

**Chirac Vs. Lessee of Chirac**

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**Court :** US Supreme Court

**Decided On :** 1817

**Appeal No. :** 15 U.S. 259

**Appellant :** Chirac

**Respondent :** Lessee of Chirac

**Judgement :**

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**Chirac v. Lessee of Chirac**

**15 U.S. (2 Wheat.) 259**

*ERROR TO THE CIRCUIT COURT*

*FOR THE DISTRICT OF MARYLAND*

## **SYLLABUS**

J.B.C., a native of France, migrated into the United States in 1793, and became domiciled in Maryland. On 22 September 1795, he took the oaths of citizenship according to an act of assembly of Maryland passed in 1779, and the next day

received a conveyance in fee of lands in that state. On 6 July 1798, he was naturalized under the laws of the United States, and in July 1799, died intestate leaving no legitimate relations other than the plaintiffs in ejectment, who, were natives and residents of France. Upon the supposition that the lands were escheatable, the State of Maryland conveyed them to his natural son J.C.F.C. with a saving of the rights of all persons claiming by devise or descent from the intestate, under which grant, J.C.F.C. took possession of the lands and remained in possession until the ejectment was brought. In March, 1809, the defendants in error, the heirs at law of J.B.C., French subjects, brought an action of ejectment for the lands in question, and in May, 1816, obtained a verdict in their favor and a judgment thereon, which was affirmed.

It was held that the power of naturalization is exclusively in Congress, but that the treaty of amity and commerce between the United States and France of 1778, art. 11, enabled the subjects of France to purchase and hold lands in the United States.

*Quaere*, what was the effect of this treaty under the confederation?

J.B.C. having died seized in fee of the lands in question, his heirs being French subjects, the treaty of 1778 having been abrogated, and the act of Maryland of 1789, permitting the lands of a French subject who had become a citizen of Maryland, dying intestate, to descend on the next of kin being nonnaturalized Frenchmen, with a proviso vesting the land in the state, if the French heirs should not, within ten years, become resident citizens of the state or convey the lands to a citizen it was determined that the time for the performance of this condition having expired before the action was brought, the estate was terminated unless supported in some other manner than by the act of Maryland.

But the convention of 1800 between the United States and France, enabling the people of one country holding lands in the other to dispose of the same by testament or otherwise and to inherit lands in the respective countries without being obliged to obtain letters of naturalization, it was held that it rendered the performance of this condition a useless formality, and that the conventional rule

applied equally to the case of those who took by descent under the act as to those who acquired by purchase without its aid.

The further stipulation in the convention

"that in case the laws of either of the two states should restrain strangers from the exercise of the rights of property with respect to real estate, such real estate may be sold or otherwise disposed of to citizens or inhabitants of the country where it may be"

was held not to affect the rights of a French subject who takes or holds by the convention so as to deprive him of the power of selling to citizens of this country, and was held to give to a French subject who had acquired lands by descent or devise (and perhaps, in any other manner) the right, during life, to sell or otherwise dispose thereof if lying in a state where lands purchased by an alien generally would be immediately escheatable.

Although the convention of 1800 has expired by its own limitation, it was determined that the instant the descent was cast on a French subject during its continuance, his rights became complete under it and could not be affected by its subsequent expiration.

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John Baptiste Chirac, a native of France, migrated into the United States in the year 1793 and settled in Maryland. On 22 September, 1795, he took the oaths of citizenship, according to the form prescribed by an act of assembly of the State of Maryland passed in the year 1779, and the next day received a conveyance in fee of land lying within that state.

On 6 July, 1798, he was naturalized as prescribed by the laws of the United States, and in July, 1799, he died intestate, leaving no legitimate relations other than the plaintiffs, who are natives and residents of France.

Supposing the lands of which he died seized to be escheatable, the State of Maryland conveyed them to John Charles Francis Chirac, his natural son, with a saving of the rights of all persons claiming by devise or descent from the intestate. Under this act, John Charles Francis Chirac took possession of the land of his father, and has remained in possession ever since.

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In March, 1809, the defendants in error, who are the heirs at law of John Baptiste Chirac and subjects of the King of France, brought their ejectment for the land of which their ancestor died seized, and in May, 1815, under the instruction of the court, to which exceptions were taken, obtained a verdict in their favor on which a judgment was rendered, which judgment is now before the Court on a writ of error.

The act of assembly of the State of Maryland, on the construction of which the cause mainly turned was passed in 1780, and is entitled "An act to declare and ascertain the privileges of the subjects of France residing within this state." The 1st section gives to French subjects the capacity of holding lands within the state on certain conditions. The 2d section gives to those subjects who may be resident in the state all the rights of free citizens thereof. The 3d section contains a proviso restricting and limiting the privileges granted by the act and declaring that nothing therein contained

"shall be construed to grant to those who shall continue subjects of his most Christian Majesty, and not qualify themselves as citizens of this state, any right to purchase or hold lands, or real estate but for their respective lives or for years."

The 4th section enacts that if any French subject who shall become a citizen of Maryland

"shall die intestate, the natural kindred of such decedent, whether residing in France or elsewhere, shall inherit his or her real estate in like manner as if such decedent and his kindred were the citizens of this state,"

with a proviso that

whenever any French subject shall, by virtue of the act, become seized in fee of any real estate, his or her estate,

"after the term of ten years be expired, shall vest in the state unless the person seized of the same shall within that time either come and settle in and become a citizen of this state or enfeoff thereof some citizen of this or some other of the United States of America. "

MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

The first point made by the plaintiff in error is that the estate of which John Baptiste Chirac died seized was, in his lifetime, escheatable, because it was acquired before he became a citizen of the United States, the law of the State of Maryland, according to which he took the oaths of citizenship, being virtually repealed by the Constitution of the United States and the act of naturalization enacted by Congress.

That the power of naturalization is exclusively in Congress does not seem to be, and certainly ought not to be, controverted, but it is contended that the act of Maryland passed in the year 1780 "To declare and ascertain the privileges of the subjects of France residing within that state" gives to those

subjects the power of holding land on the performance of certain conditions prescribed in that act.

The 2d section gives to the subjects of France who may reside within the State of Maryland all the rights of free citizens of that state. The 3d section contains a proviso restricting the privileges granted by the act and declaring that nothing therein contained shall be construed to grant to those who should continue subjects of his most Christian Majesty, and not qualify themselves as citizens of

this state, any right to purchase or hold lands, or real estate but for their respective lives or for years.

This act certainly requires that a French subject who would entitle himself under it to hold lands in fee should be a citizen according to the law which might be in force at the time of acquiring the estate. Otherwise he could only purchase or hold for life or years. John Baptiste Chirac was not a citizen according to that law when he purchased the land in controversy.

It is unnecessary to inquire into the consequences of this state of things, because we are all of opinion that the treaty between the United States and France, ratified in 1778, enabled the subjects of France to hold lands in the United States. That treaty declared that

"The subjects and inhabitants of the United States, or anyone of them, shall not be reputed aubains [that is, aliens] in France. . . . They may, by testament, donation, or otherwise, dispose of their goods, moveable and immoveable, in favor of such persons as to them shall seem good,

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and their heirs, subjects of the said United States, whether residing in France or elsewhere, may succeed them *ab intestat*, without being obliged to obtain letters of naturalization. The subjects of the most Christian King shall enjoy on their part in all the dominions of the said states an entire and perfect reciprocity relative to the stipulations contained in the present article."

Upon every principle of fair construction, this article gave to the subjects of France a right to purchase and hold lands in the United States.

It is unnecessary to inquire into the effect of this treaty under the confederation, because before John Baptiste Chirac emigrated to the United States, the confederation had yielded to our present Constitution, and this treaty had become the supreme law of the land.

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The repeal of this treaty could not affect the real estate acquired by John Baptiste Chirac, because he was then a naturalized citizen, conformably to the act of Congress, and no longer required the protection given by treaty.

John Baptiste Chirac having died seized in fee of the land in controversy, his heirs at law being subjects of France, and there being at that time no treaty in existence between the two nations, did his land pass to these heirs, or did it become escheatable?

This question depends on the law of Maryland. The 4th section of the act already mentioned enacts, among other things, that if any subject of France who shall become a citizen of Maryland

"shall die intestate, the natural kindred of such decedent, whether residing in France or elsewhere, shall inherit his or her real estate in like manner as if such decedent and his kindred were the citizens of this state."

An attempt has been made to avoid the effect of this claim in the act by contending that it was passed for the sole purpose of enforcing the treaty, and was repealed by implication when the treaty was repealed.

The Court does not think so. The enactment of the law is positive, and in its terms perpetual. Its provisions are not made dependent on the treaty, and although the peculiar state of things then existing might constitute the principal motive for the law, the act remains in force from its words, however that state of things may change.

But to this enacting clause is attached a proviso

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that whenever any subject of France shall by virtue of this act become seized in fee of any real estate, his or her estate,

"after the term of ten years be expired, shall vest in the state unless the person seized of the same shall within that time either come and settle in and become a citizen of this state or enfeoff thereof some citizen of this or some other of the United States of America."

The heirs of John Baptiste Chirac then, on his death, became seized of his real estate in fee, liable to be defeated by the nonperformance of the condition in the proviso above recited. The time given by the act for the performance of this condition expired in July, 1809, four months after the institution of this suit. It is admitted that the condition has not been performed, but it is contended, that the nonperformance is excused, because the heirs have been prevented from performing it by the act of law and of the party. The defendant in the court below has kept the heirs out of possession, under the act of the State of Maryland, so that they have been incapable of enfeoffing any American citizen, and, having been thus prevented from performing one condition, they are excused for not performing the other.

Whatever weight might be allowed to this argument were it founded in fact, its effect cannot be admitted in this case. The heirs were not disabled from enfeoffing an American citizen. They might have entered and have executed a conveyance for the land. Having failed to do so, their estate has terminated

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unless it be supported in some other manner than by the act of Maryland.

This brings the Court to a material question in the cause. While the defendants in error were seized of an estate in fee simple, determinable by their failure to perform the condition contained in the act of 1780, another treaty was entered into between the United States and France which provides for the rights of French subjects claiming lands by inheritance in the United States. This treaty enables the people of one country holding lands in the other to dispose of the same by testament or otherwise, as they shall think proper. It also enables them to inherit lands in the respective countries without being obliged to obtain letters of

naturalization.

Had John Baptiste Chirac, the person from whom the land in controversy descended, lived till this treaty became the law of the land, all will admit that the provisions which have been stated would, if unrestrained by other limitations, have vested the estate of which he died seized in his heirs.

If no act had been passed on the subject and the appellees had purchased lands lying in the United States, it is equally clear that the stipulations referred to would have operated on these lands so as to do away that liability to forfeiture to which the real estates of aliens are exposed.

Has it the same or any effect on the estate of which the appellees were seized when it was entered into?

It has been argued that the treaty protects existing

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estates, and gives to French subjects a capacity to dispose and to inherit, but does not enlarge estates.

This is true. But the estate of the defendants in error requires no enlargement. It is already a fee, although subject to be defeated by the nonperformance of a condition. The question is, does this treaty dispense with the condition or give a longer time for its performance? The condition is that those who hold the estate shall become citizens of the United States or shall enfeoff a citizen within ten years. Does the treaty control or dispense with this condition?

The direct object of this stipulation is to give French subjects the rights of citizens so far as respects property, and to dispense with the necessity of obtaining letters of naturalization. It does away the incapacity of alienage, and places the defendants in error in precisely the same situation with respect to lands as if they had become citizens. It renders the performance of the condition a useless formality, and seems to the Court to release the rights of the state as entirely in this case as in the case of one who had purchased, instead of taking by descent.

The act of Maryland has no particular reference to the case of Chirac, but is a general rule of state policy prescribing the terms on which French subjects may take and hold lands. This rule is changed by the treaty, and it seems to the Court that the new rule applies to all cases, as well to those where the lands have descended by virtue of the act as to those where lands have been acquired

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without its aid. The general power to dispose "without limitation" which is given by the treaty controls the particular power to enfeoff within ten years which is given by the act of Maryland.

But the treaty proceeds to stipulate

"that in case the laws of either of the two states should restrain strangers from the exercise of the rights of property with respect to real estate, such real estate may be sold or otherwise disposed of to citizens or inhabitants of the country where it may be."

In many of the states, perhaps in all of them, the laws do "restrain strangers from the exercise of the rights of property with respect to real estate;" consequently this provision limits to a certain extent the principles antecedently granted. What is the extent of this limitation?

It will probably prevent a French subject from inheriting or purchasing the estate of a French subject who is not also a citizen of the United States, but it cannot affect the right of him who takes or holds by virtue of the treaty so as to deprive him of the power to do that for which this clause stipulates -- that is, "to sell or otherwise dispose of the property to citizens or inhabitants of this country." This general power to sell, according to the principles of our law and, it is presumed, of that of France, endures for life. A subject of France, then, who had acquired lands by descent or devise (perhaps also by any other mode of purchase) from a citizen of the United States would have a right during life to sell or otherwise dispose of those lands if lying in a state where lands purchased by an alien generally would

be immediately escheatable on account of alienage. The Court can perceive no reason for restraining this construction in the application of the treaty to the State of Maryland where the law, instead of subjecting the estate to immediate forfeiture, protects it for ten years. The treaty substitutes the term of life for the term of ten years given by the act.

If, then, the treaty between the United States and France still continued in force, the defendant would certainly be entitled to recover the land for which this suit is instituted. But the treaty is, by an article which has been added to it, limited to eight years, which have long since expired. How does this circumstance affect the case?

The treaty was framed with a view to its being perpetual. Consequently its language is adapted to the state of things contemplated by the parties, and no provision could be made for the event of its expiring within a certain number of years. The Court must decide on the effect of this added article in the case which has occurred. It will be admitted that a right once vested does not require for its preservation the continued existence of the power by which it was acquired. If a treaty or any other law has performed its office by giving a right, the expiration of the treaty or law cannot extinguish that right. Let us, then, inquire whether this temporary treaty gave rights which existed only for eight years, or gave rights during eight years which survived it.

The terms of this instrument leave no doubt on this subject. Its whole effect is immediate. The instant

the descent is cast, the right of the party becomes as complete as it can afterwards be made. The French subject who acquired lands by descent the day before its expiration has precisely the same rights under it as he who acquired them the day after its formation. He is seized of the same estate, and has precisely the same power during life to dispose of it. This limitation of the compact

between the two nations would act upon and change all its stipulations if it could affect this case. But the Court is of opinion that the treaty had its full effect the instant a right was acquired under it, that it had nothing further to perform, and that its expiration or continuance afterwards was unimportant.

*Judgment affirmed.*

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