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subject, in which the Chief Justice suggests the difficulties of a court of law dealing with this description of property with a proper regard to the rights of all concerned.

In that case the bill was filed on the equity side of the Circuit Court of the United States for the district of Maryland, to restrain a sale of the defendant's property on execution. Gue, the judgment creditor, was a resident of Pennsylvania.

We shall not look into the questions raised upon the mortgage, whether executed by the proper authority, or if it was, whether it covered after-acquired property, as not material to the case before us. The latter question was fully examined in this court in the case above referred to, of *Pennock v. Coe*.

Neither shall we inquire into the questions raised under the attachment laws of Massachusetts, as they are unimportant in our view of the case.

Upon the whole, after the fullest consideration of the case, and utmost respect for the learning and ability of the court below, we are constrained to differ from it, and reverse the judgment.

THACKER B. HOWARD, PLAINTIFF IN ERROR, *v.* FRANCIS
BUGBEE.

A statute of the State of Alabama, authorizing a redemption of mortgaged property in two years after the sale under a decree, by *bona fide* creditors of the mortgagor, is unconstitutional and void as to sales made under mortgages executed prior to the date of its enactment, as impairing the obligation of the contract.

This question was decided by this court in the case of *Bronson v. Kinzie*, 1 Howard, 311, and the decision has been since repeatedly affirmed.

THIS case was brought up from the Supreme Court of the State of Alabama, 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. Phillips* for the plaintiff in error, and

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submitted on a printed argument by *Mr. Clay* for the defendant.

Mr. Phillips stated the case, and then proceeded with his argument.

The statute under consideration is in all respects like that which in *Bronson v. Kinzie* was held to be unconstitutional. There the question was, whether the mortgagee was not entitled to an absolute sale, regardless of the statute. Here the question is, whether the purchaser, under such a sale, can be deprived of his right to the fee simple by virtue of the redemption provided by the statute. As the purchaser under a foreclosure suit is vested with all the rights of the mortgagee, the question as to the validity of the statute must be the same, whether applied to the one or the other.

The case of *Grantley v. Ewing*, 3 Howard, 716, in which the statute was determined to be unconstitutional, was, as in this, a contest with the purchaser, and only differs from it in the fact that the obnoxious statute was passed after the decree, but before the sale, while in this case it was passed before the decree.

An unconstitutional statute is no more obligatory on State than on Federal tribunals. It is absolutely void to all intents and purposes. It cannot, therefore, be said that such a statute controlled the decree and the purchase made under it. The purchaser was vested, by the register's deed, with full and absolute property, and cannot be divested by the terms of a statute which the State had not constitutional authority to enact.

The opinion of the Supreme Court of Alabama in this case is founded upon their previous decision in *Iverson v. Shorter*, and very frankly and naively admits that "the decision in *Iverson v. Shorter* is a plain departure from the principle upon which the Supreme Court of the United States asserted in *Bronson v. Kinzie* the unconstitutionality of the statute of Illinois."

It would seem, therefore, to be confessed by the State court, that if this court adhere to its decision in *Bronson v. Kinzie*, their own judgment in this case must be reversed.

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See, also, *McCracken v. Haywood*, 2 Howard, 612.

Mr. Clay contended that the statute of Alabama did not impair the obligation of a contract, for the following reasons:

The distinction between rights and remedies, between those statutes which confer a right, and those which furnish a remedy for the enforcement of that right, is so marked that under ordinary circumstances I would not deem it necessary to offer any remarks upon it. The one inheres in and follows the contract wherever it may go. The other is dependent on the local legislation of the place where the parties seek to enforce the right. This distinction is taken in the following cases:

The People v. Tibbetts, 4 Cow., 384.

Baughn v. Nelson, 9 Gill, 299.

United States Bank v Longworth, 1 McL., 35.

Pratt v. Jones, 25 Verm., 303.

Searcy v. Stubbs, 12 Geo., 437.

Paschal v. Perez, 7 Texas, 348.

Hope v. Johnson, 2 Yerg., 125.

Maltby v. Cooper, 1 Morris, 59.

West v. Creditors, 1 La. Ann. Rep., 365.

Newton v. Tibbetts, 2 Eng. (Ark.), 150.

Rockwell v. Hubbell, 2 Doug., 197.

It is also well drawn in the able dissenting opinion of Justice McLean, in the case of *Bronson v. Kinzie*, 1 How. U. S., 311, 322. See, also, the cases cited in the opinion of Ch. J. Walker, of the Alabama Supreme Court.

The statute of 1842 takes away no right. It leaves the debt unimpaired, leaves the debtor's property subject to the debt, and only modifies the form of enforcing the decree. It does not take away all substantial remedy, which, it is conceded, would impair the obligation of the contract. It simply enlarges the time, at the completion of which the purchaser at the mortgage sale will acquire an indefeasible title. It does not weaken the binding efficacy of the mortgage, nor does it impair the mortgagee's lien. It but changes the remedy for the enforcement of the lien.

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Mr. Justice NELSON delivered the opinion of the court.

This is a writ of error to the Supreme Court of the State of Alabama.

The case was this:

Enoch Parsons executed a mortgage of the premises in controversy, on the 9th December, 1836, to Sarah Tait, to secure the payment of \$13,246.66. The last instalment fell due in January, 1841. In March, 1846, proceedings were instituted in the court of chancery to foreclose the mortgage for default in payment; and in September, 1848, Howard, the appellant, became the purchaser of the premises, under the decree of foreclosure, and held a deed of the same duly executed by the proper officer.

In January, 1842, the Legislature of the State of Alabama passed an act authorizing a judgment creditor of the mortgagor, or of his estate, at any time within two years after the sale under a mortgage, to redeem the land from the purchase on paying the purchase money, with a certain per cent. interest, besides charges.

Bugbee, the appellee, and plaintiff in the court below, having recovered a judgment against the estate of Parsons in 1843, tendered within the two years the purchase money, interest, and charges, to Howard, and also a deed of the premises to be executed; all of which were refused. This bill was filed in the court of chancery in Alabama by Bugbee to compel Howard to receive the money in redemption of the sale and execute the deed.

The main ground of the defence in that suit was, that the mortgage from Parsons, under which the defendant derived title, having been executed before the passage of the act providing for the redemption, the act as respected this debt was inoperative and void, as impairing the obligation of the contract.

The court of chancery so held and dismissed the bill. But on appeal to the Supreme Court, that court reversed the decree below, and entered a decree for the complainant. The case is now here on a writ of error to the Supreme Court.

The only question involved in this case was decided in Bron-

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son *v. Kinzie*, 1 How., 311. It was there held, after a very careful and extended examination by the court, through the Chief Justice, that the State law impaired the obligation of the mortgage contract, and was forbidden by the Constitution. This decision has since been repeatedly affirmed. 2 How., 612; 3 Ib., 716.

It is due to the judges of the court below to say that they felt bound by a decision of their predecessors, which they admitted to be in direct conflict with the case of *Bronson v. Kinzie*, and that the two decisions could not be reconciled.

We are entirely satisfied with the soundness of the decision in the above case, and with the grounds and reasons upon which it is placed, and shall simply refer to them as governing the present case.

Decree below reversed. Case remitted with directions to enter decree for the plaintiff in error.

CHARLES McMICKEN PERIN, CLYDE PERIN, AND MARY E. PERIN, INFANTS, BY THEIR FATHER AND NEXT FRIEND, FRANKLIN PERIN, COMPLAINANTS AND APPELLANTS, *v.* FREEMAN G. CAREY, WILLIAM CROSSMAN, AND WILLIAM M. F. HEWSON, EXECUTORS OF THE LAST WILL AND TESTAMENT OF CHARLES McMICKEN, DECEASED, THE CITY OF CINCINNATI, ELIZABETH RANDALL, DAVID P. STELLE, AND ELIZABETH STELLE, HIS WIFE, AND ANDREW McMICKEN, RESPONDENTS.

Charles McMicken, a citizen and resident of Cincinnati, in Ohio, made his will in 1855, and died in March, 1858, without issue.

He devised certain real and personal property to the city of Cincinnati and its successors, in trust forever for the purpose of building, establishing, and maintaining as far as practicable, two colleges for the education of boys and girls. None of the property devised, or which the city may purchase for the benefit of the colleges, should at any time be sold. In all applications for admission to the colleges, a preference was to be given to any and all of the testator's relations and descendants, to all and any of his legatees and their descendants, and to Mrs. McMicken and her descendants.

If there should be a surplus, it was to be applied to making additional buildings, and to the support of poor white male and female orphans, neither of whose