7 Tenn. 1, 1 Peck 1 (1821)

REPORTS OF CASES

ARGUED AND ADJUDGED IN THE

SUPREME COURT OF ERRORS AND APPEALS.

KNOXVILLE. MAY TERM, 1821.

TOWNSEND v. TOWNSEND AND OTHERS.

The Act of 1819, 19, 1, directing that no execution shall issue upon a judgment until two years after its rendition, unless the plaintiff shall indorse upon the execution that the sheriff may receive in satisfaction the notes of certain banks, is void, because in conflict with the Constitution of the United States, article 1, section 10, which prohibits the States from making anything but gold and silver coin a tender in payment of debts. (Acc. Lowry v. McGhee, 8 Y., 245, and Farnsworth v. Vance, 2 Cold., 118, both citing this case.)

The law is the source of the obligations of contracts; and the extent of the obligation is defined by the law in use at the time the contract is made, and can not be changed by subsequent legislation without violating the provision of the Constitution of the United States, article 1, section 10, and of our Bill of Rights, section 20, which interdicts laws impairing the obligation of contracts. The Act of 1819 is void upon this ground. (Cited approvingly Smith v. Brady, 7 Y., 451. Cited, also, in Greenfield v. Dorris, 1 Sn., 550, where the principle is thus stated: "Those laws that give force and effect to a contract, are incorporated in and form a part of it." But denied in Farnsworth v. Vance, 2 Cold., 119, citing Woodfin v. Hooper, 4 Hum., 13, which, however, was a case involving only the remedy.)

It is not unconstitutional to alter existing remedies, and vary their nature and extent, so always that some substantive remedy be in fact left. (Acc. Woodfin v. Hooper, 4 Hum., 13.)

But as regards antecedent contracts, remedies are not to be so altered as to be rendered less efficacious or more dilatory, than those ordained by the law in being when the contract was made, if such alteration be the direct and special object of the Legislature, apparent in an Act made for the purpose. *Aliter*, perhaps, if the alteration were the consequence of a general law and merely incidental to it. (So held in 1861 at Jackson, in a case not reported, upon the Act of that year, the constitutionality of which was afterwards sustained in Farnsworth v. Vance, 2 Cold., 108.)

The Act of 1819, is also violative of the State Constitution, article 1, section 17 (Bill of Rights), which provides for the administration of right and justice without denial or delay, for these terms clearly comprehend the case of execution suspended by act of the Legislature, in every instance where justice requires that it should immediately issue.