as doing no injury in the end, if we hold the act null wherever it is construed by them or us so as to conflict with prior rights obtained under contracts. *See Commercial Bank v. Buckingham's Ex'rs,* 5 How. 317.

If the state courts of Mississippi should hereafter adopt the dissenting opinion of Judge Sharkey in 4 Smedes & Marshall 28 and go back to what they appear to have before held, in 3 Smedes & Marshall 661 -- namely, that the right to sue by the bank, after a transfer, was not taken away if the plaintiff replied that the transfer had been rescinded, and the interest was now solely in the bank -- and should that construction be adopted here, the force of this new law as impairing the obligation of the contract might not be so extensive and clear as now. But still it would seem to impair the contract in some respects, yet whether in such way and extent as to render the obligation itself changed must be left to be decided definitively when such a case is presented for our decision. In the present instance, however, as before explained, the extent and operation of the prohibitory law being regarded as forbidding any transfer whatever, and, if it takes place, as barring every kind of remedy on the note, the decisive question may be repeated how can this happen without injury to the plaintiff's contracts? When every form of redress on a contract is taken away, it will be difficult to see how the obligation of it

is not impaired. *Green v. Biddle,* 8 Wheat. 76; 42 U. S. 1 How. 317; 4 Smedes & Marshall 507; *King v. Dedham Bank,* 15 Mass. 447.

If any right or power be left under the note by this act after a transfer is made, it is of no use when it cannot be enforced and no benefit be derived from it, but an action abated *toties quoties* as often as it is instituted. 21 U. S. 8 Wheat. 12; 1 Bl.Comm. 55. In the mildest view, a new disability is thus attached to an old contract, and its value and usefulness restricted, and these of course impair it. *Society for Propagating the Gospel v. Wheeler,* 2 Gall. 139.

One of the tests that a contract has been impaired is that its value has by legislation been diminished. It is not, by the Constitution, to be impaired at all. This is not a question of degree or manner or cause, but of encroaching in any respect on its obligation, dispensing with any part of its force. *Commercial Bank of Rodney v. State of Mississippi,* 4 Smedes & Marshall 507. So if the obligation of a contract is to be regarded

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as the duty imposed by it, here the duty imposed by the state to adhere to its own deliberate grant, and the duty imposed on the signer of the note to make payment to an assignee, as well as to the bank itself, are both interfered with and altered.

In answer to this supposed violation of the contract between the maker of the note and the bank, some objections have been urged which deserve further notice here.

It is sometimes stated with plausibility that states may pass insolvent laws suspending or taking away actions on contracts where the debtor goes into insolvency, and hence, by analogy, can do it here. But there, another remedy is still given on the contract before the commissioners of insolvency, and a payment is made *pro rata* as far as means exist. Here, there is no other remedy given or any part payment made. Indeed it seems that a forfeiture of all right to recover on the note in any way is inflicted here as a penalty for making that very transfer which the bank before, by the act of incorporation, as well as by the note itself,

was authorized to make. Again, state insolvent laws, if made, like this law, to apply to past contracts and stop suits on them, have been held not to be constitutional except so far as they discharge the person from imprisonment or in some other way affect only the remedy. When so restricted, they do not impair the obligation of the contract itself, because the obligation is left in full force and actionable, and future property, as well as present, subjected to its payment, and the body exonerated only as a matter connected merely with the form of the remedy. *Cook v. Moffat,* 5 How. 316, and cases there cited. The case in 8 Robinson 421 appears also to have been one on a note executed after the prohibitory law, and not, as here, before. But where future acquisitions are attempted to be exonerated, and the discharge extended to the debt or contract itself, if done by the states, it must not, as here, apply to past contracts or it is held to impair their obligation. *Ogden v. Saunders,* 12 Wheat. 213; *Sturges v. Crowninshield,* 4 Wheat. 122; 19 U. S. 6 Wheat. 131; 2 Kent Comm. 392; *Bronson v. Kinzie,* 1 How. 311; *McCracken v. Hayward,* 2 How. 608; 1 Cowen 321; 16 Johns. 237; 1 Ohio, 236; *Cook v. Moffat,* 5 How. 308, 46 U. S. 314 . Congress alone can do this as to prior contracts by means of an express permission in the Constitution to pass uniform laws on the subject of bankruptcy, and which laws, when not restrained by any Constitution or clause like this as to states impairing contracts, may in that way be made to reach past obligations.

The misfortune here is that the legislature, if meaning

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merely to insure to bill holders of the bank, when debtors, the privilege of paying in the bills of the bank (as is supposed, 4 Smedes & Marshall 1, 90), have not said so, and no more, by providing that promissory notes, though assigned by banks, should still be open to setoffs by their debtors of any of their bills which they then held. This would have been equitable, and no more, probably, than they would be entitled to, on common law principles, if an assignee purchased, as here, after the promissory notes fell due, and perhaps with a knowledge of the existence of such a set-off.

Chief Justice Marshall, in *United States v. Robertson,* 5 Pet. 659, says, independent of any statute, "every debtor may pay his creditor with the notes of that creditor. They are an equitable and legal tender." Equally just and reasonable would have been a declaratory law as to the allowance of such bills as a setoff where an assignment had been made collusively between the parties with a view to prevent such a setoff. 8 Robinson 421.

But instead of resorting to such measures, the legislature adopted a shorter and more sweeping mode of attaining the end of preventing assignments which might embarrass or defeat setoffs. They did it by cutting off all assignments whatever and all remedies whatever upon them. And they accompanied this by another statute enabling debtors of the bank who held its notes, when their debts fell due, to pay in them, or set them off, and even virtually authorized them to make payment in depreciated bills or notes afterwards bought up for that purpose, and thus to gain an undue advantage over setoffs by other debtors in other matters.

The act as to this last topic was passed the next day after the act prohibiting transfers. Mississippi Laws, 2 February, 1840, 21, sec. 2. It was in these words:

"All banks above alluded to, and all other banks in this state, shall at all times receive their respective notes at par in liquidation of their bills receivable and other claims due them."

These two acts, though undoubtedly well meant and designed to give an honest preference to bill holders (*see* Sharkey's dissenting opinion) as to a paper currency which ought always to be kept on a par with specie, were unfortunately, in the laudable zeal to avert a great apprehended evil, passed without sufficient consideration of the limitations of the powers imposed by the Constitution of the Union on the state legislatures, not to impair the obligation of existing contracts. Nor was it necessary to go so far to secure any legitimate results. Some other laws are referred to, which are upheld and which affect the whole community, and seem to violate some of the important incidents of contracts

between individuals, or between them and corporations. But it will usually be found that these are such laws only as relate to future contracts, or if to past ones, relate to modes of proceeding in courts, to the form of remedy merely, to priority to some classes of creditors, 9 U. S. 5 Cranch 298, to the kind of process, 34 U. S. 9 Pet. 319; 23 U. S. 10 Wheat. 51, to the length of the statute of limitations, 19 U. S. 6 Wheat. 131; 2 Mason 168; 3 Johns.Ch. 190; 17 U. S. 4 Wheat. 200; 42 U. S. 1 How. 315, to exempting the body from imprisonment, 17 U. S. 4 Wheat. 200, or tools and household goods from seizure, 16 Johns. 244; 42 U. S. 1 How. 15; 11 Martin 730, or affecting some privilege attached to the person or territory, Story on Confl. of Laws 339 &c.;, and not to the terms or obligations of any part of the contract itself, *Cook v. Moffat,* 5 How. 295; *Towne v. Smith,* 1 Woodb. & Minot 132; 7 Greenl. 337; 3 Burge on Col. & For. Law 234, 1046.

And if, in professing to alter the remedy only, the duties and rights of a contract itself are changed or impaired, it comes just as much within the spirit of the constitutional prohibition. *Bronson v. Kinzie,* 1 How. 316; 43 U. S. 2 How. 612; 2 Madison Papers 1239, 1581.

Thus, if a remedy is taken away entirely, as here, or clogged *"by condition of any kind, the right of the owner may indeed subsist and be acknowledged, but it is impaired."* *Green v. Biddle,* 8 Wheat. 75. And the test, as before suggested, is not the extent of the violation of the contract, but the fact that in truth its obligation is lessened, in however small a particular, and not merely altering or regulating the remedy alone. 43 U. S. 2 How. 612; 21 U. S. 8 Wheat. 1.

Having, it is believed, assigned sufficient reasons to show that the obligation of both of these contracts was impaired, it is now proposed briefly to refer to a few precedents bearing on the correctness of this conclusion, chiefly in respect to the most important of the contracts -- that between the state and the bank. On an examination of the various decisions which have taken place in this Court on the violation of the obligation of contracts, it will be found that this case does not come within the principle of any of those where the decision was that the new laws were no violation, but on the contrary is much like several where the decision annulled them as a clear violation. Thus, where a new law has taken the property of a

corporation for highways under the right of eminent domain, which reaches all property, private or corporate, on a public necessity, and on making full compensation for it, and under an implied stipulation to be allowed to do it in all public grants and charters, no injury is committed not atoned for, nothing is done not allowed

by preexisting laws or rights, and consequently no part of the obligation of the contract is impaired. *See* case of *West River Bridge* and authorities there cited, in 6 How. 507.

So when the legislature afterwards tax the property of such corporations, in common with other property of like kind in the state, it is under an implied stipulation to that effect, and violates no part of the contract contained in the charter. *Armstrong v. Treasurer of Athens County,* 16 Pet. 281. *See* *Providence Bank v. Billings,* 4 Pet. 514; 36 U. S. 11 Pet. 567; 12 Mass. 252; 4 Gill & Johns. 132; 4 Durn. & East 2; 5 Barn. & Ald. 157; 2 Railway Cases 23.

So when no clause existed in a charter for a bridge against authorizing other bridges near at suitable places, it is no violation of the terms or obligation of the contract to authorize another. *Charles River Bridge v. Warren Bridge,* 11 Pet. 420.

Nor is it if a law make deeds by *femes covert* good when *bona fide,* though not acknowledged in a particular form, because it confirms rather than impairs their deeds, and carries out the original intent of the parties. *Watson v. Mercer,* 8 Pet. 88.

Or if a state grant lands but makes no stipulation not to legislate further upon the subject, and proceeds to prescribe a mode or form of settling titles, this does not impair the force of the grant or take away any right under it. *Jackson v. Lumpkin,* 3 Pet. 280.

Nor does it if a state merely changes the remedies in form but does not abolish them entirely, or merely changes the mode of recording deeds or shortens the statute of limitations. 28 U. S. 3 Pet. 280; *Hawkins v. Barney's Lessee,* 5 Pet. 457.

It has been held also not only that a legislature may regulate anew what is merely the remedy, but some state courts have decided that it may make banking corporations subject to certain penalties for not performing their duties -- such as paying their notes on demand in specie, and that this does not violate any contract. *Brown v. Penobscot Bank,* 8 Mass. 445; 2 Hill 242; 46 U. S. 5 How. 342. It is supposed to help enforce, and not impair, what the charter requires. But on this, being a very different question, we give no opinion.

But look a moment at the other class of decisions. Let a charter or grant be entirely expunged, as in the case of the Yazoo claims in Georgia, and no one can doubt that the obligation of the contract is impaired. *Fletcher v. Peck,* 6 Cranch 87.

So if the state expressly engage in a grant that certain lands shall never be taxed, and a law afterwards passes to tax

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them. *State of New Jersey v. Wilson,* 7 Cranch 164. Or that corporate property and franchises shall be exempt, and they are then taxed. *Gordon v. Appeal Tax Court,* 3 How. 133.

So if lands have been granted for one purpose and an attempt is made by law to appropriate them to another or to revoke the grant. *Terrett v. Taylor,* 9 Cranch 43; *Town of Pawlet v. Clark,* 9 Cranch 292.

Or if a charter, deemed private rather than public, has been altered as to its government and control. Dartmouth College v. Woodward, 4 Wheat. 518.

Or if owners of lands granted without conditions or restrictions have been by the legislature deprived of their usual remedy for mesne profits or compelled to pay for certain kinds of improvements for which they were not otherwise liable. *Green v.*

Biddle, 8 Wheat. 1.

Or if, after a mortgage, new laws are passed prohibiting a sale to foreclose it unless two-thirds of its appraised value is offered and enacting further that the equitable title shall not be extinguished till twelve months after the sale. *Bronson v. Kinzie,* 1 How. 311; *McCracken v. Hayward,* 2 How. 608.

These last cases in Wheaton and Howard are very near in point to the present one, though in my view a less strong and decisive encroachment on a previous contract than this is.

So are the cases very near where all remedy whatever is taken away, and it is held that the obligation of the contract is thus impaired. *See* some before cited and 8 Mass. 430; 2 Gall. 141; 2 Greenl. 294; 42 U. S. 1 How. 311; 28 U. S. 3 Pet. 290; 43 U. S. 2 How. 608.

The whole usefulness and value of a note or contract is in this way destroyed, and that without any reference to the contract itself. For these reasons, the judgment below must be

Reversed.

BALDWIN ET AL. v. PAYNE ET AL.

This case involves several of the questions just discussed in that of the *Planters' Bank v. Sharp et al.*

Some of the points of difference are merely nominal, as for instance that the charter of the Mississippi Railroad Company, which transferred the notes in this case, is different. But, it being subsequent in date to the charter to the Planters' Bank, and with "all the usual rights, powers, and privileges of banking which are permitted to banking institutions within the state," the Court seemed, by mutual consent of parties, to regard those conferred on the Planters' Bank as extensive as any, and therefore a correct guide here.

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Other differences may be more material in appearance, as that the transfer in this case was found by the special verdict to have been in payment of a debt of the bank, and another that the suit here is in the name of the endorsee, and not, as in the former case, in the name of the promisee.

Its being assigned in payment of a debt is, however, no more than was presumed might have been the truth in the other case. And its being sued in the name either of the endorsee or payee can make little difference on the final construction given by the state court to the prohibitory law in the action of *Planters' Bank v. Sharp.* That construction, we have seen, was that it is the transfer itself which is prohibited and made in some degree penal, rather than the action in the name of the endorsee being all which is prohibited. It will be remembered also that if the state might be able, by a general repealing law, to prevent a suit in the name of an endorsee without impairing any contract in the charter itself, as is argued for the defense, it could hardly do this without impairing the other contract, between the bank and the maker, by which the latter promises to pay any endorsee.

Certainly the new prohibitory law ought not to have attempted more than a repeal of the statute allowing suits by endorsees of negotiable paper in their own name. Then the endorsees of notes negotiable, as of notes not negotiable, would still possess a right to sue their notes in the names of the payees.

In such a case there would be some plausibility in the idea that though the action would not lie in the name of the endorsee, yet if it could in the name of the payee for and on his account, the prohibitory law would chiefly affect the remedy, and not the right of action in some form or other.

But even then, if the obligation or force or duty of the contracts, whether with the bank by the state or with the maker, was impaired in any degree, though under cover of affecting the remedy only, it would come within the constitutional restriction.

But how much more must it so come in this case, as well as the other, where, instead of merely changing the obligation so as to render a recovery on the

contract not permissible in the name of an assignee, but more inconvenient, expensive, dilatory, and often difficult, in the name of another, the payee, the state court of Mississippi hold that the legislature, by the prohibitory law of 1840, not only meant to abate a suit in the name of an endorsee, but in the name of the payee, if a transfer had once been made. Substantially, they consider any suit on the note, by anybody, after it has once been transferred as

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illegal, and the right to enforce the contract to be lost or forfeited forever.

This view of the statute of 1840 being regarded as established in Mississippi, renders it clear that in this case, as well as the case of the *Planters' Bank v. Sharp,* the law under which this action has been abated must be considered as having impaired the obligation of contracts, and therefore to be in this respect unconstitutional and the judgment of the state court erroneous.

The judgment below must therefore be

Reversed and as a special verdict was found in this case, judgment must be entered on it in favor of the original plaintiffs.

MR. CHIEF JUSTICE TANEY and MR. JUSTICE DANIEL dissented.

MR. JUSTICE Mc LEAN.

So far as the seventh section of the act in question has been construed by the Supreme Court of Mississippi to invalidate the note between the bank and the payee, it is unconstitutional. The fair import of the provision takes away only the negotiability of the instrument. But the courts of Mississippi have decided, where a note has been assigned in violation of the statute, that no suit can be sustained on the note either in the name of the assignee or of the payee. This impairs the obligation of the contract, which the Constitution inhibits.

The argument that where the bank attempts to transfer a note by a void endorsement it must be reendorsed to enable the bank to sue in its own name as

payee is unsustainable. A void endorsement is no endorsement, and it can have no effect on the validity of the note. The section declares that

"It shall not be lawful for any bank in this state to transfer, by endorsement or otherwise, any note, bill receivable, or other evidence of debt, and if it shall appear in evidence, upon the trial of any action upon such note, bill receivable, or other evidence of debt, that the same was transferred, the same shall abate upon the plea of the defendant."

The object of the statute was to secure the right of the debtors of a bank to pay their debts in its own paper. This they could not do if the notes, before they were payable, had been assigned by the bank. No fair construction of the seventh section can authorize a forfeiture of the note by reason of the illegal endorsement. It is therefore unnecessary to consider whether such a provision would be constitutional.

The bank had the power, under its charter, to assign promissory notes. If this were not so, the law to prohibit the assignment

would have been unnecessary. There being no express power in the charter of the bank to endorse notes, it must be considered as exercising the power under the general law making notes negotiable, and in this respect it must stand on the same ground as an individual. And this presents the question whether the repeal of the law making notes negotiable by banks can affect notes executed before the repeal. A majority of the judges hold that a provision so construed is void, as it impairs the obligation of the contract. I dissent from this conclusion.

An individual holds a note which, under the statute, is negotiable, but the statute is repealed. Does this take away the negotiability of the note? I think it does. There can be no doubt of this unless such a construction shall impair the obligation of the contract. Now what obligation is violated by this construction? It is said that the maker of the note promised to pay to the assignee of the payee. This is admitted. But until the note be assigned, there can be no assignee. The endorsement is a

new contract between the endorser and the endorsee, and when this contract is made, it can no more be impaired than the contract between the maker and the payee of the note.

A promise to pay to A. B. or his assignee is no contract with the assignee until the new contract of assignment be made. The promise is to pay to the endorsee if the payee of the note shall endorse it. But the payee is under no obligation to endorse the note. And if there be no obligation, how can it be impaired? A contract binds a party either to do or not to do a certain thing. The maker of the note on a certain contingency binds himself to pay the endorsee, and that contingency depends upon the will of the payee, but until that will is exercised, there is no obligation by the maker. The payee has power to bind the maker of the note to pay its contents to some other person, but until that power is exercised, there is no contract which can be impaired.

Suppose a power of attorney was given to A by B to enable him to bind B, by a written instrument, to do a certain thing which may legally be done, but before the instrument is executed the thing is made unlawful; does this impair the obligation of the contract? The instrument contemplated has no existence; B cannot complain that he has not been bound to do the act, and on what ground can A complain? Is his contract impaired? He has no contract. He had the power to make a contract, which he failed to exercise. And this is the principle involved in the case now under consideration. The payee had a discretionary power to bind the maker of the

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note, but he did not exercise it until the assignment of the note was made illegal. Is a mere power of attorney to make a contract within the Constitution? It is essential, to constitute a contract, that there shall be two parties bound by it. Now the payee is not bound to assign the note, though the maker has authorized him to assign it. This, then, is a mere power to make a contract, which may or may not, at the discretion of the payee, be exercised. It is a mere unexecuted power to make a contract, and is in my judgment not within the Constitution.

If the charter of the bank had contained a special provision, authorizing it to assign promissory notes, no subsequent act of the legislature could repeal or modify such provision against the consent of the bank.

MR. JUSTICE DANIEL.

Differing from the majority of the Court in the decision just pronounced, I might nevertheless have been disposed to acquiesce in that decision had it related to questions merely of property or of individual interests; but embracing as it does a construction of the Constitution, and annulling at the same time a legislative act of a sovereign state, I cannot feel warranted in yielding by silence a seeming approbation of conclusions which my judgment entirely repels. My deliberate opinion, then, is that the statute of Mississippi of February 21, 1840, by its seventeenth section, comes not in conflict with the tenth section of the first article of the Constitution; that it in no wise impairs the obligation of any contract between the state and the Mississippi Railroad Company, formed by grant of the charter of that company, nor as existing with the plaintiffs in error as claiming under them. An elaborate review of the arguments on which the pretensions of the plaintiffs in error are urged is not here deemed necessary, nor will I enter much in detail upon the reasons by which those arguments appear to be met and overthrown, but will content myself with succinctly stating the decisive conclusions of my own mind upon the only question properly presented by this record and the legal grounds on which those conclusions are bottomed. The rights of the plaintiffs in error, whatever they may be, it must be borne in mind, are derived from the charter of the Mississippi Railroad Company or from that of the Planters' Bank of Mississippi, as supposed to possess rights and powers more comprehensive than those vested in the former company; but from whichsoever of those companies the plaintiffs in error may choose to deduce their rights, these must be restricted to the rights and authority vested in the source from which they are

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drawn. Both the Mississippi Railroad Company and the Planters' Bank of Mississippi are corporations created by statute, deriving their existence and every

power and attribute they ever possessed from the laws which gave them existence, and from these only. The doctrine has been long and repeatedly affirmed by this Court that in interpreting the powers and rights of corporations, an essential distinction must be taken between corporations existing by the common law (often -- nay, necessarily -- traceable to a remote and obscure antiquity) and those which are created by statute, whose constitutions and powers are defined and ascertained by accessible and visible proofs. Into the composition or practices of the former tradition, implication, or usage may enter, and thus give room for assumptions of power; with respect to the latter, no such rule -- or rather misrule -- has obtained or been permitted, especially by the settled decisions of this day. The adjudications of this Court, as has been already stated, are too explicit to admit of doubt on this subject. Thus, in the case of *Head and Amory v. Providence Insurance Co.,* 2 Cranch 127, Chief Justice Marshall says

"Without ascribing to this body [the Insurance Company], which in its corporate capacity is the mere creature of the act to which it owes its existence, all the qualities and disabilities annexed by the common law to ancient institutions of this sort, it may correctly be said to be precisely what the incorporating act has made it; to derive all its powers from that act, and to be capable of exerting its faculties only in the manner which that act authorizes. To this source of its being, then, we must recur to ascertain its powers and to determine whether it can complete a contract by such communications as are in this record."

In the case of *Dartmouth College v. Woodward,* 4 Wheat. 636, it is said by the Court that

"a corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being a mere creature of the law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental *to its very existence.* "

In the case of *Bank v. Dandridge,* 12 Wheat. 64, this Court said

"Whatever may be the implied powers of aggregate corporations at the common law and the modes by which those powers are to be carried into operation, corporations created by statute must depend, both for their powers and the mode of exercising them, upon the true construction of the statute itself."

In the case of *Bank of Augusta v. Earle,* 13 Pet. 587, the several authorities just mentioned are cited in the opinion of the Court -- all of them approved, and none of them,

it is presumed, will be questioned as not laying down the law with perfect accuracy.

Such being the well settled rule of this Court with respect to statutory corporations, let us inquire into its operation on the case before us. Neither by the charter granted to the Mississippi Railroad Company or to the Planters' Bank of Mississippi nor to any other banking corporation within the state was the power ever directly given to assign bonds, bills, or promissory notes. Is this power necessarily *implied* in any of the express grants contained in the charters now under consideration? It is admitted on all sides that the clause in this charter of the Planters' Bank which authorizes the bank to discount bills of exchange and notes and to make loans contains no such direct grant, but it is said that the bank is authorized to possess and receive lands, rents, tenements, hereditaments, goods, chattels, and *effects* to a certain amount, and to grant, demise, alien, or *dispose* of the same for the good of the bank; and that this authority confers the power of *assigning* notes discounted by the corporation. Could the doctrine of implied powers, in contravention of the express decisions of this Court just cited, be extended in its utmost latitude to these statutory corporations, still it would seem difficult, even by the greatest violence of construction, to torture the language of this charter into an expression of the meaning here ascribed to it. The right to *acquire* and to *dispose* of *effects* cannot, by the natural import of language nor by any received intendment, be made to signify the power to *discount* bills and notes; much less can it be interpreted to mean the power to transfer bills and

notes discounted, or securities of any description, and beyond this even, the power (in opposition to the principles of the common law in reference to choses in action) of investing the assignee with the right of maintaining an action at law in his own name.

The extravagance of the construction contended for on behalf of the plaintiffs may be seen by bringing it to another test. Let it be supposed that the charters of these companies contained not one word about rights and powers of *banking* as then permitted to other corporations in the State of Mississippi; suppose too they had been silent as to any right to discount bills and notes, and had been limited to the simple power of receiving and possessing goods, *chattels,* and *effects,* and of *disposing* of such *effects* for the good of the bank; would it be pretended that, under this latter provision, the power of *discounting* bills or notes, or of discounting at all, was given by the mere import of the word "effects" -- that the power of *receiving and disposing of effects* meant the power of discounting bills and notes? This can

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hardly be pretended.

If, then, this term be not synonymous with the words "bills" and "notes" when taken in connection with the power of discounting and of making loans, how can it become so by being connected with the right of acquisition and enjoyment, or with the *jus disponendi?* The power to sell or assign discounted notes cannot be deduced from the clause in the charter which authorizes the exercise of the usual banking powers granted to the banks of Mississippi, first, because in no charter granted by the state is it shown that such a right is expressly conferred; secondly, it is manifest that a traffic in the sale of its own paper, or in notes or bills discounted, is conformable neither with the regular functions of a bank nor reconcilable with the purposes of its institution. Banks are usually created for the purpose of making loans, and this in a medium, in theory at least, equal to money, not for the purpose of borrowing, or of raising means to eke out their daily existence by selling off their securities or their own paper. Their establishment

rests upon the idea of their possessing funds of their own as the foundation of their credit and of their circulation.

The practice of becoming brokers for the sale of their own paper or the paper of their customers to put themselves in funds is not, therefore, one of their regular functions, and can flow only from an abuse of these functions, and is a perversion of the legitimate ends of their creation. So too it is entirely inadmissible to place this practice of brokerage by the bank upon the mere absence of an inhibition in the charter; such a mode of reasoning cuts up entirely the admission that the banks have no power except such as is expressly granted or necessarily implied. The fallacy of the idea that the right to *dispose* of *effects* conferred by the charter of the Planters' Bank implied the right of an habitual and unrestricted sale or brokerage of discounted notes is exposed by adverting to another provision of the charter by which the amount of effects of every kind which the bank was permitted to acquire and dispose of was positively limited to a specified amount. The power of the bank being thus restricted, that power could by no sound reasoning be made coincident or coextensive with regular and permanent operations on the part of this corporation, for if its banking powers were deducible from such a limited privilege or were dependent upon it, of course, when this permitted limit should be attained, the operations of the bank would be at an end. It is clear, therefore, that these corporations, restricted as are all statutory corporations under the decisions of this Court, to the express grants contained in their charters and to implications necessary to and inseparable from those grants, never were by the provisions

of their charters invested with the power to assign bills or notes, and much less by such assignment to invest their assignee with the right of suing at law; that whatever power of assignment these corporations at any time may have possessed and whatever the effect implied in such assignment, both were conferred upon them in common with all other persons, natural or artificial, within the state, by a general public law, subject at all times to modification or repeal by the authority which enacted it. *Vid.* section 12 of the statute, Howard and

Hutchinson's Laws of Mississippi 373.

The actual repeal of such a statute cannot correctly be regarded as the violation of any vested right or the impairing of the obligation of a contract, for no one can claim to have a perfect and vested right, through all future time, in the mere capacity to do an act from the absence of a law forbidding that act. A pretension like this would forestall and prevent legislation upon every subject. A wholly different state of things would have existed had the assignment to the plaintiffs been made anterior to the repeal of the statute, for then the rights of these parties would have been vested and complete; but the assignment was in this instance subsequent, by more than a year, to the passage of the repealing statute, was a new and separate contract, and entered into with necessary knowledge of its provisions and made apparently in defiance thereof. This view of the question is clearly and forcibly presented by the Supreme Court of Louisiana, in the case of *Hyde v. Planters' Bank of Mississippi,* 8 Robinson 416, a case arising upon the laws and charters now under consideration, and in all its features essentially -- nay, *mutato nomine* -- literally the same with the present. It has been said that in the case from 8 Robinson the note was made after the enactment of the repealing statute. I think that this statement is not warranted by the statement of facts in that case. Certainly the reasoning of the court rests on no such hypothesis, for it covers the whole of the language and policy of the statute of Mississippi, and vindicates them to the utmost extent. In this case, the note was assigned after the enactment of the repealing law and with full knowledge thereof, and the assignment was an independent and posterior contract which the law had forbidden. The question, then, as to the validity of the statute of Mississippi seems to resolve itself into this inquiry -- whether a sovereign state of this Union possesses the right within her own territory to regulate the formation of contracts, to define the rights and interests such contracts shall give to the parties thereto, and to declare the modes and extent in and to which these may

be enforced by her own tribunals.

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To such an inquiry I can give none but an affirmative answer, and any other, I feel assured, is not evoked either by the language or spirit of the federal Constitution, and would be highly unjust and inconvenient with respect to the states.

With regard to the plaintiffs in error, no injustice nor hardship of any kind is perceived in enforcing against them the provisions of the statute of 1840. In the first place, they have, with full knowledge of the law, placed themselves directly in the attitude of resistance thereto, for they have entered into an agreement explicitly inhibited upon grounds of public policy, and this long after such inhibition was proclaimed to every person within the state. In the next place, there surely can be no merit in a combination the effects and manifest purposes of which were to deny to the holders of the notes of these banking corporations the power of making payment to them in their own currency and to enable the latter to seize or to appropriate to themselves or their favorites the substance of those very note holders to whom such right of payment was denied. A proceeding thus subversive of justice has not been heretofore sanctioned by this Court, and in one instance has been, to a certain extent -- indeed, as I think, to the whole length of the present case -- directly condemned. The case of *United States v. Robertson,* 5 Pet. 641, was a case in which a judgment had been recovered by the United States against the Bank of Somerset for an amount of money which had been deposited by a collector in that bank. By an act of Congress of the year 1818 it was provided that in any suit thereafter instituted by the United States against any corporate body for the recovery of money upon any bill, note, or other security, it should be lawful to summon as garnishees the debtors of such corporation, who were required to state on oath the amount in which they stood indebted at the time of serving such summons, for which amount judgment should be entered in favor of the United States in the same manner as if it had been due and owing to the United States. On 9 February, 1819, a year after the act of Congress giving the remedy by attachment to the United States, the Legislature of Maryland passed an act declaring that in payment of any debt due to or judgment obtained by a bank within that state, the notes of such bank should be received. Attachments were laid in behalf of the United States, after their judgment against the Bank of Somerset, on debts in the hands of various debtors to the bank, and on some of

these attachments judgments had been obtained. It was contended in behalf of these garnishees that they had a right to discharge their debts in the notes of the Bank of Somerset, as well in those cases in

which judgment had been obtained on attachment by the United States as in those wherein there were no judgments. Upon this question Chief Justice Marshall, in delivering the opinion of the Court, p. 30 U. S. 659 , remarks first, upon the Act of Congress of 1818

"That it operates a transfer from the bank to the United States of those debts which might be due from the persons who should be summoned as garnishees. They become, by the service of the summons, debtors of the United States, and cease to be debtors of the bank. But they owed to the United States precisely what they owed to the bank, and no more;"

2.

"That the act of the Legislature of Maryland of 1819, so far as respects debts on which judgments have not been obtained, embodies the general and just principles respecting effects, which are of common application. Every debtor may pay his creditor with the notes of that creditor. They are an equitable and legal tender. So far as these notes were in possession of the debtor at the time he was summoned as garnishee, they form a counterclaim which diminishes the debt due to the bank to the extent of that counterclaim. But the residue becomes a debt to the United States, for which judgment is to be rendered. May this judgment be discharged by the paper of the bank? On this subject, the Court is divided. Three of the judges are of opinion that, by the nature of the contract and by the operation of the act of Maryland upon it, an original right existed to discharge the debt in the notes of the bank, which original right remains in full force against the United States, who comes in as assignee in law, and not in fact, and who must therefore stand in the place of the bank. Three of the judges are of opinion that the right to pay the debt in the notes of the bank does not enter into the contract."

May not this decision, I inquire, be considered as substantially covering the whole ground of the case before us? For after stating that the garnishees became by the service of the summons the debtors of the United States and ceased to be the debtors of the bank, it goes on to declare that they owed to the United States what they owed the bank, and nothing more; that by the just and general principles of setoff, every debtor may pay his creditor with the notes of that creditor, which as to him are an equitable and legal tender. And by the unanimous declaration of the Court, not until after the claim against the garnishee was carried into a judgment and after the allowance of all rights of tender and setoff in the notes of the bank could payment be coerced from him in any other medium than the notes of the bank. One-half the Court deemed the garnishee, even after judgment, entitled to the same privileges against the creditor of the bank which he possessed

against the bank itself. This right, as between note holders and the assignees of a failing or insolvent bank, is fully sustained by the Court of Appeals of Maryland in the case of *Union Bank of Tennessee v. Ellicot, Morris & Gill,* 6 Gill & Johns. 364, and in that of *Bank of Maryland v. Ruff,* 7 *id.* 448, in which last case the authority of this Court is relied on. But at all events the principles of these decisions are broad enough to vindicate the legislation of Mississippi and the objects of that legislation against the imputation of oppression or hardship as respects these plaintiffs and all who may occupy a similar position, if legislation can need vindication or apology, the purposes of which are to prevent, if possible, the paper of these corporations, spread over the community by them, from utterly perishing on the hands of the note holder and to disappoint dishonest combinations to set the public laws at defiance, and further to oppress and ruin the note holder by taking his property and leaving him the worthless and false and simulated representatives of an equivalent. I am of the opinion that the judgment of the Supreme Court of Mississippi should in both these cases be affirmed.

ORDER

THE PLANTERS' BANK v. SHARP

This cause came on to be heard on the transcript of the record from the High Court of Errors and Appeals of the State of Mississippi and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this Court that the judgment of the said High Court of Errors and Appeals in this cause be and the same is hereby reversed with costs, and that this cause be and the same is hereby remanded to the said court to be proceeded with in conformity to the opinion of this Court and as to law and justice shall appertain.

ORDER

BALDWIN v. PAYNE

This cause came on to be heard on the transcript of the record from the High Court of Errors and Appeals of the State of Mississippi and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this Court that the judgment of the said High Court of Errors and Appeals reversing the judgment of the Circuit Court of Jefferson County in this cause be and the same in hereby reversed with costs and held as entirely void, and that the said judgment of the said Circuit Court of Jefferson County be in all things affirmed and remain

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in full force and virtue, the said judgment of the said High court notwithstanding, and that this cause be and the same is hereby remanded to the said High Court of Errors and Appeals, to be proceeded with in conformity to the opinion of this Court and as to law and justice shall appertain.

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