

**Hawthorne Vs. Calef**

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**Court :** US Supreme Court

**Decided On :** 1864

**Appeal No. :** 69 U.S. 10

**Appellant :** Hawthorne

**Respondent :** Calef

**Judgement :**

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**69 U.S. (2 Wall.) 10**

*ERROR TO THE SUPREME*

*COURT OF MAINE*

## **SYLLABUS**

A state statute repealing a former statute which made the *stock* of stockholders in a chartered company liable to the *corporation's* debts is, as respects creditors of the corporation existing at the time of the repeal,

a law impairing the obligation of contracts, and void. And this is so even though the liability of the stock is in some respects conditional only, and though the stockholder was not made, by the statute repealed, liable in any way in his *person* or property generally for the corporation's debts.

The Constitution of the United States ordains that "No state shall pass any law impairing the obligation of *contracts*. " With this provision in force, the State of Maine, on the 1st April, 1836, incorporated a railroad company the charter providing that "The *shares* of the individual stockholders should be liable for the *debts of the corporation*. " "And in case of *deficiency of attachable corporate property or estate*, " the provision went on to say,

"the *individual property, rights, and credits* of any stockholder shall be liable to the *amount of his stock, for all debts of the corporation* contracted prior to the transfer thereof, for the term of six months after judgment recovered against said corporation, and the same may be taken in *execution on said judgment* in the same manner as if said judgment and execution were against him individually, OR said creditor, after said judgment, may have his *action on, the case* against said individual stockholder, but in no case shall the *property, rights, and credits* of said stockholder be taken in execution, or attached as aforesaid, beyond the *amount of his said stock*. "

Another section provides that if sufficient corporate property to satisfy the execution could not be found, the officer having the execution should certify the deficiency on the execution and give notice thereof to the stockholder whose *property he was about to take*, and if such stockholder should show to the creditor or officer sufficient attachable *corporate* property to satisfy the debt, "his *individual property, rights, and credits shall thereupon be exempt* from attachment and execution."

The plaintiff, Hawthorne, who had supplied the corporation,

then embarrassed and insolvent, with materials to build its road, having obtained judgment as a creditor against *it*, and being unable to get from *it* satisfaction (the company having, in fact, no property), sued the defendant, Calef, who was a stockholder, both at the time when the debt was contracted and when judgment for it was rendered, and no transfer of whose stock had been made. A few months *after* the debt was contracted, the Legislature of Maine passed a statute repealing the "individual liability" clause of the charter.

On a question before the Supreme Court of Maine -- the highest court of law in that state -- whether such repeal was or was not repugnant to the clause, above cited, of the Constitution, that court held that it was not, that the original provision -- not making the stockholder personally liable in any way -- did not constitute a "contract" between the creditor and him, within the meaning of the Constitution, and that while, but for the repealing act, the plaintiff would have been entitled to recover of the stockholder individually to the extent of his stock, this repealing act had taken away and destroyed such right.

Judgment being given accordingly, by the said court in favor of the state statute, the correctness of such judgment was now, on error, before this Court.

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MR. JUSTICE NELSON delivered the opinion of the Court.

The question upon the provisions of the charter of the railroad company -- in connection with the sale of the property by the plaintiff to the corporation, out of which this debt accrued -- is whether a contract, express or implied, existed between him and the stockholder?

It is asserted in behalf of the latter that a contract existed only between the creditors and the corporation and that the obligation of the stockholder rests entirely upon a statutory liability, destitute of any of the elements of a contract.

Without stopping to discuss the question upon the clause of the statute, we think that the case falls within the principle of *Woodruff v. Trapnal*, [ [Footnote 1](#) ] and

*Curran v. State of Arkansas*, [ [Footnote 2](#) ] heretofore decided in this Court.

In the first of these cases, the charter of the bank provided that the bills and notes of the institution should be received in all payment of debts due to the state. The bank was chartered 2 November, 1836. On the 10th January, 1845, this provision was repealed, and the question was whether or not, after this repeal, the bills and notes of the bank outstanding at the time, were receivable for debts due to the state. The Court held after a very full examination that the clause in the charter constituted a contract with the holders of the bills and notes on the part of the state, and that the repealing act was void as impairing the obligation of the contract.

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In the second case, the charter of the bank contained a pledge or assurance that certain funds deposited therein should be devoted to the payment of its debts. It was held by the Court that this constituted a contract with the creditors, and that the acts of the legislature withdrawing these funds were void as impairing the obligation of the contract.

Now it is quite clear that the personal liability clause in the charter, in the present case, pledges the liability or guarantee of the stockholders, to the extent of their stock, to the creditors of the company, and to which pledge or guarantee the stockholders, by subscribing for stock and becoming members of it, have assented. They thereby virtually agree to become security to the creditors for the payment of the debts of the company, which have been contracted upon the faith of this liability.

This question has been repeatedly before the courts of the State of New York, and they place the obligation of the stockholders upon two grounds. The *first* is that of contract. In *Corning v. McCullough*, [ [Footnote 3](#) ] Chancellor Jones, then in the Court of Appeals, observes that the liability of the defendant, upon which the action is grounded, is for the payment of a debt of the company incurred by the purchase of merchandise of the plaintiffs, for the use and benefit of the company,

and wherein the defendant, as one of the members, was interested, and for which he thereby, and under the provisions of the charter, became and was, concurrently with the company, from the inception of the debt, personally liable. It is, he says, virtually and in effect, a liability upon a contract and the mutual agreement of the parties -- not, indeed, in form an express personal contract, but an agreement of equally binding obligation, consequent upon and resulting from the acts and admissions or implied assent of the parties. The *second* ground is upon the view that the legislature, by subjecting the stockholders to personal liability for the debts of the company, thereby removed the corporate protection

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from them as corporators, and left them liable as partners and associates as at common law. [ [Footnote 4](#) ]

There is another view of the case, involving a violation of the principal contract between the creditors and the corporation, which we think equally conclusive against the judgment of the court below. This view rests upon a principle decided in *Bronson v. Kinzie*, [ [Footnote 5](#) ] and the several subsequent cases of this class. There, Kinzie executed a bond mortgage to Bronson, conditioned to pay \$4,000 on the 1st of July, 1842, and covenanted, that in case of default, the mortgagee should sell the premises at public auction, and convey them to the purchaser. Subsequently to the execution on the mortgage, the legislature passed a law that mortgagors on a sale of the premises, under a decree of foreclosure in chancery, should have a right to redeem them at any time within twelve months from the day of sale. By another law it was provided that when the premises were offered for sale, they should not be struck off unless at two-thirds of a previous valuation. The court held that these acts so seriously affected the remedy of the mortgagee as to impair the obligation of the mortgage contract within the meaning of the Constitution, and declared them void. Now, applying the principle of this class of cases to the present one, by the clause in the charter subjecting the property of the stockholder, he becomes liable to the creditor, in case of the inability or insolvency of the company for its debts, to the extent of his stock. The creditor had this security when the debt was contracted with the company over

and above its responsibility. This remedy the repealing act has not merely modified to the prejudice of the creditor, but has altogether abolished, and thereby impaired, the obligation of his contract with the company.

We are of opinion, upon both of the grounds above recited, that the court below erred.

*Judgment reversed.*

[ [Footnote 1](#) ]

[51 U. S. 10](#) How. 190.

[ [Footnote 2](#) ]

[56 U. S. 15](#) How. 304.

[ [Footnote 3](#) ]

1 Comstock 47, 49.

[ [Footnote 4](#) ]

*Conant v. Van Schaick*, 24 Barbour 87.

[ [Footnote 5](#) ]

[42 U. S. 1](#) How. 311.