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Constitutional Law–Obligation of Contract Clause–Tax Titles

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CONSTITUTIONAL LAW — OBLIGATION OF CONTRACT CLAUSE — TAX TITLES. — A's land, sold for nonpayment of taxes and not redeemed, was certified to the state of Arkansas. In 1935 the Arkansas legislature provided that the sale of property for nonpayment of taxes should not be set aside for certain specified irregularities in connection with the assessment, levy, and sale thereof. 1 In 1936 the commissioner of state lands conveyed to D all the right, title and interest of the state in the land forfeited by A. In 1937 the legislature repealed the act of 1935. Later A sold to P who sued to cancel the state's deed and to quiet his title. He alleged, and D admitted, that there were irregularities in proceedings prior to the sale to the state which rendered it void. The trial court entered a decree in favor of P, which the state supreme court affirmed. The case was appealed to the Supreme Court of the United States. Held, reversed, the act of 1937 being an unconstitutional impairment of the obligation of contracts. Wood v. Lovett. 2

The West Virginia legislature recently passed an act 3 similar to the Arkansas act of 1935. For this reason the present decision is of great importance to landowners and real estate dealers, as well as to lawyers, and it should greatly enhance the stability, and consequently the marketability, of tax titles in West Virginia.

The Constitution provides that no state shall pass any law impairing the obligation of a contract. 4 The obligation of a contract, defined as the law or duty which binds the parties to perform their agreement, 5 is impaired by a statute which alters its terms by imposing new conditions, 6 or dispensing with conditions; 7 or

1 Ark. Acts 1935, c. 142.
2 61 S. Ct. 983, 85 L. Ed. 917 (U. S. 1941).
3 W. Va. Code (Michie Supp. 1941) c. 11A, art. 3, § 29: "No irregularity, error or mistake in respect to any step in the procedure leading up to and including delivery of the tax deed shall invalidate the title acquired by the purchaser unless such irregularity, error or mistake is, by the provisions of sections sixteen, thirty, thirty-one, or thirty-two of this article, expressly made ground for instituting a suit to set aside the sale or the deed.

"This and the preceding section are enacted in furtherance of the purpose and policy set forth in section one of this article."
6 See Northern Pacific Ry. v. Minnesota, 208 U. S. 583, 591, 28 S. Ct. 341, 52 L. Ed. 630 (1908); Murray v. Charleston, 96 U. S. 432, 443, 24 L. Ed. 760 (1877); Green v. Biddle, 8 Wheat. 1, 84, 5 L. Ed. 547 (U. S. 1823).
which adds new duties, releases any part of the contract obligation, or substantially defeats its end. The repeal of a law which constitutes a contract is an impairment of its obligation. Contracts, within the meaning of the clause have been held to embrace those that are executed, that is, grants, as well as those that are executory. Not only private contracts are protected from impairment by state laws, but also contracts made by a state with individuals and corporations, as well as with other states. The term "contract," while generally used in its ordinary sense in the clause in the United States Constitution, comprehends a variety of instruments. It has become established law that a legislative enactment, in the ordinary form of a statute, may contain provisions which, when accepted as the basis of action by individuals or corporations, becomes a contract between them and the state. A grant of public lands is an executed contract which may not be rescinded by a subsequent act of the state legislature.

In arriving at its decision in the instant case, the court said that the act of 1935, in connection with other statutes, constituted, in effect, an offer by the state to prospective purchasers, and the execution of the state's deed to D constituted the consummation of a contract, the rights arising from which are protected from impairment by the Federal Constitution. Three justices dissented, basing their opinion on two major points. First, it was said that

8 See Northern Pacific Ry. v. Minnesota, 208 U. S. 583, 591, 28 S. Ct. 341, 52 L. Ed. 680 (1908); Re Fidelity State Bank, 35 Idaho 797, 810, 209 Pac. 449 (1922); Hubbard v. Hubbard, 264 S. W. 422, 425 (Mo. App. 1924).
9 Sturges v. Crowninshield, 4 Wheat. 132, 197, 4 L. Ed. 559 (U. S. 1819); Re Fidelity State Bank, Hubbard v. Hubbard, both supra n. S.
10 See McCracken v. Hayward, 2 How. 608, 614, 11 L. Ed. 397 (U. S. 1844); Re Fidelity State Bank, 35 Idaho 797, 811, 209 Pac. 449 (1922); Indianapolis v. Robison, 186 Ind. 660, 664, 117 N. E. 861 (1917).
12 See Fletcher v. Peck, 6 Cranch 84, 137, 3 L. Ed. 162 (U. S. 1810); Farrington v. Tennessee, 95 U. S. 679, 683, 24 L. Ed. 558 (1878); Dartmouth College v. Woodward, 4 Wheat. 518, 650, 4 L. Ed. 629 (U. S. 1819).
15 See 12 Am. Jur. 35.
18 Black, Douglas, and Murphy, JJ.
19 See 61 S. Ct. at 990.
the 1937 Arkansas statute impaired no contractual agreement or obligation expressly or impliedly assumed by the state. The argument put forth was that, as there was no warranty of title by the state, the only contract entered into by it was to pass all the right, title, and interest it had and not to reassert it. Furthermore, it was said that the state was under no obligation to keep its land tax laws static. The majority answered this argument by declaring the contract involved to be much broader than that asserted by the dissent, the very purpose of the act of 1935 being to offer immunity from attack on tax titles to prospective purchasers. The second point of the dissent was that the 1937 Arkansas statute was well within the state’s general legislative powers and in no way inconsistent with the true intent and fair interpretation of the contract clause. Quoting freely from Home Bldg. & Loan Ass’n v. Blaisdell2 the dissent said, ‘‘But to assign to contracts, universally, a literal purport, and to exact for them a rigid literal fulfillment, could not have been the intent of the constitution.’’ ‘‘The question is not whether the legislative action affects contracts incidentally, or directly or indirectly, but whether the legislation is addressed to a legitimate end and the measures taken are reasonable and appropriate to that end.’’ However, the Blaisdell case decided that due to the existence of an emergency certain contract obligations might be impaired, or rather postponed for a limited time, that is, during the period of the emergency. This is no authority for the complete destruction of a contract. The majority opinion seems to have followed established precedent and sound reasoning in reaching its decision.

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CONSTITUTIONAL LAW — PUNISHMENT FOR CRIME — REQUIREMENT THAT PENALTY BE PROPORTIONED TO OFFENSE. — The West Virginia Constitution requires that ‘‘penalties shall be proportioned to the character and degree of the offense.’’2 In a recent case2 the accused was convicted and sentenced to twenty-five years in the penitentiary for an attempt at armed robbery. Although it was not necessary to the decision, the majority of the court were of opinion that the statute3 which prescribed the punishment did

20 See 61 S. Ct. at 985.
3 Ex parte Farmer, 14 S. E. (2d) 910, 913 (W. Va. 1941).