

**Watson Vs. Mercer**

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**Court :** US Supreme Court

**Decided On :** 1834

**Appeal No. :** 33 U.S. 88

**Appellant :** Watson

**Respondent :** Mercer

**Judgement :**

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**Watson v. Mercer**

**33 U.S. (8 Pet.) 88**

*ERROR TO THE SUPREME COURT*

*OF THE STATE OF PENNSYLVANIA*

## **SYLLABUS**

In 1785, M. and wife executed a deed conveying certain lands of the wife to T., who immediately reconveyed them to M. The object. of the conveyance was

to vest the lands of the wife in the husband. The deed of M. and wife to T. was not acknowledged according to the forms established by the law of Pennsylvania of 20 February, 1770, to pass the estates of *femes covert*, and after the death of the wife of M., the land was recovered in an ejectment from the heirs of M. in a suit instituted against him by the heirs of the wife of M. In 1826, after the recovery in ejectment, the Legislature of Pennsylvania passed an act the object of which was to cure all defective acknowledgments of this sort and to give them the same efficacy as if they had been originally taken in the proper form. The plaintiffs in the ejectment claimed title to the premises under James Mercer, the husband, and the defendants, as heirs at law of his wife, who

died without issue. This ejectment was brought after the passage of the act of 1826.

The authority of this Court to -examine the constitutionality of the act of 1826 extends no further than to ascertain whether it violates the Constitution of the United States; the question whether it violates the Constitution of Pennsylvania is, upon the present writ of error, not before the Court.

This Court has no right to pronounce an act of the state legislature void as contrary to the Constitution of the United States from the mere fact that it divests antecedent vested rights of property. The Constitution of the United States does not prohibit the states from passing retrospective laws generally, but only *ex post facto* laws. It has been solemnly settled by this Court that the phrase *ex post facto* laws is not applicable to civil laws, but to penal and criminal laws which punish no party for acts antecedently done which were not punishable at all or not punishable to the extent or in the manner prescribed. *Ex post facto* laws relate to penal and criminal proceedings which impose punishments or forfeitures, and not to civil proceedings which affect private rights retrospectively.

The act of 1826 does not violate the obligation of any contract, either in its terms or its principles. It does not even affect to touch any title acquired by a patent or any other grant. It supposes the titles of the *femmes covert* to be good, however acquired, and even provides that deeds of conveyance made by them shall not be

void because there is a defective acknowledgment of the deeds by which they have sought to transfer their title. So far then as it has any legal operation, it goes to confirm, and not to impair, the contract of the *femes covert*. It gives the very effect to their acts and contracts which they intended to give and which, from mistake or accident, has not been effected.

The cases of [Calder v. Bull](#), 3 Dall. 386, 1 Cond. 172; [Fletcher v. Peck](#), 5 Cranch 138, 2 Cond. 308; [Ogden v. Saunders](#), 12 Wheat. 266, 6 Cond. 523; and [Satterlee v. Matthewson](#), 2 Pet. 380, fully recognize this doctrine.

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In 1826, the defendants in error, John Mercer and Margaret Mercer, instituted an action of ejectment in the District Court of the City and County of Lancaster, against Jane Watson and others, the plaintiffs in error, for the recovery of a tract of land in Lancaster County, and a verdict and judgment, under the charge of the court in favor of the plaintiffs, were rendered in their favor.

The plaintiffs prosecuted a writ of error to the Supreme Court of Pennsylvania, and in 1832, that court affirmed the judgment of the district court.

The land in controversy was part of a tract held under a patent granted by the proprietaries of Pennsylvania to Samuel Patterson on 19 October, 1743, and by regular descent became vested in Margaret Patterson, the daughter of the patentee, who afterwards intermarried with James Mercer, who had five children by a former wife, now represented by the defendants in error.

For the purpose of vesting the land in controversy in her husband in fee simple, Margaret Mercer on 30 May, 1785, together with her husband, James Mercer, executed a conveyance thereof to a certain Nathan Thompson, who on the same day reconveyed the said land to James Mercer in fee. This deed was not acknowledged by Margaret Mercer according to the forms prescribed by the act of assembly of Pennsylvania of 1770, enacted for the purpose of making the conveyances of real estate by *femes covert* valid.

After the death of Margaret Mercer in 1805, David Watson, in right of his wife, the heir at law of Margaret Mercer, to whom, if the conveyance 30 May, 1785, was invalid, the land in controversy had descended; instituted an ejectment for the same, alleging that the acknowledgment of the deed being defective, the same was absolutely void. In this suit, Watson and wife recovered the premises, and went into possession thereof. Afterwards John and Margaret Mercer instituted an ejectment against Watson, then in possession of the premises, and in 1823 that suit was decided in the Supreme Court of Pennsylvania in favor of the defendants in the ejectment, thus affirming the decision in the first case.

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On 3 April, 1826, the Legislature of Pennsylvania made the following law.

"A supplement to an act entitled 'an act for the better confirmation of the estates of persons holding or claiming under *feme coverts*, and for establishing a mode in which husband and wife may hereafter convey their estates.'"

"Whereas, by the act of assembly, to which this is a supplement, it is enacted that the estates of *feme coverts* may be transferred by deed executed by the husband and wife, and by them acknowledged before certain officers. And whereas, under this act, estates of great value have been *bona fide* sold by husband and wife for a legal and sufficient consideration, and the deeds therefor have been by them acknowledged before the proper officer, but in many cases the mode of making such acknowledgement hath been imperfectly set forth in the certificate. And it hath been held by the supreme court that deeds transferring the rights and interests of *feme coverts* are invalid and void, unless certain requisites of the acknowledgement of such deeds provided by the said act, shall appear upon the face of the certificate of such acknowledgement to have been pursued, and in all such cases it is but just and reasonable that persons who hold such estates, should not in any case be disturbed in the enjoyment of them thus equitably acquired, nor divested thereof under any pretense whatsoever. Now, for the purpose of carrying into effect the real intent of the parties, and of quieting and

securing the estates so transferred,"

"Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in general assembly met, and it is hereby enacted by the authority of the same that no grant, bargain, sale, feoffment, deed of conveyance, lease, release, or other assurance of any lands, tenements, and hereditaments whatsoever heretofore *bona fide* made and executed by husband and wife and acknowledged by them before some judge, justice of the peace, or other officer authorized by law within this state, or an officer in one of the United States to take such acknowledgement, or which may be so made, executed, and acknowledged as aforesaid before 1 September next shall be deemed, held, or adjudged invalid or defective or insufficient in law or avoided or prejudiced by reason of any informality or omission in setting

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forth the particulars of the acknowledgement made before such officer as aforesaid in the certificate thereof, but all and every such grant, bargain and sale, feoffment, deed of conveyance, lease, release, or other assurance so made, executed, and acknowledged as aforesaid shall be as good, valid, and effectual in law for transferring, passing, and conveying the estate, right, title, and interest of such husband and wife of, in, and to the lands, tenements, and hereditaments mentioned in the same, as if all the requisites and particulars of such acknowledgement mentioned in the act to which this is supplementary were particularly set forth in the certificate thereof or appeared upon the face of the same."

In 1829, the defendants in error, John and Margaret Mercer, instituted another ejectment for the land, claiming that the deed of 30 May, 1785, had been made valid by the act of assembly of 1826, and a verdict for the plaintiff was rendered in the District Court of the City and County of Lancaster, the judgment of which court upon the verdict was affirmed in the Supreme Court of Pennsylvania. From that judgment of the supreme court, the case came before this Court by writ of error.

MR. JUSTICE STORY delivered the opinion of the Court.

This is a writ of error to the Supreme Court of the State of Pennsylvania, brought under the twentieth section of the Judiciary Act of 1789, chapter 20.

The original suit is an ejectment by the defendants in error for certain lands in Lancaster County in the State of Pennsylvania, upon which a final judgment was rendered in their favor. The facts, so far as they are material to the questions over which this Court has jurisdiction, are these. On 8 May, 1785, James Mercer and Margaret, his wife, executed a deed of the premises, then being the property of the wife, to Nathan Thompson in fee, who afterwards, on the same day, reconveyed the same to James Mercer the husband in fee, the object of the deeds being to vest the estate in the husband.

The certificate of the acknowledgement of the deed of Mercer and wife to Thompson by the magistrate who took the same does not set forth all the particulars as were required by the law of Pennsylvania of the 24th of February 1770, respecting the acknowledgement of deeds of *femes covert*. The Legislature of Pennsylvania, on 26 April, 1826, passed an act the object of which was to cure all defective acknowledgments of this sort and to give them the same efficacy as if they had been originally taken in the proper form. The plaintiffs in the ejectment claimed title to the premises under James Mercer the husband and the defendants, as heirs at law of his wife, who died without issue. The ejectment was brought after the passage of the act of 1826.

In the case of *Lessee of Watson and wife v. Bailey*, 1 Binney 470, the acknowledgement of this very deed from Mercer and wife to Thompson was held to be fatally defective to pass her title. But the act of 1826 has been repeatedly held by the Supreme Court of Pennsylvania to be constitutional and to give validity to such defective acknowledgements. It was so held in *Barnet v. Barnet*, 15 Serg.

& R. 72, and *Tate & wife v. Stoltzfoos*, 16 Serg. & R. 35, and again, upon solemn deliberation and argument, in the case now before this Court. The object of the present writ of error is to revise the opinions thus pronounced by the highest state court.

Our authority to examine into the constitutionality of the act of 1826 extends no further than to ascertain whether it violates the Constitution of the United States, for the question whether it violates the Constitution of Pennsylvania is, upon the present writ of error, not before us.

The act of 1826 provides

"That no grant, &c.;, deed of conveyance, &c.;, heretofore *bona fide* made and executed by husband and wife and acknowledged by them before some judge, &c.;, authorized by law, &c.;, to take such acknowledgement as aforesaid, before the 1st day of September next shall be deemed, held, or adjudged invalid or defective or insufficient in law or avoided or prejudiced by reason of any informality or omission in setting forth the particulars of the acknowledgement made before such officer as aforesaid in the certificate thereof, but all and every such grant, &c.;, deed of conveyance, &c.;, so made, executed, and acknowledged as aforesaid shall be

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as good, valid and effectual in law for transferring, passing and conveying the estate, right and title, and interest of such husband and wife of, in, and to the lands, &c.;, mentioned in the same as if all the requisites and particulars of such acknowledgement mentioned in the act to which this is supplementary were particularly set forth in the certificate thereof or approved upon the face of the same."

The argument for the plaintiffs in error is first that the act violates the Constitution of the United States because it divests their vested rights as heirs at law of the premises in question, and secondly that it violates the obligation of a contract -- that is, of the patent granted by the proprietaries of Pennsylvania to Samuel

Patterson, the ancestor of the original defendants, from whom they trace their title to the premises by descent through Margaret Mercer.

As to the first point, it is clear that this Court has no right to pronounce an act of the state legislature void as contrary to the Constitution of the United States from the mere fact that it divests antecedent vested rights of property. The Constitution of the United States does not prohibit the states from passing retrospective laws generally, but only *ex post facto* laws. Now it has been solemnly settled by this Court that the phrase "*ex post facto* laws" is not applicable to civil laws, but to penal and criminal laws, which punish no party for acts antecedently done which were not punishable at all, or not punishable to the extent or in the manner prescribed. In short, *ex post facto* laws relate to penal and criminal proceedings which impose punishments or forfeitures, and not to civil proceedings which affect private rights retrospectively. The cases [Calder v. Bull](#), 3 Dall. 386, 1 Cond. 172; [Fletcher v. Peck](#), 5 Cranch 138, 2 Cond. 308; [Ogden v. Saunders](#), 12 Wheat. 266, 6 Cond. 523; and [Satterlee v. Matthewson](#), 2 Pet. 380, fully recognize this doctrine.

In the next place, does the act of 1826 violate the obligation of any contract? In our judgment, it certainly does not, either in its terms or its principles. It does not even affect to touch any title acquired by a patent or any other grant. It supposes the titles of the *femes covert* to be good, however acquired, and only provides that deeds of conveyance made by them shall not be void, because there is a defective acknowledgement

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of the deeds, by which they have sought to transfer their title. So far, then, as it has any legal operation, it goes to confirm, and not to impair, the contract of the *femes covert*. It gives the very effect to their acts and contracts which they intended to give, and which, from mistake or accident, has not been effected. This point is so fully settled by the case of [Satterlee v. Matthewson](#), 2 Pet. 380, that it is wholly unnecessary to go over the reasoning upon which it is founded.

Upon the whole, it is the unanimous opinion of the Court there is no error in the judgment of the Supreme Court of Pennsylvania so far as it is subject to the revision of this Court, and therefore it is

*Affirmed with costs.*

This cause came on to be heard on the transcript of the record from the Supreme Court of the Commonwealth of Pennsylvania for the Lancaster District, and was argued by counsel, on consideration whereof it is ordered and adjudged by this Court that the judgment of the said supreme court in this cause be and the same is hereby affirmed with costs.

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