they took their views on these subjects from those sources. He also posed the question of what would happen to the Contract Clause if states might pass acts declaring that all contracts made subsequently thereto should be subject to legislative control.[2066]

For the first and only time, a majority of the Court abandoned the Chief Justice's leadership. Speaking by Justice Washington, it held that the obligation of private contracts is derived from the municipal law—state statutes and judicial decisions—and that the inhibition of Article I, § 10, is confined to legislative acts made after the contracts affected by them, subject to the following exception. By a curiously complicated line of reasoning, the Court also held in the same case that, when the creditor is a nonresident, then a state by an insolvency law may not alter the former's rights under a contract, albeit one of later date.

With the proposition established that the obligation of a private contract comes from the municipal law in existence when the contract is made, a further question presents itself, namely, what part of the municipal law is referred to? No doubt, the law which determines the validity of the contract itself is a part of such law. Also part of such law is the law which interprets the terms used in the contract, or which supplies certain terms when others are used, as for instance, constitutional provisions or statutes which determine what is "legal tender" for the payment of debts, or judicial decisions which construe the term "for value received" as used in a promissory note, and so on. In short, any law which at the time of the making of a contract goes to measure the rights and duties of the parties to it in relation to each other enters into its obligation.

Remedy a Part of the Private Obligation.—Suppose, however, that one of the parties to a contract fails to live up to his obligation as thus determined. The contract itself may now be regarded as at an end, but the injured party, nevertheless, has a new set of rights in its stead, those which are furnished him by the remedial law, including the law of procedure. In the case of a mortgage, he may foreclose; in the case of a promissory note, he may sue; and in certain cases, he may demand specific performance. Hence the further question arises, whether this remedial law is to be considered a part of the law supplying the obligation of contracts. Originally, the predominating opinion was negative, since as we have just seen, this law does not really come into operation until the contract has been broken. Yet it is obvious that the sanction which this law lends to contracts is extremely important—indeed, indispensable. In due course it became the accepted doctrine that part of the

[2066] 25 U.S. at 353–54.