

**Howard Vs. Bugbee**

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**SooperKanoon Citation :** [sooperkanoon.com/81015](http://sooperkanoon.com/81015)

**Court :** US Supreme Court

**Decided On :** 1860

**Appeal No. :** 65 U.S. 461

**Appellant :** Howard

**Respondent :** Bugbee

**Judgement :**

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**Howard v. Bugbee**

**65 U.S. (24 How.) 461**

*ERROR TO THE SUPREME COURT*

*OF THE STATE OF ALABAMA*

## **SYLLABUS**

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 How. 311, and the decision has been since repeatedly affirmed.

The case is stated in the opinion of the court.

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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 installment 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 percent 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 defense 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 [Bronson](#)

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*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. [43 U. S. 2](#) How. 612; [44 U. S. 3](#) How. 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 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.*