

# Constitutional Law--Statute Forbidding the Payment of Obligations in Gold Constitutional--Impairment of Contracts by Congress (Norman v. Baltimore & Ohio Railroad Co., 265 N.Y. 37 (1934))

St. John's Law Review

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### Recommended Citation

St. John's Law Review (1934) "Constitutional Law--Statute Forbidding the Payment of Obligations in Gold Constitutional--Impairment of Contracts by Congress (Norman v. Baltimore & Ohio Railroad Co., 265 N.Y. 37 (1934))," *St. John's Law Review*: Vol. 9 : No. 1 , Article 18.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol9/iss1/18>

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personal injuries be filed within a stated time will generally be held binding on the passenger although he failed to read them.<sup>5</sup>

The plea of infancy may be raised by a minor, but as a condition to the disaffirmance of a contract he will be required to return the consideration received and restore the other party to the *status quo*.<sup>6</sup> He will also be held to the performance of any conditions or stipulations contained in the contract if he desires to avail himself of the benefits of the contract.<sup>7</sup> The fact that he is unable to enter into a binding contract for things which are not necessities will not permit him to disaffirm the contract in part and enforce it in part.<sup>8</sup> He must either stand upon his contract or disaffirm it in its entirety. In the instant case the infant's right to have her baggage transported arose out of her contract of passage. If she wishes to recover damages for negligence in carrying out a part of the contract, she must submit to the conditions and limitations surrounding the contract.<sup>9</sup>

J. F. M.

CONSTITUTIONAL LAW—STATUTE FORBIDDING THE PAYMENT OF OBLIGATIONS IN GOLD CONSTITUTIONAL—IMPAIRMENT OF CONTRACTS BY CONGRESS.—The plaintiff brought an action to recover \$22.50 in gold coin of the United States of America or its equivalent due on a bond and coupon issued by the defendant company.

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<sup>5</sup> *Tewes v. North German Lloyd S. S. Co.*, 186 N. Y. 151, 78 N. E. 864 (1906); *Murray v. Cunard S. S. Co.*, 235 N. Y. 162, 139 N. E. 226 (1923); *cf. The Majestic*, 166 U. S. 375, 17 Sup. Ct. 597 (1897) (notice to passenger printed on back of ticket and not called to his attention is not binding upon him); *Baer v. North German Lloyd*, 69 F. (2d) 88 (C. C. A. 2d, 1934) (printed condition on back of form affixed to ticket relating to claims for damages for personal injuries held not part of contract and not binding on passenger because not called to his attention).

<sup>6</sup> *Rice v. Butler*, 160 N. Y. 578, 55 N. E. 275 (1899).

<sup>7</sup> *O'Laughlin v. Union Central L. Ins. Co.*, 11 Fed. 280 (C. C. E. D. Mo. 1882); *Mead v. Phoenix Ins. Co.*, 68 Kan. 432, 75 Pac. 475 (1904); *Western Union Tel. Co. v. Greer*, 115 Tenn. 368, 89 S. W. 327 (1905); *WILLISTON, CONTRACTS* (1924) §236.

<sup>8</sup> A stipulation in a contract permitted a person to attend an educational institution provided that the student might be dismissed at any time without any reason being given by the institution. Such a provision is binding on the student even though she be a minor. She may not sue for specific performance of the contract to afford her the educational facilities of the institution and at the same time disaffirm a condition attached to the contract. *Anthony v. Syracuse University*, 224 App. Div. 487, 231 N. Y. Supp. 435 (4th Dept. 1928).

<sup>9</sup> See *Evelyn v. International Mercantile Marine Co.*, 35 F. (2d) 47 (E. D. N. Y. 1929), where it was held that an infant who had failed to present her claim for damages for personal injuries within the time provided in the steamship ticket was prevented from suing the carrier at a later date. Her right to sue was based on her contract with the company and it must be exercised in conformity therewith.

The said bond contains a clause requiring that both principal and interest be paid "in gold coin of the United States of America of or equal to the standard of weight and fineness existing on February 1, 1930." *Held*, the defense that the defendant by statute<sup>1</sup> could not discharge the principal and interest accruing on such bond and coupon in any currency other than legal tender of the United States existing at the time of payment, is valid. *Norman v. Baltimore & Ohio Railroad Co.*, 265 N. Y. 37, 191 N. E. 726 (1934).

The Congress of the United States has power to regulate and control the issue and coinage of money and to regulate the value thereof.<sup>2</sup> The power to enact all laws necessary to the execution of the primary power is also given Congress.<sup>3</sup> The Supreme Court has held that this section of the Constitution is to be interpreted as meaning a reasonable necessity rather than an absolute necessity.<sup>4</sup> What constitutes a reasonable necessity is a matter of policy in some instances and in others is a matter of judicial jurisdiction.<sup>5</sup> Those matters which are political must be decided by Congress itself while those which are judicial questions are to be decided by the court.<sup>6</sup> The matter of regulating the value of money has been held by the Supreme Court to be a political question and therefore not within its jurisdiction.<sup>7</sup>

There are certain objects of good government which are entrusted to the National Legislature.<sup>8</sup> The coinage and evaluation of money is one of those objects.<sup>9</sup> For the court to undertake to

<sup>1</sup> 31 U. S. C. A. 463 (1933).

<sup>2</sup> U. S. CONST., Art. I, §8, cl. 5.

<sup>3</sup> U. S. CONST., Art. I, §8, cl. 18; *Brisco v. Commonwealth of Kentucky*, 12 U. S. 418 (1837); *Fox v. Ohio*, 11 Pet. 257, 16 U. S. 447 (1846); *United States v. Marigold*, 9 How. 560, 18 U. S. 261 (1849); *Veasie Bank v. Fenno*, 75 U. S. 533 (1869); *Legal Tender Cases*, 79 U. S. 457 (1883); *Juillard v. Greenman*, 110 U. S. 421. *Contra*: *Hepburn v. Griswold*, 75 U. S. 603 (1869).

<sup>4</sup> "A constitution, \* \* \* is not to be interpreted with the strictness of a private contract." *Legal Tender Cases*, *supra* note 3, at 439; "By the settled construction and the only reasonable interpretation of this clause, the words 'necessary and proper' are not limited to such measures as are absolutely and indispensably necessary, without which the powers granted must fail of execution; \* \* \*." *Id.* at 440.

<sup>5</sup> "Where the law is not prohibited, and is really calculated to effect any of the objects intrusted to the government, to undertake to inquire into the degree of necessity would be to pass the line which circumscribes the judicial department and to tread on legislative ground. This court disclaims all pretensions to such a power." *Fong Yue Ting v. United States*, 149 U. S. 698, 13 Sup. Ct. 1016 (1892).

<sup>6</sup> *Legal Tender Cases*, *supra* note 3.

<sup>7</sup> *Ibid.*

<sup>8</sup> U. S. CONST., Art. I, §8.

<sup>9</sup> "The question whether at any particular time, in war or in peace, the exigency is such, by reason of unusual and pressing demands on the resources of the government, or of the inadequacy of the supply of gold and silver coin to furnish the currency needed for the use of the government and of the people, that it is, as a matter of fact, wise and expedient to resort to this means, is a political question, to be determined by Congress when the question

inquire into the degree of necessity for laws and enactments in the matter would be to overstep the line of distinction between the legislative and judicial departments of our government.<sup>10</sup> In view of this attitude of unwillingness to overstep this line of demarcation, the court did not look into the degree of necessity for the legislation involved.<sup>11</sup>

In the *Legal Tender Cases*,<sup>12</sup> the court says that Congress has the power to impair contracts by its legislation. "Every contract for the payment of money, simply, is necessarily subject to the constitutional power of the government over the currency, whatever that power may be, and the obligation of the parties is, therefore, assumed with reference to that power."<sup>13</sup> The prohibition on the payment of obligations in gold even when the evidence of debt requires that it be paid in gold or its equivalent and a direction to cancel all such obligations by payment of a dollar for each dollar of indebtedness is within the power of Congress and is therefore a measure within the powers conferred by the Constitution of the United States.<sup>14</sup>

J. A. R., JR.

CORPORATIONS—CUMULATIVE VOTING—PROVISION THEREFOR IN BY-LAWS.—Petitioner, a minority stockholder, seeks confirmation of election of a director through cumulative voting of his stock pursuant to a by-law adopted by the corporation with consent of all the stockholders authorizing that method of voting. Respondents, majority stockholders, claim that since there is no provision in the certificate of incorporation providing for cumulative voting, the election is invalid. *Held*, such provision in by-laws creates a vested right in the stockholder, and is binding on the other stockholders. *Matter*

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of exigency arises, and not a judicial question to be afterwards passed upon by the courts." *Legal Tender Cases*, *supra* note 3, at 450.

<sup>10</sup> *Fong Yue Ting v. United States*, *supra* note 5.

<sup>11</sup> *Legal Tender Cases*, *supra* note 3.

<sup>12</sup> *Ibid*.

<sup>13</sup> *Id.* at 457.

<sup>14</sup> Instant case; *Rae v. Homestead Loan & Guarantee Co.*, 176 U. S. 121, 20 Sup. Ct. 341 (1899); *United States v. Boak Fish Co.*, 146 Fed. 104 (Cir. Ct. 3rd D. Minn. 1906); *Ceballos v. United States*, 146 Fed. 380 (C. C. A. 2d, 1906); *Troy v. Bland*, 58 Ala. 197 (1877); *Belloc v. Davis*, 38 Cal. 242 (1869); *Jones v. Harker*, 37 Ga. 502 (1867); *Black v. Lusk*, 69 Ill. 70 (1873); *Brown v. Welch*, 26 Ind. 116 (1866); *Hintrager v. Bates*, 23 Iowa 331 (1867); *George v. Concord*, 45 N. H. 434 (1864); *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400, writ of error dismissed, 68 U. S. 512 (1863); *Schollenberger v. Brinton*, 52 Pa. St. 9 (1866); *Johnson v. Ivey*, 44 Tenn. 608 (1867). *In re Société Intercommunale Belge d'Electricité—Feist v. The Company*, 49 Times Law Reports 344. *Contra*: *Hepburn v. Griswold*, *supra* note 3; *Meyer v. Kaufmann*, 37 Ga. 600 (1868); *Hepburn v. Griswold*, 63 Ky. 20 (1865); *Meyer v. Roosevelt*, 25 How. Pr. 97 (N. Y. 1862).