Supplementary Material

Chapter 5: The Jacksonian Era—Individual Rights/Property/Due Process

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White v. White, 4 How. Pr. 102 (NY 1849)

Mary and Lyman White were married in 1819. The marriage was not happy. Court records describe Lyman White as "a man of idle habits, addicted to the use of spirituous liquor to such a degree as to become frequently intoxicated." Lyman White frequently either physically assaulted his wife or threatened physical assault. In 1848, New York passed a Married Women's Property Law. The relevant section declared, "The real and personal property, and the rents, issues and profits thereof, of any female now married, shall not be subject to the disposal of her husband, but shall be her sole and separate property as if she were a single female." After the law was passed, Mary White filed a lawsuit against her husband to gain control of the property she inherited from her father. Lyman White defended on the ground that the Married Women's Property Law unconstitutionally deprived him of property rights.

The Supreme Court of New York ruled that the Married Women's Property Law could not constitutionally apply to land women acquired before 1848. Justice Mason asserted that Lyman White had a vested right to control his spouse's property under previous New York law. The Married Women's Property Law divested him of that property without due process of law. Had Mary White inherited property in 1849, she would have retained ownership of that property. Why does Justice Mason think the Married Women's Property Law could not be applied retroactively? Why was the statute constitutional when applied to property acquired after 1848? Lyman White relied on both the contracts clause of the federal Constitution and the due process clause of the state constitution. What is the difference between his two arguments? Why did the first fail and the second succeed?

JUSTICE MASON

. . . The first objection raised against the validity of this statute is . . . that it is a statute in conflict with that provision of the constitution of the United States which prohibits a state from passing any law impairing the obligation of a contract. The argument is that the relation of husband and wife is created by a contract of the parties, and is to be regarded as a mere civil contract between the parties. That by virtue of the contract of marriage between the parties in this case, the husband succeeded to all the plaintiff's personal property and to the rents and profits of her real estate during coverture at least, and that the statute under consideration takes away from the defendant in this suit these vested rights of property, and thereby assails and impairs the obligations of the marriage contract by taking away all these rights of property to which the husband succeeded under it. . . . At the time of the adoption of the constitution of the United States, the power of the state Legislature to control and modify the marriage relation, with all its incidents, was unquestioned, and the subject was considered peculiarly within the province of state legislation, and I cannot think that it was against any abuses of this right by state legislation that this constitutional provision was framed, and that it would, therefore, be a violent presumption to suppose that it was the intention of the framers of the national constitution to divest the states of their right to legislate upon this subject, and I apprehend that this is the first attempt that has seriously been made to bring the relation of husband and wife within the prohibition of this clause of the constitution respecting contracts. . . . Marriage is a civil institution established for great public objects. It is defined to be a contract between a man and a woman for the procreation and education of children. . . . It is wanting in many of the essential ingredients of a contract, and is regulated more upon grounds of public policy to

accomplish the great objects of such a relation, than it is with reference to the pecuniary rights of the parties as it regards each other; unlike other contracts at the common law, the parties may enter into it, the male at the age of 14 and the female at the age of 12 years. It cannot, like ordinary contracts, be dissolved by mutual agreement, or cancelled upon a valuable consideration. Neither can its obligations be modified by the parties. The will of society and public policy supersedes the will of the parties; and, however unable one of the parties may subsequently become to perform the obligations resulting from the relation, the other is still bound. . . . In fact, almost the only essential features of a contract it possesses, is, that the assent of the parties is necessary to create the relation. . . . Without further consideration of this branch of the case, I will conclude by saying, that in my opinion, the marriage relation is not created by what we understand to be a contract in the strict common law sense of that term, and is not in what popular language and common parlance, we understand by the word contract; and it is not a contract within the spirit and meaning of this prohibitory clause of the Constitution of the United States. It follows, therefore, that there is nothing in the Constitution of the United States which invalidates the statute under consideration, for there is nothing in that which prohibits a state Legislature from taking away vested rights, unless they arise out of contract. . .

The next question which I propose to consider, is, does the statute under consideration violate the first section of article one of the constitution of this state, which is as follows: "No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers." The defendant in this suit, by virtue of the marriage contract with the plaintiff, became seized of a freehold estate in this farm. He not only succeeded to rights of property, but became actually seized of the freehold, . . . and entitled to take the rents and profits, during their joint lives in any event, and as there were children born alive of the marriage, he took an absolute freehold estate for life as tenant by the courtesy. . . . But again it seems to me that this act of the Legislature must be adjudged void as contravening the 6th section of article one of the constitution of this state, which is as follows: "No person shall be subject to be twice put in jeopardy for the same offence, nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation.". . . [T]he people of the state of New York have never delegated to their Legislature the power to divest the vested rights of property, legally acquired by any citizen of the State, and transfer them to another against the will of the owner.