

UNITED STATES v. ONWAY.

amination of the doctrine there settled, I can perceive nothing which can justly authorize the inference that that court would declare our state valuation law inoperative and void, as being in conflict with the constitution of the United States. The distinction between the obligation of a contract, and the remedy to enforce it, is clearly stated by the chief justice who delivered the opinion. In their nature they are different and distinct things. The obligation of a contract arises at the time the contract is made, and continues until it be performed or discharged. The remedy to enforce the obligation of the contract does not arise until there is a failure to perform the obligation. They are, then, not identical, but

different and distinct things. The constitution prohibits laws impairing the obligation of contracts, and is silent with regard to laws relating to the remedies by which contracts are to be enforced.

In the opinion referred to, the chief justice states the doctrine in the following terms: "If the laws of the state, passed afterwards, had done nothing more than change the remedy upon contracts of this description, they would be liable to no constitutional objection. For, undoubtedly, a state may regulate at pleasure the modes of proceeding in its courts, in relation to past contracts as well as future. And although a new remedy may be deemed less convenient than the old one, and may in some degree render the recovery of debts more tardy and difficult, yet it will not follow that the law is unconstitutional. Whatever belongs merely to the remedy, may be altered according to the will of the state, provided the alteration does not impair the obligation of the contract. But if that effect is produced, it is immaterial whether it is done by acting on the remedy, or directly on the contract itself. In either case it is prohibited by the constitution." The chief justice further says: "It is difficult perhaps to draw a line that would be applicable in all cases, between legitimate alterations of the remedy, and provisions which, in the form of remedy, impair the right. But it is manifest that the obligation of the contract, and the rights of a party under it, may, in effect, be destroyed by denying a remedy altogether, or may be seriously impaired by burdening the proceedings with new conditions and restrictions, so as to make the remedy hardly worth pursuing. And no one, we presume, would say that there is any substantial difference between a retrospective law, declaring a particular contract or class of contracts to be abrogated and void, and one which took away all remedy to enforce them or encumbered them with conditions that rendered it useless or impracticable to pursue it"

Now, the question here presented is, does the valuation law of this state come within the rule here laid down by the supreme court of the United States? Does it, in the language of the court, so seriously impair and burden the proceedings with new conditions and restrictions, as to make the remedy hardly worth pursuing? I think not. The valuation law, in the event that the property will not bring two thirds of its appraised value, postpones the collection of the debt for twelve months. This can scarcely be said to make the remedy hardly worth pursuing.

My opinion is, that the valuation law is a valid and constitutional law, and its provisions are to be followed in executing the final process of this court. The venditioni exponas must, therefore, be quashed, and the clerk, on the application of the defendant, is directed to issue a supersedeas thereto. Ordered accordingly.

¹ [Reported by Samuel H. Hempstead, Esq.]