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# The Impairment of Contract Obligations and Vested Rights

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# THE IMPAIRMENT OF CONTRACT OBLIGATIONS AND VESTED RIGHTS

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*"No State shall . . . pass . . . any law impairing the obligation of contracts."*

This provision of Article I, Section 10 of the United States Constitution, is a direct prohibition on the enactment of state laws that have a retroactive effect to impair the obligations and rights arising under contracts entered into prior to the enactment of such state laws.

It is interesting to note that the prohibition of Article I, Section 10, United States Constitution, is a limitation on the power of the states. No mention is made of the federal government. Consequently Congress may pass any laws impairing the obligation of contracts, provided, however, that it shall not thereby take property without due process of law in violation of the fifth amendment. The fifth amendment is then, the only apparent limitation on the power of Congress to enact laws impairing the obligation of contracts.

The "contract clause" has been given a literal construction by the courts. It prohibits the states from *passing any laws* impairing contract obligations. Consequently it has been construed as a limitation on state *legislation.* In *New Orleans Water Works Co. v. Louisiana Sugar Refining Co.,* 125 U. S. 18, the court says: "In order to come within the provision of the Constitution of the United States which declares that no state shall pass any law impairing the obligation of contracts, not only must the obligation of a contract have been impaired, but it must have been impaired by a law of the state. The prohibition is aimed at the legislative power of the state, and not at the decisions of its courts, or the acts of administrative or executive boards or officers, or the doings of corporations or individuals. This court, therefore, has no jurisdiction to review a judgment of the highest court of a state, on the ground that the obligation of a contract has been impaired, unless some legislative act of the state has been upheld by the judgment sought to be reviewed." But such state legislation as impairs the obligation of contracts may take the form not only of state statutes or legislative enactments in the strict sense of the word, *Fisher Co. v. Woods,* 187 N. Y. 90, but

of municipal ordinances and resolutions, *Northern Pacific R. Co. v. Minnesota,* 208 U. S. 583, and even of state constitutional provisions and amendments, *Los Angeles v. Los Angeles City Water Works,* 177 U. S. 558.

To say, however, that the "contract clause" of the United States Constitution does not apply to decisions of the state courts, would be to make too broad a statement. When a decision of a state court is based upon a statutory provision or a constitutional provision, the "contract clause" is applicable. This constitutional prohibition applies to decisions of state courts which in effect enforce some statutory provision of the state. As the court says in *Cross Lake Club v. Louisiana,* 224 U. S. 632: "When the state court, either expressly or by necessary implication, gives effect to a subsequent law of the state, whereby the obligation of the contract is alleged to be impaired, a federal question is presented." The same has been held in the case of *New Orleans Water Works Co. v. Louisiana, supra.*

There has been considerable conflict of authority in the state and federal courts as to whether a judicial decision changing the settled construction of a statute, impairs the obligation of contracts made in reliance on the first judicial construction. But the Supreme Court of the United States has now held that a judicial decision changing the construction of a state statute does not impair the obligation of contracts made in reliance on the first judicial construction of the court. *National Mutual Building and Loan Association v. Brahan,* 193 U. S. 635. "It is well settled that the impairment of the obligation of the contract, within the meaning of the Federal Constitution, must be by subsequent legislation and no mere change in judicial decision will amount to such deprivation." *Cleveland and Pittsburgh R. Co. v. City of Cleveland,* 235 U. S. 50.

But contract obligations may be impaired by subsequent state statutes enacted in the reasonable and *bona fide* exercise of the police power of the states and such impairment of contract obligations will not be held violative of the "contract clause" of the Federal Constitution. *Griffith v. Connecticut,* 218 U. S. 563. In *Manigault v. Springs,* 199 U. S. 473, the court by Mr. Justice Brown says: "It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the state from exercising such powers as are vested in it

for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power, which in its various ramifications is known as the police power, is an exercise of the sovereign right of the government to protect the lives, health, morals, comfort and general welfare of the people, and is paramount to any rights under contracts between individuals. Familiar instances of this are, where parties enter into contracts perfectly lawful at the time to sell liquor, operate a brewery or distillery, or carry on a lottery, all of which are subject to impairment by a change of policy on the part of the state, prohibiting the establishment or continuance of such traffic; in other words, that parties by entering into contracts may not estop the legislature from enacting laws intended for the public good." *Mugler v. Kansas,* 123 U. S. 623; *Chicago, etc., R. Co. v. Chicago,* 166 U. S. 226; *Butchers' Union Co. v. Crescent City Co.,* 111 U. S. 746; *Beer Co. v. Massachusetts,* 97 U. S. 25; *Boyd v. Alabama,* 94 U. S. 645; *Charles River Bridge v. Warren Bridge,* 11 Pet. (U. S.) 420.

It is by virtue of the foregoing principle of law, that the various prohibition acts clearly impairing the obligation of contracts, have been held constitutional. Of course, it must be constantly remembered, that even the police power is restricted by the fourteenth amendment, which prohibits the states from taking property without due process of law. And any law impairing the obligation of contracts will not be upheld under the guise of police power, unless it be an actual, *bona fide* and reasonable exercise of that great sovereign power. *Mugler v. Kansas, supra.*

Nor is the power of the state to take private property for public use, upon making just compensation, limited by the so-called "contract clause" of the Constitution. *Cincinnati v. Louisville, etc., R. Co.,* 223 U. S. 390. And it may be said in general, that the fact that a state statute imposing a tax, impairs the obligation of contracts between individuals, is not an available objection. *Henderson Bridge Co. v. Henderson,* 173 U. S. 590. The police power, the power of eminent domain, the power of taxation; these are the three great sovereign powers, powers essential to the existence of government, powers that underlie the very Constitution itself, sovereign powers of which the states cannot be deprived by the mere fact that contract obligations may be impaired by the exercise thereof.

A contract between the state and an individual is as much within the prohibition of the constitutional provision under consideration, as a contract between two private individuals. The mere fact that the state is a party to the contract does not by any chance give the state the power to impair the obligation of its contract. And it will be remembered that as early as 1819 in the famous Dartmouth College case, the Supreme Court of the United States held that a charter or franchise is a contract between the state and the person to whom it is granted within the meaning of the constitutional provision prohibiting the impairment of contract obligations. *Dartmouth College v. Woodward,* 4 Wheat. (U. S.) 518. And the rule in the Dartmouth College case has remained the law of the land to this day. In Wisconsin the effect of the rule announced in the Dartmouth College case is avoided by the so-called "reserved power clause" of Section 1, Article XI., Wisconsin Constitution. This section provides as follows: "All general laws or special acts enacted under the provisions of this section may be altered or repealed by the legislature at any time after their passage." Therefore, every charter granted, whether by general or special act, is taken *subject to the reserved power of the state legislature to alter or repeal such charter at any time thereafter.* In *Kenosha, Rockford and Rock Island R. Co. v. Marsh,* 17 Wis. 13, the court by Paine, J., said: "The occasion of reserving such a power either in the constitution or in charters themselves is well understood. It grew out of the decisions of the Supreme Court of the United States, that charters were contracts within the meaning of the constitutional provision that the states should pass no laws impairing the obligation of contracts. This was supposed to deprive the states of that power of control over corporations which was deemed essential to the safety of the public. Hence the practice, which has extensively prevailed since those decisions of reserving the power of amending or repealing charters." In that case the court held, that while the legislature had the power to repeal a charter to a railroad company, it had no power to make a fundamental change in the character of the enterprise that would be binding on the original company or the subscribers to its stock. The reserved power clause is subject to the limitation contained in the fourteenth amendment to the Constitution. In *The Attorney General v. Railroad Companies,* 35 Wis. 425, it was admitted that a corporate franchise is a

contract between the state and the corporation, but it was said, that the reserved power to alter or repeal operates as a qualification of every franchise granted and that a subsequent exercise of this power cannot be regarded as impairing the obligation of the contract. But the power to repeal or amend is limited by the "due process clause" of the fourteenth amendment.

A public office is a contract within the meaning of the constitutional provision under consideration. In *Hall v. Wisconsin,* 39 Wis. 79, it appears that the state legislature having created a public office (commissioner of the geological survey of the state), by a subsequent act sought to terminate the office. The plaintiff who had been appointed such commissioner by the law brought action to recover for services rendered as such commissioner. The state court held that the subsequent repealing act terminated both the office and the right of the appointee to any salary not already earned at the time of such repeal and that the repeal of such act creating the office did not impair the obligation of any contract within the meaning of Section 10, Article I., of the Federal Constitution. But on appeal, the Supreme Court of the United States reversed the state court, holding: " . . . . When the legislature makes a contract with the public officer, as in case of a stipulated salary for his services during a limited period, this, during the limited period, is just as much a contract, within the purview of the constitutional prohibition, as a like contract would be between two private citizens." *Hall v. Wisconsin,* 103 U. S. 5.

It is clear that a sale of land by the state may not be impaired by a subsequent statute. *Butler v. Chariton County Ct.,* 13 Mo. 112. And according to the majority of courts, a grant of land by the state is treated as an executed contract, which may not be impaired by subsequent state legislation. As soon as the grant is made, rights under the land grant become vested and they may not be subsequently divested by state legislation. *Charles River Bridge v. Warren Bridge, supra; State ex rel. Mayers v. The School Commissioners,* 5 Wis. 348.

The question has arisen whether marriage is a contract within the meaning and protection of the constitutional provision under consideration. And the courts have definitely settled that the parties in the so-called marriage or marital contract do not sustain mere contract relations, but that marriage creates a status,

or such a legal relationship which the legislature may regulate in the interests of the public. In *Adams v. Palmer,* 51 Me. 481, the court determined the question in the following beautiful language: "It (marriage) is not, then, a contract within the meaning of the clause of the Constitution which prohibits the impairing the obligation of contracts. It is, rather, a social relation, like that of parent and child, the obligations of which arise not from the consent of the concurring minds, but are the creation of the law itself, a relation the most important, as affecting the happiness of individuals, the first step from barbarism to incipient civilization, the purest tie of social life, and the true basis of human progress." *Maynard v. Hill,* 125 U. S. 190; *Bennett v. Harms,* 51 Wis. 251.

It is well settled that the states can pass no laws that impair or destroy vested rights. This limitation on state legislation arises not, as is often supposed, by force of the "contract clause" of the Constitution, but by force of the fourteenth amendment. It is indeed surprising to find that prior to the adoption of the fourteenth amendment to the United States Constitution, there was absolutely no prohibition in that document by which the states could be prevented from passing laws divesting vested rights, *unless the laws also impaired the obligation of contracts* or related to criminal proceedings and were *ex post facto* laws. Thus in the case of *Watson v. Mercer,* 8 Pet. (U.S.) 88, we find Mr. Justice Story forced to say: "It is clear that this court has no right to pronounce an act of the state legislature void, as contrary to the Constitution of the United States, *from the mere fact that it divests antecedent vested rights of property.*" (Italics inserted.) But since the adoption of the fourteenth amendment, vested rights are protected against state action by the due process clause. And the fourteenth amendment is directed not only against state legislation, but against any state action, "in whatever mode or proceeding such action may be taken, by its legislative, executive, judicial or administrative agencies." *Home Telephone, etc., Co. v. City of Los Angeles, 227* U. S. 278. This brings home most forcibly the great extent to which the fourteenth amendment has limited the powers of the several states.

"A 'vested right' is property which the law protects." *Hoeft v. Supreme Lodge,* 113 Cal. 91, 45 Pacific 185. Of course, the term "vested" applies only to property rights; not to personal rights.

While the legislative department may not impair the obligation of contracts or impair or divest vested rights, it may validly make any change in an established method of procedure, provided, however, that the procedure substituted therefor, be as effective or "efficacious" as the original procedure. The courts postulate this power on the broad ground that such laws affect only the remedy, not the right, and that there can be no vested rights in a mere remedy or form of procedure by which rights are enforced. But the power of the legislature to alter or change the remedy is subject to the above limitation, that the remedy or form of procedure substituted must be as broad and efficient as the first remedy or form of procedure. The legislature cannot change the remedy if it be in effect to destroy the right. In the case of *Terry v. Anderson,* 95 U. S. 628, the court held that the period of nine months and seventeen days given to sue upon a cause of action that had been running for nearly four years, did not impair the obligation of contracts nor divest vested rights. The court said in that case: "This court has often decided that statutes of limitation affecting existing rights are not unconstitutional, if a reasonable time is given for the commencement of an action before the bar takes effect. . . . The parties to a contract have no more a vested interest in a particular limitation which has been fixed, than they have in an unrestricted right to sue. . . . In all such cases the question is one of reasonableness, and we have, therefore, only to consider whether the time allowed in this statute is, under all the circumstances, reasonable. Of that the legislature is primarily the judge and we cannot overrule the decision of that department of government unless a palpable error has been committed." And in *In re Brown,* 135 U. S. 662 (p. 701) we find the following statement: "The passage of a new statute of limitations, giving a shorter time for bringing of actions than existed before, even as applied to actions which had accrued, does not necessarily affect the remedy to such an extent as to impair the obligation of the contract within the meaning of the Constitution, provided a reasonable time is given for the bringing of such actions."

In the case of *Koshkonong v. Burton,* 104 U. S. 668, an act was passed by the Wisconsin legislature providing that no action brought to recover money on any bond, interest, coupon, agreement or promise in writing made by any town, county, city or

village, or upon any installment of the principal or interest thereof, shall be maintained unless the action be commenced within six years from the time when such money has or shall become due, when the same has been made payable to bearer or order, provided, that any such action may be brought within one year after this act takes effect. The court in upholding the statute made the following statement of the law: "It was undoubtedly within the constitutional power of the legislature to require, as to existing causes of action, that suits for their enforcement should be barred unless brought within a period less than that prescribed at the time the contract was made or the liability incurred from which the cause of action arose. The exertion of this power is, of course, subject to the fundamental condition that a reasonable time, taking all the circumstances into consideration, be given by the new law for the commencement of an action before the bar takes effect."

In the famous case of *Von Hoffman v. Quincy,* 4 Wall. (U. S.) 535, the city of Quincy had issued bonds under statutes authorizing the levy of a special tax upon property sufficient to pay the annual interest on the bonds. This tax was to be levied only for the purpose of paying the annual interest on these bonds. By a subsequent statute the city's taxing power was reduced to one-half per cent. This would leave nothing for the payment of the bonds after the current expenses of the city were paid. The court held that in so far as the subsequent law diminished the value of the bonds by decreasing the security, it impaired the obligation of a contract. "It is competent for the states to change the form of the remedy, or to modify it otherwise, as they may see fit, provided no substantial right secured by the contract is thereby impaired. No attempt has been made to fix definitely the line between alterations of the remedy, which are to be deemed legitimate, and those which, under the form of modifying the remedy, impair substantial rights. Every case must be determined upon its own circumstances. Whenever the result last mentioned is produced, the act is within the prohibition of the Constitution, and to that extent void." *Oshkosh Waterworks Co. v. Oshkosh,* 187 U. S. 457; *Bronson v. Kinzie,* How. (U. S.) 311; *Mc Cracken v. Hayward,* 2 How. (U. S.) 608; *Ogden v. Saunders,* 12 Wheat. (U. S.) 230; *McGahey v. Virginia,* 135 U. S. 662; *Marx v. Hanthorn,* 148 U. S. 172.

In the case of *Germania Saving Bank v. Vil. of Suspension Bridge,* 159 N. Y. 362, the legislature attempted to give the right of appeal in cases in which the right had been lost by expiration of the statutory limitation. Held, that in so far as the statute applied to existing judgments it was unconstitutional as impairing the obligation of contracts and divesting vested rights.

In *Falkner v. Dorman,* 7 Wis. 338, the court sustained the constitutionality of a statute barring an action on a tax deed commenced after three years from the time such deed was recorded, on the ground that such statute amounted to nothing more than a statute of limitation. The court said: "It is too late to contest the power of the legislature to pass statutes of limitation. . . . . It is a matter resting in the sound discretion of the legislature which may take into consideration the nature of the titles, the situation of the country and the mischiefs to be guarded against, to determine the period to which a party's right of action shall be limited for the recovery of the possession of real estate." And in *Parker v. Kane et al,* 4 Wis. 1, we find the following statement of the law: "It is the province of the legislature to prescribe the manner and time in which remedies shall be pursued in our courts, provided, some remedy be given, and some reasonable time be provided within which such remedy may be sought. . . ." To the same effect are *Von Baumbach v. Bade,* 9 Wis. 559; *Smith v. Pickard,* 12 Wis. 371; *Howell v. Howell,* 15 Wis. 55; *Mecklem v. Blake,* 22 Wis. 495; *Second Ward Savings Bank of Milw. v. Schranch,* 97 Wis 250.

In *Oshorn v. Jaines,* 17 Wis. 592, and *Pleasants et al v. Rohrer,* 17 Wis. 595, it is established that the legislature may extend the period of limitation as to all causes of action not already barred. In the latter case it appears that the legislature passed a law extending the time within which the owners of land sold for taxes might bring an action to recover possession of the land, three years from the passage of the act. Before the expiration of the extended period, and during the time that the statute was in force, the plaintiff commenced action. The action had not been barred by the statute of limitations existing prior to the time it was extended. The court, holding that the law extending the period in which such actions could be brought was constitutional, said: "The power of the legislature to extend the period of limitations as to all causes of action, which by the existing

law are not barred, is unquestionable. . . . . It is perfectly competent for the legislature to enlarge or abridge the period within which actions shall be barred, and pass laws affecting even existing demands, providing a reasonable time is given, after the new law takes effect, to bring the suit. The statute of limitations might therefore be changed by an extension of the time within which a party could bring his action to recover property sold for taxes. When the period of limitation has expired, then we have held the legislature could not give a new cause of action, without destroying and taking away a vested right, which exceeds its legitimate powers." *Sprecher v. Wakeley,* 11 Wis. 432; *Smith v. Packard, supra; Clark v. Clark,* 10 N. H. 380; *Gilman v. Cuttis,* 3 Foster 376; *Willard v. Harvey,* 4 Foster 344; *Call v. Hagger,* 8 Mass. 423; *Smith v. Morrison,* 22 Pick. (Mass.) 430; *Winston v. McCormick,* 1 Ind. 8.

But a cause of action having become barred by the existing statute of limitations, rights have vested, and the legislature cannot extend the statute of limitations so as to make it apply retroactively and revive the cause of action which had previously become barred under the existing statute of limitations. The law then affects not merely the remedy, but vested rights. It would, in effect, deprive one of the parties of a property right, or at least of a defense which he has acquired under the existing law, and in so far as the law would deprive him of that defense, it would deprive him of a vested right under the law. In *Sprechler et al v. Wakeley et al, supra,* the legislature attempted by a subsequent statute, to renew the right to commence an action for the recovery of land sold for taxes that had already become barred under the existing statute of limitations. The court in holding such subsequent law invalid, says: "Suppose, for instance, a party has been in adverse possession of real estate under color of title for twenty years, and after his defective title has thus by prescription ripened into a perfect title at law, can the legislature repeal the statute and give the original owner the right of action to recover the land? Can a man thus be deprived of his property without his consent and without compensation? This probably will not be asserted. Wherein lies the difference between the case supposed and one, where the legislature provide, that no action for recovery of land sold for taxes shall be commenced from the time after the tax deed is recorded? In each case, does

not the lapse of time operate upon and affect the title? . . . . And if the title becomes vested in the one case by operation of the statute, *Gage v. Gage,* 10 Foster 420; *Ash v. Ashton,* 3 W. and S. 510, is it wholly unaffected by lapse of time in the other? . . . . The legislature cannot now restore to him (the owner of the land sold at tax sale), or those claiming under him, the rights which have been lost by negligence, while in so doing the opposite party is deprived of rights and interests gained by vigilance and the operation of the statute of limitations. This it appears to us is destroying vested rights in the clearest manner." To the same effect is *Hill v. Kricke,* 11 Wis. 465.

Reversions and remainders, being vested estates, come within the protection of the provisions of the Constitution prohibiting the states from impairing vested rights. "Legislation which impairs the value of a vested estate is unconstitutional." *In re Peel,* 171 N. Y. 48, 63 N. E. 789. In this case it was held that the remainder could not be subjected to the payment of a succession tax by a statute passed subsequent to the vesting of the remainder in right, even though the remainder had not vested in possession, on the ground that the law diminished the value of vested estates, impaired the obligation of contracts, and took private property for public use without compensation. The majority rule is to the effect that contingent remainders may be impaired or destroyed at any time before becoming vested, *Moore v. Reddel,* 259 Ill. 36, 102 N. E. 257, but there seems to be some authority to the contrary.

As was intimated above, when title to real property has been acquired by adverse possession, an absolute estate has become vested in the adverse holder of which he may not be divested. This was established in this state in the early case of *Knox v. Cleveland,* 13 Wis. 274, in which the court held that the owner of land, which is held adversely by another, is "cut off" by his failure to bring suit to recover possession within the time prescribed by the statute of limitations; that the land is transferred to the adverse holder by failure of the owner to bring suit within the prescribed time and the legislature, by a repeal of the statute of limitations, or otherwise, could not restore the right of the former owner against the adverse holder. *Sprecher v. Wakeley, supra; Parish et al v. Eager,* 15 Wis. 590. But the legislature may validly lengthen the period prescribed by the existing law

for acquiring title by adverse possession, provided it does not attempt thereby to restore or revive the right of the former owner to recover his land from one who has already acquired a vested estate by adverse holding; and the legislature may even shorten the period prescribed for acquiring title by adverse possession, provided, however, that a reasonable time is given the owner to assert his right of recovery before the new law goes into effect. *McAuliff v. Parker,* 10 Wash. 141, 38 Pacific 744.

Dower, which during the lifetime of the husband is a mere inchoate right, may be taken away by law at any time before the decease of the husband. *Randall v. Krieger,* 23 Wall. (U. S.) 137. But upon the decease of the husband, the dower right becomes vested (a vested interest), even before assignment, *Burke v. Barron,* 8 Iowa 132, and from then on, it may not be destroyed or divested by state action. In *Bennett v. Harms,* 51 Wis. 251, our court made the following statement of the law: "It would seem to follow from the weight of authority, that while the right of dower remains inchoate—a mere expectancy,—and until it becomes consummated by the husband's death, it is entirely under legislative control." There are cases to be found holding *contra* to this. *In re Alexander* 53 N. J. Eq. 96.

In *Sutton v. Askew,* 66 N. C. 172, 8 Am Rep. 500, the legislature of North Carolina attempted to enlarge the dower right of the widow by giving her dower in all of the lands of which her husband was seized during coverture (common law dower). Previously to this, under the existing law, the wife had dower only in such lands as her husband should die seized of. It was held that the statute was invalid in so far as it was applicable to lands acquired prior to the enactment of the statute, but it was valid as to lands acquired subsequent to the passage of the law, even though the marriage had been contracted prior to its enactment. *O'Kelly v. Williams,* 84 N. C. 281. In the Sutton case the court speaks as follows: "If the right to dower is at the mercy of the legislature, to increase or diminish, continue or destroy, then it is nothing—nothing as a right—nothing as property! We think that this great right, sacred as life, and indispensable to society and the family economy, ought to be more secure, ought to inviolable, when once it exists, whether it be created by contract or by operation of law."

By the great weight of authority, the dower right being an inchoate right, a mere expectancy during the lifetime of the

husband, a right which may never vest, it may be modified, enlarged, limited, changed or destroyed before the decease of the husband. It is upon this principle of law that the amendment to section 2159 Wis. R. S. relating to dower (Session laws, 1921, Chap. 99), which purports to give to the widow of every deseased person dying after August 31, 1921, a third interest (in fee) of all lands whereof her husband was seized of an estate of inheritance at any time during marriage, may be upheld.

What has been said with reference to the wife's dower is applicable to the husband's right of curtesy. But when all of the requisites of curtesy initiate have been fulfilled, then curtesy becomes a vested right in the husband and it may not be destroyed or impaired by any subsequent act of the legislature. *NcNeer v. McNeer,* 142 Ill. 388, 32 N. E. 681. And it is generally held that the homestead, considered in its aspect as a life estate in the widow during widowhood, is a mere statutory estate and may be impaired or abolished at any time before becoming vested. *Henson v. Moore,* 104 Ill. 403.

There are no vested rights in exemption laws. These are mere privileges that exist by the grace of the legislature and consequently they may be subsequently impaired or abolished. Their repeal involves the impairment of no contract obligations and the divestiture of no property rights. "The privileges of debtors are not vested rights and the legislature may modify and abridge them by laws which operate directly upon the property." *Bull v. Conroe,* 13 Wis. 260. In this case it was held that exemptions extended to debtors by existing exemption laws, are not, as to the particular property which comes within their protection, vested rights. The court said: "If such statutes were general in their operation and affected the interests of all debtors alike, according to the classes into which they are at present divided, and if they did not amount to a total repeal of all exemptions, but left debtors in the enjoyment of enough of the necessary comforts of life, so that we could not readily and without hesitation say that the constitutional duty was unexecuted, they would not be subject to objection on account of those clauses in the constitution which forbid the disturbance of settled rights of property. The immunities of benefits which debtors are to derive from the operation of such laws, are spoken of in the constitution as *privileges,* not *absolute rights.* They affect the remedies of the creditor, rather than the strict legal right of the debtor. The

words used imply that the framers, although they made it obligatory upon the legislature to recognize them, considered them matters of legislative grace or favor, and not vested rights growing out of grants from the state, or compacts between the state and individual debtors. The state receives nothing, and debtors pay no price the consideration for which does not contribute to their own immediate and exclusive benefit. They are more in the nature of gratuities commanded by the constitution and enforced by the legislature, and their perpetuity and safety, so far as future legislation is concerned, must depend entirely on the clause in the constitution which requires them, and such other clauses as prevent special or exclusive legislation upon subjects of general concern."

Mr. Justice Miller in his work on the Constitution of the United States, speaking with reference to state laws enlarging exemptions from execution so as to include homesteads says: "So far as these laws or any of them, have the effect to operate upon contracts in existence when they were passed, they have been uniformly held by the Supreme Court of the United States, as well as by nearly all the other courts before whom the question has come, to be forbidden by the clause of the Constitution we are now considering. To the extent that they impair the obligation of contracts, or hinder the creditor from collecting his debt, they benefit the debtor and place him in a better position at the expense of the creditor and so are repugnant to this clause of the Constitution. It matters not whether the sum involved be large or small, every law which has this effect in regard to past contracts, or those in existence when the law took effect, is void." *Miller on Constitution of the United States* (pp. 547, 548). This distinction between laws enlarging exemptions and those reducing exemptions must be kept in mind. It may be stated as a general rule that any change in an exemption law, as applied to past or existing contracts, is not unconstitutional if it be favorable to the creditor. Any statute *increasing* an exemption or *enlarging* an exemption, as applied to past and existing contracts, must necessarily impair the obligation of contracts, since it diminishes the security and the value of contracts, and to that extent it is unconstitutional. On the other hand, any statute *reducing* or *lessening* exemptions must be favorable to the creditor, because it strengthens his contract; no contract obligations are impaired, no property rights divested and so in these respects we may say

that any statute reducing or lessening exemptions, is constitutional. *Brearley School v. Ward,* 201 N. Y. 358; *Edwards v. Kearzey,* 96 U. S. 595.

In *Webb v. Moore,* 25 Ind. 4, we find the following statement of the law: "We think it is well settled that the remedy given by a law to enforce a contract, upon breach of its obligation, may be changed, from time to time, at the will of the legislature. The point guarded by the Constitution is, that in so changing the remedy, care must be taken that the obligation of the contract be not, thereby, materially lessened, weakened or impaired. It is equally well settled, that the legislature may give a more efficient remedy for the enforcement of the obligation of a contract, after breach, and that such legislation is not repugnant to the Constitution of the United States prohibiting a state from passing any law impairing the obligation of contracts. In this case, the statute in force at the time of the execution of the mortgage to the school fund, required the county auditor to give sixty days' notice of sales for the nonpayment of the principal of the loan of the interest thereon. The legislature subsequently changed the law so that a notice of only three weeks was made sufficient. The court held that the subsequent statute did not impair vested rights or contract obligations, but, on the contrary, strengthened contract obligations by expediting the remedy.