which was supposed to underlie this case, is not before us for consideration. If it were, as at present advised, we are not prepared to say that the decision of the commissioner was not correct.

The order of the court below, awarding the *mandamus*, is reversed with costs, and it is ordered by this court that the application of the relator be by that court

OVERRULED AND DISMISSED.

VON HOFFMAN *v.* CITY OF QUINCY.

1. Where a statute has authorized a municipal corporation to issue bonds and to exercise the power of local taxation in order to pay them, and persons have bought and paid value for bonds issued accordingly, the power of taxation thus given is a contract within the meaning of the Constitution, and cannot be withdrawn until the contract is satisfied. The State and the corporation in such a case are equally bound.
2. A subsequently passed statute which repeals or restricts the power of taxation so previously given, is, in so far as it affects bonds bought and held under the circumstances mentioned, a nullity.
3. It is the duty of the corporation to impose and collect the taxes in all respects as if the second statute had not been passed.
4. If it does not perform this duty a *mandamus* will lie to compel it.

THIS case was brought up by a writ of error to the Circuit Court of the United States for the Southern District of Illinois.

The relator filed his petition in that court, alleging, among other things, as follows:

At the June Term, 1863, and before that time, he was the owner and holder of certain coupons on interest notes of the City of Quincy. They were past due and unpaid. When issued and negotiated they were attached to certain bonds made and delivered by that city, in payment for the stock of the Northern Cross Railroad Company, and of the Quincy and Toledo Railroad Company, subscribed for by

the city under and by virtue of certain acts of the legislature of Illinois, of the 17th of October, 1851, and 26th of January, 1853, and the 31st of January, 1857. *By the provisions of these several acts the city was authorized to collect a special annual tax upon the property, real and personal, therein, sufficient to pay the annual interest upon any bonds thereafter issued by the city for railroad purposes, pursuant to law.* It was required that the tax, when collected, should be *set aside*, and held separate from the other portions of the city revenue, as a fund specially pledged for the payment of the annual interest upon the bonds aforesaid. It was to be applied to this purpose, from time to time, as the interest should become due, "*and to no other purpose whatsoever.*"

The city failed to pay the coupons held by the relator for a long time after they became due, and refused to levy the tax necessary for that purpose. The relator sued the city upon them in the court below, and at the June Term, 1863, recovered a judgment for $22,206.69 and costs. An execution was issued and returned unsatisfied. The judgment was unpaid. The city still neglected and refused to levy the requisite tax. He therefore prayed that a writ of *mandamus* be issued, commanding the city and its proper officers to pay over to him any money in their hands otherwise unappropriated, not exceeding the amount of the judgment, interest, and costs; and, for want of such funds, commanding them to levy the special tax as required by the acts of the legislature before referred to, sufficient to satisfy the judgment, interest, and costs, and to pay over to him the proceeds.

The city filed an answer. It alleged that there was no money in its treasury wherewith to satisfy the judgment, and as a reason why a peremptory writ of *mandamus* should not issue, referred to an act of the legislature of Illinois, of the 14th of February, 1863, which contains the following provisions:

Sec. 4. The city council of said city shall have power to levy and collect annually taxes on real and personal property within

Statement of the case.

the limits of said city, as follows: On real and personal property within, or which may hereafter be within, portions of said city lighted with gas, to meet the expenses thereof, not exceeding twenty-eight cents on each one hundred dollars per annum on the annual assessed value thereof. On all real and personal property within the limits of said city, to meet the expenses of obtaining school grounds, and erecting, repairing, and improving school buildings and school grounds, and providing teachers and maintaining public schools in said city, and to be devoted exclusively for such purposes, not exceeding twenty-five cents on each one hundred dollars per annum on the annual assessed value thereof: *Provided, That no more than eighteen cents on each one hundred dollars aforesaid shall be levied in any year for such purposes without the concurrence of a majority of the votes of legal voters of said city*, to be cast at an election to be ordered by said city council, and held to determine the rate per cent. so to be levied. On all real and personal property within the limits of said city, to pay the debts and meet the general expenses of said city, not exceeding fifty cents on each one hundred dollars per annum on the annual assessed value thereof.

Sec. 5. All laws and parts of laws, other than the provisions hereof, touching the levy or collection of taxes on property within said city, except those regulating such collection, and all laws conflicting herewith, are hereby repealed; but this act shall not affect taxes of said city relating to streets or alleys, or to licenses of whatever nature, nor any sources of revenue other than taxes upon real or personal property, and which said act remains in full force and unrepealed.

The answer averred that the full amount of the tax authorized by this act had been assessed, and was in the process of collection; that the power of the city in this respect has been exhausted: "and that the said fifty cents on the one hundred dollars, when collected, will not be sufficient to pay the current expenses of the city for the year 1864, and the debts of the said city." It further alleged that about the year 1851, the city, under the act of November 6th, 1849, issued to the Northern Cross Railroad Company bonds to the amount of $100,000, and about the year 1854, under the act of January 26th, 1853, other bonds to the amount of

Argument for the relator.

$100,000, and that about the year 1856, it made and delivered its other bonds to the amount of $100,000. It alleged that the bonds last issued were wholly unauthorized, but that they were subsequently ratified by the legislature by the act of January 1st, 1857. The relator's judgment, it averred, was founded upon coupons belonging to bonds of these three classes.

The relator demurred to the answer, and judgment was given against him.

The principal question in this court was whether the act of February 14th, impaired the obligation of a contract, and was therefore void within the tenth section of the first article of the Constitution, which prohibits any State from passing such an act.

A second question was whether, if it did so, a *mandamus* would lie against the city to compel it to levy a tax to pay the debt.

Messrs. McKinnon and Merrick, for the relator, plaintiff in error.

I. The general law of November 6th, 1849, and the several supplemental acts of the legislature, under which were issued the coupons, or interest notes, on which the relator obtained judgment, constitute a contract.

"A contract," says Chief Justice Marshall,* "is a compact between two or more persons, and is either executory or executed. An executory contract is one in which a party binds himself to do or not to do a particular thing. A contract executed is one in which the object of the contract is performed, and this, says Blackstone, differs in nothing from a grant. A contract executed, as well as one that is executory, contains obligations binding on the parties. A grant, in its own nature, amounts to an extinguishment of the right of the grantor, and implies a contract not to reassert that right."

This language was used in reference to a grant of land,

* Fletcher *v.* Peck, 6 Cranch, 137.

by the governor of a State, under a legislative act. It is simple and unambiguous, and determines, in an unequivocal manner, that the grant of a State is a contract within the clause of the Constitution referred to, and implies an agreement not to resume rights granted. The doctrine applies to an act of the legislature granting authority to a city to issue its bonds in consideration of railroad stock, for its private advantage and emolument, and provide for the payment thereof by special taxation.

These acts of the legislature are grants of special powers and privileges to the respondent, for its private advantage and benefit, and not for municipal purposes, and when acted upon, and bonds are issued and negotiated thereunder, the acts fall completely within Judge Marshall's definition of executed contracts.

Do the acts possess, in any less degree, the elements of a good contract than a charter granted by the supreme power of a State, to any given number of persons, or corporators, for religious or educational purposes? They do not; and no one, at this day, would contend that such a charter is not a contract within the meaning of the constitutional provision invoked.

In *Dartmouth College* v. *Woodward*,* which was an action of trover that grew out of an attempt on the part of the legislature of New Hampshire, as revolutionary successor of George III, to revoke a charter of this kind, Judge Marshall, in delivering the opinion of the court, and speaking of the charter, holds the following language:

"This is plainly a contract to which the donors, the trustees, and the crown—to whose right and obligations New Hampshire succeeds—were the original parties. It is a contract made on a valuable consideration. It is a contract for the security and disposition of property. It is a contract on the faith of which real and personal estate has been conveyed to the corporation. It is, then, a contract within the letter of the Constitution, and within its spirit also."

* 4 Wheaton, 643.

The language of this case is applicable to the case at bar. Here we have a grant of special powers by legislative enactment, authorizing the respondent, as a private company, to purchase or subscribe for stock in certain railroad companies, and in payment therefor to issue its bonds, and provide for the annual interest on and the ultimate redemption of the bonds so issued, by the levy and collection of a special tax, to be set aside and held separate and distinct, for that and no other purpose whatever. Under these powers and privileges, stock is subscribed for, bonds issued and negotiated, pecuniary rights vested, and third parties, relying upon this legislative grant, pay out their money, and *bonâ fide* become the owners of the bonds and coupons so issued.

But, probably, the most accurate definition of a contract by legislative grant, anywhere to be met with, is that laid down by Mr. Justice Washington, in this same case.

That learned judge, after stating that the question was whether the charter granted to Dartmouth College, on the 13th of December, 1769, was to be considered as a contract, then asks what is a contract? and, in answer, says:

"It may be defined to be a transaction between two or more persons, in which each party comes under an obligation to the other, and each reciprocally acquires a right to whatever is promised by the other. The ingredients requisite to form a contract, are: parties, consent, and an obligation to be created and dissolved."

Apply this definition to the case at bar.

In the first place, there is a legislative grant of special powers, enabling the respondent, as a private company, to subscribe for stock in certain railroad companies, issue its bonds for the amount of such stock, and to provide for payment of the bonds so issued, with interest thereon, by the levy and collection of a special tax.

Following this grant of powers and privileges is the fact of a transaction in strict pursuance thereof.

Here, then, is every ingredient which, according to the definition, is requisite to form a contract—parties, consent,

Argument for the relator.

and obligation—whereby each party reciprocally acquired a right to what was promised by the other.

"A legislative act, conferring powers and privileges, is a grant which, when accepted, amounts to an extinguishment of the right of the grantor, and implies a contract not to re-assert that right; and, therefore, the legislature is estopped by its own grant."*

A State legislature may bind the State by contract in regard to the exercise of the power of taxation.†

The act of February 14th, 1863, attempting as it did to revoke the power vested in the corporate officers to levy a special tax to pay a debt incurred on the faith of the existence of the power, is not distinguishable from a law prohibiting the sheriff from selling on execution, except on certain conditions.‡

It follows as a corollary that the act of February 14th, 1863, so far as the same repeals the several laws and parts of laws under which the coupons, or interest notes, in question were issued, by prohibiting the Common Council of Quincy to levy and collect the special tax which those laws and parts of laws direct to be levied and collected as a means of paying its bonds and interest coupons issued thereunder, as it did, is an act impairing the obligation of contracts.

II. The court below had power by *mandamus* to compel the city to levy and collect a tax to pay the judgment ob-

* Fletcher *v.* Peck, 6 Cranch, 137; State of New Jersey *v.* Wilson, 7 Id. 166; Terret *v.* Taylor, Id. 43; Town of Paulet *v.* Clark, Id. 252; Sturgis *v.* Crowninshield, 4 Wheaton, 122; Mechanics' Bank of Pennsylvania *v.* Smith, 6 Id. 131; Green *v.* Biddle, 8 Id. 1; Bronson *v.* Kinzie, 1 Howard, 311; McCracken *v.* Hayward, 2 Id. 608; Gantly's Lessee *v.* Ewing, 3 Id. 707; Planters' Bank *v.* Ewing, 6 Id. 319; Curran *v.* Arkansas, 15 Id. 304; Commissioners of Knox County *v.* Aspinwall, 21 Id. 239; Curtis *v.* Butler County, 24 Id. 446; Rice *v.* Railroad Company, 1 Black, 373; People *v.* Bond, 10 California, 571.

† McGee *v.* Mathis, *supra*, p. 143; The State of New Jersey *v.* Wilson, 7 Cranch, 164; Billings *v.* The Providence Bank, 4 Peters, 514; Gordon *v.* Appeal Tax Court, 3 Howard, 133; The F. & P. Railroad Co. *v.* The Louisa Railroad Co., 13 Id. 71; Jefferson Branch Bank *v.* Skelly, 1 Black, 349.

‡ McCracken *v.* Hayward, 2 Howard, 71.

tained against it for interest on its bonds issued under the special authority abovementioned.*

Messrs. Cushing and Ewing, Jr., contra, for the City of Quincy, defendant in error:

Mandamus lies only where there is a clear legal right to have a specific thing done by the public officer. And when the legislature has inhibited a city from levying a tax exceeding a certain limit, no court can compel it by *mandamus* to override the legislative limitation.†

The act of 1863, set up in the return, fixes the maximum of taxation by the city, to meet certain municipal expenses, and to pay the debts of the city, at fifty cents on the hundred dollars. This tax has been duly levied, to the limit authorized, and, therefore, the city has failed to execute no power of taxation. This act is clear and explicit, leaving no room for construction. The purposes of taxation are named. The intention of the act is free from question.

Does the act of 1863, set up in the return, "impair the obligation of the contract?" We think that it does not.

Legislative power and control over the public revenue, over the entire subject of taxation, is a fundamental element of sovereignty which must ever remain with the State; a political power to be exercised consistently with the public interests, or necessities, and over which the courts have no jurisdiction. No contract, binding or controlling the legislature as to the collection or appropriation, under revenue laws, of future taxes, can, consistently with the sovereignty of the State, exist. And by virtue of no contract, capable of legal enforcement, can a vested interest be created in any one in such unlevied and uncollected taxes.

As a general rule, any act may be repealed by the author-

* The Board of Commissioners of Knox County *v.* Aspinwall, 24 Howard, 376; Same case, 21 Id. 539; The Commonwealth *v.* Commissioners of Alleghany, 4 Wright's Pennsylvania, 348; The United States ex rel. Learned *v.* Mayor of Burlington, United States Circuit for Iowa, 2 American Law Register, New Series, 394.

† People *v.* Burrows, 27 Barbour, 93; People *v.* Tremain, 29 Id. 98.

ity that created it. There may, indeed, be legislative grants of property, or of franchises, which, becoming vested rights of property, assume the character of contracts; but such rights of property can never arise out of a delegation to municipal corporations of the power to levy taxes; nor out of a pledge of public faith.

The *Dartmouth College* case* states the doctrine as to what are public or political corporations, and concedes plenary power over them in the legislature. This court held the college to be a private eleemosynary corporation, and hence, under the Constitution, protected from legislative control.

In the separate opinions of Washington and Story, JJ., the rule is declared to be, that corporations for the government of communities, such as "towns, cities, and counties," being "public institutions," are always subject to State control, by regulating, enlarging, or limiting their powers according to the will of the legislature.

Now, the City of Quincy was created by the legislature for the purposes of civil government alone—for public, not private ends. The State was the only party to the charter. No acceptance, by any one, of chartered privileges was essential to give it a political being, nor could the default of individuals forfeit the charter. It is but an instrument of government, exercising political power through the agency of public officers only. Individuals may be interested in having certain powers continued in or conferred upon the city, by reason of being its creditors or otherwise; but they are political powers, to be exercised only through public officers, in which the individual can have no more a contract right than he could in the powers of any one of the three departments of the State government, or of any officer thereof. Although the State may empower a municipal corporation to issue bonds, and provide for future taxation of property within the municipality to pay them, and bonds accordingly issue, this, in the sense of the Constitution of the United States, creates no contract between the holder

* 4 Wheaton, 641.

and the State, that the State will not exercise its political authority over the subject of taxation therein.*

To be a contract within the meaning of the Constitution, the right must be such that an action could be founded upon it in a court of justice.

Numerous adjudged cases support our view. In *East Hartford* v. *The Hartford Bridge Company*, in this court,† a municipal corporation had obtained from the legislature ferry privileges, which were afterwards repealed. It was held that there was no violation of a contract; that the State, having the power to even abolish the corporation, could not confer upon it rights which it could not take away; that all powers conferred on it could be controlled or resumed by the legislature in virtue of its sovereignty, and that all grants to such public corporations are made upon condition that they may be defeated or resumed at the will of the legislature.

In *Saterlee* v. *Matthewson*,‡ also, in this court, it was said that a statute which divests a right, even an existing right, of property, may be valid, provided the statute do not operate upon and impair a contract, and that it is only when the statute, by its own force, impairs or destroys the contract, that it is void under the Constitution.

"It is an unsound proposition," the Supreme Court of New York declared in *The People* v. *Morris*,§ "that political power conferred by the legislature can become a vested right, as against the government, in any individual or body of men."

In *Trustees* v. *Rider*,‖ the Supreme Court of Connecticut held that a statute granting money to a private corporation or individual, to be acquired *in futuro*, and through the official action of public agents, may be repealed at any time before the acquisition and application of the money, and the grant defeated before it is fully executed. Such a grant is not a perfect obligation capable of enforcement.

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* Gilman *v.* City of Sheboygan, 2 Black, 510.

† 10 Howard, 533–5.

‡ 2 Peters, 413.

§ 13 Wendell, 331.

‖ 13 Connecticut, 87.

In *Brandon* v. *Green*,* a Tennessee case, the Supreme Court of Tennessee decided that a statute giving a new remedy to defeat usurious contracts is constitutional, even as to existing contracts and judgments upon them.

In the *Covington Railroad* v. *Kenton*,† the Court of Appeals of Kentucky say that provisions in a railroad charter, providing for county subscription to stock and the collection of a tax to pay the same, are no contract between the State and the railroad company, and may be repealed at any time before they are complete by full execution. The legislature may take away by statute what by statute is granted, unless by execution of the powers granted, private rights, in some definite thing or property, have become vested.

A legislative act, this court held in *Railroad Co.* v. *Nesbit*,‡ cannot impair the obligation of a contract, unless at the time of its passage, some one not subject to legislative control, "by contract with the State, has been vested with certain, perfect, absolute rights of property," which rights are divested or impaired by such act.

It also held, in *Beers* v. *Bingham*,§ that "the right to imprison (for debt) constitutes no part of the contract; and discharge of the person of the party from imprisonment does not impair the obligation of the contract, but leaves it in full force against his property and effects;" and, in *Mason* v. *Hake*,‖ where A. gave a prison-limits bond, and by an act of the legislature was discharged from arrest and imprisonment, that the act was valid.

The Supreme Court of California has gone as far as we now ask this court to do. In 1855, the legislature of the State passed a law for funding the debts of a county, changing the time and manner of payment, and prohibited payment of any debts not so funded. The court, on the matter coming before it, held,¶ that as the county was a municipal

* 7 Humphrey, 130; and see Wilson *v.* Hardesby, 1 Maryland Chancery, 66.
† 12 B. Munroe, 147, 148; and see People *v.* Livingston, 6 Wendell, 531
‡ 10 Howard, 400, 401. § 9 Peters, 359.
‖ 12 Wheaton, 370. ¶ Hunsacker *v.* Borden, 5 California, 288

body, the legislature had full control of its revenues and payment of its debts, and the law did not, therefore, impair the creditor's contract in the sense of the Constitution.

In *Oriental Bank* v. *Frieze*,* the Supreme Court of Maine says:

"When a person by existing laws becomes entitled to a judgment, or to have certain real or personal property applied to the satisfaction of his debt, he is apt to regard the privilege as a vested right, not considering that it has its foundations only in the remedy, which may be changed, and the right thereby destroyed."

It was accordingly held that the legislature may take away rights given by statute, until those rights are perfect, and vested by judgment recovered.

In the *Sunbury Railroad Co.* v. *Cooper*† the Supreme Court of Pennsylvania lay down principles which justify fully the action of the court below in its refusal to grant a *mandamus*. The legislature of Pennsylvania had there pledged the revenues of the State canals to the payment of certain State bonds. Afterwards an act was passed for the sale of these canals, and different appropriation of the proceeds. The diversion of the pledge made by the legislature was held to be without legal redress.

Numerous cases are in effect similar with the principle above generally asserted by us.‡

Reply: The proposition stated on the other side, to wit, that "legislative power and control over the public revenues is a fundamental element of sovereignty which must ever remain with the State," and "that no contract, binding or controlling the legislature, as to the collection or appropriation under revenue laws, of future taxes, can, consistently

* 18 Maine, 109. † 33 Pennsylvania State, 278, 281, 285.

‡ See Mayor *v.* The State, 15 Maryland, 376; Trustees *v.* Tatman, 13 Illinois, 28; Stocking *v.* Hunt, 3 Denio, 274; Fisher *v.* Lackey, 6 Blackford, 373; Evans *v.* Montgomery, 4 Watts & Sergeant, 220; Springfield *v.* Commissioners, 5 Pickering, 508.

Reply for the relator.

with the sovereignty of the State, exist," may be admitted as a general proposition, subject to exception.* But we are at a loss to apply it to the case under consideration. How is the levy and collection of a special annual tax, under and in pursuance of the powers in question, to be deemed an exercise of sovereignty which must ever remain with the State? A specific mode whereby the respondent is empowered to provide the necessary means of discharging debts contracted by it as a private company is no such exercise.

The moneys thus to be raised are in no manner or way connected with "the public revenues." Nor is the levy and collection of this special tax, under the laws, legally speaking, an exercise of sovereign powers belonging to the respondent in its character as a municipal or political corporation. The object and purpose of the tax, as well as the powers authorizing its levy and collection, are private, not public. Therefore, the respondent, in respect to the powers conferred by these laws, is to be regarded as a private corporation, standing on the same footing as would any individual or body of persons upon whom like privileges had been conferred. Or, in the language of the court in *Bailey* v. *The Mayor, &c., of the City of New York*,† a case where this whole matter is fully and learnedly considered, "The argument confounds the powers in question with those belonging to the defendants in their character as a municipal or public body, such as are granted exclusively for public purposes to counties, cities, towns, and villages, where the corporations have, if I may so speak, no private estate or interest in the grant."

The proposition is based on, and is almost in the identical words of, a suggestion offered by the court in the New Hampshire case of *Brewster* v. *Hough*,‡ to the effect that it is not competent for a legislature, by enactment, to make a contract perpetually exempting from taxation any portion of the

* State of New Jersey *v.* Wilson, 7 Cranch, 166; State Bank of Ohio *v.* Knoop, 16 Howard, 369; Dodge *v.* Woolsey, 18 Id. 331.

† 3 Hill, 539.

‡ 10 New Hampshire, 145.

property lying within the government; that the right to levy and collect taxes, being an element of sovereignty, it is so far inalienable, that no legislature can make a contract by which it shall be surrendered.

This, however, is not law. In *The State of New Jersey* v. *Wilson*,* it is laid down by Chief Justice Marshall, as a settled rule, that a State may do so through its legislature, and that the law is a contract within the meaning and protection of the Constitution of the United States. If an act of the legislature, perpetually exempting from taxation certain portions of the State, or property of its citizens, lying within the government, is a contract, within the meaning and protection of the Constitution, it would seem to follow, as inevitable, that a law authorizing the citizens of a particular municipal locality, or division of the State, to levy and collect a special annual tax on the property, real and personal, lying within that locality, as a means or mode of paying indebtedness contracted by it under the authority and upon the faith of such law, is also a contract, which cannot be repealed to the prejudice of third persons having pecuniary rights or interests depending on the existence thereof, without violating the Constitution of the United States. Numerous cases are to this effect.†

The case, it will be observed, comes here upon the petition, answer, and demurrer.

Mr. Justice SWAYNE delivered the opinion of the court, and after stating the case, proceeded thus:

The demurrer admits what is set forth in the answer. On the other hand, the answer, according to the law of pleading, admits what is alleged in the petition and not denied.

It is then a part of the case before us, that when the bonds were issued and negotiated there were statutes of Illinois in

* 7 Cranch, 164.

† Atwater *v.* Woodbridge, 6 Connecticut, 223; Osborne *v.* Humphrey, 7 Id. 335; Parker *v.* Redfield, 10 Id. 495; Landon *v.* Litchfield, 11 Id. 251; Armington *v.* Barnet, 15 Vermont, 751; Herrick *v.* Randolph, 13 Id. 525.

force which authorized the levying of a sufficient special tax to pay the coupons in question as they became due. Such statutes are so inconsistent with the provisions of the act of 1863, relied upon by the city, and cover the same ground, in such a manner that the act of 1863 unquestionably repeals them, if that act be valid for the purposes it was intended to accomplish.

The validity of the bonds and coupons is not denied. No question is made as to the judgment. The case turns upon the validity of the statute restricting the power of taxation left to the city within the narrow limits which it prescribes.

The answer says expressly that fifty cents on the hundred dollars' worth of property, which is all the statute allows to be levied to meet the debts and current expenses of the city, will not be sufficient for those purposes. The expenses will, of course, be first defrayed out of the fund. What the deficiency will be as to the debts, or whether anything applicable to them will remain, is not stated. So far, it appears that nothing has been paid upon these liabilities. And it was not claimed at the argument that the result under the statute would be different in the future.

The question to be determined is whether the statute, in this respect, is valid, or whether the legislature transcended its power in enacting it.

The duty which the court is called upon to perform is always one of great delicacy, and the power which it brings into activity is only to be exercised in cases entirely free from doubt.

The Constitution of the United States declares (Art. I, § 10), that "no State shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts."

The case of *Fletcher* v. *Peck*,* was the first one in this court in which this important provision came under consideration. It was held that it applied to all contracts, executed and executory, "whoever may be parties to them." In that case the legislature of Georgia had repealed an act

* 6 Cranch, 87.

passed by a former legislature, under which the plaintiff in error had acquired his title by mesne conveyances from the State. The court pronounced the repealing act within the inhibition of the Constitution, and therefore void. Chief Justice Marshall said: "The validity of this rescinding act might well be doubted were Georgia a single sovereign power; but Georgia cannot be viewed as a single, unconnected sovereign power, on whose legislature no other restrictions are imposed than may be found in its own constitution. She is a part of a large empire. She is a member of the American Union, and that Union has a Constitution, the supremacy of which all acknowledge, and which imposes limits to the legislatures of the several States which none claim a right to pass." This case was followed by those of *New Jersey* v. *Willson*,* and *Terret* v. *Taylor*.† The principles which they maintain are now axiomatic in American jurisprudence, and are no longer open to controversy.

It is also settled that the laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms. This principle embraces alike those which affect its validity, construction, discharge, and enforcement. Illustrations of this proposition are found, in the obligation of the debtor to pay interest after the maturity of the debt, where the contract is silent; in the liability of the drawer of a protested bill to pay exchange and damages, and in the right of the drawer and indorser to require proof of demand and notice. These are as much incidents and conditions of the contract as if they rested upon the basis of a distinct agreement.‡

In *Green* v. *Biddle*, the subject of laws which affect the remedy was elaborately discussed. The controversy grew out of a compact between the States of Virginia and Kentucky. It was made in contemplation of the separation of

* 7 Cranch, 164. † 9 Id. 43.

‡ Green *v.* Biddle, 8 Wheaton, 92; Bronson *v.* Kinzie, 1 Howard, 319; McCracken *v.* Hayward, 2 Id. 612; People *v.* Bond, 10 California, 570; Ogden *v.* Saunders, 12 Wheaton, 231.

the territory of the latter from the former, and its erection into a State, and is contained in an act of the legislature of Virginia, passed in 1789, whereby it was provided "that all private rights and interests within" the District of Kentucky "derived from the laws of Virginia prior to such separation shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in this State." By two acts of the legislature of Kentucky, passed respectively in 1797 and 1812, several new provisions relating to the consequences of a recovery in the action of ejectment—all eminently beneficial to the defendant, and onerous to the plaintiff—were adopted into the laws of that State. So far as they affected the lands covered by the compact, this court declared them void. It was said: "It is no answer that the acts of Kentucky now in question are regulations of the remedy, and not of the right to the lands. If these acts so change the nature and extent of existing remedies as materially to impair the rights and interests of the owner, they are just as much a violation of the compact as if they *overturned* his rights and interests."

In *Bronson* v. *Kinzie*,* the subject was again fully considered. A mortgage was executed in Illinois containing a power of sale. Subsequently, an act of the legislature was passed which required mortgaged premises to be sold for not less than two-thirds of their appraised value, and allowed the mortgagor a year after the sale to redeem. It was held that the statute, by thus changing the pre-existing remedies, impaired the obligation of the contract, and was therefore void.

In *McCracken* v. *Hayward*,† the same principle, upon facts somewhat varied, was again sustained and applied. A statutory provision that personal property should not be sold under execution for less than two-thirds of its appraised value was adjudged, so far as it affected prior contracts, to be void, for the same reason.

In *Sturges* v. *Crowninshield*,‡ the question related to a law

* 1 Howard, 297. † 2 Id. 608. ‡ 4 Wheaton, 122.

discharging the contract. It was held that a State insolvent or bankrupt law was inoperative as to contracts which existed prior to its passage.

In *Ogden* v. *Saunders*,* the question was as to the effect of such a law upon a subsequent contract. It was adjudged to be valid, and a discharge of the contract according to its provisions was held to be conclusive.

A statute of frauds embracing a pre-existing parol contract not before required to be in writing would affect its validity. A statute declaring that the word *ton* should thereafter be held, in prior as well as subsequent contracts, to mean half or double the weight before prescribed, would affect its construction. A statute providing that a previous contract of indebtment may be extinguished by a process of bankruptcy would involve its discharge, and a statute forbidding the sale of any of the debtor's property, under a judgment upon such a contract, would relate to the remedy.

It cannot be doubted, either upon principle or authority, that each of such laws passed by a State would impair the obligation of the contract, and the last-mentioned not less than the first. Nothing can be more material to the obligation than the means of enforcement. Without the remedy the contract may, indeed, in the sense of the law, be said not to exist, and its obligation to fall within the class of those moral and social duties which depend for their fulfilment wholly upon the will of the individual. The ideas of validity and remedy are inseparable, and both are parts of the obligation, which is guaranteed by the Constitution against invasion. The obligation of a contract "is the law which binds the parties to perform their agreement."† The prohibition has no reference to the degree of impairment. The largest and least are alike forbidden. In *Green* v. *Biddle*,‡ it was said: "The objection to a law on the ground of its impairing the obligation of a contract can never depend upon the extent of the change which the law effects in it.

* 12 Wheaton, 213.

† Sturges *v.* Crowninshield, 12 Id. 257.

‡ 8 Id. 84.

Any deviation from its terms by postponing or accelerating the period of performance which it prescribes, imposing conditions not expressed in the contract, or dispensing with those which are, however minute or apparently immaterial in their effect upon the contract of the parties, impairs its obligation. Upon this principle it is that if a creditor agree with his debtor to postpone the day of payment, or in any other way to change the terms of the contract, without the consent of the surety, the latter is discharged, although the change was for his advantage."

"One of the tests that a contract has been impaired is that its value has, by legislation, been diminished. It is not, by the Constitution, to be impaired at all. This is not a question of degree or cause, but of encroaching, in any respect, on its obligation—dispensing with any part of its force."*

This has reference to legislation which affects the contract directly, and not incidentally or only by consequence.

The right to imprison for debt is not a part of the contract. It is regarded as penal rather than remedial. The States may abolish it whenever they think proper.† They may also exempt from sale, under execution, the necessary implements of agriculture, the tools of a mechanic, and articles of necessity in household furniture. It is said: "Regulations of this description have always been considered in every civilized community as properly belonging to the remedy, to be exercised by every sovereignty according to its own views of policy and humanity."

It is competent for the States to change the form of the remedy, or to modify it otherwise, as they may see fit, provided no substantial right secured by the contract is thereby impaired. No attempt has been made to fix definitely the line between alterations of the remedy, which are to be deemed legitimate, and those which, under the form of mod-

* Planters' Bank v. Sharp et al., 6 Howard, 327.

† Beers v. Haughton, 9 Peters, 359; Ogden v. Saunders, 12 Wheaton, 230; Mason v. Haile 12 Id. 373; Sturges v. Crowninshield, 4 Id. 200.

ifying the remedy, impair substantial rights. Every case must be determined upon its own circumstances. Whenever the result last mentioned is produced the act is within the prohibition of the Constitution, and to that extent void.*

If these doctrines were *res integræ* the consistency and soundness of the reasoning which maintains a distinction between the contract and the remedy—or, to speak more accurately, between the remedy and the other parts of the contract—might perhaps well be doubted.† But they rest in this court upon a foundation of authority too firm to be shaken; and they are supported by such an array of judicial names that it is hard for the mind not to feel constrained to believe they are correct. The doctrine upon the subject established by the latest adjudications of this court render the distinction one rather of form than substance.

When the bonds in question were issued there were laws in force which authorized and required the collection of taxes sufficient in amount to meet the interest, as it accrued from time to time, upon the entire debt. But for the act of the 14th of February, 1863, there would be no difficulty in enforcing them. The amount permitted to be collected by that act will be insufficient; and it is not certain that anything will be yielded applicable to that object. To the extent of the deficiency the obligation of the contract will be impaired, and if there be nothing applicable, it may be regarded as annulled. A right without a remedy is as if it were not. For every beneficial purpose it may be said not to exist.

It is well settled that a State may disable itself by contract from exercising its taxing power in particular cases.‡ It is equally clear that where a State has authorized a municipal

* Bronson *v.* Kinzie, 1 Howard, 311; McCracken *v.* Hayward, 2 Id. 608.

† 1 Kent's Commentaries, 456; Sedgwick on Stat. and Cons. Law, 652; Mr. Justice Washington's dissenting opinion in Mason *v.* Haile, 12 Wheaton, 379.

‡ New Jersey *v.* Wilson, 7 Cranch, 166; Dodge *v.* Woolsey, 18 Howard, 331; Piqua Branch *v.* Knoop, 16 Id. 331.

corporation to contract and to exercise the power of local taxation to the extent necessary to meet its engagements, the power thus given cannot be withdrawn until the contract is satisfied. The State and the corporation, in such cases, are equally bound. The power given becomes a trust which the donor cannot annul, and which the donee is bound to execute; and neither the State nor the corporation can any more impair the obligation of the contract in this way than in any other.*

The laws requiring taxes to the requisite amount to be collected, in force when the bonds were issued, are still in force for all the purposes of this case. The act of 1863 is, so far as it affects these bonds, a nullity. It is the duty of the city to impose and collect the taxes in all respects as if that act had not been passed. A different result would leave nothing of the contract, but an abstract right—of no practical value—and render the protection of the Constitution a shadow and a delusion.

The Circuit Court erred in overruling the application for a *mandamus*. The judgment of that court is REVERSED, and the cause will be remanded, with instructions to proceed

IN CONFORMITY WITH THIS OPINION.

THE HINE *v.* TREVOR.

1. The doctrine of the case of *The Genesee Chief*, 12 Howard, that the admiralty jurisdiction of the Federal courts, as granted by the Constitution, as not limited to tide-water, but extends wherever vessels float and navigation successfully aids commerce, approved and affirmed.
2. The grant of admiralty powers to the District Courts of the United States, by the ninth section of the act of September 24th, 1789, is coextensive with this grant in the Constitution, as to the character of the waters over which it extends.

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* People *v.* Bell, 10 California, 570; Dominic *v.* Sayre, 3 Sandford, 555.