RALEIGH REGISTER AND NORTH-CAROLINA GAZETTE.

"Oure arethe plans of fair, delightful Peace,
"Unwarp'd by party rage, to live like Brothers."

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CASES DECIDED IN THE Supreme Court of N. Carolina.

At January Term, 1814.

FROM BEAUFORT.

Lewis Leroy *vs.* Joel Dickinson and others. The Injunction granted until the hearing. The Complainant entering into bond.

FROM BUNCOMBE.

David M. Carson, sen. and David M. Carson, jun. *vs.* Andrew Miller. The motion to dissolve the Injunction overruled, and the Injunction retained till the hearing.

State and James Gideon *vs.* Malcom Henry. Decided that the votes of a majority of the Justices present are requisite to elect a Register.

FROM BURKE.

State *vs.* David Greanlea. The motion to commit the Defendant under the Act relative to Fugitives from other States be overruled.

FROM CAMDEN.

John Wright's, ex'rs. *vs.* John Wright's heirs. New trial granted.

FROM CASWELL.

James Smith *vs.* Wm. B Brooks. The act of 1802 is not repealed by the act of 1803.

FROM DUPLIN.

Executors of Aaron Williams *vs.* Frederic Wells. New trial granted.

FROM HALIFAX.

Samuel Thorne and wife and others *vs.* Wm. Williams. The demurrer is sustained and the Bill dismissed with costs.

Wm. Jones and others *ps.* George Zollicoffer. The motion that the Bill be dismissed and stricken from the docket, be overruled.

John Crittenden *vs.* Harwood Jones. The act of Assembly of 1812 is contrary to the Constitution of the U. States, therefore void, and the stay of execution is set aside.

FROM JONES.

Bozel S. Orme *vs.* Stephen B. Forbs, Exec'r. of B. Smith. The Appeal retained.

FROM IREDELL.

Robert M'Connell *vs.* John Martin. New trial granted.

FROM MARTIN.

John Garrett *vs.* Moses Harrell and others. New trial refused.

FROM ORANGE.

Geo. Carrington *vs.* Thos. Carrington and Herbert Sims. The Injunction granted to be continued till the hearing.

Den on demise of Solomon Debow. Judgment for the Plaintiff.

FROM ROCKINGHAM.

David Shuttle *vs.* John Wardlow. New trial refused.

FROM ROWAN.

Jesse Lester *vs.* Wm. Zachary. New trial refused.

FROM STOKES.

Samuel and Wm. Fox, to the use of the Clerk's Office *vs.* Wm. Steele and Geo. Houser, securities, &c.—A Scire facias will not lie upon the bond given by the Defendants in this case.

FROM SURRY.

Joseph Williams, sen. *vs.* Geo. D. Hoktomb. Nonsuit entered.

John Martin *vs.* George Houser. New trial refused.

FROM WAKE.

Dennis Sampson Bradly *vs.* Geo. Carrington. New trial refused.

FROM WAYNE.

Zilpha Byrd *vs.* Henry Rouse.—All the witnesses summoned on behalf of the Plaintiff should be taxed against the Defendant.

FROM WILKES.

Hugh Allen, assig. *vs.* John Marlar. The evidence of the hand writing of the obligor was properly admitted. Judgment for Plaintiff.

Opinion of the Supreme Court, on the Constitutionality of the Suspension law—in the case of Jones vs. Crittenden; delivered by Chief Justice Taylor.

The law of which the defendant claims the benefit, was passed in 1812, and provides that any Court, rendering judgment against a debtor, for debt or damages between the 31st of December in that year and the 1st February 1814, shall stay the same until the first term or session of the Court after the latter period, upon the defendant's giving two freeholders as securities. The act also contains sundry details not necessary to be recited.

In deciding the momentous question, whether the will of the legislature, as expressed in this act, be incompatible with the will of the people, as expressed in their fundamental law, the Constitution of the United States, we disclaim all right or power to give judgment against the validity of a legislative act, unless its collision with the constitution appear to our understandings manifest and irreconcilable. On the contrary if patient and dispassionate consideration of the subject, produce any thing short of entire conviction, we hold ourselves bound to support a law.

The constitutional will of the legislature, inclination, not less than duty, prompts us to execute; for identified as its members are with the other citizens of the community, and faithfully representing their feelings and interests, we can never allow ourselves to think that the acts proceeding from them can be designed for any other purpose than the promotion of the general welfare; or can result from any other than the purest and most patriotic motives.

We have deliberately viewed the question in every light, in which the arguments of the learned counsel on both sides have presented it, and aided by such additional information as our own research or reflection could furnish, the result of our opinion is that the law in question is, unconstitutional, and cannot be executed by the judicial department, without violating the paramount duty of their oaths, to maintain the constitution of the United States.

This conclusion we derive, first from the plain and natural import of the words of the constitution of the United States.

2. From a consideration of the previously existing mischiefs, which it was the design of that valuable instrument to suppress and remedy.

Amongst the important objects which the people of the United States designed to accomplish by adopting the constitution, that of establishing justice, holds a conspicuous rank. This appears from the solemn declaration of the people themselves in the Preamble to that instrument. The enlightened statesmen, by whom it was originally framed, had reaped abundant instruction from history and experience. Long accustomed to contemplate the operation of those master principles and comprehensive truths, which form, at once, the defences and the ornament of human society; and, which alone can justly form the basis of the social compact; they designed to give them practical effect, for the benefit of the American people—to consecrate and make them perpetual. They well knew that while the principle of justice is deeply rooted in the nature and interest of man, and essential to the prosperity of States, it forms the strongest and brightest link in the chain, by which the Author of the Universe has united together the happiness and the duty of his creatures.

To give a proper direction to these general principles, the clause in the constitution which presents the question before us, was inserted. Some of its provisions are transcribed from the articles of confederation; others are added because experience had demonstrated that without them the Union of the States would be imperfect. The words are "No State shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, &c."

The obligation of a contract may be impaired by various modes and in different degrees; and the restrictive clause in the constitution does, according to our apprehension of its meaning, annul every act of a State legislature, which shall thereafter produce that effect, plainly and directly, in any degree. When, therefore, the validity of the law is maintained by the defendant's counsel, because it does not allow a debtor, who promises to pay in one thing, to pay in another; because it does not absolutely restrain the debtor from paying according to his engagement; or, because it does not allow a third person to interfere between the contracting parties—the answer is that the examples cited furnish stonger instances of a violation of the constitution than the case before us;—they may with stricter propriety be called cases of annulling a contract—but they certainly do not prove that the obligation of contracts is not impaired by the act under consideration.

Whatever law releases one party from any article of a stipulation, voluntarily and legally entered into by him with another, without the direct assent of the latter, impairs its obligation; because the rights of the creditor are thereby destroyed, and these are ever correspondent to, and coextensive with the duty of the debtor. The first principles of justice teach us that he to whom a promise is made under legal sanctions, should signify his consent, before any part of it can be rightfully cancelled by a legislative act.

The binding force of a contract may likewise, be impaired by compelling either party to do more than he has promised. If an act postponing the payment of debts be constitutional, what reasonable objection could be made to an act, which should enforce the payment before the debt becomes due? If, notwithstanding the constitutional barrier, it is competent for the legislature to hold out to all debtors, that although they fail to pay their debts when they become due, and their creditors are in consequence compelled to sue them, they shall nevertheless be indulged with a certain time beyond the judgment, superadded to the ordinary delays of the law; may not the Legislature, with equal authority, announce to all creditors the right of suing for their debts and inforcing payment before the day? Yet the rights of both parties established by the contract, are in the eye of justice, equally sacred; and whether those of the creditor are sacrificed to the convenience of the debtor, or the subject be reversed, we are compelled to think that the constitution is overlooked.

No unimportant part of the obligation of every contract, arises from the inducement the debtor is under to preserve his faith. With many persons, and it may be hoped, the greater number, a sense of justice and respect for character, form motives of sufficient strength; but how rarely does it happen, that a man lending his money, or selling his property on credit, estimates such motives so highly as to deem them a safe and exclusive ground of reliance? In most cases he would reserve both money and property in his own possession, were he not assured, that the law animates the industry and quickens the punctuality of his debtor; and that by its aid, he can obtain payment in six or nine months. Hence the well considered ceremonies of bonds, mortgages, and deeds of trust, more useful as the instruments of coercive justice, than as preserving the evidence of contract. The act under view destroys this assurance, and while it produces a state of things, the existence of which at the time of contract would have restrained the creditor from parting with his property, it encourages the debtor to relax his efforts to be punctual. It weakens his inducements to fulfil his engagement and thereby impairs its obligation.

The right to suspend the recovery of a debt for one period implies the right of suspending it for another; & as the state of things which called for the first delay, may continue for a series of years, the consequence may be a total stagnation of the business of society, by destroying confidence and credit amongst the citizens.

An argument urged and much relied on by the defendants counsel is, that the law in question bears only on the remedy, and is therefore within the sphere of legislative authority. But if in so doing it violates the constitution, it is not less invalid, than if it directly touched and annulled the right. Every one will agree, that a law, which should deny to all creditors the power of instituting the action of debt, covenant assumpsit or a bill in chancery, would invade the constitution; that a law which should limit the recovery of all debts, to so short a period after its passage, that it would be impossible, according to the course of the courts, to obtain a judgment would also be null and void; though such laws, ostensibly, bear only on the remedy, yet they do in reality, annihiliate the right. The law before us, it is conceded, does not go to the extent of either instance, yet it certainly diminishes the importance and value of the right. It is difficult to conceive how a law could otherwise impair an existing right than by withholding the remedy, which is in effect to suspend the right.

The undoubted right of the legislature to alter and reform the judicial system may, it is said, produce delay in the execution of a contract, equal to that which results from the present law: and it is urged that all such acts must upon the same principle be declared unconstitutional.

We cannot acquiesce in the final conclusion drawn from these premises, which, without hesitation we acknowledge to be correct.

All such laws, the legislature have an unquestionable right to enact, a right which the people have never surrendered, and the exercise of which is not forbidden by the constitution of the United States.

But it must be considered, that the primary, and essential object of all such laws, is the promotion of the administration of justice, it's advancement and improvement. If delay grow out of them; if any thing that bears the semblance of a violation of contract follow in their train; it is merely the unintended incident and consequence of the exercise of a lawful authority. It is different with the law before us; it's very design, as expressed in the title, is to do that against which the constitution has opposed its veto.

Many analogous powers it is argued have long existed in the state under the authority of the law; that their exercise has been highly convenient to the citizens, and has been universally acquiesced in; that all these must cease to have effect if the suspension law is unconstitutional, to the manifest detriment of the community.

If such effects follow from our decision, there are no citizens in the State who will more sincerely deplore them than ourselves. But we feel too deeply what we owe to the responsibility of our stations, to the obligation of our oaths, and the rights of the people and their posterity, to be turned aside from what we believe to be the post of duty, by any consideration of the consequences that may arise from continuing in it.

Let all these cases be patiently examined, and we think it will be seen that their analogy is not complete; that they may still exist and the powers under them be rightfully exercised, notwithstanding the decision in the present case.

The first instance is the stay of execution, which justices are allowed to grant upon judgments rendered by them. But here, the creditor is not concluded; he may appeal to the county court. Besides the constitution of the United States in the section under consideration employs the future tense "No state shall pass laws &c. It does not repeal these conflicting laws which were then in force; though several of [illegible] did in obedience to its spirit, forbear to re-enact laws in hostility with it. The law giving this power to magistrates was enacted long before the constitution was adopted.

Another example cited is that of the power constantly exercised by a Court of Chancery, in given time to a mortgager, on a bill filed against him to foreclose, to pay the debt before the decree is made absolute, or the land ordered to be sold.

Such a power has been exercised by that Court from very ancient times was one of the modes of administering a remedy on those contracts, known to the parties when they entered into it, and is a necessary consequence of the principles on which the constitution of the Court compels it to decide the rights of parties to a mortgage.

It is also in strict conformity with natural justice, for the land mortgaged being only a collateral security for the payment of the debt, and so understood by the creditor, he cannot be injured if his debt and interest are paid. It is upon the same principle, that a Court of Chancery exercises its jurisdiction of relieving against a penalty; because it is designed to secure the payment of money, and the court allows the creditor all that he expected when he made the contract. The intention of the parties is in all respects, effectuated; and the obligation of the contract is enforced, precisely in the way, both creditor and debtor knew it might be enforced when they entered into it. Another point of view may probably render the subject clearer. Such an order in the court of Chancery is not at all directed against the contract; but it is the answer of the court to a mortgagee, who brings his bill against the mortgagor, on whom it prays the Court to lay hands, and make him if he intends to redeem, to do it then, or ever after remain silent. When the Court therefore, is applied to for the purpose of lending its aid to an individual, in a matter which he deems necessary for his peace, it is clearly in its power to say upon what terms such interposition shall be extended. With the utmost propriety then, the court answers it cannot be, that a decree of foreclosure shall be made in the case, without giving reasonable time to the mortgagor to redeem." If there are special cases in which a Court of Chancery gives further time upon a bill to redeem, it must be upon the ground that the substantial understanding and agreement of the parties is that of a security for the money and the interest accruing, without having reference to any particular day of payment and that the safety of the debt is only intended to be provided for by the mortgage. Hence the mortgagee takes a bond for the debt, and the existence of the mortgage is no objection to the recovery of the debt. The giving further time on a bill to redeem has no influence on the bond, nor does it affect any proceeding to recover the debt in a court of law. Both jurisdictions move distinctly within the sphere of their respective orbits. The Court of Equity applies itself to the conscience of the party, requiring of him substantially to accept and perform what he originally expected, and what was intended by both parties; thereby enforcing rather than impairing the contract.

The act of 1789 has been pointed out to the notice of the Court, as containing a similar exercise of legislative power with the one under consideration. That act provides that no execution shall be levied on property of a minor in the hands of his guardian, until twelve months after a judgment on the Scire Facias.

An examination of the [illegible] this law will shew that it [illegible] mentary to the act of 1784, a remedy is given against [illegible] formerly possessed by the [illegible] The heir was at first liable [illegible] he was expressly bound in