Michigan Law Review

Volume 34 | Issue 5

1936

CONSTITUTIONAL LAW-APPLICATION OF JOINT RESOLUTION OF CONGRESS TO GOLD CLAUSE IN BONDS OF CORPORATIONS OF OTHER COUNTRIES

RECENT DECISIONS

CONSTITUTIONAL LAW—APPLICATION OF JOINT RESOLUTION OF CONGRESS TO GOLD CLAUSE IN BONDS OF CORPORATIONS OF OTHER COUNTRIES —Plaintiff, a South American corporation, brought suit to recover on bearer bonds of a Finland corporation sold to plaintiff in New York. The bonds contained the stipulation that they were to be paid "in gold coin of the United States of America of the standard of weight and fineness as it existed on July 1, 1924." Both the principal and interest on these bonds were payable in New York. *Held*, the Congressional Joint Resolution [1] declaring gold clauses in obligations to be against public policy and providing for discharging such obligations on payment, dollar for dollar, of legal tender coin, or currency at the time of payment, applied to such bonds of a foreign debtor in the hands of a foreign creditor. *Compania de Inversiones Internacionaies v. Industrial Mortgage Bank of Finland*, 269 N. Y. 22, 198 N. E. 617 (1935).

The applicability of the Joint Resolution to the bonds of foreign debtors held by foreign creditors was not decided in the momentous Gold Clause decisions of a year ago.[2] The principal case brings the international aspects of the resolution to the fore. Where the intent of the parties as to the governing law is not expressed, there are left for the court two possibilities on the question of what law determines the validity of a contract. Thus, the law of the place of making of the contract [3] may be invoked, or resort may be had to the law of the place of its performance.[4] In either view it would seem that on the facts of the instant case, the applicable law was that of New York and the United States since the contract here was both made and to be performed in New York. That a distinction should be made in case of "international," as distinguished from "domestic," gold clause contracts has been urged.[5] However, the result of the principal case was clearly foreseen, even before the Gold Clause decisions were

[1] 48 Stat. L. 112 (1933), 31 U. S. C., § 463.

[2] Nortz v. United States, 294 U. S. 317, 55 S. Ct. 428 (1935); Perry v. United States, 294 U. S. 330, 55 S. Ct. 432 (1935); Norman v. Baltimore & Ohio R. R., 294 U. S. 240, 55 S. Ct. 407 (1935); Dawson, "The Gold Clause Decisions," 33 MICH. L. REV. 647 (1935); and see on contracts for payment in gold or silver or in gold or silver coin for collections of cases, annotations in 84 A. L. R. 1499 (1933); 88 A. L. R. 1532 (1934); 92 A. L. R. 1525 (1934).

[3] GOODRICH, CONFLICT OF LAWS 229 (1927); CONFLICTS RESTATEMENT, §§ 332, 358 (1934).

[4] GOODRICH, CONFLICT OF LAWS 231 (1927).

[5] EDER, THE LAW AS TO THE GOLD CLAUSE IN INTERNATIONAL CONTRACTS (1933). On p. 32 the author points out that to compel American corporations to live up to their contracts in securities held abroad would entail relatively small sacrifice which would be counter-balanced by a right of United States domestic creditors to insist on recognition of gold clauses by foreign debtors. And at p. 30 is again urged the necessity of the distinction. It will be noted, however, that Mr. Eder was counsel for the South American plaintiff in the instant case—and that his views, which may have been urged upon the court, were not given mention in the court's opinion.

handed down.[6] The language of the Joint Resolution is broad, and can well be given application to this case between non-American parties. The language that "Every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy. . ." [7] may have expressed an unequivocal intent to cover bonds of this character.[8] Finding the bonds contrary to the public policy so clearly expressed in the Joint Resolution, the court refuses to permit the parties in this suit, although both are foreign corporations, to avoid that policy when declared in the exercise of Congress' power to regulate the currency.[9] The instant case should be distinguished from the situation where the bond is payable in gold coin of the United States or that of a foreign country. Two recent decisions have reached contrary conclusions as to the applicability of the Joint Resolution to that set of facts.[10] There, a narrower interpretation of the Congressional Joint Resolution is possible. It may have referred only to that part of the alternate obligations which is "payable in money of the United States . . ." [11] and justified a refusal to reach the result of the New York court on facts of the instant case.

J. A. R.

[6] Nussbaum, "Comparative and International Aspects of American Gold Clause Abrogation," 44 YALE L. J. 53 (1934).

[7] 31 U. S. C., § 463 (a) (1933).

[8] Compania de Inversiones Internacionales v. Industrial Mortgage Bank of Finland, 269 N. Y. 22, 198 N. E. 617 at 619 (1935).

[9] Norman v. Baltimore & Ohio R. R., 294 U. S. 240, 55 S. Ct. 407 (1935).

[10] McAdoo v. Southern Pac. R. R., (D. C. Cal. 1935) 10 F. Supp. 953 (joint resolution held inapplicable); *contra*, City Bank Farmers Trust Co. v. Bethlehem Steel Co., 244 App. Div. 634, 280 N. Y. S. 494 (1935) (joint resolution held applicable). In both of these cases the bonds were held by Americans and were presented for payment in one of the specified foreign countries, suit being brought in the United States. But see Anglo-Continentale Treuhand, A. G. v. St. Louis Southwestern Ry., (C. C. A. 2d, 1936) 3 U. S. LAW WEEK, index p. 456 (Feb. 4, p. 8) wherein Learned Hand, J., considering both of the above cases, adopts the view of Lindley, J., in the federal case. He views the situation as one of alternative promises and holds that although the Joint Resolution was applicable to the promise to pay in United States gold coin, he finds it inapplicable to the promise to pay in foreign coin. Despite the fact that here the bonds were bought by an alien from an American holder after June 5, 1933, the judge reasons that the Joint Resolution did not reach the bonds held by aliens when it was passed, nor did it reach those of citizens in this form. And see 35 COL. L. REV. 1132 (1935), wherein the author contends that the Joint Resolution should be equally applicable to bonds of this type in the hands of Americans.

[11] 31 U. S. C., § 463 (b) (1933); CONFLICTS RESTATEMENT, § 356 (1934), "When a contract involves a promise to do one thing or another at the option of either party the place of performance is undetermined until the option is exercised, and it then becomes the place of performing the promise which is chosen by the party having the option."