facias, just as he could have done when the contract was made." All this is very true, and it is equally true that in nine cases out of ten the sheriff will return on the *fieri facias* "Nothing found except property exempted by homestead law." This is the shadow, but not the substance. The creditor trusted to the property which the debtor had at the time of the contract as the means of enforcing it, and to that law by which a voluntary conveyance is declared fraudulent and void—that was the obligation or the thing that binds; and yet it is held, as I think, under the unconscious bias of pressing circumstances, that a law which bestows this property on the debtor, to the injury of existing creditors, does not impair the obligation of contracts.

It was argued on the argument: By the common law, wearing apparel, arms for muster, tools of a tradesman, and a bed and furniture are exempted (and these articles were not looked to and were not included in the obligation); then, by statute, certain other articles, *i. e.,* Bible, hymn-book and school-books, and finally a horse, not to exceed in all the value of $200, were exempted. Now, because creditors did not choose to make a point about these small matters, that is relied on as fixing the power of the General Assembly to make exemptions against existing debts; and the power being thus established, the extent of its exercise is a matter of legislative discretion. "Give an inch, and take an ell!" First, assume the power to exempt a Bible, hymn-book and school-books; then a horse may be added, then $200 worth of property, then $500, then $1,500, including land, then $5,000, and then exempt everything, for there is no limit save legislative discretion! Indeed, the statute under consideration, I believe, exempts everything owned by debtors, in nine cases out of ten.

In reply to the argument drawn from legislative sanction, one fact counterbalances the whole. In 1822 the Legislature deemed it wise to modify the law of imprisonment for debt as an obligation of contracts. After full discussion the act provides: "Any person arrested under *capias ad satis-*
(451) *faciendum* for any debt contracted after the first day of May next may give bond to appear, etc., and shall not be confined in jail, as before."

I am aware that in several of the States decisions have been made sustaining homestead laws. These cases all rest on the fallacy of assuming the power to make exemptions to some extent, and then, on the idea of legislative discretion, the amount is swelled up to thousands; and it is justified on the ground of "keeping pace with the progress of the age"—a progress in this particular, I fear, of dishonesty and fraud. I choose to rely on the cases in our own Court. *Jones v. Crittenden,* 4 N. C., 55; *Barnes v. Barnes,* 53 N. C., 366.

PER CURIAM. Order below reversed.

Cited: McKethan v. Terry, 64 N. C., 26; *Sluder v. Rogers, Id.,* 290; *Poe v. Hardie,* 65 N. C., 448; *Horton v. McCall,* 66 N. C., 163; *Todd v. Adams, Id.,* 167; *Martin v. Hughes,* 67 N. C., 297; *Garrett v. Cheshire,* 69 N. C., 399; *Mills v. Sluder,* 70 N. C., 59; *Keener v. Finger, Id.,* 45; *Wilson v. Sparks,* 72 N. C., 210; *Allen v. Shields, Id.,* 505; *Edwards v. Kearsey,* 74 N. C., 243; *Comrs. v. Riley,* 75 N. C., 147; *Edwards v. Kearsey, Id.,* 412; *Barrett v. Richardson,* 76 N. C., 432.

Overruled: Edwards v. Kearsey, 79 N. C., 664; *Lowdermilk v. Corpening,* 92 N. C., 335; *Van Story v. Thornton,* 112 N. C. 219.

STATE v. WESLEY HAIRSTON and PUSS WILLIAMS.

The provisions of the act (Rev. Code, ch. 68, sec. 7) declaring intermarriages between whites and persons of color to be *void,* are still in force in this State, not having been affected by recent changes of the Constitution of the State, or of the United States; or by the civil rights bill.

(*S. v. Underwood, ante,* 98, cited and approved).

INDICTMENT FOR FORNICATION AND ADULTERY, tried before *Cloud, J.,* Spring Term, 1869, of FORSYTH.

Upon the trial it appeared that the defendant Hairston was a colored man and the defendant Williams a white woman, and that they were cohabiting as man and wife at the time of the finding of the bill. The defense was that they had been duly married. The facts established a marriage, if such relation could exist between parties one of whom is colored and the other white.

His Honor instructed the jury that by the law of the State the alleged marriage in this case was a nullity.

(452) Verdict, guilty. Rule for a new trial; rule discharged. Judgment, and appeal by the defendants.

Attorney-General, for the State.

No counsel *contra.*

READE, J. The only question in this case is whether the intermarriage of whites and blacks is lawful.

By our Marriage Act, "All marriages since 8 January, 1839, and all marriages in future between a white person and a free negro, or a free person of color to the third generation, shall be void." Rev. Code, ch. 68, sec. 7.

Late events and the emancipation of the slaves have made no alteration in our policy or in the sentiments of our people. And, lest it might be supposed that there was or would be a change, the Legislature, in 1866, re-enacted the Marriage Act. And thus the law stood at the time of the adoption of our new Constitution. The Constitution was adopted by a large popular vote, both whites and blacks voting. In the Constitution it is provided that "the laws of North Carolina, not repugnant to this Constitution or to the Constitution and laws of the United States, shall be in force until lawfully altered." Art. IV, sec. 24.

It thus appears that we have not only the plain letter of the acts of the Legislature, but the sanction of the Constitution, that the intermarriage of whites and blacks is against public policy and is unlawful. And as this is a matter affecting the social and domestic relations, it is gratifying to know that the law has the sanction of both races. It is no discrimination in favor of one race against the other, but applies equally to both. At the last term, in the case of *State v. Underwood, ante,* 98, we decided that the act forbidding persons of color to be witnesses, except against each other, was repealed by the Constitution as being repugnant to its spirit and inconsistent with our altered condition. But that was because there was a discrimination between the races in civil rights. Here there is no discrimination. The law operates upon both races alike; neither can marry the other; nor is it

(453) repugnant to the spirit of the Constitution or subversive of civil rights, but is in consonance with both.

It was insisted that the Civil Rights Bill has declared a different policy and has changed the law. It is not necessary that we should decide whether the operation of that bill ended with the cessation of our provisional relations with the United States, or whether it is operative now, for by its terms it has no application to the social relations. Its object was, and its terms are, to declare equality between all citizens without regard to race or color, in the matters of making business contracts, suing in the courts, giving evidence, acquiring property and in the protection of person and property. And this is nothing more than our own State Constitution has done. But neither the Civil Rights Bill nor our State Constitution was intended to enforce social equality, but only civil and political rights. This is plain from their very terms. But if the terms were doubtful, the policy of prohibiting the intermarriage of the two races is so well established and the wishes of both races so well known that we should not hesitate to declare the policy paramount to any doubtful construction.

The marriage relation is a peculiar and important one. The courts treat it as a contract only in the sense that contract—consent of parties—precedes it and is essential to its validity. But, when formed, it is more than a civil contract; it is a *relation,* an *institution,* affecting not merely the parties, like business contracts, but offspring particularly, and society generally. And every State has always assumed to regulate it and to declare who are capable of contracting marriage—what shall be the ceremony, what shall be the duties and privileges, and how it shall be dissolved. These things have never been left to the discretion of individuals, but have been regulated by law. Among other things, our marriage law declares that the white and colored races shall not intermarry. The pretended marriage in this case was therefore invalid and the parties guilty of fornication and adultery. Let this be certified, etc.

PER CURIAM. No error.

Cited: S. v. Reinhardt, post, 548; *Puitt v. Comrs.,* 94 N. C., 718; *Woodward v. Blue,* 103 N. C., 114; *McMillan v. School,* 107 N. C., 613.