

arbitrarily divested or withdrawn by future State action. It is an incident to the sovereignty of any government, that it may take private property for public use, of the necessity or expediency of which the government must judge, but the obligation to make just compensation is *concomitant with the right*. Government cannot take away private property and rights without allowing compensation.²

And to conclude the argument upon this branch of the subject, that independent of of all human laws and constitutions, and upon principles of right, this Convention has no power to pass this article, I refer to the case of Regents of University of Maryland *vs.* Williams, 9 G. & J., 365, where the Court announced this principle, that "independently of the Constitution of the United States, and of this State, the act of 1825 is void, as opposed to the fundamental principles of right and justice, inherent in the nature of the social compact." Here, sir, is a recognition therefore of the fact that there are rights which underlie the social compact, and are beyond the control of State action.

(The hour having expired, the hammer fell.)

On motion of Mr. HEBB,

The speaker was allowed fifteen minutes further time.

Mr. CLARKE proceeded: It will be impossible for me to finish in fifteen minutes, but I will proceed.

Slavery, Mr. President, is not opposed to the fundamental principles of right. If so, Revelation never would have authorized or sanctioned it. Robbery is expressly prohibited by both human and divine laws.

But again, Mr. President, section 10 of article 1 of the Constitution of the United States, provides that "no State shall pass any law impairing the obligation of contracts." This is the supreme law. This is the mandate of the Constitution of the United States, to which, Mr. President, you have declared you owe paramount allegiance. Sir, the decisions of the Courts have announced this legal principle which is *indisputable*, that a law which prohibits a levy on a portion of the debtor's property

previously subject to an *existing* judgment, is unconstitutional, as impairing the obligation of the contract.

Permit me to illustrate the meaning of this view of the question. The Constitution of the United States announces that the State shall not impair the obligation of contracts. There are many mortgages and bills of sale in this State where negroes are the sole security, upon the faith of which the contract was made. Pass this article; strike down this property; and then if any one of that class of persons holding such security desires to realize his money upon such a contract or bill of sale or mortgage, where is the security? By your legislation you have said it shall have no existence. You cannot proceed to enforce the contract either by execution or by proceedings for a sale of the property. It has been destroyed as *property* by this article. The result is, that you will have impaired by this provision of the Constitution the obligation of the contract.

I put for further illustration, the case of a party who dies, leaving general creditors, and a creditor who is secured by mortgage upon the real estate. The mortgagee enforces a sale of the real estate, and the entire proceeds of sale is absorbed in the payment of his debt. The general creditors, who looked to the personal property—the negro property—of the deceased for payment of their claims, find that it has been all destroyed by the adoption of this article. The deceased has no other property from which the payment of his general creditors may be enforced. Not only is the obligation of the contracts made with the general creditors impaired, but the contracts themselves are virtually destroyed. The vested rights of the general creditors to have this property applied to the payment of their indebtedness or contracts are entirely abrogated.

Take the case of a conditional sale, by which the vendee bound himself by an obligation which matures immediately after this article takes effect, to purchase negroes. The vendor is not in default. But you have stricken down this property. Upon whom does the loss fall? Upon the vendor or vendee? There is no property in the negro upon which the contract can operate. The article clearly impairs the obligation of the contract.

Now, sir, if this article is unconstitutional *quoad* the rights of A, B and C, it is unconstitutional *quoad* everybody. There

* See Woodruff *vs.* State 3 Pike, 285.
Cooper *vs.* Williams, 7 Greenl. 273.
Strong *vs.* Russell, 3 Watts, 294.
Henry *vs.* Underwood, 1 Dana, 267.
O'Hara *vs.* Lexington, 1 Dana, 232.
Ferry *vs.* Wilson, 7 Mass, 395.
Hooker *vs.* Canal Co., 14 Conn. 146.
1 Baldwin, 220. 4 Hammond, 255. 7 Peters, 243.
Barron *vs.* Mayor and C. of Baltimore.