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Rec'd


# Oregon Spectator.

"Westward the Star of Empire takes its way."

Vol. II. Oregon City, (Oregon Ter.) Thursday, June 24, 1847. No. 11.


[REPORTED FOR THE SPECTATOR.]

## Supreme Court.

The following is an abstract of the principles settled, and of the points of law decided by the Hororable J. QUINN THORNTON, Judge of the Supreme Court, at the June Term, 1847.

1. In an action of forcible entry and detainer, the plaintiff must alledge in his complaint that he possessed the premises, and that the defendant divested him of their possession. *Henry Hill, Plaintiff in error vs. William Higgins.*

2. Under the Ioway Law, made the law of Oregon Territory, entitled "An act to prevent forcible entry and detainer," approved Jan. 25th, 1839, (Laws of Ioway p. 217) and which is substantially a re-enactment of the statute of 8 Hen. VI c. 9, the verdict of the jury must be subscribed by all of them. —*Ibid.*

3. The action which this Act authorizes does not propose to try title, but only the right of possession; and it is sustained in those cases only where the plaintiff had possession.—*Ibid.*

4. The omission of a plaintiff to alledge in his complaint that he possessed the premises, and that the defendant divested him of their possession, will not be cured by the Statute of Amendments and Jeofails.—*Ibid.*

5. A cause which stands continued at a regular term of the County Court cannot be taken up and tried at a special term.—*Gilbert Munden, Plaintiff, in error, vs. James McGinnis, Defendant in error.*

6. The Act (Spec. Vol. 1 No. 7, p. 1, Sec. 2,) providing for a special term contemplates county business in contradistinction to civil suits between party and party.—*Ibid.*

7. The Act regulating the taking of depositions, must be so construed as to give the party seeking to obtain testimony in this manner, a continuance of the cause sufficiently remote to admit of his giving his adversary at least ten days notice, and one day additional (Sabbaths included) for every thirty miles of distance to the place, and a reasonable time in addition, and having in view the tardiness of communication for sending the *dedimus potestatem*, and for the return of the depositions, allowing for the latter at the least one day for every thirty miles of distance.—*Henry B. Brewer, Plaintiff in error, vs. Isaac Hutchins, Defendant in error.*

8. If a plaintiff appeal and do not recover a greater sum in the Court above, than in the Court below, exclusive of costs and interest which have accrued after the rendition of the judgment in the Court below, the Court above will render a judgment against him for the cost accruing in that Court; and if the defendant appeal in any personal action and the plaintiff recovers the same or a larger sum than was recovered in the Court below, exclusive of costs, the Court above will render a judgment for the sum so recovered with costs; so also if the defendant appeals and the judgment below is diminished, the costs of the appeal must fall upon the plaintiff below.—*Ibid.*

9. An account upon which a summons was issued by a J. P. charging the defendant "To one yoke of oxen," without any date excepting that of the year, and without any thing further that would show whether the defendant is sued in an action of assumpsit for oxen sold and delivered, for a malicious trespass, or as a bailee, is not such a statement of "the *nature* of the demand" as the law requires in order that the defendant may be prepared for his defence.—*Ibid.*

10. A variance between the judgment and the declaration, or the account which stands in the place of a declaration, is error. —*Ibid.*

11. Upon a joinder in error being filed by the counsel for the defendant in error, and the cause being set down for argument upon an agreed day, the defendant's counsel will not have leave to withdraw his joinder for the purpose of enabling him to assail his adversary from a point overlooked through inadvertance or want of skill.—*A. L. Lovejoy, Administrator of the estate of Ewing Young, deceased, vs. David Waldo, surviving partner of the late firm of Jackson & Waldo.*

12. A failure to make a just application of the rules which relate to the *persons* who are to be the parties to the action, are in general so fatal to the further prosecution of the suit, that the plaintiff is usually compelled to proceed *de novo*.—*Ibid.*

13. Actions to be properly brought, must be commenced and prosecuted in the proper Christian and Sir names of the parties,—*Ibid.*

14. The books furnish no example of an omission of both the Christian and Sir names of either of the parties being cured by pleading over, intendment after verdict, or by the Statute of Amendments and Jeofails,—*Ibid.*

15. The Supreme Court possesses a superintending control over all inferior jurisdictions; and it only has the power to issue writs of *habeas corpus, quo warranto, mandamus* and *certiorari*, and to hear and determine the same.—*Stephen H. L. Meek vs. Richard D. Torney.*

It is believed that the importance of the points adjudicated in the case of *Henry M. Knighton, Plaintiff in error, vs. Hugh Burns, Defendant in error*, make it expedient that not only the head notes of that case be published, but that opinion at large be given to the public in order that the community may see the reasons upon which the decisions in that case are made to rest.

1. The prohibitory clause contained in the Organic Law Art. I. Sec. 2, is taken in the substance of its provisions, from the Constitution of U. S. prohibiting the passage of laws impairing the obligation of contracts.

2. Any deviation from the terms of a contract, impairs it; and the objection to a law on the ground of its impairing the obligation of contracts, can never depend upon the extent of the change which the law affects in it.

3. While the remedy to enforce the obligation of a contract may be modified, yet the obligation of the contract itself is inviolable.

4. Any construction of the Act of Dec. 12, 1845, entitled "An Act relative to the Currency, and subjecting property to Execution," which would admit of scrip constituting the basis of a legal tender, impairs the obligation of a contract.

5. Parties are presumed to contract with reference to the existing laws.

6. Independently of the Organic Law, it is a general rule, subject however to exceptions, that statutes shall have a prospective operation only.

7. The prohibition extends to all rights accruing under all contracts, whether written or parol, whether expressed or implied, whether arising from the stipulations of the parties or accruing by operation of law.

HENRY M. KNIGHTON, *Plaintiff in error,*

vs.

HUGH BURNS, *Defendant in error.*

ERROR TO THE CLACKAMAS CIRCUIT COURT.

OPINION AT LARGE.

*Per Curiam.* This cause came up from the Circuit Court, upon a statement of facts presented in a bill of exceptions. On the 4th November 1845, the defendant executed to the plaintiff a note for $150, payable November 1st 1846. Suit was brought upon this note before a J. P. where judgment was rendered against the maker, from which an appeal was taken to the Clackamas Circuit Court. This Court rendered a judgment against defendant for $146 43 payable in currency, scrip excepted, together with costs. On the trial of the cause at the April term 1847, the defendant to maintain the issue on his part, proved that he had tendered to the J. P. before whom the trial was originally had, the full amount of the debt, interest and cost up to the filing of the plea of tender, in Oregon Scrip to the amount specified in the plea of tender. The defendant also tendered in the Circuit Court the full amount in Oregon Scrip. The plaintiff objected to receiving the scrip in payment of the debt, interest and cost, which objection was sustained by the Court.

The Organic Law Art. I. Sec. 2, declares "that no law ought to be made, or have force in said Territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements, *bona fide* and without fraud previously formed." This is a prohibition of great moment, affecting extensively the authority of the legislative branch of the established government. It is taken in the substance of its provisions from the Constitution of the U. S. in which there is no prohibitory clause, which has given rise to more various and able discussion, or more protracted litigation. The first important case arising under the clause as found in that Constitution was the case of *Fletcher vs. Peck*, (6 Cranch, 87.) In that case it was decided that when a law was in its nature a contract, and absolute rights have vested under that contract, a repeal of that law could not divest those rights. The Supreme Court went again, and more largely, into the consideration of this delicate and interesting fundamental doctrine, in the case of *Terret vs. Taylor*, (9 Cranch, 43.) It was there held, that a legislative grant, competently made, vested an indefeasible and irrevocable [illegible]. But it was in the great case of *Dartmouth College vs. Woodward*, (4 Wheaton, 518,) that the inhibition to impair by law the obligation of contracts, received the most elaborate discussion. In that case the principles previously recognized were not only greatly elaborated, but efficiently and instructively applied to new cases. The late venerated and learned Judge Story, added many new and interesting views of the nature of contracts which the Constitution intended to protect. The argument of the Court in this celebrated case; the full and elaborate exposition of the constitutional sanctity of contracts to be met with in any of the reports; and the decision made in it did much to throw an impassable barrier around all rights and franchises; and to give stability to the literary, religious, and commercial institutions of the country. (4 Wheat. 518.)

The same constitutional prohibition came again under discussion in the case of *Green vs. Biddle*, (8 Wheaton, 1,) in which it was decided that *any* deviation from the terms of a contract impaired it, and that the objection to a law on the ground of its impairing the obligation of contracts, could never depend upon the *extent* of the change which the law effects in it.

In the case of *Sturges vs. Crowninshield*, (4 Wheaton, 122,) the operation and effect of this constitutional prohibition was again extensively enquired into. That was a case which arose out of the retrospective operation of an Act the Legislature of New York passed in April 1811, by which the defendant had been discharged as an insolvent debtor upon his single petition, from the obligation to pay two promissory notes executed by him in March of the same year, and upon his surrendering his property, without the concurrence of any creditor.

In the opinion delivered by the late Chief Justice Marshall, a broad and well defined distinction was made between the contract and the remedy for the enforcement of that contract; and the Court held that while the remedy to enforce the obligation of a contract might be modified as the wisdom of the legislature should direct, yet that the Constitution intended to restore and preserve public confidence completely, by establishing the great principle that the obligation of contracts should be inviolable. And all experience, even if this had been necessary to a correct understanding of the subject, hath shown that the framers of the Constitution acted wisely in incorporating this prohibitory clause in that sacred instrument, and that its expounders merit the gratitude of the nation for having had the firmness to give to it such a construction as affords an ample remedy for the consequences which must otherwise result from the temporary expedients of legislators. The Supreme Court admitted in this case, that the States might by law discharge debtors from imprisonment, and that they might pass statutes of limitation, because these relate only to the remedy, affecting only the means of coercion, while the obligation of the contract is left where the parties chose to place it. But a law which discharged the debtor from his contract to pay by a given time, without performance, and released him without payment, would [illegible] any future obligation to pay, impairs the cause it entirely destroys the obligation of the contract. Any [illegible] of the Act of the Legislature of Oregon Territory, Dec. 12, 1845, which would [illegible] entirely annihilating the value of a legal tender on the part of the defendant upon [illegible] versa Organic Law, Art. [illegible] although it would [illegible] defendant from the [illegible] it would impair the [illegible] embraced in that note, by [illegible] ful tender which was not [illegible] by the parties at the time of the [illegible] Nov. 4, 1845. The [illegible] York, in [illegible] 16 Johnson's Rep. 233; the [illegible] setts, in [illegible] Rep. 1; the [illegible] in *Hicks vs.* [illegible] 297, took a distinction [illegible] contract made before, and [illegible] passage of the Act; and that [illegible] Insolvent Act in force when the [illegible] made, did not in the sense of the [illegible] impair the obligation of that [illegible] the parties are presumed to [illegible] gard to existing laws. Were [illegible] plied to the case now before [illegible] would of itself determine [illegible] sented. The laws existing [illegible] contract was made for the payment of [illegible] money, did not recognise [illegible] any part of the legal currency of the country, nor did it do so until more [illegible] month after the date of the execution of the note. But the Supreme Court of the United States in *McMillan vs. McNeill*, 4 Wheaton, 209, carried this doctrine much further, and held, that a discharge under a state insolvent law *existing* when the debt was contracted, impaired the obligation of a contract. As the decisions now stand, the debt, in order that a discharge may extinguish the remedy against the future property of the debtor, must be contracted after the passage of the Act, within the State and [illegible] of the State. The principles then settled are the law of the present case, in which the contract was made before the [illegible] law.

The Supreme Court of Indiana in *Lewis vs. Brookbridge*, 1 Blackford's Rep. 288 following the current of decisions, decided that this constitutional provision must be considered as rendering void any statute which is retrospective, and which destroys a vested right of action which arises ex-contractu; but that the legislative power of regulating the time and manner, in which rights shall be legally demanded, does not interfere with the rights themselves. It was also held independently of the Constitution, to be a general rule, subject however to exceptions, that statutes shall have a prospective operation only. The constitutional provision, therefore, that no law impairing the obligation of contracts shall ever be made, extends to all rights accruing under all contracts, whether written or parol, whether expressed or implied, whether arising from the stipulation of the parties, or accruing by operation of law. Persons, therefore, who contract to pay a given sum in cash, will be required to make payment in cash; and persons who contract to pay in a named sort of funds or property will be held the fulfilment of their engagements, or be required to pay in coin an amount equal in value to the funds or property contracted to be paid.—4 Kent. Com. 412—421.

It is clear therefore, that the plea of tender was bad, and that payment can be made only in that which might have been legally tendered in payment of debts Nov. 4, 1845. Judgment of Court below affirmed with costs.

BURNETT & LOVEJOY, Att'ys for Plaintiff.
W. G. T'VAULT, Att'y for the Defendant.

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THE BEST ANECDOTE YET.—In the good old North State, a gentleman sent his son to school at an institution situated on Tar river; the teacher asked him what branches he wished his son put in? The laughable reply was that he didn't care a d—n what branches he put him in so he didn't put him in the river, for he never swum a lick in his life.

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COMPANY.—There is a certain magic or charm in company, for it will assimilate and make you like to them by much conversation with them. If they be good company, it is a great means to make you good, or confirm you in goodness; but if they be bad, it