ture the Court formerly felt free to determine questions of fundamental justice for itself. Indeed, in such a case, the Court in the past has apparently regarded itself as free to pass upon the constitutionality of the state law authorizing the bonds even though there had been no prior decision by the highest state court sustaining them, the idea being that contracts entered into simply on the faith of the presumed constitutionality of a state statute are entitled to this protection.[1964]

In other words, in cases in which it has jurisdiction because of diversity of citizenship, the Court has held that the obligation of contracts is capable of impairment by subsequent judicial decisions no less than by subsequent statutes, and that it is able to prevent such impairment. In cases, on the other hand, of which it obtains jurisdiction only on the constitutional ground and by appeal from a state court, it has always adhered in terms to the doctrine that the word "laws" as used in Article I, § 10, does not include judicial decisions. Yet even in these cases, it will intervene to protect contracts entered into on the faith of existing decisions from an impairment that is the direct result of a reversal of such decisions, but there must be in the offing, as it were, a statute of some kind—one possibly many years older than the contract rights involved—on which to pin its decision.[1965]

In 1922, Congress, through an amendment to the Judicial Code, endeavored to extend the reviewing power of the Supreme Court to "any suit involving the validity of a contract wherein it is claimed that a change in the rule of law or construction of statutes by the highest court of a State applicable to such contract would be repugnant to the Constitution of the United States . . . ."[1966] This appeared to be an invitation to the Court to say frankly that the obligation of a contract can be impaired by a subsequent court decision. The Court, however, declined the invitation in an opinion by Chief Justice Taft that reviewed many of the cases covered in the preceding paragraphs.

Dealing with *Gelpcke* and subsequent decisions, Chief Justice Taft said: "These cases were not writs of error to the Supreme Court of a State. They were appeals or writs of error to federal courts where recovery was sought upon municipal or county bonds or some other form of contracts, the validity of which had been sustained by decisions of the Supreme Court of a State prior to their execution, and had been denied by the same court after their issue or

---

[1964] Great Southern Hotel Co. v. Jones, 193 U.S. 532, 548 (1904).

[1965] Sauer v. New York, 206 U.S. 536 (1907); Muhlker v. New York & Harlem R.R., 197 U.S. 544, 570 (1905).

[1966] 42 Stat. 366.