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Constitutional Law—Impairment of Obligation of Contract—Impairment by Change of Remedies—Impairment by Excercise of State's Police Power.— Canal Nat'l Bank v. School Administrative Dist. No. 3.

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> parties, unless some other state has a more significant relationship with the occurrence and the parties as to the particular issue involved, in which event the local law of the latter state will govern.[35]

In the instant case, Pennsylvania was interested to the extent that the decedent was a Pennsylvania domiciliary, the airplane ticket was purchased in Pennsylvania, and the flight began and was eventually to end in Pennsylvania. Also because the decedent's family lived in Pennsylvania, compensation for their loss will have an effect on Pennsylvania. Colorado, on the other hand, where the death occurred, had no other relationship to either the decedent or the defendant airline. This decision thus aligns Pennsylvania with the rapidly growing number of jurisdictions which apply the newer rule based on "contacts," "center of gravity" or "significant relationships" to their choice of law problems in conflict of laws.

This newer rule of "contacts," although arguably a cause of "forum shopping" in which a plaintiff could attempt to sue in that jurisdiction in which he will receive the largest recovery, merely authorizes the forum state to apply its own law in a choice of law situation when it has a significant relationship or interest in the outcome of the action. In the instant case, a more equitable result was attained using the newer "contacts" rule than would have been attained if the place of injury rule had been applied by the Pennsylvania court.

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Constitutional Law—Impairment of Obligation of Contract—Impairment by Change of Remedies—Impairment by Exercise of State's Police Power.—***Canal Nat'l Bank v. School Administrative Dist. No. 3.***[1]— The Canal National Bank was the holder of bonds issued by a school administrative district (SAD) which was comprised of eleven Maine towns. Under existing statutes,[2] the bonds were secured by (1) the power of the SAD to tax the eleven towns and (2) the right of the bank to levy on all personalty of the residents and on all realty within the eleven-town district. Subsequent to the issuance of the bonds, the state legislature enacted a statute,[3] removing three of the eleven towns from the SAD and reorganizing the SAD to comprise the eight remaining towns. Under this statute, the bonds were to be secured by (1) the power of the SAD to tax the remaining eight towns, (2) the right of the bank to levy directly on the property of the eight towns, and (3) a contingent liability imposed on the three withdrawn towns if payment in full was not made by levy on all the assets of the reorganized SAD. The bank brought suit for a declaratory judgment. The lower court rendered a decision in favor of the bank; and on appeal to the

[35] Id. § 379a.

[1] 203 A.2d 734 (Me. 1964).

[2] Me. Rev. Stat. Ann. ch. 41, § 111-K to L; ch. 90A, § 23; ch. 118, § 32 (Supp. 1963); Me. Rev. Stat. Ann. ch. 118, §§ 30-1.

[3] Me. Priv. & Sp. Laws 1963, ch. 175.

state supreme court, HELD: The reorganizing statute is unconstitutional under both the state[4] and federal[5] constitutions in that it impairs the contractual obligations of the bonds.

The court reasoned that although the legislature may change the remedies for the enforcement of contractual obligations, the remedies substituted or retained must be the substantial equivalent of the remedies lost. The court then found that the contingent liability of the three withdrawn towns was not the substantial equivalent of the SAD's power to tax the three towns and the bank's non-contingent right to levy on the property of the three towns. The court further stated that the fact that the statute was enacted for educational purposes did not remove the constitutional bar to its validity.

It is submitted that the court erred in its adoption of the "substantial equivalent" standard in determining whether the reorganization statute impaired the contractual obligations of the bonds. The standard is based solely on a passage found in the case of *Mobile v. Watson*.[6] The decisive factor of the *Mobile* case was that the questioned statute "made no adequate provision for the payment"[7] of the municipal bonds. Thus the passage which forms the basis for this standard appears to be mere *dicta*. In addition, the case was decided in 1886. It is significant that prior to this date—despite cases to the effect that the legislature had the power to change remedies[8]—the only change uniformly held constitutional was the abolishment of imprisonment for debt.[9] At this date, then, the Court had not yet left the period in which remedy changes were not readily sanctioned. Finally, and most significantly, the "substantial equivalent" standard is not in accord with the two standards which have been generally accepted in the most recent cases, and which may be broadly termed as the "efficacy" and "value of the contract" standards.[10]

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[4] Me. Const. art. I, § 11.

[5] U.S. Const. art. I, § 10.

[6] 116 U.S. 289 (1886). The Court stated that the remedies for the enforcement of contractual obligations, "which existed when the contract was made, must be left unimpaired by the legislature, or, if they are changed, a substantial equivalent must be provided." Mobile v. Watson, supra at 305.

[7] Id. at 299.

[8] Mason v. Haile, 25 U.S. (12 Wheat.) 234 (1827); Ogden v. Saunders, 25 U.S. (12 Wheat.) 135 (1827); Sturges v. Crowinshield, 17 U.S. (4 Wheat.) 70 (1819).

The first and leading case on the power of the legislature to change remedies is Sturges v. Crowinshield, supra. In that case, at the time defendant incurred a debt to the plaintiff, the state law provided that debts could be discharged only by full payment. Subsequently, the state enacted an insolvency law which abolished imprisonment for debt and discharged the debtor from his obligation to pay on the debtor's surrendering his property to a trustee. In upholding the law insofar as it abolished imprisonment for debt, Mr. Chief Justice Marshall stated:

> The distinction between the obligation of a contract, and the remedy given by the legislature to enforce that obligation, has been taken at the bar, and exists in the nature of things. Without impairing the obligation of the contract, the remedy may certainly be modified as the wisdom of the nation shall direct.

Sturges v. Crowinshield, supra at 106.

[9] Penniman's Case, 103 U.S. 714 (1881); Mason v. Haile, supra note 8; Sturges v. Crowinshield, supra note 8.

[10] The distinction between these standards is, at best, tenuous. In the first place,

The "efficacy" standard, prevalent in state decisions since 1925,[11] resembles the "substantial equivalent" standard in that it initially distinguishes the remedy to enforce the contractual obligation from the contractual obligation itself. It similarly recognizes that the former may be changed without impairing the latter. Unlike the "substantial equivalent" standard, however, in determining whether the legislative change has resulted in impairment of the contractual obligation, the "efficacy" standard does not look solely to whether there has been a substantial reduction in the remedies, but rather considers the remedy in relation to the obligation to be enforced. Thus the obligation is not impaired if there is merely a substantial reduction in remedies, but only if the remaining remedy is found not to be "reasonable,"[12] "substantial and efficacious,"[13] "reasonably adequate and effective,"[14] or "sufficient"[15] for enforcement of the obligation.

The "value of the contract" standard, adopted in the dicta of many cases[16] from the time of *Planters' Bank v. Sharp*[17] in 1848, is strongly supported by the leading case of *Faitoute Iron & Steel Co. v. City of Asbury Park*.[18] In the latter case, subsequent to the issuance of its bonds, the city approached insolvency. The bonds had little value, and the purchasers' sole remedy for enforcement of the bonds—a suit for mandamus to compel the levying of additional taxes—was equally valueless. The statute in question provided that the original bonds could only be converted into new bonds bearing a lower rate of interest. At the time of refunding, the new bonds

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the two standards may be substantially the same insofar as the "efficacy" standard is geared toward the protection of the value of the contract. Secondly, several cases draw no distinction, and indiscriminately use language referring to a change of remedies and to the value of the contract. See, e.g., Penniman's Case, supra note 9. As will be seen, "remedies" language has no place in a decision based on the "value of the contract" standard.

[11] The origin of the standard may be Oshkosh Waterworks Co. v. Oshkosh, 187 U.S. 437 (1903), where Mr. Justice Harlan stated:

> [It] is equally well settled that the Legislature may modify or change existing remedies or prescribe new modes of procedure, without impairing the obligation of contracts, provided a substantial or efficacious remedy remains or is given, by means of which a party can enforce his rights under the contract.

Oshkosh Waterworks Co. v. Oshkosh, supra at 439.

[12] Creteau v. Phoenix Assur. Co. of N.Y., 202 Va. 641, 119 S.E.2d 336 (1961) (insurance contract).

[13] Dows Estates v. Smith, 290 N.Y. 484, 49 N.E.2d 977 (1943) (mortgage contract); Onsrud v. Kenyon, 238 Wis. 496, 300 N.W. 359 (1941) (mortgage contract).

[14] Burke v. Fidelity Trust Co., 202 Md. 178, 96 A.2d 254 (1953) (bank charter contract).

[15] Mahood v. Bessemer Properties, 154 Fla. 710, 18 So. 2d 775 (1944) (purchase and sale agreement of realty); Lowther v. People's Bank, 293 Ky. 425, 169 S.W.2d 35 (1943) (real estate broker contract).

[16] Richmond Mortgage & Loan Corp. v. Wachovia Bank and Trust Co., 300 U.S. 124 (1937) ("remedies" language also); Worthen Co. v. Kavanaugh, 295 U.S. 56 (1935) (by implication); Home Bldg. & Loan Assn. v. Blaisdell, 290 U.S. 398 (1934) ("remedies" language also); Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922); Penniman's Case, supra note 9 ("remedies" language also).

[17] 47 U.S. (6 How.) 317 (1848). The Court stated that one "of the tests that a contract has been impaired is, that its value has by legislation been diminished." Planters' Bank v. Sharp, supra at 344.

[18] 316 U.S. 502 (1942) (no dissent).

were selling at 69, and at the time of the suit, they commanded a market price of better than 90. In speaking of the dividing line between a legitimate change in remedies and a change which, under the form of modifying the remedy, impairs the obligations of a contract, Mr. Justice Frankfurter said that the line would remain "obscure if we deal with empty abstract rights instead of worldly gains and losses, if we indulge in doctrinaire talk about 'rights' and 'remedies.' "[19] Mr. Justice Frankfurter then pointed out that "that which was a most depreciated claim of little value has, by the very scheme complained of, been saved and transmuted into substantial value."[20] In upholding the statute, then, the *Faitoute* decision effectively (1) abolishes the distinction between remedy and obligation[21] and (2) makes the standard for determination of impairment the question of whether the value of the contract immediately before enactment of the questioned statute is diminished after its enactment.[22] Thus the "substantial equivalent" standard stands in marked contrast with the "value of the contract" standard on both points, particularly on the latter.

It is further submitted that the *Canal Nat'l Bank* court might have easily disposed of the case on the ground that the statute was a valid exercise of the state's police power.

That a state may, in the exercise of its police power, enact a statute which impairs contractual obligations is now clear.[23] It is further clear that to qualify as a valid exercise of the police power, the statute must be addressed to a legitimate end,[24] *i.e.*, a purpose which is within the scope of the police power, and the measures taken must be reasonable and appropriate to that end.[25]

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[19] Id. at 515.

[20] Id. at 515-16.

[21] Accord, Judge Learned Hand's statement that "a right without any remedy is a meaningless scholasticism." Wood & Selick v. Compagnie Generale Transatlantique, 43 F.2d 941, 943 (2d Cir. 1930).

[22] Before Faitoute v. City of Asbury was decided, the "value of the contract" standard required protection of the value at the time the contract was made, rather than the value at the time the statute was enacted. People ex rel. Brixton Operating Corp. v. La Fetra, 194 App. Div. 523, 186 N.Y.S. 58 (1920). See Worthen Co. v. Kavanaugh, supra note 16.

[23] Veix v. Sixth Ward Bldg. & Loan Assn. of Newark, 310 U.S. 32 (1940); Home Bldg. & Loan Assn. v. Blaisdell, supra note 16.

[24] Compare Veix v. Sixth Ward, supra note 23, with Treigle v. Acme Homestead Assn., 297 U.S. 189 (1936).

The following constitute some of the ends for which the police power may be validly exercised under the contracts-impairment clause: health, City of Covington v. Sanitation Dist. No. 1 of Campbell and Kenton Counties, 301 S.W.2d 885 (Ky. 1957); safety, New York State Thruway Authority v. Ashley Motor Court, Inc., 12 App. Div. 2d 223, 210 N.Y.S.2d 193 (1961); economic interests, Willys Motors v. Northwest Kaiser-Willys, 142 F. Supp. 469 (D. Minn. 1956); and conservation of cemeteries, Grove Hill Realty Co. v. Ferncliff Cemetery Assn., 7 N.Y.2d 403, 198 N.Y.S.2d 287, 165 N.E.2d 858 (1960).

[25] These were the requirements first set down in the body of the leading case Home Bldg. & Loan Assn. v. Blaisdell, supra note 16. However, in its conclusion, the Court added the requirements that an emergency situation exist and that the legislation be temporary. These latter requirements were later erased by Veix v. Sixth Ward,

The sole obstacle[26] in upholding the reorganization statute is that no precedent has been established to the effect that education is an end for which the police power may be exercised where the contracts-impairment clause is concerned. However, this obstacle might be easily overcome. In *Interstate Consol. St. Ry. v. Commonwealth of Mass.*[27] an educationally oriented statute was challenged as violative of due process. In upholding the statute against the due process objection, Chief Justice Holmes stated: "Education is one of the purposes for which what is called the police power may be exercised."[28] It has been strongly suggested that the standard utilized to determine the validity of an exercise of the police power is the same under both the due process clauses of the Fifth and Fourteenth Amendments and the contracts-impairment clause.[29] The suggestion is highly logical, since to require a more stringent standard under the contracts-impairment clause than under the due process clause would be to prefer contract rights to personal and property rights. Also, the cases which deal with the police power under the contracts-impairment clause intimate no distinction as to the extent of the validity of the police power under the two clauses.[30] From these facts, therefore, there arises a strong inference that an educationally oriented statute can be upheld against a contracts-impairment objection as a valid exercise of the police power.

The practical consequences of this decision, too, must not be forgotten. In adopting the "substantial equivalent" standard, the *Canal Nat'l Bank* court effectively renders the contracts-impairment clause absolute, thus obstructing the flow of that capital which need not be tied up in giving excessive security to contract obligations. This is economically unsound. In failing to include education within the scope of the police power, and consequently to uphold the educationally oriented statute against a contracts-impairment objection, the court unnecessarily precludes any means of improving the educational system which would involve alteration of existing contracts. The academic determination, then, that the court is a step or two behind present case law and present trends constitutes merely one major criticism of the *Canal Nat'l Bank* decision. A second, and equally severe criticism is based on the observation that the practical effect of the decision is to deny economic and social benefits which are constitutionally obtainable.

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supra note 23, where the Court upheld a statute which was permanent in nature and which was enacted to meet no emergency situation.

[26] There is a presumption in favor of the legislature regarding the reasonableness and appropriateness of the measures. Grove Hill Realty Co. v. Ferncliff Cemetery Assn., supra note 24. See Veix v. Sixth Ward, supra note 23, where the Court seems to set only one requirement—namely, that the legislation be addressed to a legitimate end.

[27] 207 U.S. 79 (1907).

[28] Id. at 87.

[29] Hochman, The Supreme Court and the Constitutionality of Retroactive Legislation, 73 Harv. L. Rev. 692, 695 (1960), citing several cases to support conclusion.

[30] See cases cited supra note 24.