WILLIAM E. WOODRUFF, PLAINTIFF IN ERROR *vs.* FREDERIC W. TRAPNALL. (*a.*)

In 1836, the Legislature of Arkansas chartered a bank, the whole of the capital of which belonged to the State, and the president and directors of which were appointed by the General Assembly.

The twenty-eighth section provided "that the bills and notes of said institution shall be received in all payments of debts due to the State of Arkansas."

In January, 1845, this twenty-eighth section was repealed.

The notes of the bank which were in circulation at the time of this repeal, were not affected by it.

The undertaking of the State to receive the notes of the bank constituted a contract between the State and the holders of these notes, which the State was not at liberty to break, although notes issued by the bank after the repeal were not within the contract, and might be refused by the State.

Therefore, a tender, made in 1847, of notes issued by the bank prior to the repealing law of 1845, was good to satisfy a judgment obtained against the debtor by the State; and it makes no difference whether or not the debtor had the notes in his possession at the time when the repealing act was passed.

NOTE (*a.*)—See *Woodruff v. Trapnall*, 3 English Reports, 236.

THIS case was brought up, by writ of error, from the Supreme Court of the State of Arkansas.

On the 2d of November, 1836, the State of Arkansas passed an act to incorporate the Bank of the State of Arkansas. The capital was one million of dollars, which was raised by a sale of the bonds of the State, or by loans founded upon those bonds. The President and Directors were appointed by a joint vote of the General Assembly. All dividends upon the capital stock were declared to belong to the State, subject to the control and disposal of the legislature.

The twenty-eighth section was as follows, viz:—"That the bills and notes of said institution shall be received in all payments of debts due to the State of Arkansas." The other sections of the act were in the usual form of conferring general banking powers.

In 1836, William E. Woodruff was elected, by the General Assembly of Arkansas, Treasurer of the State, and on the 27th of October, 1836, executed a bond to James S. Conway, Governor of the State, in the penal sum of three hundred thousand dollars, conditioned for the faithful performance of his duties as treasurer. There were seven sureties, whose names it is not necessary to mention. The time for which Woodruff was to serve was two years, "and until his successor shall be elected and qualified." His term of office was thus from the 27th of October, 1836, to the 25th of December, 1838.

On the 23d of March, 1840, the State of Arkansas brought a suit upon this official bond against the principal and sureties in the Pulaski Circuit Court. The breach alleged was, that Woodruff had not paid over to his successor the sum of $2,395.18. It is not necessary to trace the history of this suit; suffice it to say, that it eventuated in a judgment against Woodruff for $3,359.22 and costs.

On the 10th of January, 1845, the legislature passed an act relating to the revenue of the State, the nineteenth section of which provided that, "from and after the 4th of March, 1845, nothing shall be received in payment of taxes or revenue due the State, but par funds."

In the progress of the suit, Frederic W. Trapnall had become regularly substituted in place of the Attorney-General, to conduct the suit.

In 1847, Trapnall ordered an execution upon the judgment which the State had obtained against Woodruff, who, on the 24th of February, 1847, tendered and offered to pay to Trapnall the sum of $3,755 in the notes issued by the Bank of the State of Arkansas, which Trapnall refused to receive.

On the 25th of February, 1847, Woodruff filed a petition in the Supreme Court of the State, praying for an alternative writ of mandamus, commanding Trapnall to "receive and accept, in payment of the judgment, the notes of the Bank, or to show cause why he shall refuse to do so." The writ was issued accordingly.

To this writ the following answer was filed:

"The answer of Frederic W. Trapnall, attorney for the State *pro tem.*, to an alternative mandamus hereto annexed, issued by the Supreme Court on the petition of William E. Woodruff.

"This respondent admits the judgment and tender as set out in said petition, but alleges that he was not authorized to receive the said Arkansas State Bank notes; because the twenty-eighth section of the bank charter, under which alone the said Woodruff could claim a right to satisfy the said judgment, was repealed by an act of the legislature of the State of Arkansas, approved January 10, 1845, and entitled, 'An Act making appropriations for the years 1845, 1846, and a part of the year 1844, and for balances due from the State, and for other purposes,' and by the nineteenth section of said act.

"And this respondent submits to the court, if the repeal of the said section does not deprive him of all authority to receive the said bank notes from the said Woodruff in satisfaction of the said judgment in favor of the State of Arkansas against him and others. Respectfully,

"FREDERIC W. TRAPNALL."

To this answer, Woodruff demurred, and there was a joinder in demurrer.

Before the argument, the following agreement was filed by the counsel of the respective parties:

"Be it remembered, that the following matters are agreed upon by the counsel for the petitioner and respondent in this cause, to the end that the same may be filed and become a part of the record herein.

"1st. The record and proceedings in the case of William E. Woodruff, and the said persons named in said petition as his securities, against the State of Arkansas, upon the first and second writs of error remaining in this court, and which are referred to in said petition, shall form a part thereof by such reference, as fully as though the same were incorporated therein at full length.

"2d. That said respondent, as attorney of record for said State in the suit aforesaid, is the proper officer by law to receive and acknowledge satisfaction of said judgment.

"3d. That the notes of the Bank of the State of Arkansas, referred to in said petition and response, and tendered in this case, were issued by said bank, pursuant to the charter thereof, prior to the year 1840.

"4th. That after the creation of said bank, down to the year 1845, the notes of said bank were received and paid out by said State in discharge of all public dues to and from said State.

"5th. That said bank continues to exist, with all its corporate functions, and that in the consideration of this case all the acts of the General Assembly of said State, affecting said bank, shall be deemed to be public laws, as they have been heretofore decided by this court to be, and whereof this court will judicially take notice; but to the end thereof, and for greater certainty, the act of said General Assembly, entitled 'An act to incorporate the Bank of the State of Arkansas,' approved November 2d, 1836, is here inserted at full length, and made part of the record in this cause, and which act of incorporation is in the words following." (Then followed the charter of the bank *in extenso.*)

One of the grounds of the demurrer was the following:—

"1st. That the nineteenth section of said act, entitled 'An Act

making appropriations for the years 1845, 1846, and part of the year 1844, and for balances due from the State, and for other purposes,' approved January 10th, 1845, is a law impairing the obligation of contracts, and is repugnant to the Constitution of this State and of the United States, and therefore void."

On the 28th of July, 1847, the Supreme Court of Arkansas overruled the demurrer, and on the 30th of July, Woodruff sued out a writ of error to bring the case up to this court.

It was argued by *Mr. Lawrence* and *Mr. Reverdy Johnson*, for the plaintiff in error, and by *Mr. Sebastian*, for the defendant.

Mr. Justice McLEAN delivered the opinion of the Court.

This case is before us on a writ of error to the Supreme Court of Arkansas.

An action was brought by the State of Arkansas in the Pulaski Circuit Court, against the plaintiff in error, and his sureties, Chester Ashley and others, upon his official bond as late Treasurer of State, for the recovery of a certain sum of money alleged to have been received by him, as treasurer, between the 27th day of October, 1836, and the 26th day of December, 1838. And a judgment was recovered against him and his securities, on the 13th of June, 1845, for $3,359.22 and costs. An execution having been issued on the judgment, on the 24th of February, 1847, the plaintiff tendered to the defendant in error, who prosecuted the suit as Attorney General, the full amount of the judgment, interest, and costs, in the notes of the Bank of the State of Arkansas, which were refused.

The above facts being stated in a petition to the Supreme Court of Arkansas on the 25th of February, 1847, an alternative mandamus was issued to Trapnall, the defendant in error, to receive the bank notes in satisfaction of the judgment, or show cause why he shall refuse to do so.

On the return of the mandamus, the defendant admitted the judgment and tender of the notes; but alleged that he was not authorized to receive them in satisfaction of the judgment, because the twenty-eighth section of the bank charter, under which

alone the plaintiff could claim a right so to satisfy the judgment, was repealed by an act of the Legislature, approved January 10th, 1845.

It was agreed by the parties, that the record of the judgment should be made a part of the proceeding; that the defendant was the proper officer by law to receive satisfaction of the judgment; that the notes tendered were issued by the bank prior to the year 1840, and that down to the year 1845 the notes of the bank were received and paid out by the State, in discharge of all public dues; that the bank continues to exist with all its corporate functions.

The court were of opinion, that the return of the defendant showed a sufficient cause for a refusal to obey the mandate of the writ, and gave judgment accordingly.

The twenty-eighth section of the bank charter, which was repealed by the act of 1845, provided "that the bills and notes of said institution shall be received in all payments of debts due to the State of Arkansas." And the question raised for consideration and decision is, whether the repeal of this section brings the case within the Constitution of the United States, which prohibits a State from impairing the obligation of a contract.

The bank charter was passed on the 2d of November, 1836, "with a capital of one million of dollars, to be raised by a sale of the bonds of the State, loans, or negotiations, together with such other funds as may now or hereafter belong to, or be placed under the control and direction of, the State;" the principal bank to be located at the city of Little Rock, and its concerns to be conducted by a president and twelve directors, to be appointed by a joint vote of the General Assembly. Branches were required to be established, the presidents and directors whereof were to be elected in the same manner.

The president and directors were to have a common seal, were authorized to deal in bullion, gold, silver, &c., purchase real property, erect buildings, &c., issue notes, make loans at eight per cent. on endorsed paper, or on mortgages, within the State; a general board was constituted, who were to make report of the condition of the bank annually, to the legislature, and perform

other duties; and any debtor to the bank, "as maker or endorser of any note, bill or bond, expressly made negotiable and payable at the bank, who delays payment," should have a judgment entered against him on a notice of thirty days.

Some doubt has been suggested, whether the notes of this bank were not bills of credit within the prohibition of the Constitution.

We think they cannot be so held, consistently with the view taken by this court in the case of *Biscoe v. The Bank of the Commonwealth of Kentucky,* 11 *Peters* 311. It was there said, that, "to constitute a bill of credit within the Constitution, it must be issued by a State, on the faith of the State, and be designed to circulate as money. It must be a paper which circulates on the credit of the State, and is so received and used in the ordinary business of life."

The bills of this bank are not made payable by the State. A capital is provided for their redemption, and the general management of the bank, under the charter is committed to the president and directors, as in ordinary banking associations. They may in a summary manner obtain judgments against their debtors. And although the directors are not expressly made liable to be sued, yet it is not doubted they may be held legally responsible for an abuse of the trust confided to them.

The entire stock of the bank is owned by the State. It furnished the capital and receives the profits. And in addition to the credit given to the notes of the bank by the capital provided, the State declares in the charter, they shall be received in all payments of debts due to it. Is this a contract? A contract is defined to be an agreement between competent persons, to do or not to do a certain thing. The undertaking on the part of the State is, to receive the notes of the bank in payment from its debtors. This comes within the definition of a contract. It is a contract founded upon a good and valuable consideration; a consideration beneficial to the State, as its profits are increased by sustaining the credit, and consequently extending the circulation, of the paper of the bank.

With whom was this contract made? We answer, with the

holders of the paper of the bank. The notes are made payable to bearer; consequently every *bona fide* holder has a right, under the twenty-eighth section, to pay to the State any debt he may owe it, in the paper of the bank. It is a continuing guaranty by the State, that the notes shall be so received. Such a contract would be binding on an individual, and it is not less so on a State.

That the State had the right to repeal the above section, may be admitted. And the emissions of the bank subsequently are without the guaranty. But the notes in circulation at the time of the repeal are not affected by it. The holder may still claim the right, by the force of the contract, to discharge any debt he may owe to the State in the notes thus issued.

It is argued that there could have been violated or impared no contract with the plaintiff in error, as it does not appear he had the notes tendered by him in his possession at the time the twenty-eighth section was repealed.

It is admitted that he had the notes in his possession at the time he made the tender, and that they were issued by the bank before the repeal of the section; and nothing more than this could be required.

The guaranty of the State, that the notes of the bank should be received in discharge of public dues, embraced all the bills issued by it; the repeal of the guaranty was intended, no doubt, to exclude all the notes of the bank then in circulation. Until the repeal of the twenty-eighth section, the State continued to receive and pay out these notes. Up to that time, no one doubted the obligation of the State to receive them. The law was absolute and imperative on the officers of the State. The holder of the paper claimed the benefit of this obligation, and it is supposed his right could never have been questioned. The notes were payable to bearer, and the bearer was the only person who had a right to demand payment of the bank, or to pay them into the State treasury in discharge of a debt. The guaranty included all the notes of the bank in circulation as clearly as if on the face of every note the words had been engraved, "This note shall be received by the State in payment of debts." And that the legis-

lature could not withdraw this obligation from the notes in circulation at the time the guaranty was repealed, is a position which can require no argument. Any one had a right to receive them, and to test the constitutionality of the repeal.

Suppose a State legislature should pass a law authorizing the drawers of promissory notes, payable to bearer, to discharge the same by the payment of produce. Would such a law affect the rights of the bearer? The contract would stand, and the law would be declared void. A standing guaranty by a mercantile house, to receive in payment of its debts all notes drawn by a certain other house, is valid, on the ground that the notes were taken on the credit of such guaranty. It may be terminated by a notice; but when so terminated, are not all the notes good against the guarantors, which were executed and circulated prior to the notice? Who could commend the justice of guarantors, who should endeavor to avoid responsibility, on so clear a principle? *Louisville Man. Co. v. Welch. post*, 461.

A State can no more impair, by legislation, the obligation of its own contracts, than it can impair the obligation of the contracts of individuals. We naturally look to the action of a sovereign State, to be characterized by a more scrupulous regard to justice, and a higher morality, than belong to the ordinary transactions of individuals. The obligation of the State of Arkansas to receive the notes of the bank, in payment of its debts, is much stronger than in the above case of individual guaranty.

The bank belonged to the State, and it realized the profits of its operations. It was conducted by the agents of the State, under the supervision of the legislature. By the guaranty, the notes of the bank, for the payment of debts to the State, were equal to gold and silver. This, to some extent, sustained their credit, and gave them currency. Loans were made by the Bank on satisfactory security. The debts of the bank, or a large proportion of them, may fairly be presumed to have been collected. But the means of the bank, thus under the control of the State, became exhausted. Whether this was the result of withdrawing the capital from the bank, by the State, does not appear upon

the record. We only know the fact, that its funds have disappeared, leaving, it is said, a large amount of its paper, issued before the repeal of the guaranty, worthless, in the hands of the citizens of the State.

The obligation of the State to receive these notes is denied, on the ground that the twenty-eighth section was a general provision, liable to be repealed, at any time, by the legislature. And it is compared to a general provision to receive, for public dues, the paper of banks generally, unconnected with the State. There is no analogy in the two cases. One is a question of public policy, influenced by considerations of general convenience, which every one knows may be changed at the discretion of the legislature. But the other arises out of a contract incorporated into the charter, imposing an obligation on the State to receive, in payment of all debts due to it, the paper of a bank owned by the State, and whose notes are circulated for its benefit. The power of the legislature to repeal the section, the stock of the bank being owned by the State, is not controverted; but that act cannot affect the notes in circulation at the time of the repeal.

It is objected, that this view trenches upon the sovereignty of the State, in the exercise of its taxing power and in the regulation of its currency. We are not aware that a State has power over the currency further than the right to establish banks, to regulate or prohibit the circulation, within the State, of foreign notes, and to determine in what the public dues shall be paid.

It is a principle controverted by no one, that, on general questions of policy, one legislature cannot bind those which shall succeed it; but it is equally true and undoubted, that a legislature may make a contract which shall bind those that shall come after it.

The notes of the bank in circulation at the repeal of the twenty-eighth section, if made receivable by the State in discharge of public dues, may so far resuscitate them, as that, in the course of time, they will find their way into the treasury of the State, where in justice and by contract they belong. It is presumed

there will be no complaint, as there will be no ground for any, by the citizens of the State, if these notes, now dead and worthless, should be so far revived as to reach their appropriate destination. And if, as a consequence, some increase of taxation should be required by the State, it will be nothing more than is common to all other States that perform their contracts. It would be a most unwise policy for a State to improve its currency through a violation of its contracts. In such a course, the loss of the State would be incomparably greater than its gain. Any argument in commendation of such an action by a State cannot be otherwise considered than as exceedingly infelicitous and unjust.

If these notes be receivable in payment of public dues by the State, having been in circulation at the time of the repeal of the above section, as we think they clearly are, no doubt can exist as to the sufficiency of the tender. The law of tender which avoids future interests and costs, has no application in this case. The right to make payment to the State in this paper arises out of a continuing contract, which is limited in time by circulation of the notes to be received. They may be offered in payment of debts due to the State, in its own right, before or after judgment, and without regard to the cause of indebtedness.

Whatever may be the demerits of the plaintiff in error, they do not affect the nature and extent of the obligation of the State. And that obligation cannot be withdrawn from this paper. Into whosoever hands it shall come, it carries with it the pledge of the State to receive it in payment of its debts. In this case the payment is made by the securities of Woodruff, and exacted by the State, to whose organization and management of the bank may be attributed its insolvency. In procuring the notes of the bank, these securities had a right to rely, and no doubt did rely, upon the guaranty of the State to receive them in payment of debts.

In sustaining the application for a mandamus, the Supreme Court of the State exercised jurisdiction in the case. To that court exclusively belongs the question of its own jurisdiction.

For the reasons stated, the judgment of the Supreme Court is reversed, and the cause is remanded for further proceedings to that court, as it may have jurisdiction, in conformity to the opinion of this court.

Mr. Justice CATRON, Mr. Justice DANIEL, Mr. Justice NELSON, and Mr. Justice GRIER, dissented.

Taken from 10 Howard's U. S. Sup. C. R. 190.