

**Constitutional Law—Gold Clause Acts—Power of Congress Over Contracts—Extension to Multiple Currency Clauses (The Guaranty Trust Co. of N.Y. v. Berrywood Henwood; The Chemical Bank and Trust Co. of Same, 59 Sup. Ct. 847 (1939))**

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CONSTITUTIONAL LAW—GOLD CLAUSE ACTS—POWER OF CONGRESS OVER CONTRACTS—EXTENSION TO MULTIPLE CURRENCY CLAUSES.—In the bankruptcy proceedings of the St. Louis-Southwestern Railway Company, the petitioners submitted a claim for \$37,335,525.12. Petitioners were trustees of a certain bond and mortgage of said railroad which gave to the holders the right to demand payment either in United States gold coin of the value of January 1, 1912, or its equivalent in value of English pound sterling, Dutch guilder, French franc, or German mark at that date.<sup>1</sup> The petitioners in these proceedings elected to claim the Dutch guilder value at the standard of gold on January 1, 1912. The referee in bankruptcy reduced this amount to \$21,638,000.00, justifying his action by the present value of the dollar.<sup>2</sup> This was sustained by the lower courts.<sup>3</sup> On appeal to the United States Supreme Court, *held*, affirmed. The Court found that the multiple currency clause in the trust mortgages came within the Joint Resolution of June 5th, 1933, as the bonds were domestic obligations, and, as such, dischargeable upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts; that contractual rights of the Fifth and Fourteenth Amendments were not nullified, as private parties cannot create vested rights limiting power of Congress in respect to the monetary policy of the United States. *The Guaranty Trust Co. of N. Y. v. Berryman Henwood; The Chemical Bank and Trust Co. v. Same*, — U. S. —, 59 Sup. Ct. 847 (1939).

The decision in this case is in accord with recent decisions.<sup>4</sup> The

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<sup>1</sup> The bonds themselves provided: "St. Louis Southwestern Railway Company \* \* \* for value received, hereby promises to pay to the bearer, or, if registered, to the registered holder, of this bond, on the first day of January, 1952, at its office or agency in the Borough of Manhattan, City and State of New York, One Thousand Dollars in gold coin of the United States of America, of or equal to the standard of weight and fineness as it existed January 1, 1912, or in London, England, £205 15s 2d, or in Amsterdam, Holland, 2490 guilders, or in Berlin, Germany, marks 4200, D. R. W., or in Paris, France, 5180 francs, and to pay interest thereon, at the rate of five per cent, per annum, from the first day of January, 1912, in said respective currencies, semi-annually \* \* \*."

<sup>2</sup> 48 STAT. 112 (1933), 31 U. S. C. § 463 (1934).

The Joint Resolution of June 5th, 1933, made the bonds dischargeable by payment of current legal tender United States money and further stated that domestic obligations requiring payment in gold or in a particular currency of fixed valuation are against public policy.

<sup>3</sup> 48 STAT. 337, 12 U. S. C. § 212 (1934). Then the President, by an executive order under the Gold Reserve Act of 1934, fixed the present value of the dollars. Proclamation 2072, Jan. 31, 1934.

<sup>4</sup> 98 F. (2d) 160, 179 (C. C. A. 8th, 1939).

<sup>4</sup> *Norman v. Baltimore & Ohio R. R.*, 294 U. S. 240, 55 Sup. Ct. 407 (1935) (the claimant sought to enforce a payment in gold of the standard of Feb. 1, 1930, but the Court, holding the Joint Resolution constitutional, said Congress could establish the value of currency and as such make it legal tender, outlawing all contract clauses seeking to establish payment on a previous standard. *Nortz v. United States*, 294 U. S. 317, 55 Sup. Ct. 415 (1935). The Court even extended the Joint Resolution to include Government obligations in the form of gold certificates and made them payable in current legal tender).

terms of the bonds and mortgages made them domestic obligations<sup>5</sup> and, as such, within the laws relating to them.<sup>6</sup> Congress alone has the right to determine the public policy of the United States in matters relating to currency and national economy.<sup>7</sup> The Constitution also gives to Congress the right to make all laws which shall be necessary and proper for carrying into execution the powers granted.<sup>8</sup> In view of these provisions, it has been held that Congress is authorized to provide a sound and uniform currency for the country, and to secure the benefits of it to the people by appropriate legislation.<sup>9</sup> The Joint Resolution of 1933 has been held constitutional in relation to outlawing the "gold clause" in domestic and foreign bonds,<sup>10</sup> and the Court, in the instant case, has gone further and declared its constitutionality where an optional payment in foreign currency is offered, based on a fixed value of United States gold.

The plaintiff claims that the decision is contrary to the provisions of the Fifth and Fourteenth Amendments,<sup>11</sup> as the stipulation for gold payment was included in the bond and mortgage, creating a property right and, as such, Congress had no right to interfere or impair the obligations of the contract. Although Congress cannot impair the obligations and interests created by a contract,<sup>12</sup> it is a well-established

<sup>5</sup> The bonds provided that the trustee be a New York trust company; enforcement of the trust security, collection of bonds and interest, employment of attorneys, institution of legal proceedings and distribution of assembled assets were all duties of the New York trustee. Thus, it is obvious that the mortgaged property, situated in the United States, is subject to the law of the United States.

<sup>6</sup> *Ogden v. Saunders*, 12 Wheat. 213 (U. S. 1827); *Putchar v. Norton*, 106 U. S. 124, 1 Sup. Ct. 102 (1882); *Liverpool & G. W. Steam Co. v. Phenix Ins. Co.*, 129 U. S. 397, 9 Sup. Ct. 469 (1888); *United States v. North Carolina*, 136 U. S. 211, 10 Sup. Ct. 920 (1889).

<sup>7</sup> *Veazie Bank v. Fenno*, 8 Wall. 533 (U. S. 1869); *Knox v. Lee*, 12 Wall. 457 (U. S. 1871).

<sup>8</sup> U. S. CONST. Art. I, § 8; *Civil Rights Cases*, 109 U. S. 3, 3 Sup. Ct. 18 (1883) ("The constitutional power extends to all laws regulating the subject of currency in every detail and the conduct and transactions of individuals in respect thereof"); *Norman v. B. & O. R. R.*, 294 U. S. 240, 55 Sup. Ct. 407 (1935).

<sup>9</sup> *Sturgis v. Crowninshield*, 4 Wheat. 122, 193 (U. S. 1819); *United States v. Marigold*, 9 How. 560, 568 (U. S. 1850); *Veazie Bank v. Fenno*, 8 Wall. 533, 549 (U. S. 1869); *Legal Tender Cases*, 12 Wall. 457, 545 (U. S. 1871); *Juilliard v. Greenman*, 110 U. S. 421, 4 Sup. Ct. 122 (1884); *Ling Su Fan v. United States*, 218 U. S. 302, 31 Sup. Ct. 21 (1910).

<sup>10</sup> *Norman v. B. & O. R. R.*, 294 U. S. 240, 55 Sup. Ct. 407 (1935), *aff'g*, 265 N. Y. 37, 191 N. E. 226 (1934); *Holyoke Water Power Co. v. American Writing Paper Co.*, 300 U. S. 324, 57 Sup. Ct. 485 (1937), *rev'g*, *Emery Bird Thayer Dry Goods Co. v. Williams*, 15 F. Supp. 938 (W. D. Mo. 1936).

<sup>11</sup> U. S. CONST. Amend. V ("No person \* \* \* shall be deprived of life, liberty or property without due process of law"); U. S. CONST. Amend. XIV ("No state shall deprive any citizen of life, liberty or property without due process of law").

<sup>12</sup> *Highland v. Russell Car & Snow Plow Co.*, 279 U. S. 253, 49 Sup. Ct. 314 (1929), citing *Adair v. United States*, 208 U. S. 161, 28 Sup. Ct. 277 (1908) ("Generally speaking, the right to enter into and carry out contracts in

principle that such liberty of contract is not absolute or universal, and that Congress may regulate the making and performance of such contracts whenever reasonably necessary to insure the furtherance of the sovereignty and power of the National Government.<sup>13</sup> The Constitution only limits the powers of the states over contracts and does not control the power of Congress or the United States.<sup>14</sup> Congress has often exercised its power over contracts by appropriate legislation. Congressional control over money has even been held valid when applied to limiting already existing contracts.<sup>15</sup> Contracts are made in reference to a possible exercise of the rightful authority of the Government and no obligation of a contract can defeat that power. It is because of the authority of Congress over currency that there attaches to the ownership, or the right to ownership of gold and silver, certain limitations which public policy requires, since it is used as legal tender and as a medium of exchange.<sup>16</sup>

The argument against Congress exercising its implied constitutional power to impair contracts is based in main on the hardship and loss resulting from the destruction of property rights created by the obligation and, consequently, Congress would, in effect, be regulating contracts and not currency. But harshness of legislation, or the hardship resulting to certain persons, is no reason for declaring an act unconstitutional.<sup>17</sup> Necessity alone is the determiner of the justi-

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respect of one's property and private affairs is protected by the due process clause of the 5th and 14th Amendments of the Constitution").

<sup>13</sup> *McCulloch v. Maryland*, 4 Wheat. 316 (U. S. 1819) ("Congress has the power to pass appropriate legislation to achieve the great objects for which the government was framed \* \* \* to create a national government with sovereign powers"); *Baltimore & O. R. R. v. Interstate Commerce Comm.*, 221 U. S. 612, 31 Sup. Ct. 716 (1911); *Highland v. Russell Car & Snow Plow Co.*, 279 U. S. 253, 49 Sup. Ct. 314 (1929), citing *Frisbie v. United States*, 157 U. S. 160, 15 Sup. Ct. 586 (1895).

<sup>14</sup> *Legal Tender Cases*, 12 Wall. 457, 529 (U. S. 1871); *Louisville & W. R. R. v. Mottley*, 219 U. S. 467, 31 Sup. Ct. 265 (1911); *New York v. United States*, 257 U. S. 591, 42 Sup. Ct. 439 (1922); *Home Bldg. & Loan Assn. v. Blaisdell*, 290 U. S. 398, 54 Sup. Ct. 231 (1934).

<sup>15</sup> *Sturges v. Crowninshield*, 4 Wheat. 122, 200 (U. S. 1819); *Legal Tender Cases*, 12 Wall. 457, 544 (U. S. 1871), *overruling* *Hepburn v. Griswold*, 8 Wall. 603 (U. S. 1870). See also *Dooley v. Smith*, 13 Wall. 604 (U. S. 1872); *Norwich & W. R. R. v. Johnson*, 15 Wall. 195 (U. S. 1873); *Bernheimer v. Converse*, 206 U. S. 516, 27 Sup. Ct. 755 (1907) ("Without impairing the obligation of the contract, the remedy may certainly be modified as the wisdom of the national shall direct").

The Joint Resolution does affect the fulfillment of a contract.

The Legal Tender Acts, which were passed during the Civil War, 12 STAT. 345 (1862), 31 U. S. C. § 452 (1934), made the United States notes lawful money and legal tender in payment of all debts, public and private, within the United States, affected the fulfillment of contracts when they were passed. Congress also has the right to pass bankruptcy acts, non-intercourse acts, declare an embargo or declare war, all of which operate seriously upon existing contracts.

<sup>16</sup> *Ling Su Fan v. United States*, 218 U. S. 302, 310, 31 Sup. Ct. 21 (1910).

<sup>17</sup> *Norman v. B. & O. R. R.*, 294 U. S. 240, 55 Sup. Ct. 407 (1935) (holding valid the repeal of the "gold clause" as applied to a private contract).

fication of an abridgement of a contract.<sup>18</sup> Congress has always determined the *policy*, which must not be confused with the judicial right to determine *power*.<sup>19</sup>

The wording of the bonds, while perfectly legal at the time they were written, show that the makers intended to prevent loss if Congress altered the value of gold. The Court, in the instant case, has seen through the subterfuge and extended its ruling in the Gold Clause cases to cover optional bonds and thus defeating the obvious attempt to nullify the Gold Clause Acts. The Court points to the Senate report on the Resolution which shows the intention of Congress to prevent such a result.<sup>20</sup> The Courts, having previously recognized the Congressional power in relation to the United States monetary policy,<sup>21</sup> were consistent in affirming the decision of the lower courts. Gold coin is no longer recognized as legal tender and the obligation of the contract to pay money is governed by that which the law shall recognize as money.<sup>22</sup> The Joint Resolution and subsequent legislation stated what was to be recognized as legal tender for all domestic obligations. The bonds and mortgages in the instant case were found to be domestic obligations that came within the law.<sup>23</sup>

R. M. P.

CONSTITUTIONAL LAW—MULTIPLE INHERITANCE TAXATION—DETERMINATION OF DOMICILE BY SUPREME COURT.—This action, in the nature of a bill of interpleader, was brought in the Supreme Court by the State of Texas against the states of Florida, New York and Massachusetts, to determine the domicile of the decedent, Edward H. R. Green, who died leaving an estate which included intangibles aggregating more than \$35,000,000. The court's jurisdiction was based on allegations that each state claimed to be deceased's domicile for taxing purposes, and that the total sum of the claims of each state and the Federal Government would far exceed the total value of the estate, thereby jeopardizing plaintiff's attempt to collect its taxes. The court appointed a special master,<sup>1</sup> who found that decedent, at

<sup>18</sup> *Wolff Packing Co. v. Court of Industrial Relations*, 262 U. S. 522, 43 Sup. Ct. 630 (1923).

<sup>19</sup> *Chicago, B. & O. R. R. v. McGuire*, 219 U. S. 549, 31 Sup. Ct. 259 (1911).

<sup>20</sup> SEN. REP. NO. 99, 73d Cong., 1st Sess. (1933) ("Additional and immediate legislation is necessary to remove the disturbing effect of this uncertainty and to insure the success of the policy by closing possible legal loopholes and removing inconsistencies").

<sup>21</sup> *Legal Tender Cases*, 12 Wall. 457 (U. S. 1871).

<sup>22</sup> *Faw v. Marstittler*, 2 Cranch 1, 29, 32 (U. S. 1804).

<sup>23</sup> See notes 6, 7, *supra*.

<sup>1</sup> 301 U. S. 671, 57 Sup. Ct. 935 (1936).