The City of Memphis following the Yellow Fever Epidemics

By 1879, Memphis had contracted debts aggregating more than $5,000,000. When the city was unable to pay, suits were brought, and judgments were taken. Executions were issued but returned unsatisfied. These were followed by writs of mandamus to compel the proper authority to levy and collect taxes to pay the debts.

A bill to repeal the charter of Memphis was introduced by Senator Gustavus A. Hanson, a lawyer from Memphis, on January 11, 1879.

On January 28, 1879, Robert Garrett & Sons together with others filed a bill in equity in the Circuit Court for the Western District of Tennessee against the City of Memphis and others to have a receiver appointed "to take charge of the assets of the city, including its tax books and bills for past-due and unpaid taxes," and for an order "clothing him with all proper powers to enable him to collect the same."

> This application was predicated on section 3 of the 'Act to enable municipal corporations, having more than 30,000 inhabitants, to settle their indebtedness,' of the twenty-third of March, 1877, which provides 'that upon the application of any person or persons who are the owners of any past-due and unpaid bonds, coupons, or other indebtedness of a municipal corporation, not less in amount than $100,000, it shall be the duty of the chancery court to appoint a receiver for said municipal corporation, who, as the officer of the court, and not otherwise, should, under the order and instruction of the court, act for such municipal corporation.' Garrett v. City of Memphis, 5 F. 860, 861 (C.C.W.D. Tenn. 1881).

The next day, the Tennessee legislature passed two acts – one to repeal the charter of the City of Memphis and the other to organize the same population and territory into a Taxing District. These bills were signed into law by Governor Albert S. Marks who certified that they applied to the City of Memphis.

Following the passage of these acts, the bill of Garrett & Son was amended and supplemented. Numerous similar bills were filed seeking the same relief – appointment of a receiver – which were consolidated for hearing.

Judge John Baxter heard arguments on February 12, 1879. Judge Baxter was particularly concerned that the legislature had avoided having the Taxing District become the successor to the City by withholding from the district the power to levy and collect taxes which could have been used to satisfy the judgments of the complainants. He felt the bills passed by the legislature were crafted to divest the courts of authority to consider the appointments of receivers for corporations in conflict with the national and state constitutions.

Judge Baxter issued his decree the following day appointing Thomas J. Latham receiver on February . Latham. Latham had been appointed register of the United States District Court in bankruptcy for Memphis in January 1868, one of the first registers in bankruptcy appointed by Chief Justice Salmon P. Chase. Thus, he was a logical person to be appointed receiver for the assets of the City of Memphis.

Judge Baxter was of the opinion that "a corporation, whether municipal or not, can [not] be dissolved, and that by that dissolution its property be withdrawn from the reach of its just creditors by any process of law or equity." Garrett v. City of Memphis, 5 F.860, 865 (C.C.W.D. Tenn. 1881).

The legislature responded with two additional bills:

> the first entitled 'An act to amend an act entitled 'An act to establish taxing districts of this state and to provide the means of local government for the same;'' and the other, 'An act to collect and dispose of the taxes assessed for municipal corporations in this state, whose charters, and to provide for the compromise and making settlement of the debts of such extinct municipal corporations respectively.' Garrett v. City of Memphis, 5 F. 860, 863 (C.C.W.D. Tenn. 1881)

The second of these authorized and commanded the government to appoint a receiver and back-tax collector to "collect all the taxes imposed by said extinct municipalities up to the time of the repeal of their charters." *Id.* Under this act, the governor appointed Minor Merriwether (whose home stood on the site of this hotel) receiver and back tax collector for Memphis.

Meriwether originated the scheme by which Memphis abrogated its charter and lost its identity as a municipality and thus escaped the payment of the heavy bonded indebtedness incurred during the reconstruction period. By Meriwether's repudiation scheme the city disintegrated, becoming part of the commonwealth and having no municipal existence and no officers; the bondholders were left without recourse. Meriwether was appointed receiver in a suit brought for the purpose of adjusting the matter, and after a long fight the bondholders settled for an insignificant amount, by way of compromise. www.csa-railroads.com/Essays/Biography_of_Minor_Meriwether.htm.

On April 10, 1879, the complainants filed another amended and supplemental bill adding Merriwether and others as defendants. It alleged that Meriwether was interfering in the work of Latham as receiver, impeding his efforts to collect back taxes, and discouraging and preventing payments to him. They asked for an injunction preventing Meriwether from further interfering with the work of Latham. The defendants demurred, on several grounds, but their demurrers were denied.

Judge Eli Shelby Hammond, judge of the United States District Court, did not agree with the conclusions of Judge Baxter. On appeal by Meriwether, he and Judge Baxter certified a number of questions for the Supreme Court.

Judge Baxter issued an order of the court decreeing that the complainants might recover from the City of Memphis and that all assets of the City should be applied to the payment of those debts by Latham, as receiver, who as directed to retain possession of the assets and property, books, papers, and writings placed in his possession. Meriwether was perpetually enjoined from collecting, suing for, or interfering with the assets of the City in the hands of Latham.

In the appeal to the Supreme Court, Chief Justice Waite announced the decision of the Court that the power of taxation is legislative, and thus that taxes levied before the repeal of the charter or levied under judicial direction for payment of judgments could not be collected through a court of chancery upon suit by the creditors of the city. Such taxes can only be collected under the authority of the legislature and the only recourse of the creditors was appeal to the legislature.

A separate concurring opinion was filed by Justice Field joined by Justices Miller and Bradley. The justices who joined in the concurring opinion would have permitted the appointment of a receiver to administer the assets left to the corporation at the time of its dissolution that were not held for charitable or public purposes. They would not have permitted the receiver appointed by the court in chancery to collect unpaid taxes because taxes are not debts.

But while the charter of a municipal corporation may be *512 repealed at the pleasure of the legislature, where there is no inhibition to its action in the Constitution of the State, the lawful contracts of the corporation, made whilst it was in existence, may be subsequently enforced against property held by it, in its own right, as hereafter described, at the time of the repeal. In this respect its position is not materially different from that of a private individual, whose property must, upon his decease, go to the satisfaction of his debts before those who succeed to his rights can share in its distribution. Meriwether v. Garrett, 102 U.S. 472, 511–12, 26 L. Ed. 197 (1880)

A dissenting opinion was filed by Justices Strong, Swayne, and Harlan.

Whatever may be said of the equities of the complainants and of their power to enforce those rights in a court of equity, I agree that the decree as entered was too broad. Meriwether v. Garrett, 102 U.S. 472, 525, 26 L. Ed. 197 (1880).

I think, also, that part of the decree which adjudges that all the property within the limits of the territory of the city of Memphis is liable and may be subjected to the payment of all the debts owing by the city, and that such liability shall be enforced hereafter, from time to time, in such manner as the Circuit Court might order and direct, is erroneous. Meriwether v. Garrett, 102 U.S. 472, 526, 26 L. Ed. 197 (1880).

But while, in these particulars and for these reasons, the decree entered by the Circuit Court cannot be sustained in its full extent, I am of opinion that the complainants are entitled to some of the relief granted them by the decree. If they are not, then a new way has been discovered to pay old debts. It cannot be that a corporation, whether municipal or not, can be dissolved, and that by its dissolution its property can be withdrawn from the reach of its just creditors by any process of law or equity. No doubt there are technical difficulties in the way of maintaining proceedings at law against a corporation *527 after its charter has been repealed, but a court of equity is competent to enforce justice to some extent, even where the processes of law fail. Meriwether v. Garrett, 102 U.S. 472, 526–27, 26 L. Ed. 197 (1880).

Thus far I have considered the merits of the case as unaffected by the legislation of the State, heretofore spoken of, except so far as that legislation repealed the charter of the city. That legislation was certainly very extraordinary, and quite unprecedented in the history of the country since the Federal Constitution was adopted. Whatever may have been its purpose, and however carefully that purpose may have been disguised, if it can be sustained, its effect is to obstruct, if not totally destroy, all the power of the creditors of the city to enforce payment of the debts due them. They are remanded to the mere grace and favor of the legislature. If ever legislation impaired the obligation of contracts, this did. If it had been simply the repeal of the municipal charter, no one could have called it in question. Undoubtedly the legislature of a State may amend or dissolve the organization of a municipal corporation, so far as its governmental powers are concerned. But no legislature can so dissolve a corporation, municipal or private, as to destroy or impair the obligation of any contracts the corporation may have made. Dillon, Mun. Corp., sect. 114; Von Hoffman v. City of Quincy, 4 Wall. 535. Creditors of municipal corporations are as completely within the protection of the Constitution as any other creditors. What is meant by 'impairing the obligation of a contract' is well defined. Embarrassments thrown by a statute in the way of enforcing payment of a debt, or a statutory substitution for the obligation and liability *533 of the debtor, of the will of some other person, though that person be a State, have not heretofore been recognized as consistent with the Constitution. The protection afforded by its provisions and its prohibition of certain State legislation relate, not to the mode and form of State statutes, but to their operation or effect. Meriwether v. Garrett, 102 U.S. 472, 532–33, 26 L. Ed. 197 (1880)

Certainly the appointment by the governor of Meriwether as a receiver and back-tax collector can have no effect upon the prior appointment of Latham by the Circuit Court. It cannot confer upon Meriwether any right to interfere with the performance of the duties which the court had imposed upon its receiver. The jurisdiction of the Circuit Court had fully attached, and, by the action of its receiver, the assets of the city, the tax-bills and books, had come into the possession of the court before Meriwether's appointment. That jurisdiction and possession cannot be divested by any State action. The injunction decreed against Meriwether was, therefore, I think, properly adjudged. Meriwether v. Garrett, 102 U.S. 472, 533, 26 L. Ed. 197 (1880) (Strong, A.J., dissenting)

Thomas Latham was out of a job, but in 1880 he purchased the Memphis Water Company out of bankruptcy for $155,000 and continued as its president until 1903, a period which included the discovery of the artesian wells under the city by Bolen Huse in 1887.