FLETCHER V. PECK 1810

An 1810 decision by the U.S. Supreme Court, *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 3 L. Ed. 162, held that public grants were contractual obligations that could not be abrogated without fair compensation, even though the state legislature that made the grant had been corrupted and a subsequent legislature had passed an act nullifying the original grant.

The plaintiff, Robert Fletcher, brought suit against John Peck for breach of covenant on land that Fletcher had purchased in 1803. This land was part of a tract of 35 million acres in the area of the Yazoo River (Mississippi and Alabama) that the state of Georgia had taken from the Indians and then sold in 1795 to four land companies for a modest sum ($500,000) for so much land. The land companies then broke up the tract and resold parcels for enormous profits.

When a new Georgia legislature learned in 1796 that some of the legislators who had voted to sell the land had been stockholders in the companies that purchased the tract and that many of the legislators who had authorized the sale had received bribes from the land speculators, it rescinded the original sale on the grounds that it had been attended by fraud and corruption.

The property in question had passed through several hands before Peck purchased it in 1800. Three years later, he sold the land to Fletcher with a deed stating that all the previous sales had been legal. Fletcher, however, contended that the original sale to the land companies was void and that Peck was guilty of breach of covenant because the land was not legally his to sell. After a circuit court found in favor of Peck, the case came before the U.S. Supreme Court on a writ of error.

Speaking for the Court, Chief Justice JOHN MARSHALL deplored the corruption that had found its way into the state legislature but found that the validity of a law cannot depend on the motives of its framers. Nor can private individuals be expected to conduct an inquiry into the probity of a legislature before they enter into a private contract on the basis of a statute enacted by that legislature.

Marshall then turned to the question of whether the statute enacted in 1796 could nullify rights and claims established under the bill that had authorized the land sale in 1795. Although he agreed that as a general principle "one legislature is competent to repeal any act which a former legislature was competent to pass," Marshall held that actions taken under a law cannot be undone by a subsequent legislature. If the law in question is a contract, he reasoned, repeal of the law cannot divest rights that have vested under the contract. To hold otherwise would be tantamount to seizing without compensation property that an individual had acquired fairly and honestly.

In addition to basing his argument on such general considerations, Marshall found that the original grant was a contract within the meaning of the Contract Clause of the U.S. Constitution, which provides that "No State shall … pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts …" (Art. I, § 10, clause 1). Reasoning that the Constitution did not distinguish between contracts between individuals and contracts to which a state was a party, Marshall held that the Framers of the Constitution intended the clause to apply to both. The purpose of the clause, he explained, was to restrain the power of the state legislatures over the lives and property of individuals.

Under the act rescinding the bill of 1795, however, Fletcher would forfeit the property "for a crime not committed by himself, but by those from whom he purchased." Thus the rescinding act "would have the effect of an ex post facto law" and would therefore be unconstitutional. Accordingly Marshall concluded that in spite of the profits reaped by the dishonesty of the land speculators, both general principles and the U.S. Constitution prevented a state legislature from rendering a contract null and void.

Fletcher v. Peck was the first case in which the Supreme Court invalidated a state law as contrary to the Constitution. It also exemplified the protective approach of the Marshall court toward business and commercial interests. In *Fletcher* and later in the *Dartmouth College* case (**TRUSTEES OF DARTMOUTH COLLEGE V. WOODWARD,** 17 U.S. [4 Wheat.], 518, 4 L. Ed. 629[1819]), the Court expanded the scope of the term *contract* and limited the degree to which the states could encroach upon property rights and contractual obligations.

Fletcher v. *Peck* presented Chief Justice John Marshall with a dilemma. He had to uphold the original legislative grant, corrupted by bribery, in order to reassure investors who took land under state grants, while voiding the later, untainted statute. He therefore proceeded cautiously. The only question before the Court, Marshall said, was title; to remedy political corruption, citizens should resort to the polls, not to the courts. Having sidestepped the corruption issue, Marshall deftly took up the constitutional issues. Could legislatures deprive bona fide (real – legal) investors of the lands they had acquired under the corrupt grant? Each buyer, said Marshall, had procured “a title good at law, he is innocent, whatever may be the guilt of others, and equity will not subject him to the penalties attached to that guilt. All titles would be insecure, and the intercourse between man and man would be very seriously obstructed, if this principle be overturned” (pp. 133–134).

Marshall held the rescinding act an unconstitutional abridgment of the obligation of lawful contracts under the Contracts Clause. Equally important, he tied the rights protected by that clause to the natural law doctrine of vested rights: when an agreement was “in its nature a contract, when absolute rights have vested under that contract, a repeal of the law cannot divest those rights” (p. 134). He concluded that “either by principles which are common to our free institutions, or by the particular provisions of the constitution of the United States” (p. 139), a state legislature could not enact legislation that impaired contracts or disturbed land titles supposedly acquired in good faith.

Fletcher v. *Peck* provoked public outcry, particularly from proponents of states' rights who accused the Court of pandering to speculators and of imposing a doctrinal strait-jacket on frontier legislatures. Marshall's opinion did in fact support land speculators and protected the titles of some unscrupulous investors as well as bona fide purchasers of western lands. But Marshall considered contractual rights and obligations essential to the American experiment in self-rule. Thus, *Fletcher*'s legacy was complex: it was a benchmark in Marshall's campaign to protect the law of property and contracts from legislative interference, an early statement about the need to separate politics from law, and an example of judicial receptivity to the needs of investors in an age of capital scarcity. At the same time, it reflected the Court's commitment to the security of contracts and property rights as protected under the Constitution.