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THE EFFECT OF ALTERATION OR ABOLITION OF A MUNICIPAL CORPORATION UPON ITS DEBTS

By John Donald Robb*

In a number of cases which have been decided by the Supreme Court of the United States the question which was raised was —what happens to debts owed by a muncipal corporation to a private person, when the state abolishes or alters the municipal corporation without making provision for the payment of its debt? In *Laramie County v. Albany County*,[1] the state legislature had carved the defendant county out of the plaintiff county without making any provision for the apportionment of the debt. Suit was brought to compel contribution by Albany County, but the court held that the entire burden must fall upon the parent county. In the case of *Mount Pleasant v. Beckwith*,[2] however, where the legislature abolished a municipal corporation and divided its territory among three others without providing for any apportionment of the debt, the court apportioned the debt, and allowed a bondholder of the extinct municipality to bring suit against one of its successors, on the ground that, unless the legislature intended the debt to be apportioned, the obligation of the plaintiff's contract would be impaired, and the court would so construe the legislative act as to uphold its constitutionality.

There is a respectable amount of opinion to the effect that the two cases are irreconcilable and that the former is the correct view. It is argued that in the *Laramie Case* the value of the bonds was lessened by cutting down the size of the county which was responsible for payment of the debt, and hence if there were no impairment of the obligation of contracts in that case, there would be none in the *Mount Pleasant Case*. But, it is said, the parties must have contracted with a view to the law, and therefore one of the terms of the contract was that if the state exercised its sovereign power of altering or abolishing the debtor corporation without apportioning the debt among its successors, the debt

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[1](1875) 92 U.S. 307, 23 L. Ed. 552.
[2](1879) 100 U.S. 514, 25 L. Ed. 699.

should as to that successor be invalid. Therefore, there is no impairment of contract in either case and the court is free to construe the statute without a slant. Construing the statute thus we should reach in both cases the result of the *Laramie Case.*

The argument thus advanced, however, is open to the criticism that it assumes a term of the contract which is purely fictitious, and the interpretation of a contract is a process in which we should stick to facts. There is a great danger in adjusting the facts so that we may reason from the premise thus derived to a preconceived result. The data of a judicial decision should be determined accurately before it is attempted to reason therefrom. There can be little doubt that the contracts in question were upon their faces unconditional contracts by the city to pay back to the plaintiff the money borrowed. There is no express qualification to the effect that the contract should be subject to the right of the state to destroy the debtor. And it is rather difficult to conceive of parties entering into a contract with such an understanding.

The analogy which is drawn between the *Laramie Case* and the *Mount Pleasant Case* seems to be unsound. It is submitted that there is no real antagonism between the two cases, for in the former the parent municipal corporation was well able to pay the entire debt, while in the latter the debtor municipal corporation was entirely destroyed. In the former the obligation of the contract persists unimpaired, only the security being weakened. In the latter the contract itself is impaired, is in fact destroyed when the obligor is destroyed without provision for a successor. This distinction may perhaps be better brought out by a consideration of the case of *Brewis v. City of Duluth.*[3] In that case the debtor municipal corporation was not destroyed, but the larger part of its assets was transferred by legislative act to another municipal corporation, and it was left for the time without the ability to pay its debt. This is then a middle case, a substantial impairment of the obligation of the contract, whereas the *Laramie Case* involves only an immaterial impairment of the security (the debt being left intact) and the *Mount Pleasant Case* involves the total impairment of the obligation of the contract.

If then these two premises are sound, namely, that there is a contract absolute in its terms and an impairment of the obligation of such contract, the legislative act is within the literal wording of the prohibition in article I, sec. 10, par. 1, of the constitution of the United States.

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[3](1881) 3 McCrary (U.S.C.C.) 219, 9 Fed. 747.

At this point we are met by a very pertinent consideration. In order to recover on such an evidence of indebtedness, the bondholder would have to recover a judgment against the city, and then mandamus the collection of necessary taxes, if the municipality proved refractory and refused to levy the taxes.[4] If the tax commissioners then resigned one could only go into equity and have a receiver appointed to collect the taxes. But, in *Meriwether v. Garrett*,[5] the Supreme Court has held that the collection of taxes by such a receiver was unconstitutional, as a usurpation by the courts of legislative power.

It is quite evident then that, if the above line of argument is to be followed, the contract clause must be read as referring only to a certain class of contracts, namely, those which can be enforced by the courts without usurping legislative powers. This seems to be the correct approach, logically; and the further question now arises whether in its practical results the latter approach is preferable to the former, that is, whether it is not better to say that there is a contract and that its obligation is impaired, and then to consider whether such a contract comes within the protection of the contract clause, than to say that one of the terms of the contract envisages its destruction by the act of one of the parties and that therefore its obligation is not impaired.

By the former view the contract includes an implied agreement that the state may destroy the municipal corporation at any time and thus repudiate its debt. Consequently, if the legislature destroys the municipal corporation there is no remedy for the creditor. By the latter view there is a contract enforceable in spite of the destruction of the municipal corporation, by means of a judgment, an apportionment by the court, and a writ of mandamus directed to municipal officials of the succeeding municipal corporation ordering the collection of such taxes as had already been provided for the payment of these obligations. The remedy of the creditor is only limited by the constitutional inability of the courts to exercise legislative power. That this is the line along which the problem is being worked out by the Supreme Court there is evidence in the decision of *Mobile v. Watson*.[6] In that case the city of Mobile was authorized to issue bonds, and did so, providing at the same time for a special tax

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[4]Heine v. Levee Commissioners, (1873) 19 Wall. (U.S.) 655, 22 L. Ed. 223.

[5](1880) 102 U.S. 472, 26 L. Ed. 197.

[6](1886) 116 U.S. 289, 29 L. Ed. 620, 6, S.C.R. 398.

to be levied annually to take care of the payments of principal and interest as they became due. The city of Mobile was later dissolved by the state legislature and the port of Mobile was incorporated to take over most of its assets. Upon suit by one of the bondholders the court decreed that the officers of the port of Mobile should assess, levy and collect the special tax provided for by the legislature. The legislative power had already been exercised so that the court had merely to order certain executive acts.

It seems, therefore, that the ends of justice, as well as logical coherence, can better be attained by applying to these cases the view that there is a contract, valid insofar as it can be enforced by the courts without usurping legislative power, than by applying the theory that one of the terms of the contract is that it shall cease to be of binding force if the state legislature sees fit to destroy or partially destroy a municipal corporation.