

## Statement of the case.

I. It is claimed that the contract is for the borrowing of money, and that the complaint is bad, because it does not aver the sanction of two-thirds of the electors of the city. If the fact were so, the consequence would not follow. If the city could make such a contract with that sanction, the sanction will be presumed until the contrary is shown. The non-existence of the fact is a matter of defence which must be shown by the defendant.

II. We are also of the opinion that the contract, except the provision for an advance to the city of \$20,000, which it is stated has been repaid, is not for borrowing money. It bound the plaintiffs to pay the interest for the city upon the debts of the city already created and presumed to be valid. The city agreed to refund the amount so paid at the times and in the manner specified. Such a contract is neither within the terms nor the spirit of the provisions of the charter upon the subject of borrowing.

## JUDGMENT REVERSED AND CAUSE REMANDED.

N. B. The dissenting opinion of Mr. Justice Miller, given in the principal case, No. 80, applied to Nos. 79 and 81. See also the dissenting opinion of that Justice in *Meyer v. City of Muscatine (post)*, as well as that case generally.

## BALDWIN v. HALE.

A discharge obtained under the insolvent law of one State is not a bar to an action on a note given in and payable in the same State; the party to whom the note was given having been and being of a different State, and not having proved his debt against the defendant's estate in insolvency, nor in any manner been a party to those proceedings.

THIS was a writ of error to the Circuit Court for the District of Massachusetts; the case, as appearing from an agreed statement of facts, being thus:

J. W. Baldwin, a citizen of *Massachusetts*, made, at *Boston*, in that State, his promissory note, *payable there*, in these words:

\$2000.

BOSTON, February 21, 1854.

Six months after date I promise to pay to the order of myself, two thousand dollars, *payable in Boston*, value received.

J. W. BALDWIN.

And duly indorsed it to Hale, the plaintiff, then and afterwards a citizen of *Vermont*. After the date of the note, but

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before any suit was brought upon it, Baldwin, upon due proceedings in the Court of Insolvency of the State of *Massachusetts*, obtained a certificate of discharge from his debts; the certificate embracing by its terms all contracts to be performed within the State of Massachusetts. Hale did not prove his debt, nor take any part in the proceedings.

Suit having been afterwards brought against Baldwin by Hale, the indorsee and holder of the note, and still, as originally, a citizen of Vermont, the question was *whether the certificate was a bar to the action*.

The court below ruled that it was not, and the correctness of the ruling was now before this court on error.

*Messrs. Hutchins & Wheeler for the plaintiff in error:* It is settled that State insolvent laws not operating retrospectively (such being the character of those under which the discharge here pleaded was granted), do not fall within the constitutional prohibition against the violation of contracts. Otherwise such State insolvent laws would not have been held valid and binding as between the citizens of the States enacting them, as they have been ever since *Ogden v. Saunders.*\* The law, then, under which the discharge here pleaded was granted, possesses all the validity and force which the State of Massachusetts, with uncontrolled power of legislation on the subject and in the absence of any constitutional restraint, could impart to it. We do not suggest that this or any State law relating to property possesses extra-territorial force: the legislative sovereignty of each State is confined to its limits. Beyond these the laws of some other local jurisdiction prevail.

The question, then, presented for decision, being not one of constitutional law, but rather of public or international law, we set out with the principle, well settled, that contracts take their legal construction and validity or invalidity from the "*law of the place*" to which they belong; including, under this term, both the place of origin and of execution, where

\* 12 Wheaton, 279.

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they are not the same. We do not find that contracts as such take any attribute from the circumstance that the domicile or allegiance of the contracting parties is different, unless they are alien enemies.

When the place both of the origin and the execution of the contract is the same, then the contract is to be governed wholly by the law of that place.\*

Upon the same principle, it is held that a contract discharged by the law of the place which governs it, is discharged everywhere; and conversely, a contract not discharged by the law of that place, is nowhere discharged.†

It seems, therefore, that where, as here, the contract, the discharge, and the party pleading it, come wholly under and within the same jurisdiction, all the conditions necessary to subject the contract to the law of that jurisdiction exist,—so that the discharge should be deemed effectual in bar of any action upon it. And upon this state of facts the Supreme Court of Massachusetts, while announcing their purpose to follow, strictly, decisions by this court of constitutional questions, have yet held such a discharge as was here given to be a good defence in a suit brought by a non-resident creditor. They say in *Scribner et al. v. Fisher*,‡ that the question raised here in the case at bar, has never been passed on by the court at all. The judgment below must therefore be reversed, unless this court should overrule the doctrine of the Massachusetts case, and determine that it is in conflict with its own decisions, and it cannot do this without contradicting at the same time the declaration to the contrary of the Massachusetts court itself.

*Ogden v. Saunders*, which will be relied on by the other side, settled, no doubt, that the insolvent laws of the State of the origin of a contract, are not competent to discharge a contract when entered into by one of its citizens with a citi-

\* *Cox v. United States*, 6 Peters, 172; *Strother v. Lucas*, 12 Id., 436-7; *Andrews v. Pond*, 13 Id., 77; *Bell v. Bruen*, 1 Howard, 182.

† *May v. Breed*, 7 Cushing, 38; *Van Reimsdyk v. Kane*, 1 Gallison, 375; *Very v. McHenry*, 29 Maine, 206; *Green v. Sarmiento*, 1 Peters's C. C., 74.

‡ 2 Gray, 43.

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zen of another State, *where no place of performance is fixed, otherwise than by the origin of the contract*; but that case did not make the citizenship of the contracting parties, instead of the law of the contract itself, the test for determining whether it was liable to be defeated by a discharge in insolvency. To have done so, would have been to establish a test of the legal obligation of contracts hitherto unknown to the law.

We admit that some influence might, in the absence of authority to the contrary, be ascribed to the fact of the foreign domicile of a creditor, but not that such influence can be exerted over the contract, where no *locus* is given to it by the parties themselves. It fails altogether as a test, where the parties contract with the express reference to a place of performance, and embody this provision in the contract, as was done by the parties in the case at bar.

*Mr. F. A. Brooks for the creditor, Hale*: It is not contended that this note would have been barred by the discharge (it being given by a citizen of Massachusetts to a citizen of Vermont), had it not been *payable in Massachusetts*; but it is said that this makes it a Massachusetts contract, and subjects the claim to the operation of the insolvent laws of that State, although given to a citizen of Vermont. But this question has been decided. It is not the question where the note is payable or where it is dated, but whether the contract is between a citizen of Massachusetts and of Vermont, and if so, an insolvent law of Massachusetts cannot discharge it. It is a question of *citizenship*. Many cases decide this.\* The Massachusetts case of *Scribner v. Fisher*† is opposed; but we submit that the case is not law. Metcalf, J., dissented, and the true view we conceive is contained in his opinion.

\* *Sturges v. Crowninshield*, 4 Wheaton, 122; *McMillan v. McNeil*, 4 Id., 209; *Ogden v. Saunders*, 12 Id., 279; *Boyle v. Zacharie*, 6 Peters, 348; *Suydam et al. v. Broadnax*, 14 Id., 75; *Springer v. Foster et al.*, 2 Story, 383; *Cook v. Moffat et al.*, 5 Howard, 308; *Donnelly v. Corbett*, 3 Selden, 500; *Poe v. Duck*, 5 Maryland, 1; *Anderson v. Wheeler*, 25 Connecticut, 607; *Felch v. Bugbee et al.*, 48 Maine, 9.

† 2 Gray, 43.

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An insolvent law of one State cannot discharge the contracts of citizens of other States, because it has no jurisdiction over the citizens of other States. It has no authority to issue notice or process, or in any way to bind the citizens of other States by its proceedings. Its laws can have no *extra-territorial* operation.\* A citizen of Vermont, by making his note payable in Massachusetts, does not thereby subject himself to the jurisdiction of Massachusetts laws. Even presentment at the place appointed for payment is not necessary to charge a maker of a note.†

Mr. Justice CLIFFORD, after stating the case, delivered the opinion of the court:

Contract was made in Boston and was to be performed at the place where it was made, and upon that ground it is contended by the defendant that the certificate of discharge is a complete bar to the action. But the case shows that the plaintiff was a citizen of Vermont, and inasmuch as he did not prove his debt against the defendant's estate in insolvency, nor in any manner become a party to those proceedings, he insists that the certificate of discharge is a matter *inter alios*, and wholly insufficient to support the defence.

Adopting the views of the court in *Scribner et al. v. Fisher*, 2 Gray, 43, the defendant concedes that the law is so, as between citizens of different States, except in cases where it appears by the terms of the contract that it was made and must be performed in the State enacting such insolvent law. Where the contract was made and is by its terms to be performed in the State in which the certificate of discharge was obtained, the argument is, that the discharge is entirely consistent with the contract, and that the certificate operates as a bar to the right of recovery everywhere, irrespective of the citizenship of the promisee. Plaintiff admits that a majority

\* *Ogden v. Saunders*, 12 Wheaton, 213; per Washington, J., and per Johnson, J.; second opinion. *Baker v. Wheaton*, 5 Massachusetts, 509.

† *Wallace v. McConnell*, 13 Peters, 136; S. C. 1 American Leading Cases, 4th ed., 348.

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of the Supreme Court of Massachusetts, in the case referred to, attempted to maintain that distinction, but he insists that it is without any foundation in principle, and that the decisions of this court in analogous cases are directly the other way.

Controversies involving the constitutional effect and operation of State insolvent laws have frequently been under consideration in this court, and unless it be claimed that constitutional questions must always remain open, it must be conceded, we think, that there are some things connected with the general subject that ought to be regarded as settled and forever closed.

State legislatures have authority to pass a bankrupt or insolvent law, provided there be no act of Congress in force establishing a uniform system of bankruptcy, conflicting with such law; and, provided the law itself be so framed that it does not impair the obligation of contracts. Such was the decision of this court in *Sturges v. Crowninshield*, 4 Wheat., 122, and the authority of that decision has never been successfully questioned. Suit was brought in that case against the defendant as the maker of two promissory notes. They were both dated at New York, on the 22d day of March, 1811, and the defendant pleaded his discharge under an act for the benefit of insolvent debtors and their creditors, passed by the legislature of New York subsequently to the date of the notes in controversy. Contracts in that case, it will be observed, were made prior to the passage of the law, and the court held, for that reason, that the law, or that feature of it, was unconstitutional and void, as impairing the obligation of contracts within the meaning of the Constitution of the United States. Suggestion is made that the ruling of the court in the case of *McMillan v. McNeill*, 4 Wheat., 209, decided at the same term, asserts a different doctrine, but we think not, if the facts of the case are properly understood.

Recurring to the statement of the case, it appears that the contract was made in Charleston, in the State of South Carolina, and it is true that both parties resided there at the time

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the contract was made, but the defendant subsequently removed to New Orleans, in the State of Louisiana, and it was in the latter State where he obtained the certificate of discharge from his debts. He was also one of a firm doing business in Liverpool, and a commission of bankruptcy had been issued there, both against him and his partner, and they respectively obtained certificates of discharge. Suit was brought in the District Court for the District of Louisiana, and the defendant pleaded those certificates of discharge in bar of the action, and the plaintiff demurred to the plea. Under that state of the case and of the pleadings, the court held that the certificate of discharge obtained in the State of Louisiana, was no defence to the suit, and very properly remarked that the circumstance that the State law was passed before the debt was contracted made no difference in the application of the principle. Bearing in mind that the plaintiff was a citizen of South Carolina, and that the contract was made there, it is obvious that the remark of the court is entirely consistent with the decision in the former case.

Secondly, the court also held that a discharge under a foreign bankrupt law was no bar to an action in the courts of the United States, on a contract made in this country. Speaking of that case, Mr. Justice Johnson afterwards remarked that it decided nothing more than that insolvent laws have no extra-territorial operation upon the contracts of other States, and that the anterior or posterior character of the law with reference to the date of the contract makes no difference in the application of that principle. Eight years later the question, in all its phases, was again presented to this court, in the case of *Ogden v. Saunders*, 12 Wheat., 213, and was very fully examined.

Three principal points were ruled by the court. First, the court held that the power of Congress to establish uniform laws on the subject of bankruptcies throughout the United States did not exclude the right of the States to legislate on the same subject, except when the power had actually been exercised by Congress, and the State laws conflicted with those of Congress. Secondly, that a bankrupt or insolvent

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law of any State which discharges both the person of the debtor and his future acquisitions of property, was not a law impairing the obligation of contracts so far as respects debts contracted subsequent to the passage of such law. Thirdly, but that a certificate of discharge under such a law cannot be pleaded in bar of an action brought by a citizen of another State in the courts of the United States, or of any other State than that where the discharge was obtained. Much diversity of opinion, it must be admitted, existed among the members of the court on that occasion, but it is clear that the conclusions to which the majority came were in precise accordance with what had been substantially determined in the two earlier cases to which reference has been made. Misapprehension existed, it seems, for a time, whether the second opinion delivered by Mr. Justice Johnson in that case was, in point of fact, the opinion of a majority of the court, but it is difficult to see any ground for any such doubt. Referring to the opinion, it will be seen that he states explicitly that he is instructed to dispose of the cause, and he goes on to explain that the majority on the occasion is not the same as that which determined the general question previously considered. Ample authority exists for regarding that opinion as the opinion of the court, independently of what appears in the published report of the case. When the subsequent case of *Boyle v. Zacharie et al.*, 6 Pet., 348, was first called for argument, inquiry was made of the court whether the opinion in question was adopted by the other judges who concurred in the judgment of the court. To which Marshall, C. J., replied, that the judges who were in the minority of the court upon the general question concurred in that opinion, and that whatever principles were established in that opinion were to be considered no longer open for controversy, but the settled law of the court. Judge Story delivered the unanimous opinion of the court in that case during the same session, and in the course of the opinion he repeated the explanations previously given by the chief justice. *Boyle v. Zacharie et al.*, 6 Pet., 643. Explanations to the same effect were also made by the present chief justice in the case of

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*Cook v. Moffat et al.*, 5 How., 310, which had been ruled by him at the circuit. He had ruled the case in the court below, in obedience to what he understood to be the settled doctrine of the court, and a majority of the court affirmed the judgment. Acquiescing in that judgment as a correct exposition of the law of the court, he nevertheless thought it proper to restate the individual opinion which he entertained upon the subject, but before doing so, he gave a clear and satisfactory exposition of what had previously been decided by the court. Those remarks confirm what had at a much earlier period been fully explained by the former Chief Justice and his learned associate. Taken together, these several explanations ought to be regarded as final and conclusive. Assuming that to be so, then, it was settled by this court, in that case,—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. Saunders, a citizen of Kentucky, brought suit in that case against Ogden, who was a citizen of Louisiana at the time the suit was brought. Plaintiff declared upon certain bills of exchange drawn by one Jordan, at Lexington, in the State of Kentucky, upon Ogden, the defendant, in the city of New York, where he then resided. He was then a citizen of the State of New York, and the case shows that he accepted the bills of exchange at the city of New York, and that they were subsequently protested for non-payment.

Defendant pleaded his discharge under the insolvent law of New York, passed prior to the date of the contract. Evidently, therefore, the question presented was, whether a dis-

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charge of a debtor under a State insolvent law was valid as against a creditor or citizen of another State, who had not subjected himself to the State laws otherwise than by the origin of the contract, and the decision in express terms was, that such a proceeding was "incompetent to discharge a debt due a citizen of another State." Whenever the question has been presented to this court since that opinion was pronounced, the answer has uniformly been that the question depended upon citizenship. Such were the views of the court in *Suydam et al. v. Broadnax et al.*, 14 Pet., 75, where it was expressly held that a certificate of discharge cannot be pleaded in bar of an action brought by a citizen of another State in the courts of the United States, or of any other State than that where the discharge was obtained. Undoubtedly a State may pass a bankrupt or insolvent law under the conditions before mentioned, and such a law is operative and binding upon the citizens of the State, but we repeat what the court said in *Cook v. Moffat et al.*, 5 How., 308, that such laws "can have no effect on contracts made before their enactment, or beyond their territory." Judge Story says, in the case of *Springer v. Foster et al.*, 2 Story, C. C., 387, that the settled doctrine of the Supreme Court is, that no State insolvent laws can discharge the obligation of any contract made in the State, except such contracts as are made between citizens of that State. He refers to the case of *Ogden v. Saunders* to support the proposition, and remarks, without qualification, that the doctrine of that case was subsequently affirmed in *Boyle v. Zacharie*, where there was no division of opinion. In the last-mentioned case he gave the opinion of the court, and he there expressed substantially the same views. Confirmation of the fact that such was his opinion may be found both in his Commentaries on the Constitution and in his treatise entitled Conflict of Laws. His view as to the result of the various decisions of this court is, that they establish the following propositions: 1. That State insolvent laws may apply to all contracts within the State between citizens of the State. 2. That they do not apply to contracts made within the State between a citizen of the

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State and a citizen of another State. 3. That they do not apply to contracts not made within the State: 2 *Story on Const.*, sec. 1390 (3d edition), p. 281; *Story on Confl. L.*, sec. 341, p. 573.

Chancellor Kent also says that the discharge under a State law is not effectual as against a citizen of another State who did not make himself a party to the proceedings under the law. 2 *Kent Com.* (9th ed.), p. 503. All of the State courts, or nearly all, except the Supreme Court of Massachusetts, have adopted the same view of the subject, and that court has recently held that a certificate of discharge in insolvency is no bar to an action by a foreign corporation against the payee of a note, who indorsed it to the corporation in blank before its maturity, although the note itself was executed and made payable in that State by a citizen of the State. Repeated decisions have been made in that court, which seem to support the same doctrine. *Savoye v. Marsh*, 10 Met., 594; *Braynard v. Marshall*, 8 Pick., 196. But a majority of the court held, in *Scribner et al. v. Fisher*, 2 Gray, 43, that if the contract was to be performed in the State where the discharge was obtained, it was a good defence to an action on the contract, although the plaintiff was a citizen of another State and had not in any manner become a party to the proceedings. Irrespective of authority it would be difficult if not impossible to sanction that doctrine. Insolvent systems of every kind partake of the character of a judicial investigation. Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. Common justice requires that no man shall be condemned in his person or property without notice and an opportunity to make his defence. *Nations et al. v. Johnson et al.*, 24 How., 203; *Boswell's Lessee v. Otis et al.*, 9 How., 350; *Oakley v. Aspinwall*, 4 *Comst.*, 514.

Regarded merely in the light of principle, therefore, the rule is one which could hardly be defended, as it is quite evident that the courts of one State would have no power to require the citizens of other States to become parties to any such proceeding. *Suydam et al. v. Broadnax et al.*, 14

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Pet., 75. But it is unnecessary to pursue the inquiry, as the decisions of this court are directly the other way; and so are most of the decisions of the State courts. *Donnelly v. Corbett*, 3 Seld., 500; *Poe v. Duck*, 5 Md., 1; *Anderson v. Wheeler*, 25 Conn., 607; *Felch v. Bugbee et al.*, 48 Me., 9; *Demerrit v. Exchange Bank*, 10 Law Rep. (N. S.), 606; *Woodhull v. Wagner*, Bald., C. C., 300.

Insolvent laws of one State cannot discharge the contracts of citizens of other States, because they have no extra-territorial operation, and consequently the tribunal sitting under them, unless in cases where a citizen of such other State voluntarily becomes a party to the proceeding, has no jurisdiction in the case. Legal notice cannot be given, and consequently there can be no obligation to appear, and of course there can be no legal default. The judgment of the Circuit Court is therefore affirmed with costs.

JUDGMENT ACCORDINGLY.

## BALDWIN v. BANK OF NEWBURY.

The case of *Baldwin v. Hale* (*ante*, p. 223) affirmed.

Where negotiable paper is drawn to a person by name, with addition of "Cashier" to his name, but with no designation of the particular bank of which he was cashier, parol evidence is allowable to show that he was the cashier of a bank which is plaintiff in the suit, and that in taking the paper he was acting as cashier and agent of that corporation.

THE Bank of Newbury, a corporation, at the time of the suit and now, established in Vermont, brought an action of assumpsit in the Circuit Court of the United States for the Massachusetts district against Baldwin, upon a promissory note made by him in Massachusetts, where he resided. The following is a copy of the note. It was unindorsed:

\$3500.

BOSTON, Dec. 9, 1853.

Five months after date I promise to pay to the order of *O. C. Hale, Esq.*, Cashier, Thirty-five hundred dollars, payable at either bank in Boston, value received.

J. W. BALDWIN.