REGINALD A. SHERMAN, Appellant, vs. REPUBLIC OF LIBERIA, Appellee.

LRSC 4; 1 LLR 145 (1881)

[January Term, A. D. 1881.]

Appeal from the Court of Admiralty, Montserrado County.

Specific Performance in the Payment of duties—Set-off against Government —Courts of Admiralty—Liberian paper currency—The engraved bills or Paper currency of Liberia are in their nature a contract.

1. Where a statute provides that certain revenue of Government must be paid in a certain class or kind of money, the obligation is imperative and cannot be avoided, even where a demand note for the same class of money is tendered in lieu.
2. In suits where the Government is plaintiff, a set-off will not be allowed unless specially provided for by statute. The engraved notes or paper currency of Liberia is not a proper tender for the one tenth of duties provided for in the Act of 1880.
3. Courts cannot enforce a contract in manner otherwise than that expressed therein. Where a suit for debt is brought against the Government, the court cannot exercise jurisdiction or take cognizance of same, nor can it exercise jurisdiction in such circumstances over a cross action under a plea of set-off. Courts of Admiralty do not take notice of set-offs where they do not grow out of a maritime contract.
4. The Act of 1880, requiring one tenth of duties to be paid in gold or silver coin, does not destroy nor impair the obligation expressed on the face of certain demand notes issued by the Government of Liberia. A currency may be lawful and yet not a tender for all dues.
5. The Legislature cannot make a law impairing the obligation of a contract ; it has, however, the power to adopt measures for the benefit of the nation, and, from the necessity of the case, which may be subsequently varied or discontinued as the public may require.

This case is now before us for the second time this term, under the following circumstances: Having come for hearing before the Admiralty Court, Montserrado County, to which it has been remanded by this court, to be opened "for such proofs and evidence as may establish the merits of the case on either side," and for the libel to be adjudged "according to the law and right of the case," an agreement was entered into by the parties in the cause to this effect: To admit the facts set forth in the libel and in the fourth and fifth pleas in defendant's answer, and to submit the following points or questions of law to be decided by the court after hearing arguments: (1) Whether the currency mentioned in the fourth plea in the defendant's answer is or is not such a contract as can be made a set-off against the claim set forth in the libel; (2) Whether the tender of such currency in payment of the libellant's claim, and its refusal, does or does not bar the libellant's recovery in this action, or, (3) Whether the law requiring the one tenth of duties to be paid in gold or silver coin does or does not impair the obligation of a contract.

According to this agreement the admitted facts by the defendant, now appellant, are his indebtedness to the libellant, now appellee, to the amount of one hundred and sixteen dollars and seventy-six cents, on account of the one tenth of duties on his imports and exports, and his refusal to pay the same in gold or silver coin or good approved bills of exchange, such refusal being in violation of an act entitled "An act to amend an act entitled An act amendatory and supplementary to an act regulating the payment of duties, passed and approved January 5th, 1879." The libellant admits the facts of having issued a paper currency and contracted to redeem the same in gold and

silver coin on demand; that the defendant having taken said currency so issued in exchange for goods imported, and demanded payment therefor, payment was refused by the said libellant; that the defendant did tender and offer to pay to the said libellant the sum of money claimed to be due for said duties in the lawful paper currency aforesaid, which the libellant refused to receive.

Upon the trial of the points and questions of law submitted to the court, the defendant took exceptions to the rulings of the judge, and the appellee in the case when first before this court now comes as the appellant, and brings for the consideration of the court the questions as contained in his bill of exceptions.

After having very attentively listened to the arguments advanced by counsel on each side, and carefully investigated and weighed the law cited in support of their respective positions, this court is now enabled to declare the result of its deliberations and researches on the questions presented to it.

As to the rulings of the judge: (1) That the currency mentioned in the fourth plea of defendant's answer "is not sufficient in law to be a set-off against the claim of the one tenth part of the duties claimed," see Lib. Stat. 1880, p. 18, secs. 1 and 2. (2) That the tender of such currency in payment of the libellant's claim for the one tenth does not bar the libellant's recovery in this action. The collector accepting the tender of anything but gold or silver coin or bills of exchange would subject him to penal servitude or fine (see Lib. Stat. p. 18, secs. 1—2) and the refusal does not bar the libellant's recovery in this action.

We are inclined to follow the principle that, in general, when the Government is plaintiff, no set-off will be allowed, "except in cases where it is permitted by act of the Legislature." (2 Bouv. Law Dict. p.516—"
off;" fig. 4.) And this inclination is confirmed by that section of our Constitution which declares that "suits may be brought against the Republic in manner and in such cases as the Legislature may by law direct." Under this provision it will be observed that no claim can be proceeded with or established against the Government in any other manner than that prescribed by law, and, to us at least, it seems a fair, logical and legal inference that where a special process has been thus prescribed for enforcing claims against the state, the defendant in an action brought by the Government cannot, because he has claims against the Government, evade the legal course laid down for him to pursue to secure those claims, by setting off such demands. A set-off is in the nature of and is governed by the same principles as a cross action, and to admit it would be virtually allowing suits to be brought against the Government other than in the manner prescribed. Under a plea of set-off and tender, it is questionable whether either a court of law or equity could enforce the payment of a contract in a manner otherwise than that expressed therein, and it seems reasonable to conclude that if the court can exercise no jurisdiction over actions of debt brought against the Republic, it cannot do so over a cross action of debt under a plea of set-off, unless by expressed direction of the Legislature. If the claim is in the nature of a contract, the party aggrieved by non-performance of the contract has had a remedy provided by the law, which also prescribes the manner in which he shall seek it.

Then there is another consideration. The counsels in their endeavors, during the course of their arguments, to impress the fact that the case is in a Court of Admiralty, have not failed. Now "Courts of Admiralty do not take notice of set-offs, except so far as they grow out of a maritime contract submitted to their cognizance, and then principally by way of diminishing compensation and not as an independent right." (12 U. S. Digest, first series, p. 229, sec. 998.) The judge therefore did not err in refusing to admit the claim of the defendant as a set-off.

Does the tender made to the collector bar the libellant's recovery in this action? We propose to answer this by refence to the authorities on the consequences and effect of a tender. A tender by one party, of paying a debt or performing a duty, and a refusal of the other to accept thereof, do in some cases amount to a payment of the debt or a performance of the duty. But it will appear that the discharge is in such cases an accidental and not a necessary consequence of the tender and refusal ; the debt or duty being discharged, because the cases · were so peculiarly circumstanced that there was not, after the tender and refusal, any remedy to enforce the payment of the debt, or the performance of the duties. (9 Bacon's Abrg. 328.) The effect of a tender when lawfully made is to discharge the debtor from subsequent interest and cost. (Ibid.)

A plea of tender admits the contract, and so much of the declaration as the plea is applied to. It does not bar the debt, as a payment would, but rather establishes the liability of the defendant; for, in general, he is liable to pay the sum which he tenders, whenever he is required to do so. But it puts a stop to accruing damages, or interest for delay in payment, and gives the defendant costs. (2 Parsons on Contracts, 629; see also Bouv. Law Dict. p. 582—"Tender," fig. 6.)

There is another point claiming our attention with respect to the tender made. The collector as agent for the Government to receive duties, was not at liberty to receive anything but the monies described in the act for his instruction. Any specific authority to an agent must be strictly pursued. (1 Parsons on Contract, p. 42.) An agent is not at liberty to exercise his discretion in the choice of a mode of performing the duty imposed upon him if someone mode, and that only, is fixed either by usage or by the orders of his principal, if he is a general agent; or, if he is a particular agent, by his principal's orders alone; for then he must adopt that very mode and no other. (Id. 58.) The collector was bound to observe the act, and was not competent to set it aside as illegal and void, unless it had been so pronounced by a proper authority.

We come now to the real essence of the case, the salient point of the bill of exceptions, which may be thus resolved: "The act authorizing one tenth of duties to be paid in gold or silver coin in good approved bills of exchange is not violative of the constitutional inhibition

— ' 'Nor shall the Legislature make any law impairing the obligation of contracts."

There is, perhaps, no class of cases in which the sensibilities of a people can be more readily and completely excited or aroused, than that in which it is proposed to establish principles relative to the currency and money of a nation, and to pronounce upon the restrictions that may have been placed on the exercise of sovereign powers. Constitutional questions generally cannot fail to be of great interest to all, and of much difficulty to those who have specially to deal with them, and to decide whether the law to be void for its repugnancy to the Constitution, is at all times a question of the greatest delicacy, and one that demands the greatest and most deliberate consideration.

Chief Justice Marshall, in giving the opinion of the Supreme Court of the United States in the case of Fletcher against Peck (as found in 6 Cranch, 128), made this declaration: "A question with respect to the constitutionality of a law is one which ought seldom if ever to be decided in the affirmative in a doubtful case." "The court," said he, "when impelled by duty to render such a judgment, would be unworthy of its station could it be unmindful of the solemn obligation which that station imposes. But it is not on slight implication and vague conjecture that the Legislature is to be pronounced to have transcended its powers, and its acts to be considered as void. The opposition between the Constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other." The force and justness of this observation of the Chief Justice, we opine, is apparent to all. Now, while it may be the duty of a judge to harmonize the acts of the Legislature as far as he can do so consistently, with the Constitution which he is sworn to support, yet it does not 'interfere with or annul his obligation "faithfully and impartially to discharge the duties of said office," nor require him to uphold a law simply because it has been enacted. While he should be extremely careful in pronouncing a law void for its unconstitutionality, a faithful discharge of his duty renders it imperative that he should do so without hesitation when there is apparent to him a repugnancy between the law and the Constitution.

It is in this spirit, and thus impressed' with our obligation to dispassionately compare the law and the Constitution, so far as the case is concerned, that we have approached the subject, and sought for such legal light as would make clear the road leading to a just conclusion. We propose to analyse to a certain degree that clause of the Constitution embraced in the question as above stated.

And first—What is a contract? Various definitions have been given of the word, and perhaps the most generally received one is, that "A contract is an agreement in which a party undertakes to do or not to do a particular thing."

Broom, in his Commentary on the Common Law (p. 252) says, that "in its widest and most general sense, the word 'contract' signifies an agreement, obligation or compact, which may be either unilateral or inter Partes;" and he further states it to be "of the essence of every contract or agreement, that the parties to be bound should consent, expressly or impliedly, to whatever is stipulated therein; for otherwise no obligation or reciprocal right can be created between them." (p. 255.) In our statutes (Legal Forms and Principles, page 4, sec. 11) it is defined to be "an agreement entered into by the assent of two or more minds by which one party undertakes to give some valuable thing, or to do or omit some act, in consideration that the other party shall give or has given some valuable thing, or shall do or omit, or has done or omitted, some act."

Second—What are the obligations of a contract?

"The obligatory force of contracts is in every civilized country derived tacitly from the law by reason of the manifest necessity which exists, with a view to the wellbeing of the community, that every man should fairly and honestly perform what he has undertaken to do." (Broom's Com. Law, p. 259.)

A contract is an agreement in which a party undertakes to do or not to do a particular thing. The law binds him to perform his undertaking, and this is, of course, the obligation of his contract. The term "obligation" is used as equivalent to "binding force," or "vinculum juris," and as consisting in the efficacy of the law which attaches to the contract, and if it cannot enforce its performance, at all events gives pecuniary compensation in lieu of performance. The word obligation is also used as correlative to "right." Whatever I, by my contract, give another a right to require of me, I thereby lay myself under an obligation to give or to do. (Broom's Com. Law, 261 ; 3 Parsons on Contracts, 555.)

The United States Supreme Court in the case of McCrackon against Hayword (2 How, U. S. 612) gave this interpretation of the phrase: "The obligation of a contract consists in its binding force on the party who makes it. This depends on the laws in existence when it is made; these are necessarily referred to in all contracts, and forming a part of them as the measure of the obligation to perform them by the one party, and the right acquired by the other. There can be no other standard by which to ascertain the extent of either, than that which the terms of the contract indicate, according to their settled legal meaning; when it becomes consummated the law defines the duty and the right, compels one party to perform the thing contracted for, and gives the other a right to enforce the performance by the remedies then in force. If any subsequent law affect to diminish the duty, or to impair the right, it necessarily bears on the obligation of the contract, in favor of one party, to the injury of the other; hence, any law which in its operation amounts to a denial or obstruction of the rights occurring by a contract, though professing to act only on the remedy, is directly obnoxious to the prohibition of the Constitution." And again, in the case of Curran against State of Arkansas (15 How, 319) : "The obligation of a contract, in the sense in which those words are used in the Constitution, is that duty of performing it, which is recognized and enforced by the laws. And if the law is so changed that the means of legally enforcing this duty are materially impaired, the obligation of the contract no longer remains the same."

This brings us to the next query—What impairs the obligation of a contract?

Any laws which enlarges, abridges, or in any manner changes the intention of the parties resulting from the stipulation in the contract, necessarily impairs it. The manner or degree in which this change is effected can in no respect influence the conclusion; for whether the law affects the validity, the construction, the duration, the discharge, or the evidence of the contract, it impairs its obligation, though it may not do so to the same extent in all the supposed cases.

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 the performance of those which are a part of the contract, however minute or apparently immaterial in their effect upon it, impairs its obligation. (2 Story, Const. sec. 1385 ; Green vs. Biddle, 8 Wheat 84.) "All laws which can by any possibility impair the obligation of a contract must apply either directly to the terms thereof, or directly to the remedy by which it is to be enforced," etc. (Ledg. on Const, Law, p. 605, n. a.) Our system of jurisprudence being borrowed to a very considerable extent from the English and American laws, we have deemed it as the most prudential course to go to these sources, and to search the reports in the construction of these terms contained in the constitutional

inhibition; and having laid down the principles as gathered and deducible from these, the next thing is to apply them to the case now under consideration. And in doing so we would observe that this question will not be considered in the form as presented to this court, as to whether the law in question does or does not impair the obligation of a contract, but will be confined to the special contract which it is alleged has been impaired. Our statutes declare that ' "The court to which the appeal may be taken shall examine the matter in dispute upon the record only; it shall receive no additional evidence and it shall reverse no judgment for any default of form, or for any matter to which the attention of the court below shall not appear to have been called, either by some bill of exception or other part of the record." (p. 62, sec. 10.) This law does not allow us to travel outside of the record in making up our decision, and if there be any contract other than the one forming a part of the record of this case we do not feel bound to pronounce upon it.

The contract as appearing by the pleadings in this cause and as admitted by libellant, is the engraved bills —bills of credit or paper currency running thus: "On Demand at the Treasury Department, the Treasurer of the Republic of Liberia will pay to Bearer in Gold or Silver coin Dollars."

The admission of this as a contract relieves us of the necessity of any elucidation on this point, and we proceed at once to consider its obligations. These are evident and unmistakable on the very face of the instrument. These are that the Republic will at its Treasury Department pay to the bearer of each note, on demand, the amount specified in gold or silver. It has been contended during the course of the argument that the receiving these notes for duties is a part of the contract so made by the law making these a tender for such.

Contracts between individuals and Government should be construed in the same manner as contracts between private parties. Let us suppose an individual to contract with another to pay him on demand a certain amount, and in a certain class of money; that he should afterwards, for the relief or convenience of either one or the other, say, "I will take up the note or contract so given, by work or merchandise." Would this affect the original condition or obligation of the contract to be paid in a certain class of money, and if it did not affect it, could it rightly be said to form a part of the contract? And if he should afterwards say, "I will no longer take up the note with work or merchandise," upon what would the other seek his remedy, the subsequent permission granted for cancelling the contract, or for the enforcement of the obligation as contained in the contract itself?

While the Legislature cannot legally impair the obligations of any contract, we think this prohibition must be distinguished from its right to adopt measures for the benefit of the nation, and from the necessity of the case, which may be subsequently varied or discontinued as the public good may require. It must be conceded that in every perfect and Competent government there must exist a general power to enact and to repeal laws, subject of course to such restrictions and prohibitions as the higher organic law or Constitution of the State may prescribe.

The Government is competent to declare anything a legal tender, to say for what it shall be a legal tender, and from time to time restrict or enlarge the province of this tender, unless it be a contract in which it has bound itself to receive unqualifiedly. And the defendant in this action, while he claims that the Government has contracted to pay him in gold or silver coin, does not set forth

any subsequent contract where the Government bound itself to receive this contract for. duties. And we hold that the binding obligation of the Government is that expressed in the contract, and that this is unaffected by the subsequent tender laws.

Does the act requiring one tenth of the duties to be paid in gold, silver or bills of exchange impair the obligation of this contract?

We cannot see that this act in any way enlarges, abridges or in any manner changes the intention of the parties resulting from the stipulations in the contract; we do not see that the act affects in any way the terms of the contract, or the remedy by which it may be enforced. The act authorizing the making of the contract does declare that it shall be the lawful paper currency of the Republic. But a currency may be lawful and yet not a tender for all dues, and the Legislature is competent to declare for what it shall be a tender, except perhaps in certain cases.

We have thus traversed all of the points properly before us, and at a very tedious length have endeavored to show our views and the legal authorities in support thereof; and while we may all agree as to the authorities, there will doubtless be various and diverse opinions as to our application of them.

It would indeed be remarkable if such was not the case, and we have not, in the framing of our views, attempted or even entertained the hope of avoiding such differences of opinion. We would not if we could control the independent view of each individual member of a nation, and in the discharge of our judicial duties will not, if we know it, allow ours to be controlled by any other influence than what we regard as law, justice and right.

For the reasons thus set forth, we feel bound and therefore do hereby decree that the decree made by the judge of the Court of Admiralty, Montserrado County, on the 26th day of January, A. D. 1881 is hereby affirmed.

Key Description: Admiralty (Jurisdiction as to revenue laws; setoff arising from nonadmiralty matter disallowed)