*295] *JAMES INNERARITY, PLAINTIFF IN ERROR, *v.* THOMAS BYRNE.

A citation is not necessarily a part of the record, and the fact of its having been issued and served may be proved *aliunde*.

Mr. Bagby moved to dismiss the writ of error in this case for the want of a citation. None appeared in the record.

Mr. Justice McLEAN delivered the opinion of the court, saying, that the citation was not necessarily a part of the record, it forming no part of the proceedings of the court below. The presumption is, that one was issued when the writ of error was allowed, and it may be proved *aliunde*.

Motion overruled, and case continued to next term.

WILLIAM G. COOK, PLAINTIFF IN ERROR, *v.* JOHN L. MOFFAT AND JOSEPH CURTIS, DEFENDANTS IN ERROR.

A contract, made in New York, is not affected by a discharge of the debtor under the insolvent laws of Maryland, where the debtor resided, although the insolvent law was passed antecedently to the contract.[1]

The prior decisions of this court upon this subject reviewed and examined.

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[1] CITED. *Planters' Bank* v. *Sharp*, 6 How., 328; *Supervisors* v. *Galbraith*, 9 Otto, 218; *Gebhard* v. *Canada Southern R'y Co.*, 17 Blatchf., 418.

See also *Hills* v. *Carlton*, 74 Mo., 160; *Bedell* v. *Scruton*, 54 Vt., 495.

A non-resident plaintiff who has brought suit in the courts of the State where the defendant resides has subjected himself to the jurisdiction of that State, and is bound by a discharge afterwards granted under the insolvent laws of that State. *Davidson* v. *Smith*, 1 Biss., 346. By obtaining a judgment in the Circuit Court of the United States for another State, upon a record of the judgment of the State court, the plaintiff has not changed his position. A satisfaction of the judgment in the State court would operate as a satisfaction of that in the United States court; and whatever would bar the former, would also bar the latter. Although a State insolvent law has no force or validity outside of the State, except such as may be given it by comity, the principle of the Constitution of the United States, that full faith and credit shall be given in each State to the judicial proceedings of every other State, requires that judgments when sued on in another State shall be considered of the same force and effect as in the State wherein they were originally rendered. Ib.

A discharge of a debtor under a State insolvent law is invalid against a creditor or citizen of another State who has never voluntarily subjected himself to the laws of the State where the discharge was obtained, otherwise than by the origin of his contract, and the plea of such discharge is insufficient to bar the rights of the plaintiff. *Hale* v. *Baldwin*, 1 Cliff., 511; *Stevenson* v. *King*, 2 Id., 1; *Byrd* v. *Badger*, McAll., 263; *Kendall* v. *Badger*, Id., 523.

Such discharges are valid as to alien creditors residing in the State at the time the contract was made. *Von Glahn* v. *Varrenne*, 1 Dill., 515.

A negotiable note endorsed to a non-resident of the State wherein the

THIS case was brought up, by writ of error, from the Circuit Court of the United States for the District of Maryland.

Cook was a citizen of Maryland, and Moffat and Curtis were citizens of New York.

It was an action brought, in July, 1835, by Moffat and Curtis against Cook, upon the common money counts. Cook confessed judgment, subject to the opinion of the court upon the following case stated, namely:—

In Circuit Court of the United States, Fourth Circuit, District of Maryland.

John L. Moffat and Joseph Curtis, surviving partners of *Jonathan Wilmarth*, v. *William G. Cook.*

Statement of Facts. John L. Moffat, Joseph Curtis, and Jonathan Wilmarth (the last of whom is now deceased) were citizens of the State of New York and resident there, and partners trading under the name and firm of Wilmarth, Moffat, & Curtis, and the defendant was a citizen and resident of Maryland during the times when the contracts and transactions upon which this suit is founded, or which constitutes the causes of this action, were entered into and had and made between the said firm and said Cook.

That the course of dealing was, that Cook, the defendant, used to write to said firm, ordering such articles or goods as he wanted, and they, said firm, sent them to him, and charged the goods in *their books. In order to settle the account current from time to time, Cook sent to the said [*296
firm (usually by mail, sometimes, perhaps, otherwise) his note at six months, and these notes averaged $500 per month, and were punctually paid, for a time, in Baltimore. Cook at length became embarrassed, and wanted extensions, until he stopped payment entirely; being then indebted to said firm, on book account, ... $2,104 98

And owing	1 note, due 4th April, 1832, for .	500 00
"	1 note, due 14th May, 1832, for .	500 00
"	1 note, (do not know exactly when due),	416 02
"	1 note, due 2d June, 1832, for .	500 00
"	I note, due 30th June, 1832, for . .	500 00
"	1 note, due 1st July, 1832, for .	800 00
"	1 note, due 13th August, 1832, for	500 00
"	1 note, due 24th September, 1832, for	500 00
	Total debt, ...	$6,321 00

discharge is granted, is not barred by the discharge. *Towne* v. *Smith*, 1 Wood. & M., 115; see *Perry Manuf. Co.* v. *Brown*, 2 Id., 449.

The above notes were remitted by Mr. Cook to said firm previously to March, 1832, when he stopped payment. On the 7th June following, his New York creditors generally agreed to give him time to pay, and the said firm of Wilmarth, Moffat, & Curtis, about that time, by arrangement made with Mr. Disosway, Cook's attorney in New York, gave time, and took Cook's three notes, drawn payable to the said firm, for the sums following, all dated 12th May, 1832, as the respective time as follows, viz. :—

One, 12 months after date, for . . .	$2,107 00
One, 15 months after date, for	2,107 00
One, 18 months after date, for . . .	2,107 03
	$6,321 03

These notes were drawn and dated at Baltimore by Cook, and sent by him to his said attorney at New York, and there delivered by said attorney to the said firm; they were given for the amount of Cook's account, and the notes then had and held by said firm against Cook; the old notes being then given up to his attorney. These three notes and the consideration thereof, namely, the goods sold and delivered as aforesaid, constitute the ground of this action; the amount of the notes being the amount claimed. It is also admitted, that said Cook has applied for and obtained the benefit of the insolvent laws of Maryland since such notes fell due.

EDWARD HINKLEY, *Attorney for Plaintiffs.*
J. GLENN, *for Defendant.*

Upon the foregoing statement of facts, the plaintiffs pray for a general and unqualified judgment, notwithstanding the release of Cook, since the making of said notes, under the insolvent laws of Maryland; and the plaintiffs rely upon
*297] the cases of *Ogden* v. **Saunders*, 12 Wheat., 213; *Boyle* v. *Zacharie and Turner*, 6 Pet., 634; *Frey* v. *Kirk*, 4 Gill. & J. (Md.), 509.

The circumstance of the notes being dated and made at Baltimore, in favor of citizens, at the time, of New York, does not make the contract a Maryland contract, any more than did the acceptance of bills of exchange by Mr. Ogden, in the State of New York, make such acceptance a New York contract, so as to be discharged by Mr. Ogden's release under the insolvent laws of that State.

The evidences of contracts made between citizens of different States cannot bear date in both the States of the respective parties. In the nature of things, and according to the

course of business, they would bear date and be signed by one party only, in one of the States; most commonly in the State of the citizenship and residence of the party signing. And it would be immaterial in principle in which of the States it might bear date. It is a contract between citizens of different States at the time when made, and this is the fact and the principle which excludes it from the operation and effect of a release of the debtor under the insolvent laws of his State.

EDWARD HINKLEY, *Attorney for Plaintiffs.*

1. The defendant's attorney insists that the contract was to be performed in Maryland, and governed by the laws of Maryland, and that the judgment must be to exempt the future acquisitions of the defendant from execution.

2. That at all events the judgment must be so entered as to exempt the defendant's person from arrest.

J. GLENN, *for Defendant.*

Judgment for the Plaintiffs upon the Case stated.

Whereupon, all and singular the premises being seen, heard, and by the court here fully understood, for that it appears to the court, that the said John L. Moffat and Joseph Curtis are entitled to recover in the plea aforesaid. Therefore, it is considered by the court here, that the said John L. Moffat and Joseph Curtis recover against the said William G. Cook, as well the sum of twelve thousand dollars, current money, the damages in the declaration of the said John L. Moffat and Joseph Curtis mentioned, as the sum of seventeen dollars and twenty-five cents adjudged by the court here unto the said John L. Moffat and Joseph Curtis, on their assent, for their costs and charges by them about their suit in this behalf laid out and expended. And the said William G. Cook in mercy, &c.

Memorandum. Judgment rendered in this cause on this 21st day of April, 1836, for the damages laid in the declaration and costs of suit; the said damages to be released on payment of $7,335.57, with interest from 21st day of April, 1836, and costs of suit.

Memorandum. That no execution against the person of the defendant be issued in the above cause on said judgment without the leave of the court.

*To review this judgment the case was brought up to this court. [*298

The cause was argued by *Mr. Mayer*, and *Mr. Johnson*, for

the plaintiff in error, and *Mr. Hinkley*, for the defendants in error.

Mr. Mayer entered into a critical analysis of all the opinions which had been given in this court on the subject of State insolvent laws, from all which he argued, that the philosophy of the law had never been settled; that, in consequence of the want of harmony in those opinions, the whole subject ought to be again reviewed. There was a difficulty in annexing a meaning to some terms in the constitution which were in themselves uncertain; such, for example, as the phrase, "impairing the obligation of contracts." This expression was supposed to include a prohibition to pass insolvent laws; and yet in *Sturges* v. *Crowninshield*, 4 Wheat., 122, it appeared to be conceded that a State might pass such laws, operating only upon its own citizens. It was also admitted, on all hands, that the United States could pass bankrupt laws, which dissolved a contract entirely. Now, if these laws were prohibited on account of their supposed dishonesty, it was unaccountable that a power to extend them over the whole nation should have been conferred upon Congress. Certainly laws do not become less mischievous by becoming more extensive. It would seem as if bankrupt laws were not considered as impairing the obligation of contracts. In the debates of 1787, they were spoken of as mere commercial regulations, like damages upon bills of exchange. Luther Martin says that the prohibition meant to exclude tender laws, and retrospective laws. All nations have bankrupt laws, and it is not surprising that the power to make them was given to Congress, as auxiliary to the general one of regulating commerce. These State laws only stay all judicial proceedings, like statutes of limitation. It will not do to say that statutes of limitation rest on a presumption that the debt has been paid, because where they apply to land there can be no such presumption.

In support of these and similar views he cited Secret Proceedings and Debates of the Convention, Yates's Notes, 70, 71, 246, 247; 3 Madison Papers, 1442, 1443, 1448, 1480, 1549, 1552, Federalist, 80th number; Story, Confl. of L., §§ 312, 395, 404, 422, 438.

Mr. Hinkley, for defendants in error.

It is understood that the question raised upon the statement of facts in this case was decided in the case of *Ogden* v. *Saunders*, 12 Wheat., 213.

It will be contended that the court cannot consistently with

law and the constitution of the United States give an effect to State insolvent laws greater or more extensive than that given by the decision in that case.

*The constitution is to be construed with reference to its general as well as to its particular intents. [*299

The general government emanates from the people, and its powers are to be exercised directly upon them and for their benefit. *McCulloh* v. *Maryland*, 4 Wheat., 316; *Cohens* v. *Virginia*, 6 Id., 413.

Moreover the constitution is an agreement or compact between each individual of the people and all the rest, as well as between each one of the States and all the others.

The States, as to their sovereign and exclusive powers, are foreign to each other, as well as to the federal government. *Woodhull et al.* v. *Wagner*, Baldw., 296.

It is said that there is great obscurity in the clause of the constitution, art. 1, § 10, which declares, among other things, that "no State shall pass any law impairing the obligation of contracts." But if we construe the language as it stands, it is clear, that, forming what logicians call a universal negative proposition, and being absolute and imperative,—

1. It excludes every kind and degree of what it prohibits, whatever that be. This has been seen by the court. *Sturges* v. *Crowninshield*, 4 Wheat., 122; *Green* v. *Biddle*, 8 Id., 84.

2. Consequently it excludes every cause, mode, and manner, by which the thing prohibited may be effected. Hence it is immaterial what may be the title, provisions, or professed object of a State law, if, in its effect, it impair the obligation of a contract in the sense of the constitution.

3. It may be admitted, that, in the absence of any bankrupt law of Congress, the States may pass insolvent or bankrupt laws, provided their effect be not extended to impair the obligation of contracts. The power granted to Congress by the constitution, art. 1, § 8, "to establish uniform laws on the subject of bankruptcies throughout the United States," is permissive, not imperative. The decisions which are in accordance with this construction need not be disturbed, however difficult it may be to reconcile the exercise of the power by the States with the prohibitory clause in relation to impairing the obligation of contracts. Perhaps it can only be done in the manner in which it has been done by the decision of Justice Johnson in the case of *Ogden* v. *Saunders*, by allowing the States to legislate for their own citizens in matters exclusively within the jurisdiction of their own courts, but not for citizens of other States who have a right to the jurisdiction of the courts of the United States. The justice, policy, or humanity

of insolvent or bankrupt laws is not so much a question for the courts as for the legislatures. If the State legislatures can constitutionally pass such laws, their own courts may be bound to administer them to all suitors within their jurisdiction. See *Babcock* v. *Weston*, 1 Gall., 168.

4. A creditor may waive his constitutional rights. *Consensus* *[*300] *vincit legem.* What acts may amount to a waiver it is for the court to determine. It has been decided, that receiving a dividend under the insolvent law of a State is evidence of a waiver. *Clay* v. *Smith*, 3 Pet., 411. Making himself a party to the proceedings under a State insolvent law in other ways may have the same effect. Baldw., 299; *Buckner* v. *Finley*, 2 Pet., 586. But a citizen of one State, by simply becoming a party to a commercial contract with a citizen of another State, does not waive any right under the constitution of the United States. This point is involved in the question put for decision by Justice Johnson in the case of *Ogden* v. *Saunders*, 12 Wheat., 358. If, indeed, this were construed to be a waiver, it would in effect take away the jurisdiction of the courts of the United States. What now is the meaning of the phrase *impairing the obligation of a contract?*

The word *contract* is an artificial term of very extensive signification. It is collective and generic, embracing a great number of individuals, but comprehending only the essential properties of each. It may be defined an agreement, not prohibited by law, between two parties at the least, whereby each, for a sufficient consideration, promises or undertakes to do or not to do something. What one promises or gives is ordinarily the consideration for what the other promises or gives. There is a duty imposed on each party by the laws of God and by the laws of man, in civil society, to perform what is stipulated in the contract on his part to be performed. This is the obligation of the contract.

There may be, and usually are, two obligations in a contract, one appertaining to each party. When one party has fulfilled his obligation, there remains only the obligation of the other party. Although the contract include a moral as well as a legal obligation, yet the legal obligation only is intended in the constitution. The moral obligation acts upon the conscience, understanding, and free will of man, and cannot be enforced by human laws or courts of justice. It may die and revive again. It may remain and be the consideration of a new promise after the legal obligation is released by law. According to Webster, the word *impair* is of French derivation, and signifies to make worse, to lessen the value of.

With reference to the constitution of the United States the term *contracts* must embrace all subjects to which the judicial powers extend, whether of common law, equity, or admiralty and maritime jurisdiction.

The contract in question is one of common law jurisdiction, and must be adjudicated with reference to the rules of this jurisdiction. There are three sources of law, to one or more of which the court may look for rules to guide. They are distinguished as *lex rei sitæ*, *lex loci contractûs*, and *lex fori*. Much depends upon a correct understanding and applicability of these laws, in any given case, as to the results to which the court may be led.

*If the subject of the contract be land, the *lex rei sitæ* takes precedence, and the place of the contract, [*301 or the citizenship or domicile of the parties, is immaterial. All rights and titles in the subject must be governed by the law of the State in which it is situate. And the decisions of the courts of the State will be respected as to what the law is. *Bronson* v. *Kinzie*, 1 How., 316. The *lex loci contractûs* is said in general to govern in determining the nature, validity, and interpretation of contracts. Story, Confl. of L., § 241; *The Bank of the United States* v. *Donally*, 8 Pet., 361. And sometimes the law of the place where the contract is to be performed is said to govern.

There is a nice discrimination to be made by courts in regard to the source of the law, as well as to the nature of the law, which ought to govern them.

As to the contract now under consideration, we are furnished with no law, either of New York or of Maryland, in regard to its nature, validity, or interpretation. If not prohibited, it is not to be adjudged by their laws. The right of the parties to enter into the contract was not granted by either of those States. It is a right of personal liberty which was conquered by our fathers, and was inherent in the people when the State governments were formed, as well as when the general government was established. The States of the contract were silent as to the laws of the contract, and therefore the law of the former must govern it. Indeed, what is intended by the *lex loci contractûs* would seem to be, not the territorial law, but the law of the government under whose jurisdiction the parties are, in reference to the contract. If the territorial law is silent, and the citizenship of the parties gives them a right to resort to an independent forum, the law of this forum will be the law of the contract.

Jurisdiction given in consideration of personal attributes or qualifications is not always controlled or lost by temporary

domicile within the territorial surface or sphere of a subordinate jurisdiction. And this appears to have been the law of the Roman empire in the first century. For, when St. Paul was accused before Festus at Cesarea, being a Roman citizen, he appealed to Cæsar, and his appeal was allowed. And afterwards, when Agrippa had heard his noble defence, he told Festus that he found nothing in the man worthy of death or of bonds, and that he might have been set at liberty, if he had not appealed to Cæsar. After the appeal, neither the governor nor the king could decide the cause. The jurisdiction was gone. And Paul was sent a prisoner to Rome.

Residence of aliens within a State of the Union constitutes no objection to the jurisdiction of the federal court. *Breedlove et al.* v. *Nicolet et al.*, 7 Pet., 413.

The constitutional right of a citizen to sue in the Circuit Courts of the United States does not permit an act of in-
*302] solvency, executed *under the authority of a State, to be a bar against a recovery upon a contract made in another State. *Suydam et al.* v. *Broadnax*, 14 Pet., 67. This case decides to what extent the jurisdiction of the United States will prevail over that of the States, and how far the laws of the States can interfere with the remedies afforded by the courts of the United States.

Neither the statutes of the States nor decisions of the State courts apply to questions arising in a court of the United States upon contracts of a commercial nature. *Swift* v. *Tyson*, 16 Pet., 1; *Amis* v. *Smith*, Id., 303. This court, then, is not to be restrained by any State law in passing judgment upon the contract in question.

To revert to the consideration of the obligation of the contract, what does it require the court to do? what judgment to pronounce? I have said it is the duty imposed upon the party to perform what he has stipulated. It is argued on the other side, that the creditor ought to submit to the insolvent law of the State of which the debtor was a citizen when the contract was made, as he must have contemplated the possibility that the debtor would avail himself of this law. But before insolvency happens, the expectation of the creditor, and of the debtor too, if he is honest, is, that the debt will be paid without default. It is not probable that the remedy is in the contemplation of the parties. It is not strictly a part of the contract. It is a legal right arising after breach or default, secured by the constitutions and the laws. It is not necessary to be contemplated at the time when the contract is made, in order to be appropriated after the contract is broken. It may be resorted to when there is occasion for its

use. And as between the remedy afforded by the State and that by the United States, the latter may be esteemed superior and preferable, and as the creditor has the right of election, it may be presumed, that if he contemplated any remedy at the time of entering into the contract, it was that which he has elected. It is in accordance with the rule of the common law, that of two concurrent jurisdictions a party may elect the superior one. The court are now to render judgment. The obligation of the debtor as a party to the contract is clearly seen and admitted. It is to pay a certain sum in gold or silver coin. But the State, by her act, interposes a release of the debtor, against the will of the creditor, and would thereby bar a judgment corresponding with the debtor's obligation. Does not the constitution mean, by the obligation of a contract, the obligation entire and full, and in all the integrity and with all the value that was given to it by the terms of the contract? We answer in the affirmative. For if the court give judgment for the value of the obligation after the State law has acted on it, and after the release shall have been applied, then it suffers exactly what is prohibited by the constitution. It suffers the law to impair the obligation. And so every obligation might be impaired to any extent, or wholly *destroyed. The judgment is a record of the obligation, or more exactly of the duty [*303 which the constitution and the law imposes upon the debtor in order that he discharge his obligation.

It would appear, therefore, that in cases in which a court of common law of the United States has jurisdiction over a commercial contract, valid by the law of the State or States where made, a State insolvent law cannot be applied to impair the obligation of the contract in suit. That the forum has law of its own, and that this is the law to be administered, in order to determine and adjudge what is the obligation of the contract.

It has been said, that, by reason of the doubts in regard to the meaning of the constitution upon this question, resort must be had to external evidence, to the history of the times prior to the formation of the constitution, and to the debates of the convention had upon that instrument. In the view we have taken, there does not appear to be any obscurity in the phrase, *impairing the obligation of contracts.* And, unless there is obscurity or latent ambiguity, it is a rule that you cannot go out of the instrument for explanation. And it is a well-settled rule of evidence, that what may have passed pending negotiations for a contract does not form a part of the contract finally agreed upon and deliberately executed.

And this rule applies with great force to an instrument of so grave and solemn a character as the constitution of the United States.

But the debates do not seem to furnish any thing that militates with the construction which we have given to the phrase in question. It is said that they furnish evidence that none but *retrospective* laws were intended to be prohibited. At page 1443 of volume 3 of the Madison papers, it is found that "Mr. King moved to add, in the words used in the ordinance of Congress establishing new States, a prohibition on the States to interfere in private contracts." Upon which there was debate, which see; Mr. Morris and Colonel Mason being against, and Mr. Sherman, Mr. Wilson, and Mr. Madison in favor of the motion. And at page 1444, Mr. Wilson stated, "The answer to these objections is, that retrospective *interferences* only are to be prohibited." Whereupon "Mr. Rutledge moved, instead of Mr. King's motion, to insert, 'nor pass bills of attainder, nor retrospective laws'";[1] upon which seven States voted in the affirmative and three in the negative. At page 1450, Mr. Dickinson mentioned that *ex post facto* related to criminal cases only; that some further provision was necessary to restrain the States from retrospective laws in civil cases. At page 1552, we find the words *altering* or *impairing* the obligations of contracts introduced into the tenth section of art. 1. At page 1581, we find the first clause of art. 1, § 10, altered so as to read as it now stands in the constitution. And there does not appear to have been any debate upon this section in this form.

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It is stated that Mr. Gerry entered into observations inculcating the importance of public faith, and the propriety of the restraint put on the States from impairing the obligation of contracts, and alleging that Congress ought to be laid under the like prohibitions. He made a motion to that effect. He was not seconded.

Now it is a sufficient answer to all that may be inferred from the remark of Mr. Wilson, or any other member of the convention, that the phrase *retrospective laws* was not finally adopted, although it appears to have been suggested. And in the absence of all debate or explanation of the phrase, *or law impairing the obligation of contracts*, we are left to construe it according to its plain meaning. It is said that it could not be meant to restrain the States from passing bank-

[1] In a note it is said that in the printed journal this was *ex post facto*. If the debates were upon this phrase, there is no inference to be made as to the meaning of terms in question.

rupt or insolvent laws, which the framers of the constitution must have approved, inasmuch as they gave Congress power to pass a uniform law upon the subject of bankruptcies throughout the States. But if the States were qualified to pass acceptable laws on this subject, what need was there of a law of Congress? The inference is the rather, that, while it admitted the power of States to pass such laws, that either the character or effect of them was objectionable.

It is admitted that retrospective laws were intended to be prohibited, as impairing the obligation of contracts. But insolvent and bankrupt laws are usually retrospective; therefore they could not have been intended to be wholly excluded from the prohibition.

The fair meaning of the clause, as to impairing the obligation of contracts, is, that the prohibition or restraint was laid upon the States, and took effect from the moment the constitution was adopted, so that it was not afterwards competent for any State to pass any law which might have the effect to impair the obligation of any contract to be thereafter made.

As to the distinction between the *right* and the *remedy*, it is proper when used to distinguish what is stipulated in the contract, supposing it to be performed without breach, and what the law will compel the delinquent party to do in consequence of his failure to do what he has stipulated. But the remedy is the fruit of the contract, and it is the whole value of the obligation of the delinquent party. This obligation continues as an obligation of the contract at the time of the judgment, and afterwards until satisfaction, or until the judgment dies by lapse of time.

It is difficult to decide in every case how far the remedy may be modified without impairing the obligation. The remedy is given by the United States, although it is adopted from the laws and practice of the States respectively. The only general rule seems to be to distinguish between *form* and *substance*. The remedy cannot be wholly taken away, nor essentially impaired. See *Green* v. *Biddle*, *8 Wheat., 1–75; *Bronson* v. *Kinzie*, 1 How., 316; *McCracken* v. *Hayward*, 2 Id., 608. [*305

It may be difficult, in strict reasoning, to prove that imprisonment is only a form of remedy. But as gold or silver is the only thing that can constitutionally satisfy the debt, and as an incarcerated body cannot be sold or put into slavery, it seems to be no direct remedy at all, and as a punishment it is unjust against an honest man.

Upon the whole, the judgment ought to be affirmed, and the decisions rest undisturbed.

Mr. R. Johnson, for the plaintiff in error, in reply to *Mr. Hinkley*, divided the subject into the four following heads:—

1. What points have been decided by this court.

2. How far the points decided bear upon the present case.

3. Under all the circumstances of the opinions given, whether it is not justifiable and proper to look into those opinions.

4. That the law of the case was with the plaintiff in error.

The debtor was a citizen of Maryland at the time of contracting the debt, and at the time of his discharge. Anterior to the Revolution, the State had bankrupt laws which discharged the debt, as well as the person of the debtor. Act of 1774. After the Revolution, special acts were passed from time to time, all of which discharged the debts themselves. In 1805, a general system was established, more extensive than that of 1774. From 1805 to the time when this court decided the case of *Sturges* v. *Crowninshield*, no doubt existed of the constitutionality of these laws, either as respecting debts or debtors. The bankrupt law of the United States passed in 1800 recognized State laws. The decision in *Sturges* v. *Crowninshield* took the States and the profession by surprise. It was a matter of astonishment that up to that time the States had all been wrong. But this surprise was lessened when the case came to be discussed afterwards by the bench as well as the bar, in *Ogden* v. *Saunders*. (*Mr. Johnson* here went into a minute examination of the opinions of the judges in that and subsequent cases.

The doctrine cannot be correct, that Maryland law means one thing when applied to her own citizens, and another thing when applied to other persons. The constitution of the United States is obligatory within a State itself, as well as between citizens of different States. The protection which it extends over all extends to persons in the same State, and if such protection prevents the claims of a foreign creditor from being destroyed by an insolvent law, it must equally secure the claims of a domestic creditor. The result will be, that such laws must be entirely swept away, even as regards the internal concerns of a State; in which her own citizens alone have an interest. But this conclusion is not likely to be *306] *adopted. The power of a State to pass such laws is not denied. 4 Wheat., 136; 12 Id., 277.

Contemporaneous construction has acquiesced in this power. The Federalist does not deny it. State judiciaries acted on it. No convention where the constitution was discussed ever thought it an objection that this power was taken away from the States. Millions have been distributed

by its exercise. As an attribute of sovereignty, a government cannot get along without it. Such laws are known to all the globe where commerce is known. The hazards of life and business make it certain that some men must be ruined. At first, these laws were passed solely for the benefit of creditors, and bankrupts were punished as guilty. But a more benign spirit at length taught, that men might become poor and bankrupt from misfortune as well as crime. The framers of the constitution did not hold it to be immoral to discharge debtors, because they gave the power of doing so to the United States. The forty-second number of the Federalist says, that the expediency of such a power is not likely to be drawn into question. Can the constitution be made to say that State laws are unjust, and that the same laws by the United States are not unjust? Or does it rather mean, that under the operation of State laws a sufficient amount of good could not be obtained? State laws cease with their limits. A debtor might be free within his own State, but not beyond it. Giving all possible effect to the Maryland insolvent laws within her limits, yet if a bankrupt debtor went beyond, he was unprotected; and the constitution must have intended to supply this deficiency, by giving to Congress power to pass a law which should protect him everywhere. But there is nothing in this hostile to State insolvent laws. On the contrary, it is recognizing them and extending their beneficial influence. The objection is, that there is no uniform system; not that the whole system should be broken up and destroyed. There are higher moral obligations than those of debtor and creditor. It is the duty of a man to live for the happiness of his parent or child, and a wise government will place no insuperable barrier in his way to debar him from fulfilling these duties. Upon this ground, and under the power of a State to control remedies at law, tools, &c., are exempted from surrender. But upon the theory of the opposite counsel, this humane provision must be swept off, because he says the law of a contract is to pay to the uttermost farthing. But the laws of humanity will not permit such utter ruin, nor did the constitution intend it. The forty-fourth number of the Federalist, page 192, by Mr. Madison, says, that bills of attainder and *ex post facto* laws are contrary to the principles of the social compact everywhere, and therefore the power to pass them is denied. But if bankrupt laws had been considered as falling within this category, would the power to pass them have been expressly given to the United States?

*307] *Mr. Justice GRIER delivered the opinion of the court.

This case comes before us by a writ of error to the Circuit Court of the United States for the Maryland District.

Moffat & Curtis, merchants in New York, sold goods to Cook, who resided in Baltimore. On a settlement of their accounts, Cook transmitted his notes to his attorney in New York, who delivered them to the defendants in error. After the notes fell due, Cook applied for and obtained the benefit of the insolvent laws of Maryland. By these laws the debtor, on surrender of his property, is discharged not only from imprisonment, but from his previous debts.

On the trial of this case in the Circuit Court, the plaintiff in error pleaded this discharge, insisting, "that the contract was to be performed in Maryland, and governed by the laws of Maryland in existence at the time it was made; and that, therefore, his discharge under her laws was a good defence to the action." The Circuit Court gave judgment for the plaintiffs, and the defendant prosecuted this writ of error.

That the contract declared on in this case was to be performed in Maryland, and governed by her laws, is a position which cannot be successfully maintained, and was, therefore, very properly abandoned on the argument here. For, although the notes purport to have been made at Baltimore, they were delivered in New York, in payment of goods purchased there, and of course were payable there and governed by the laws of that place. See *Boyle* v. *Zacharie and Turner*, 6 Pet., 635; Story, Confl. of L., § 287.

The only question, then, to be decided at present, is, whether the bankrupt law of Maryland can operate to discharge the plaintiff in error from a contract made by him in New York, with citizens of that State.

In support of the affirmation of this proposition, it has been contended,—

1st. "That the State of Maryland having power to enact a bankrupt law, it follows as a necessary consequence, that such law must control the decisions of her own forums."

2d. "That the courts of the United States are as much bound to administer the laws of each State as its own courts."

It has also been contended, that the case of *Ogden* v. *Saunders*, while it admits the first proposition, denies the second, and that this court ought to reconsider the whole subject, and establish it on principles more consistent.

But we are of opinion, that the case of *Ogden* v. *Saunders* is

not subject to the imputation of establishing such an anomalous doctrine, although such an inference might be drawn from some remarks of the learned judge who delivered the opinion of the court in that case; the question, whether a State court would be justifiable in giving effect to a bankrupt discharge which the courts of the United *States would declare invalid, was not before the court, and [*308 was therefore not decided. Nor has such a decision ever been made by this court.

The constitution of the United States is the supreme law of the land, and binds every forum, whether it derives its authority from a State or from the United States. When this court has declared State legislation to be in conflict with the constitution of the United States, and therefore void, the State tribunals are bound to conform to such decision. A bankrupt law which comes within this category cannot be pleaded as a discharge, even in the forums of the State which enacted it.

It is true, that as between the several States of this Union, their respective bankrupt laws, like those of foreign States, can have no effect in any forum beyond their respective limits, unless by comity. But it is not a necessary consequence, that State courts can treat this subject as if the States were wholly foreign to each other, and inflict her bankrupt laws on contracts and persons not within her limits.

It is because the States are not foreign to each other in every respect, and because of the restraint on their powers of legislation on the subject of contracts, and the conflict of rights arising from the peculiar relations which our citizens bear to each other, as members of a common government, and yet citizens of independent States, that doctrines have been established on this subject apparently inconsistent and anomalous.

Accordingly we find that when, in the case of *Sturges* v. *Crowninshield*, this court decided "that a State has authority to pass a bankrupt law, provided there be no act of Congress in force to establish a uniform system of bankruptcy," it was nevertheless considered to be subject to the further condition, "that such law should not impair the obligation of contracts within the meaning of the constitution of the United States, art. 1, sec. 10."

It followed, as a corollary from this modification and restraint of the power of the State to pass such laws, that they could have no effect on contracts made before their

enactment, or beyond their territory.[1] Hence, at the same term, the court unanimously decided, in the case of *McMillan* v. *McNeil*, that a contract made in South Carolina was not affected by a bankrupt discharge in Louisiana, under a law made antecedently to the contract, although the suit was brought in the Circuit Court of the United States for Louisiana. That case was precisely similar in all respects to the one before us.

In the *Mechanics' Bank* v. *Smith*, a discharge under a Pennsylvania bankrupt law was held not to affect a contract between citizens of that State, made previous to the passage of the law.

Next followed the case of *Ogden* v. *Saunders*, which has been made the subject of so much criticism. In that case, Saunders, a citizen of New York, drew bills on Ogden in
*309] New York, which *were accepted and protested there. Ogden was afterwards discharged under the insolvent laws of New York, passed previous to the contract of acceptance, and pleaded this discharge to an action brought against him in the District Court for Louisiana. A majority of the court there decided,—

1st. "That a bankrupt or insolvent law of any State, which discharges the person of the debtor and his future acquisitions, is not a law impairing the obligation of contracts, so far as it respects debts subsequent to the passage of such law."

2dly. "That a certificate of discharge under such a law cannot be pleaded in bar of an action brought by a citizen of another State."

We do not deem it necessary, on the present occasion, either to vindicate the consistency of the propositions ruled in that case with the reasons on which it appears to have been founded, or to discuss anew the many vexed questions mooted therein, and on which the court were so much divided. It may be remarked, however, that the members of the court who were in the minority in the final decision of it fully assented to the correctness of the decision of *McMillan* v. *McNeil*, which rules the present case.

The case of *Boyle* v. *Zacharie*, 6 Pet., 635, is also precisely parallel with the present. The contract declared on was made in New Orleans; the defendant resided in Baltimore, and, on suit brought in the Circuit Court for Maryland, pleaded his discharge under the Maryland insolvent laws, and his plea was overruled.

[1] FOLLOWED. *Baldwin* v. *Hale*, 1 Wall., 232.

So far, then, as respects the point now before us, this court appear to have always been unanimous; and in order to meet the views of the learned counsel for the plaintiff in error, we should be compelled to overrule every case heretofore decided on this most difficult and intricate subject. But as the questions involved in it have already received the most ample investigation by the most eminent and profound jurists, both of the bar and the bench, it may be well doubted whether further discussion will shed more light, or produce a more satisfactory or unanimous decision.

So far, at least, as the present case is concerned, the court do not think it necessary or prudent to depart from the safe maxim of *stare decisis*.

The judgment of the Circuit Court is therefore affirmed.

Mr. Chief Justice TANEY.

I gave the judgment in this case in the Fourth Circuit, because, sitting in an inferior tribunal, I felt myself bound to follow the decisions of this court, although I could not assent to the correctness of the reasoning upon which they are founded. And I acquiesce in the judgment now given, since a majority of the justices have determined not to consider the question upon the operation of the insolvent laws of the States as altogether an open one; and undoubtedly, according to the decisions heretofore given, the judgment of [*310 *the Circuit Court ought to be affirmed. But, in my opinion, these decisions are not in harmony with some of the principles adopted and sanctioned by this court, and therefore ought not to be followed.

The opinion delivered by Judge Johnson in the case of *Ogden* v. *Saunders* was afterwards concurred in and adopted by a majority of the court in the case of *Boyle* v. *Zacharie and Turner*, 6 Pet., 643. And the subject has not since been brought to the attention of this court until the case now under consideration came before it.

The opinion of Judge Johnson is stated by him in the following words.

"The propositions which I have endeavoured to maintain, in the opinion which I have delivered, are these:—

"1. That the power given to the United States to pass bankrupt laws is not exclusive.

"2. That the fair and ordinary exercise of that power by the States does not necessarily involve a violation of the obligation of contracts, *multo fortiori* of posterior contracts.

"3. But when in the exercise of that power the States pass beyond their own limits, and the rights of their own

citizens, and act upon the rights of citizens of other States, there arises a conflict of sovereign power, and a collision with the judicial powers granted to the United States, which renders the exercise of such a power incompatible with the rights of other States, and with the constitution of the United States." [1]

And afterwards, in delivering the opinion of the court in the case of *Boyle* v. *Zacharie and Turner*, Mr. Justice Story says:—"The ultimate opinion delivered by Mr. Justice Johnson in the case of *Ogden* v. *Saunders*, 12 Wheat., 213, 358, was concurred in and adopted by the three judges who were in the minority upon the general question of the constitutionality of State insolvent laws, so largely discussed in that case. It is proper to make this remark, in order to remove an erroneous impression of the bar, that it was his single opinion, and not of the three other judges who concurred in the judgment. So far, then, as decisions upon the subject of State insolvent laws have been made by this court, they are to be deemed final and conclusive."

To the first two propositions maintained in the opinion of Judge Johnson, thus sanctioned and adopted, I entirely assent. But when the two clauses in the constitution therein referred to are held to be no restriction, express or implied, upon the power of the States to pass bankrupt laws, I cannot see how such laws can be regarded as a violation of the constitution of the United States upon the grounds stated in the third proposition. For bankrupt laws, in the nature of things, can have no force or operation beyond the limits of the State or nation by which they are passed, except by the comity of other States or nations. And it is *difficult, therefore, *311] to perceive how the bankrupt law of a State can be incompatible with the rights of other States, or come into collision with the judicial powers granted to the general government. According to established principles of jurisprudence, such laws have always been held valid and binding within the territorial limits of the State by which they are passed, although they may act upon contracts made in another country, or upon the citizens of another nation; and they have never been considered, on that account, as an infringement upon the rights of other nations or their citizens. But beyond the limits of the State they have no force, except such as may be given to them by comity. If, therefore, a State may pass a bankrupt law in the fair and ordinary exer-

[1] Followed. *Baldwin* v. *Hale*, 1 Wall., 231. See also *Torrens* v. *Hammond*, 10 Fed. Rep., 902.

cise of such a power, it would seem to follow, that it would be valid and binding, not only upon the courts of the State, but also upon the courts of the United States when sitting in the State, and administering justice according to its laws; and that in the tribunals of other States it should receive the respect and comity which the established usages of civilized nations extend to the bankrupt laws of each other. But how far this comity should be extended would be exclusively a question for each State to decide for itself, by its own proper tribunals; and there is no clause in the constitution which authorizes the courts of the United States to control or direct them in this particular. It would be a very unsafe mode of construing the constitution of the United States, to infer such a power in the tribunals of the general government, merely from the general frame of the government and the grant to it of judicial power.

I propose, however, merely to state my opinion, not to argue the question. For since the year 1819, when the validity of these State laws was first brought into question in this court, so much discussion has taken place, and such conflicting opinions been continually found to exist, that I cannot hope that any useful result will be attained by further argument here. I content myself, therefore, with thus briefly stating the principles by which I think the question ought to be decided, and referring to Story, Confl. of L. (edit. of 1841), § 335, and several of the sections immediately following, where the decisions in foreign courts of justice, as well as in our own, upon this subject, are collected together and arranged, and commented on with the usual learning and ability of that distinguished jurist.

Mr. Justice McLEAN.

I assent to the affirmation of the judgment of the Circuit Court. How an act which impairs the obligations of contracts can be considered constitutional as regards subsequent contracts, and not prior ones, is not within my comprehension. The notion, that such a law becomes a part of the contract, is in my judgment fallacious. Whatever constitutes a part of the contract is inseparably connected [*312 *with and governs it, wherever it may be enforced. All other forms and modes of proceeding, which affect the contract, belong to the remedy.

An unconstitutional law has the same and no greater effect on subsequent than on prior contracts. If a State can, in the mode supposed, disregard the inhibitions of the federal constitution, there is no limit to the exercise of its powers. It

has only to pass an act, however repugnant to the constitution, and, according to the doctrine advanced, it operates as a law upon all subsequent transactions by a presumed assent to its validity. The principle, if carried out, would effectually subvert all restriction on the exercise of State powers in the federal constitution.

Mr. Justice DANIEL.

In the decision just pronounced, so far as it affirms the judgment of the Circuit Court, I readily concur. I concur, too, in the opinion of the majority of the court, so far as it maintains the position, that the contracts sued upon in this case, being essentially New York contracts, could not be discharged by the insolvent laws of Maryland. But to any and every extent to which it may have been intended to assume that these contracts, if properly Maryland contracts,—that is, if they had been made in Maryland, and designed to have been there performed,—should not have been discharged by the insolvent laws of that State, enacted and in force prior to the contracts themselves, I am constrained to express my entire dissent. I hold it to be invariably just, that the law of the place where a contract is made, or at which it is to be performed, enters essentially into and becomes a part of such contract; and should govern its construction, whenever a departure from that law is not so stipulated as to establish a different rule by the contract itself. This principle of interpretation I deem to be in accordance with the doctrine of the writers upon the comity of nations, as we find it extensively collated by the late Justice Story in his learned researches upon the conflict of laws. This rule, moreover, I hold to be in no wise in conflict with the eighth section of the first article of the constitution of the United States, conferring upon Congress the power to establish uniform laws on the subject of bankruptcy; nor with the tenth section of the same article, which prohibits to the States the power of enacting laws impairing the obligation of contracts. On the contrary, it recognizes in the federal government, and in the governments of the States, the correct and complete distribution of powers assigned to them respectively by the constitution.

By a reasonable rule of interpretation, and by repeated adjudications of this court, it is held, that the mere investiture of Congress with the power to pass laws on the subject of bankruptcy would not, *ipso facto*, divest such a power out of the States. The withdrawing of the power from the States would be dependent upon *an actual exercise by Con- *313]
gress of the power conferred by the constitution, and

upon the incompatibility between the modes and extent of its exercise with an exertion of authority on the same subject by the States. The mere grant of power to Congress, whilst that power remained dormant, would leave the States in possession of whatever authority appertained to them at the period of the adoption of the constitution. These conclusions are in entire harmony with the decisions of this court in the case of *Sturges* v. *Crowninshield;* in that of *Ogden* v. *Saunders*, so far as the latter has been comprehended; for whilst it would be presumptuous not to ascribe any perplexity in this respect rather to my own infirmity than to a defect in the work of much wiser men, I must be permitted to say, that I have great difficulty in reconciling the case of *Ogden* v. *Saunders* with other decisions of this court, or in reconciling it even with itself. These conclusions, too, are in accordance with the very perspicuous opinions of Justices Washington and Thompson in the case last mentioned, and with the opinion of Justice Story in that of *Houston* v. *Moore*. Yet, if it be asked whether the States can now enact bankrupt laws within the sense and meaning of the power granted to Congress, I answer that they cannot. This reply, however, is by no means a deduction from the terms of the grant to Congress, as expressed in the eighth section of the first article of the constitution. That provision, I maintain, for aught that its language imports, leaves the States precisely where it found them, except so far as they might be affected by an actual exercise of authority by Congress. The States were found in the habitual practice of bankrupt systems; and as long as they should not be controlled in that practice by the action of Congress, they would have remained in possession of the right to continue their familiar practice, so far as the mere language of the eighth section of the first article of the constitution would affect them. But the constitution has proceeded beyond the potential restriction of the section just mentioned, and in so doing has abridged the power it found in practice in the States. It has, in section tenth of the same article, declared that no State shall have power to pass any "law impairing the obligation of contracts"; and in this inhibition, as I hold, is to be found the true limit upon the power of passing bankrupt laws, previously exercised by the States. Bankrupt laws, as understood at the time of adopting the constitution, and at all other periods of time, have been interpreted to mean laws which discharge or annihilate the contract itself, with all its obligations; and if the constitution had stopped short at providing for a discretionary power in Congress to enact such laws, and should have omitted any

restraint upon the States, having found the latter exerting the power of passing bankrupt laws, it would have left them, by the mere fact of this omission, still with the power, by retroactive legislation, of dissolving and abrogating contracts.

*314] By connecting the *power given to Congress to pass bankrupt laws with the inhibition upon the States contained in the tenth section of the first article, all power in the latter to enact bankrupt laws as laws operating upon contracts previously existing has been taken away. But a power to discharge a contract made under a system of laws established and known to all, as public laws are inferred and indeed are necessarily admitted to be,—laws which may permit, nay, which under certain circumstances may command, such discharge,—presents a wholly different aspect of things, —one implying no bankrupt power, no power that is retroactive, and incompatible with either the legal or moral obligations involved in the contract; an aspect of things which, so far from authorizing an infringement, insists upon a fulfilment, of the contract, an exact compliance with its true obligations. To prevent this, then, would be to impair the obligations of the contract, to set up some new and retroactive rule for its interpretation, and thereby to inflict a wrong on a portion, if not on all, of the contracting parties.

To carry into effect the obligations of parties is the perfect right of communities of which those parties are members, and within which their obligations are made, and within which it may have been stipulated that they should be fulfilled; the enforcement of obligations, when intended to be performed according to the laws of other communities, constitutes a right and a duty recognized by the comity existing amongst all civilized governments. The case under consideration being one of a contract, which, though made in Maryland, was to be performed in the State of New York, the Circuit Court decided very properly that it could not be discharged by the insolvent laws of Maryland. But to prevent a misapprehension of the grounds on which this decision of the Circuit Court is approved, by myself, at least, and that, by assenting to that judgment, I may not hereafter be considered as concluded from an application of what is deemed the correct principle, when a case proper for its application may arise, the aforegoing explanation has been deemed proper.

Mr. Justice WOODBURY.

The judgment which has just been pronounced meets with my concurrence; but I have the misfortune to differ as to

some of the views that have been expressed in rendering it.

As a matter of fact, the merchandise which is set out as the ground of action in the declaration in this case was sold in New York, by a citizen resident and doing business there, and the note given for it and offered in evidence was delivered to him there. Consequently, in point of law, the contract must be deemed a foreign one, or, in common parlance, a New York, and not a Maryland, contract. 6 Pet., 644; 3 Wheat., 101, 146; 3 Met. (Mass.), 207; 3 Johns. (N. Y.) Ch., 587.

*The *lex loci contractûs*, which must govern its construction and obligations, is therefore the law of New [*315 York, unless on its face the contract was to be performed elsewhere. This is the rule in almost every country which possesses any civilized jurisprudence. 16 Johns. (N. Y.), 233; 3 Cai. (N. Y.), 154; Story, Bills of Exch., §§ 146, 158, 168; 2 Barn. & Ald., 301; 1 Barn. & C., 16; Story, Confl. of L., §§ 272–329; 5 Cl. & F., 1–13; 13 Mass., 1; 6 Cranch, 221; 6 Pet., 172; 7 Id., 435; 8 Id., 361; 13 Id., 65; Pet. C. C., 302; 4 Dall., 325; Baldw., 130, 537; 2 Mason, 151. See more cases, in *Towne* v. *Smith*, 1 Woodb. & M., 115.

As a question, then, of international law, without reference to any constitutional question, such a contract and its obligations cannot be affected by the legislation of bankrupt systems of other States. It is understood that the whole court concur in the opinion, that this reasoning and these decisions would be sufficient to dispose of the present case without going into other questionable matters; and, accordingly, no expression of approbation or disapprobation of former decisions in this tribunal, concerning bankrupt discharges, seems to have been necessary on this occasion.

But as the majority of the court have deemed it proper to express some opinions upon them, it devolves on me the necessity of stating very briefly and very generally two or three of my own in relation to this subject, which in some respects do not accord with those of the majority.

What has been and what has not been decided heretofore in respect to the operation of insolvent and bankrupt discharges, in the various cases which have come before this court, it is somewhat difficult to eviscerate, amidst so many conflicting and diversified views among its judges. But without going into an analysis of them now, and without stating in detail how far my individual opinions coincide or differ with what is supposed to have been adjudicated in each case,

I would say, that, independent of any binding precedents, the true rules on this subject seem to me to be these.

1. That the States possess a constitutional right to pass laws, whether called insolvent or bankrupt, discharging contracts subsequently made, provided no concurrent legislation by Congress exists at the same time on the subject, and that such laws cannot be considered as impairing the obligation of contracts, which are made under and subject to them, and when Congress is expressly empowered by the Constitution to pass similar laws. 12 Wheat., 23; *Bronson* v. *Kinzie et al.*, 1 How., 311; 2 Id., 612.

2. That such laws are to be regarded as if a part of the subsequent contract, incorporated into it; and hence, that the contract, being construed according to the *lex loci contractûs*, should be discharged by a certificate of bankruptcy given to the obligor in the State where the contract was made and was to be performed. *And this whether the action on it is brought in that State or another, or in the courts of the United States or those of the States, and whether the obligee reside in that State or elsewhere. Considered as a part of the contract itself, it is inseparable from it, and follows it into all hands and all places. 5 Mass., 509; 13 Id., 4, 13 Pick. (Mass.), 60; 3 Burge's Col. & For. Laws, 876; 3 Story, Confl. of L., §§ 281–284; 2 Kent, Com., 390; 2 Mason, 175; *Towne et al.* v *Smith*, 1 Woodb. & M., 115. And though in other States and in other forums it may be a matter of comity merely, in one sense of the word, to respect and enforce foreign contracts and their obligations, yet courts will always do it as right whenever the contracts are valid at home, and not immoral or against public policy elsewhere. 1 Dall., 229; 3 Id., 369; Story, Confl. of L., §§ 331–335; 3 Burge's Col. & For. Laws, 876, 925; 2 Kent, Com., 392; 4 T. R., 182; 5 East, 124; 2 H. Bl., 553; 1 Knapp, 265; *Adams* v. *Storey*, Paine, 79.

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3. That the ancient State insolvent laws, which were often called here "poor debtor's acts," and in England "lord's acts," and usually discharged only the body from imprisonment, instead of the contract (2 Tidd Pr., 978; 6 T. R., 366), were and still are constitutional, whether they apply to future or past contracts. Because they do not interfere at all with the debt due, the contract itself, or its obligations, but merely the remedy on it, or the form of legal process, and thus they should govern in that respect no foreign forums, but merely its own courts, as the local and territorial tribunals who issue the precept or process. 4 Wheat., 112, 122, 209; 6 Id., 131; 12 Id., 213, 272; 2 Kent, Com., 392; *Adams*

v. *Storey*, Paine, 79; *Campbell et al.* v. *Claudius*, Pet. C. C., 484; 4 Wash. C. C., 424.

Without feeling justified on this occasion in going more at large into these questions, and some others of an interesting character connected with them, I may be permitted to add, that these rules seem to me to have in their favor over some others at least this merit. They give full effect to State powers and State rights over this important matter, when not regulated by Congress. They produce uniformity among the State and the United States courts. They conform to the practice in other countries, and are easily understood and easily enforced.

ORDER.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Maryland, and was argued by counsel; on consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said Circuit Court in this cause be and the same is hereby affirmed, with costs and damages, at the rate of six per centum per annum.

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*THE PRESIDENT, DIRECTORS, AND COMPANY OF THE COMMERCIAL BANK OF CINCINNATI, PLAINTIFFS IN ERROR, *v.* EUNICE BUCKINGHAM'S EXECUTORS, DEFENDANTS IN ERROR. [*317

To bring a case to this court from the highest court of a State, under the twenty-fifth section of the Judiciary Act, it must appear on the face of the record,—1st. That some of the questions stated in that section did arise in the State court; and, 2d. That the question was decided in the State court, as required in the section.[1]

It is not enough that the record shows that the plaintiff in error contended and claimed that the judgment of the court impaired the obligation of a contract, and violated the provisions of the constitution of the United States, and that this claim was overruled by the court, but it must appear, by clear and necessary intendment, that the question must have been raised, and must have been decided, in order to induce the judgment.[2]

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[1] CITED. *Messenger* v. *Mason*, 10 Wall., 510.

[2] FOLLOWED. *Williams* v. *Oliver*, 12 How., 124. CITED. *Planters' Bank* v. *Sharp*, 6 How., 327; *Brown* v. *Atwell*, 2 Otto, 329.

It must appear from the record that the Act of Congress or the constitutionality of the State law was drawn in question. *Miller* v. *Nicholls*, 4 Wheat., 311; *Davis* v. *Packard*, 6 Pet., 41; *Crowell* v. *Randell*, 10 Id., 368; *McKinney* v. *Carroll*, 12 Id., 66; *Armstrong* v. *Treasurer of Athens Co.*, 16 Id., 281; *Crawford* v. *Branch Bank*, 7 How., 279; *Wolf* v. *Stix*, 6 Otto, 541; *Brown* v. *Atwell*, 2 Id., 327; *Moore* v. *Mississippi*, 21 Wall., 636.