

*Bank of Washington et al. v. State of Arkansas et al. Same v. Same.*

no such contract can be implied from the law, nor can this court inquire whether the law operated hardly or unjustly upon the parties whose suits were then pending. That was a question for the consideration of the Legislature. They might have repealed the prior law altogether, and put an end to the jurisdiction of their courts in suits against the State, if they had thought proper to do so, or prescribe new conditions upon which the suits might still be allowed to proceed. In exercising this latter power, the State violated no contract with the parties; it merely regulated the proceedings in its own courts, and limited the jurisdiction it had before conferred in suits when the State consented to be a party defendant.

Nor has the State court, in the judgment brought here for review, decided anything but a question of jurisdiction. It has given no decision in relation to the validity of the contract on which the suit is brought, nor the obligations it created, or the rights of parties under it. It has decided, merely, that it has no right under the laws of the State to try these questions, unless the bonds given by the State are filed. The plaintiff refused to file them pursuant to the order of the court, and the case was thereupon dismissed, for want of jurisdiction in the court to proceed further in the suit. There is evidently nothing in the decision, nor in the act of Assembly under which it was made, which in any degree impairs the obligation of the contract, and nothing which will authorize this court to reverse the judgment of the State court.

The writ of error must therefore be dismissed, for want of jurisdiction in this court.

The two cases of William A. Platenius, administrator of James Holford, against the State of Arkansas, in covenant, are the same in all respects with the one above decided, and must also, for the same reasons, be dismissed for want of jurisdiction.

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THE PRESIDENT AND DIRECTORS OF THE BANK OF WASHINGTON, AND HENRY S. AND FREDERICK S. HOLFORD, ADMINISTRATORS OF JAMES HOLFORD, DECEASED, PLAINTIFFS IN ERROR, *v.* THE STATE OF ARKANSAS, AND HENRY L. BRISCOE, SANDFORD C. FAULKNER, AND JAMES H. WALKER. *SAME v. THE STATE OF ARKANSAS AND THE BANK OF THE STATE OF ARKANSAS.*

A bill in chancery, purporting to be a cross bill, filed under the same law of Arkansas which was mentioned in the preceding case of Holford's Administrator *v.* The State of Arkansas, comes under the decision in that case, and must be dismissed for want of jurisdiction in this court.



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THESE two cases depended upon the same principle, and a report of the first will apply equally to the second.

It was brought up from the Supreme Court of the State of Arkansas by a writ of error issued under the twenty-fifth section of the judiciary act.

The case is stated in the opinion of the court.

It was argued by *Mr. Pike* for the plaintiffs in error, and by *Mr. Hempstead* for the defendants.

Mr. Chief Justice TANEY delivered the opinion of the court.

This is a bill in equity, brought in the Chancery Court of the State of Arkansas, to recover the money due on or which had arisen from, certain bonds issued by the State, to which the complainants claimed to be entitled. The bill is drawn out very much at length, and states particularly the bonds and contracts on which the complainants are proceeding, and also certain laws and acts of the State, which the bill alleges impaired the obligation of these contracts, and were forbidden by the Constitution of the United States.

It is unnecessary, however, to state at large the contents of the bill, or the particular contracts and bonds to which it refers, because the decision of the State court dismissing the bill has no relation to the validity of these contracts, or to the rights and obligations which they created. The bill was dismissed by the State court upon the same ground with the common-law actions above mentioned; and the appeal to this court must be disposed of upon the principles upon which we have dismissed the writs of error.

The bill was filed in November, 1854, and in February, 1855, the attorney for the State moved the court to dismiss it, unless the bonds upon which the complainants were proceeding were forthwith filed according to the provisions of the act of December, 1854. The complainants put in written objections to the motion, and finally refused to file the bonds. The court overruled the objections as insufficient, and dismissed the bill.

The complainants call their bill a cross bill. The bill filed by the State, and which gave rise to this, is not set forth in full in the transcript. The appellants in their bill refer to it, and state that it was filed by the State for itself and in behalf of all the creditors of the Real Estate Bank; and that it claims for the State a right to share with other creditors of the bank in certain assets of the bank in the hands of trustees, although the bonds issued by the State, which furnished the capital for the bank, had not been paid; and many of these bonds were held by the appellants, who were creditors of the bank as well as of the State.



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*Barton v. Forsyth.*

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But this is not a cross bill in the chancery sense of the words; the complainants, according to their own statement, were not defendants in the suit brought by the State. They cannot, therefore, file a cross bill, nor be regarded as defending themselves in that form of proceeding against the suit of the State. Their bill is evidently a suit against the State and others, to enforce the payment of money due on certain contracts made by the State, and the State is made a party defendant in the suit. And for the reasons assigned in the foregoing cases at common law, the judgment of the State court dismissing the bill is not open to revision here. Like the cases at common law, it was dismissed by the State court for want of jurisdiction to proceed further, after the passage of the act of December, 1854.

The appellants have not sought to come in under the bill filed by the State for itself and all the creditors of the Real Estate Bank, and to share with the State the assets in the hands of the trustees, who are assignees of the bank. Nor, indeed, could they do so upon the allegations made in their bill; for they do not claim a common interest with the State in the fund they are pursuing, but an adverse interest, and deny the right of the State to share in it, and could not, therefore, come in and associate themselves as complainants with the State in its creditor's bill when they denied that the State was a creditor of the fund.

The laws and proceedings on the part of the State may have operated harshly and unjustly upon the appellants. But it is not the province of this court to decide that question. Those who deal in the bonds and obligations of a sovereign State are aware that they must rely altogether on the sense of justice and good faith of the State; and that the judiciary of the State cannot interfere to enforce these contracts without the consent of the State, and the courts of the United States are expressly prohibited from exercising such a jurisdiction.

The case must be dismissed for want of jurisdiction in this court; and the case of the Bank of Washington et al. against the State of Arkansas, and the Bank of Arkansas, being confessedly an original bill, must be disposed of in like manner.

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JAMES BARTON, PLAINTIFF IN ERROR, *v.* ROBERT FORSYTH

Where there was an affidavit made, after verdict and judgment, that the affiant was the real party in interest, and prayed to be substituted for, or admitted with, the defendant, and the court overruled the motion, an exception to this ruling will not bring up the points which were raised at the trial; nor will it bring up the ruling upon the motion.