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BILLS OF CREDIT.

At the request of a number of our Subscribers, we publish below, the opinion of a majority of the Supreme Court of the United States, in the important case of *Craig & others* v. *the State of Missouri*. This case involves the question of constitutionality, as to the power of State Governments issuing a paper currency to serve as a circulating medium. It was much relied upon in debate, at the last session of our Legislature, against the Bill for establishing a Bank of the State.

Mr. Chief Justice MARSHALL delivered the opinion of the Court: Justices THOMPSON, JOHNSON, and M'LEAN dissenting.

This is a writ of error to a judgment rendered in the Court of last resort, in the State of Missouri; affirming a judgment obtained by the State in one of its inferior Courts against Hiram Craig and others, on a promissory note.

The judgment is in these words: "and afterwards at a Court," &c. "the parties came into Court by their Attorneys, and, neither party desiring a Jury, the cause is submitted to the Court; therefore, all and singular the matters and things being seen and heard by the Court, it is found by them, that the said defendants did assume upon themselves, in manner and form, as the plaintiff by her counsel alleged. And the Court also find, that the consideration for which the writing declared upon and the assumpsit was made, was for the loan of loan office certificates, loaned by the State at her loan office at Chariton; which certificates were issued, and the loan made in the manner pointed out by an act of the Legislature of the said State of Missouri, approved the 27th day of June 1821, entitled an act for the establishment of loan offices, and the acts amendatory and supplementary thereto: and the Court do further find, that the plaintiff has sustained damages by reason of the non-performance of the assumptions and undertakings of them, the said defendants, to the sum of two hundred and thirty-seven dollars and seventy-nine cents, and do assess her damages to that sum. Therefore it is considered," &c.

The first inquiry is into the jurisdiction of the Court.

The twenty-fifth section of the judicial act declares, "that a final judgment or decree in any suit in the highest Court of law or equity of a State, in which a decision in the suit could be had, where is drawn in question" "the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favour of such their validity," "may be re-examined, and reversed or affirmed in the Supreme Court of the United States."

To give jurisdiction to this Court, it must appear in the record, 1. That the validity of a statute of the State of Missouri was drawn in question; on the ground of its being repugnant to the Constitution of the United States. 2. That the decision was in favour of its validity.

1. To determine whether the validity of a statute of the State was drawn in question, it will be proper to inspect the pleadings in the cause, as well as the judgment of the Court.

The declaration is on the promissory note, dated on the 1st day of August 1822, promising to pay to the State of Missouri, on the 1st day of November 1822, at the loan office in Chariton, the sum of one hundred and ninety-nine dollars ninety-nine cents, and the two per cent. per annum, the interest accruing on the certificates borrowed from the 1st of October 1821. This note is obviously given for certificates loaned under the act, "for the establishment of loan offices." That act directs that loans on personal securities shall be made of sums less than two hundred dollars. This note is for one hundred and ninety-nine dollars ninety-nine cents. The act directs that the certificates issued by the State shall carry two per cent interest from the date, which interest shall be calculated in the amount of the loan. The note promises to repay the sum, with the two per cent interest accruing on the certificates borrowed, from the 1st day of October 1821. It cannot be doubted that the declaration is on a note given in pursuance of the act which has been mentioned.

Neither can it be doubted that the plea of non assumpsit allowed the defendants to draw into question at the trial the validity of the consideration on which the note was given. Every thing which disaffirms the contract, every thing which shows it to be void, may be given in evidence on the general issue in an action of assumpsit. The defendants, therefore, were at liberty to question the validity of the consideration which was the foundation of the contract, and the constitutionality of the law in which it originated.

Have they done so?

Had the cause been tried before a jury, the regular course would have been to move the Court to instruct the jury that the act of assembly, in pursuance of which the note was given, was repugnant to the Constitution of the United States; and to except to the charge of the judges, if in favour of its validity: or a special verdict might have been found by the jury, stating the act of assembly, the execution of the note in payment of certificates loaned in pursuance of that act; and referring its validity to the Court.—The one course or the other would have shown that the validity of the act of assembly was drawn into question, on the ground of its repugnancy to the Constitution; and that the decision of the Court was in favour of its validity. But the one course or the other, would have required both a Court and jury. Neither could be pursued where the office of the jury was performed by the Court. In such a case, the obvious substitute for an instruction to the jury, or a special verdict, is a statement by the Court of the points in controversy, on which its judgment is founded. This may not be the usual mode of proceeding, but it is an obvious mode; and if the Court of the State has adopted it, this Court cannot give up substance for form.

The arguments of counsel cannot be spread on the record. The points urged in argument cannot appear. But the motives stated by the court on the record for its judgment, and which form a part of the judgment itself, must be considered as exhibiting the points to which those arguments were directed, and the judgment as showing the decision of the court upon those points. There was no jury to find the facts and refer the law to the court; but if the court, which was substituted for the jury, has found the facts on which its judgment was rendered; its finding must be equivalent to the finding of a jury. Has the court, then, substituting itself for a jury, placed facts upon the record, which, connected with the pleadings, show that the act in pursuance of which this note was executed was drawn into question, on the ground of its repugnancy to the Constitution?

After finding that the defendants did assume upon themselves, &c. the court proceeds to find "that the consideration for which the writing declared upon and the assumpsit was made, was the loan of loan office certificates loaned by the State at her loan office at Chariton; which certificates were issued and the loan made, in the manner pointed out by an act of the Legislature of the said State of Missouri, approved the 27 of June 1821, entitled," &c.

Why did not the court stop immediately after the usual finding that the defendants assume upon themselves? Why proceed to find that the note was given for loan office certificates issued under the act contended to be unconstitutional, and loaned in pursuance of that act; if the matter thus found was irrelevant to the qustion they were to decide?

Suppose the statement made by the court to be contained in the verdict of a jury which concludes with referring to the court the validity of the note thus taken in pursuance of the act; would not such a verdict bring the constitutionality of the act, as well as its construction, directly before the court? We think it would: such a verdict would find that the consideration of the note was loan office certificates, issued and loaned in the manner prescribed by the act. What could be referred to the court by such a verdict, but the obligation of the law?—It finds that the certificates for which the note was given, were issued in pursuance of the act, and that the contract was made in conformity with it. Admit the obligation of the act, and the verdict is for the plaintiff; deny its obligation, and the verdict is for the defendant.—On what ground can its obligation be contested, but its repugnancy to the constitution of the United States? No other is suggested. At any rate, it is open to that objection. If it be in truth repugnant to the constitution of the United States, that repugnancy might have been urged in the State, and may consequently be urged in this court; since it is presented by the facts in the record, which were found by the court that tried the cause.

It is impossible to doubt that, in point of fact, the constitutionality of the act, under which the certificates were issued that formed the consideration of this note, constituted the only real question made by the parties, and the only real question decided by the court. But the record is to be inspected with judicial eyes; and, as it does not state in express terms that this point was made, it has been contended that this court cannot assume the fact that it was made or determined in the tribunal of the State.

The record shows distinctly that this point existed, and that no other did exist; the special statement of facts made by the court as exhibiting the foundation of its judgment contains this point and no other. The record shows clearly that the cause did depend, and must depend, on this point alone. If in such a case, the mere omission of the court of Missouri, to say, in terms, that the act of the Legislature was constitutional, withdraws that point from the cause, or must close the judicial eyes of the appellate tribunal upon it: nothing can be more obvious, than that the provisions of the constitution, and of an act of Congress, may be always evaded: and may be often, as we think they would be in this case, unintentionally defeated.

But this question has frequently occurred; and has, we think, been frequently decided in this court. Smith *vs.* The State of Maryland, 6 Cranch, 286. Martin *vs.* Hunter's Lessee, 1 Wheat. 355. Miller *vs.* Nicholls, 4 Wheat. 311.—Williams *vs.* Norris, 12 Wheat. 117.—Wilson and others *vs.* The Black Bird Creek Marsh Company, 2 Peters, 245, and Harris *vs.* Dennie in this term; are all, we think, expressly in point. There has been perfect uniformity in the construction given by this court to the twenty-fifth section of the judicial act. That construction is, that it is not necessary to state, in terms, on the record, that the constitution or a treaty or law of the United States has been drawn in question or the validity of a State law, on the ground of its repugnancy to the constitution. It is sufficient if the record shows that the constitution, or a treaty or law of the United States must have been construed, or that the constitutionality of a State law must have been questioned; and the decision has been in favour of the party claiming under such law.

We think, then, that the facts stated on the record presented the question of repugnancy between the constitution of the United States and the act of Missouri to the court for its decision. If it was presented, we are to inquire,

2. Was the decision of the court in favour of its validity?

The judgment in favour of the plaintiff is a decision in favour of the validity of the contract, and consequently of the validity of the law by the authority of which the contract was made.

The case is, we think, within the twenty-fifth section of the judicial act, and consequently within the jurisdiction of this court.

This brings us to the great question in the cause: Is the act of the Legislature of Missouri repugnant to the constitution of the United States?

The counsel for the plaintiffs in error maintain, that it is repugnant to the constitution, because its object is the omission of bills of credit contrary to the express prohibition contained in the tenth section of the first article.

The act under the authority of which the certificates loaned to the plaintiffs in error were issued, was passed on the 25th of June 1821, and is entitled "an act for the establishment of loan offices." The provisions that are material to the present inquiry, are comprehended in the third, thirteenth, fifteenth, sixteenth, twenty-third and twenty-fourth sections of the act, which are in these words:

Section the third enacts: "that the auditor of public accounts and treasurer, under the direction of the governor, shall, and they are hereby required to issue certificates, signed by the said auditor and treasurer, to the amount of two hundred thousand dollars, of denominations not exceeding ten dollars, nor less than fifty cents (to bear such device as they may deem the most safe,) in the following form, to wit: "This certificate shall be receivable at the treasury, or any of the loan offices of the State of Missouri, in the discharge of taxes or debts due to the State, for the sum of $ ———, with interest for the same, at the rate of two per centum per annum from this date, the ———day of ——— 182 ."

The thirteenth section declares: "that the certificates of the said loan office shall be receivable at the treasury of the State, and by all tax gatherers and other public officers, in payment of taxes or other moneys now due to the State or to any county or town therein, and the said certificates shall also be received by all officers civil and military in the State, and in the discharge of salaries and fees of office."

The fifteenth section provides: "that the commissioners of the said loan offices shall have power to make loans of the certificates, to citizens of this State, residing within their respective districs only, and in each district a proportion shall be loaned to the citizens of each county therein, according to the number thereof." &c.

Section sixteenth. "That the said commissioners of each of the said offices are further authorised to make loans on personal securities by them deemed good and sufficient, for sums less than two hundred dollars; which securities shall be jointly and severally bound for the payment of the amount so loaned, with interest thereon," &c.

Section twenty-third. "That the general assembly shall, as soon as may be, cause the salt springs and lands attached thereto, given by Congress to this State, to be leased out, and it shall always be the fundamental condition in such leases, that the lessee or lessees shall receive the certificates hereby required to be issued, in payment for salt, at a price not exceeding that which may be prescribed by law: and all the proceeds of the said salt springs, the interest accruing to the State, and all estates purchased by officers of the said several offices under the provisions of this act, and all the debts now due or hereafter to be due to this State; are hereby pledged and constituted a fund for the redemption of the certificates hereby required to be issued, and the faith of the State is hereby also pledged for the same purpose."

Section twenty-fourth. "That it shall be the duty of the said auditor and treasurer to withdraw annually from circulation, one-tenth part of the certificates which are hereby required to be issued."

The clause in the constitution which this act is supposed to violate is in these words: "No State shall" "emit bills of credit."

What is a bill of credit? What did the constitution mean to forbid?

In its enlarged, and perhaps its literal sense, the term "bill of credit" may comprehend any instrument by which a State engages to pay money at a future day: thus including a certificate given for money borrowed. But the language of the constitution itself, and the mischief to be prevented, which we know from the history of our country, equally limit the interpretation of the terms. The word "emit," is never employed in describing those contracts by which a State binds itself to pay money at a future day for services actually received, or for money borrowed for present use; nor are instruments executed for such purposes, in common language, denominated "bills of credit." To "emit bill of credit," conveys to the mind the idea of issuing paper intended to circulate through the community for its ordinary purposes, as money, which paper is reedeemable at a future day. This is the sense in which the terms have been always understood.

At a very early period of our colonial history, the attempt to supply the want of the precious metals by a paper medium was made to a considerable extent; and the bills emitted for this purpose have been frequently denominated bills of credit. During the war of our revolution, we were driven to this expedient; and necessity compelled us to use it to a most fearful extent. The term has acquired an appropriate meaning; and "bills of credit" signify a paper medium, intended to circulate between individuals, and between government and individuals, for the ordinary purposes of society. Such a medium has been always liable to considerable fluctuation. Its value is continually changing; and these changes, often great and sudden, expose individuals to immense loss, are the sources of ruinous speculations, and destroy all confidence between man and man. To cut up this mischief by the roots, a mischief which was felt through the U. States, and which deeply affected the interest and prosperity of all; the people declared in their constitution, that no State should emit bills of credit. If the prohibition means any thing, if the words are not empty sounds, it must comprehend the emission of a paper medium, by a State Government, for the purpose of common circulation.

What is the character of the certificates issued by authority of the act under consideration? What office are they to perform? Certificates signed by the auditor and treasurer of the State, are to be issued by those officers to the amount of two hundred thousand dollars, of denominations not exceeding ten dollars, nor less than fifty cents. The paper purports on its face to be receivable at the treasury, or at any loan office of the State of Missouri, in discharge of taxes or debts due to the State.

The law makes them receivable in discharge of all taxes, or debts due to the State, or any county or town therein; and of all salaries and fees of office, to all officers civil and military within the State; and for salt sold by the lessees of the public salt works. It also pledges the faith and funds of the State for their redemption.

It seems impossible to doubt the intention of the Legislature in passing this act, or to mistake the character of these certificates, or the office they were to perform. The denominations of the bills, from ten dollars to fifty cents, fitted them for the purpose of ordinary circulation; and their reception in payment of taxes, and debts to the government and to corporations, and of salaries and fees, would give them currency. They were to be put into circulation; that is, emitted by the government. In addition to all these evidences of an intention to make these certificates the ordinary circulating medium of the country, the law speaks of them in this character; and directs the auditor and treasurer to withdraw annually one-tenth of them from circulation. Had they been termed "bills of credit," instead of "certificates," nothing would have been wanting to bring them within the prohibitory words of the constitution.

And can this make any real difference? Is the proposition to be maintained, that the constitution meant to prohibit names and not things? That a very important act, big with great and ruinous mischief, which is expressly forbidden by words most appropriate for its description: may be performed by the substitution of a name? That the constitution, in one of its most important provisions, may be openly evaded by giving a new name to an old thing? We cannot think so.—We think the certificates emitted under the authority of this act, are as entirely bills of credit, as if they had been so denominated in the act itself.

But it is contended, that though these certificates should be deemed bills of credit, according to the common acceptation of the term, they are not so in the sense of the constitution; because they are not made a legal tender.

The constitution itself furnishes no countenance to this distinction. The prohibition is general. It extends to all bills of credit, not to bills of a particular description. That tribunal must be bold indeed, which, without the aid of other explanatory words, could venture on this construction. It is the less admissible in this case, because the same clause of the constitution contains a substantive prohibition to the enactment of tender laws. The constitution, therefore, considers the emission of bills of credit, and the enactment of tender laws, as distinct operations, independent of each other, which may be separately performed. Both are forbidden. To sustain the one, because it is not also the other; to say that bills of credit may be emitted, if they be not made a tender in payment of debts; is, in effect, to expunge that distinct independent prohibition, and to read the clause as if it had been entirely omitted. We are not at liberty to do this.

The history of paper money has been referred to, for the purpose of showing that its great mischief consists in being made a tender; and that therefore the general words of the constitution may be restrained to a particular intent.

Was it even true, that the evils of paper money resulted solely from the quality of its being made a tender, this court would not feel itself authorised to disregard the plain meaning of words, in search of a conjectural intent to which we are not conducted by the language of any part of the instrument. But we do not think that the history of our country proves either, that being made a tender in payment of debts, is an essential quality of bills of credit; or the only mischief resulting from them. It may, indeed, be the most pernicious; but that will not authorise a court to convert a general into a particular prohibition.

We learn from Hutchinson's History of Massachusetts, vol. 1, p. 402, that bills of credit were emitted for the first time in that colony in 1690. An army returning unexpectedly from an expedition against Canada, which had proved as disastrous as the plan was magnificent, found the government totally unprepared to meet their claims. Bills of credit were resorted to, for relief from this embarrassment. They do not appear to have been made a tender: but they were not on that account the less bills of credit, nor were they absolutely harmless. The emisssion, however, not being considerable, and the bills being soon redeemed, the experiment would have been productive of not much mischief, had it not been followed by repeated emissions to a much larger amount. The subsequent history of Massachusetts abounds with proof of the evils with which paper money is fraught, whether it be or be not a legal tender.

Paper money was also issued in other colonies, both in the north and south; and whether made a tender or not, was productive of evils in proportion to the quantity emitted. In the war which commenced in America in 1755, Virginia issued paper money at several sessions, under the appellation of treasury notes. This was made a tender. Emissions were afterwards made in 1760, in 1771, and in 1773. These were not made a tender; but they circulated together; were equally bills of credit; and were productive of the same effects. In 1775 a considerable emission was made for the purposes of the war. The bills were declared to be current, but were not made a tender. In 1776, an additional emission was made, and the bills were declared to be a tender. The bills of 1775 and 1776 circulated together; were equally bills of credit; and were productive of the same consequences.

Congress emitted bills of credit to a large amount; and did not, perhaps could not, make a legal tender. This power resided in the States. In May 1777, the Legislature of Virginia passed an act for the first time making the bills of credit issued under the authority of Congress a tender so far as to extinguish interest.—It was not until March 1781 that Virginia passed an act making all the bills of credit which had been emitted by the state, a legal tender in payment of debts. Yet they were in every sense of the word bills of credit, previous to that time; and were productive of all the consequences of paper money. We cannot then assent to the proposition, that the history of our country furnishes any just argument in favour of that restricted construction of the constitution, for which the counsel for the defendant in error contends.

The certificates for which this note was given, being in truth "bills of credit" in the sense of the constitution, we are brought to the inquiry:

Is the note valid of which they form the consideration?

It has been long settled, that a promise made in consideration of an act which is forbiden by law is void. It will not be questioned, that an act forbidden by the constitution of the United States, which is the supreme law, is against law. Now the constitution forbids a State to "emit bills of credit." The loan of these certificates is the very act which is forbidden. It is not the making of them while they lie in the loan offices; but the issuing of them, the putting them into circulation, which is the act of emission; the act that is forbidden by the constitution. The consideration of this note is the emission of bills of credit by the State. The very act which constitutes the consideration, is the act of emitting bills of credit in the mode prescribed by the law of Missouri; which act is prohibited by the constitution of the United States.

Cases which we cannot distinguish from this in principle, have been decided in State courts of great respectability; and in this court. In the case of the Springfield Bank *vs.* Merrick et al. 14 Mass. Rep. 322, a note was made payable in certain bills, the loaning or negotiating of which was prohibited by statute, inflicting a penalty for its violation. The note was held to be void. Had this note been made in consideration of these bills, instead of being made payable in them, it would not have been less repugnant to the statute; and would consequently have been equally void.

In Hunt *vs.* Knickerbocker, 5 Johns. Rep. 327, it was decided that an agreement for the sale of tickets in a lottery, not authorised by the Legislature of the State, although instituted under the authority of the government of another State, is contrary to the spirit and policy of the law, and void. The consideration on which the agreement was founded being illegal, the agreement was void. The books, both of Massachusetts and New-York, abound with cases to the same effect. They turn upon the question whether the particular case is within the principle, not on the principle itself. It has never been doubted, that a note given on a consideration which is prohibited by law, is void. Had the issuing or circulation of certificates of this or of any other description been prohibited by a statute of Missouri, could a suit have been sustained in the courts of that State, on a note given in consideration of the prohibited certificates? If it could not, are the prohibitions of the constitution to be held less sacred than those of a State law?

It had been determined, independently of the acts of Congress on that subject, that sailing under the license of an enemy is illegal. Patton *vs.* Nicholson, 3 Wheat. 204, was a suit brought in one of the courts of this district on a note given by Nicholson to Patton, both citizens of the United States, for a British license. The United States were then at war with Great Britain; but the license was procured without any intercourse with the enemy. The judgment of the circuit court was in favour of the defendant; and the plaintiff sued out a writ of error. The counsel for the defendant in error was stopped, the court declaring that the use of a license from the enemy being unlawful, one citizen had no right to purchase from or sell to another such a license, to be used on board an American vessel. The consideration for which the note was given being unlawful, it followed of course that the note was void.

A majority of the court feels constrained to say that the consideration on which the note in this case was given, is against the highest law of the land, and that the note itself is utterly void. In rendering judgment for the plaintiff, the court for the State of Missouri decided in favour of the validity of a law which is repugnant to the constitution of the U. States.

In the argument, we have been reminded by one side of the dignity of a sovereign State; of the humiliation of her submitting herself to this tribunal; of the dangers which may result from inflicting a wound on that dignity: by the other, of the still superior dignity of the people of the United States; who have spoken their will, in terms which we cannot misunderstand.

To these admonitions, we can only answer: that if the exercise of that Jurisdiction which has been imposed upon us by the constitution and laws of the United States, shall be calculated to bring on those dangers which have been indicated, or if it shall be indispensable to the preservation of the union, and consequently of the independence and liberty of those