

**Wagner Vs. Baird**

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**Court :** US Supreme Court

**Decided On :** 1849

**Appeal No. :** 48 U.S. 234

**Appellant :** Wagner

**Respondent :** Baird

**Judgement :**

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**Wagner v. Baird**

**48 U.S. (7 How.) 234**

*APPEAL FROM THE CIRCUIT COURT OF THE*

*UNITED STATES FOR THE DISTRICT OF OHIO*

## **SYLLABUS**

There is a defense peculiar to courts of equity founded on lapse of time and the staleness of the claim, where no statute of limitations directly governs the case. In such cases, the court often acts upon its own inherent doctrine of discouraging, for

the peace of society, antiquated demands by refusing to interfere where there has been gross laches in prosecuting rights or long acquiescence in the assertion of adverse rights.

The rule upon this subject, originally laid down by Lord Camden in *Smith v. Clay*, 3 Brown's Chancery Reports 640, note, and adopted by this Court in [42 U. S. 1](#) How. 189, again asserted.

Long acquiescence and laches by parties out of possession are productive of much hardship and injustice to others, and cannot be excused but by showing some actual hindrance or impediment caused by the fraud or concealment of the party in possession which will appeal to the conscience of the chancellor.

The party guilty of such laches cannot screen his title from the just imputation of staleness merely by the allegation of an imaginary impediment or technical disability.

The facts in this case bring it within the operation of the above principles, and the bill must therefore be dismissed.

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The case as set forth by the complainants is contained in the following extract from the brief of Mr. Ewing, one of their solicitors.

"The bill, which was filed on 18 November, 1840, charges that on or about 21 November, 1783, Brigadier-General Robert Lawson obtained of the State of Virginia a military land warrant, No. 1,921, for 10,000 acres of land due him for military services in the Revolutionary war in the Virginia line on Continental establishment."

"That prior to 12 January, 1788, said warrant was lodged in the office of Richard C. Anderson, then Principal Surveyor of the Virginia Military Lands, and that prior to 4f June, 1794, divers entries had been made on said warrant, to-wit, entries Nos. 1,704, 1,705, 1,706, 1,707, 1,714, 1,715, 1,716, 1,717, 1,718, and 1,719, of 1,000

acres each; and that Nos. 1,704, 1,705, and 1,706 had been withdrawn and reentered, so as to leave Nos. 1,707 and 1,714 the first subsisting entries made for the said Robert Lawson on the surveyor's books."

"That on 4 June, 1794, the said Robert Lawson, by deed of indenture of three parts, between him, the said Robert Lawson, of the first part, his wife Sarah Lawson, of the second part, and James Speed, George Thompson, Joseph Crocket, and George Nicholas, of the third part, for the consideration therein expressed, conveyed to the said Thompson, Crocket, and Nicholas, for the uses and purposes therein specified, 2,000 acres of land, described as situate on White Oak Creek, on the northwest side of the Ohio River, being the land mentioned in the first entry made for said Robert on the surveyor's books, which said 2,000 acres of land is averred to be the land embraced not in a single entry, but in entries Nos. 1,707 and 1,714, made January 12 and February 11, 1788."

"That the said Robert Lawson, by the same deed, conveyed to the said trustees five other tracts of land of 1,000 acres each, described as being the last entries made on said warrant in the name of said Robert Lawson, which, it is averred, embrace the land contained in entries Nos. 1,718 and 1,719, made 11 February, 1788; entry No. 1,704, made February 11, 1793; and entries Nos. 1,705 and 1,706, made 21 January, 1793."

"Complainants file a certified copy of said deed, aver that the same was duly recorded in Fayette County, Kentucky, and on 26 February, 1798, a certified copy, from the records in Fayette County, Kentucky, was recorded in the Recorder's Office of Hamilton County, in the Northwestern Territory, in which county the lands in controversy lay. The original deed of trust is lost; due search has been made for it, and the complainants

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verily believe that the original was consumed by fire in the recorder's office in Kentucky."

"That on 16 August, 1796, John O'Bannon procured of Lawson an assignment of 3,333 1/3 acres of said warrant. That Lawson, at the time he made this assignment, was habitually intemperate and mentally incapable of transacting business. O'Bannon well knew this -- knew of the deed of trust -- and procured the assignment by fraud, and on the false pretenses that he was the locator of the whole tract of 10,000 acres."

"That afterwards, on 25 August, 1796, O'Bannon, knowing that entry No. 1,707 had been conveyed to the trustees aforesaid, fraudulently withdrew so much of said warrant 1,921 as was entered in said No. 1,707, and caused the same to be entered on the lands in controversy; and, on 29 August, 1796, surveyed the same, and returned the plat to the surveyor general's office."

"That prior to 12 February, 1799, O'Bannon applied for a patent in his own name for said survey, and that on said day the trustees, in the deed of trust aforesaid, by Joshua Lewis, their agent, filed a caveat against the issuing of patents to the assignees on said warrant 1,921, and with it a copy of the deed of trust."

"That O'Bannon continued to urge the department to issue patents on his claims under said assignment, which was for a long time postponed, and, on 9 May, 1811, refused or suspended, because said assignment was in violation of the deed of trust aforesaid. That said deed of trust, among other things, directed the trustees aforesaid to convey the 2,000 acres of land first above mentioned to either of the sons of said Robert and Sarah Lawson that the said Sarah might direct, unless it should be necessary to dispose of the same for the use of the family; that the last-named 5,000 acres should be conveyed, 1,000 to America Lawson, 2,000 to John P. Lawson, and 2,000 to Columbus Lawson."

"That the said Sarah did not in her lifetime direct the conveyance of the said 2,000 acres, and the said trustees did not convey the same, nor any part of the 5,000 acres. That all the trustees are dead, and that the last survivor of them, George Thompson, died on 22 March, 1834, leaving the complainant George C. Thompson his only child and heir at law."

"That America Lawson intermarried with Joshua Lewis December 23, 1797. General Lawson died March 1, 1805, leaving three children, John Pierce Lawson, America Lewis, and Columbus Lawson, his heirs at law. That on 10

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June, 1809, said Sarah Lawson died. That on 7 January, 1807, John Pierce Lawson conveyed to Joshua Lewis all his interest in said lands. That on 1 June, 1809, John P. Lawson died, leaving Mary P. Lawson, now Mary P. Bowman, his only child and heir at law, who intermarried with complainant John Bowman. That on 8 January, 1815, Columbus Lawson died unmarried and intestate, leaving said America Lewis and Mary P. Bowman his heirs at law."

"That about 1 January, 1813, John O'Bannon died, leaving Robert Alexander and George T. Cotton executors of his last will and testament. That Cotton, who qualified, applied to the General Land Office for a patent on survey No. 1,707, of 965 acres, as executor of said O'Bannon, but the patent was withheld, and the record thereof cancelled."

"That, about 21 December, 1816, the said Cotton deposited in the General Land Office a paper purporting to be a certificate of and signed by, Robert Lawson, dated 27 November, 1802, and purporting to be witnessed by J. Bootwright and C. McCallister. Said certificate was false and forged, but by means thereof the patent was procured to be issued."

"That Cotton died testate; complainants exhibit a copy of the will of O'Bannon, and of Cotton. The devisees of said John O'Bannon and George T. Cotton are not residents of the District of Ohio; prays process of subpoena against them or such of them as may be found in the said district and that they and such others as will voluntarily appear be made defendants."

"That on 1 October, 1830, America Lewis died; on 20 June, 1833, Joshua Lewis died and left complainants their only surviving children and heirs at law. Aver that the remaining 3,000 acres of land of warrant 1,921 not included in the deed of trust, vested in them as heirs of Robert Lawson through America Lewis."

"That America Lawson, afterwards Lewis, was under the disability of infancy or coverture during her whole natural life, and that at the time of issuing the patent to George T. Cotton, and from that time till her death, she was under the disability of coverture. That Columbus Lawson was an infant at the time of the death of his brother, John P. Lawson, and that he was killed at the battle of New Orleans on 8 January, 1815, and that neither of the trustees in the deed of trust nor either of the persons under whom complainants claim title was ever resident in the State of Ohio."

"That John Baird, James W. Campbell Thomas Jennings, Isaac E. Day Duncan Evans, William King, Victor King, Absalom King, William More, and Christian Snedecker, who are

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made defendants, are in possession of, and claim to have derived title to, portions of said tract No. 1,707, of 965 acres, mediately or immediately from George T. Cotton, executor of John O'Bannon, deceased. Call upon defendants to exhibit their title. Aver that they had full notice of the title of complainants and the fraud of O'Bannon; pray subpoena &c.;"

"An affidavit of search for the deed of trust, and belief that it is lost or consumed, is attached to the amended bill."

"The defendants, terre-tenants, severally plead that they are *bona fide* purchasers, without notice of complainants' title. They answer jointly, putting in issue the material allegations of the bill; set forth specifically their own derivation of title; aver that the claim of complainants is stale, and that a part of the persons named as trustees have been in the State of Ohio since the execution of the deed of trust, and before the issuing of the patent. That the caveat was filed by Joshua Lewis without authority from the trustees, and that the patent was wrongfully suspended at the General Land Office. They refer to the certificate of Lawson, November 27, 1802; the affidavit of James Speed, November 20, 1803; and the certificate of James Morrisson, December 9, 1816."

"To these answers there is a replication."

The above statement of the case is taken, as was before remarked, from the brief of Mr. Ewing, and presents it in as strong a point of view, for the complainants and appellants, as can be given to it.

In the progress of the cause in the court below, a great mass of evidence was taken and many exhibits were filed which it is unnecessary to set forth.

In December, 1842, the circuit court dismissed the bill, with costs, an appeal from which decree brought it up to this Court.

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MR. JUSTICE GRIER delivered the opinion of the Court.

The appellants in this case filed their bill in the Circuit Court of the United States for the District of Ohio, claiming a certain tract of land in possession of the defendants, and praying a decree for the title and possession of the same.

The bill sets forth that Robert Lawson, under whom complainants

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claim, had received for his services as an officer in the Revolutionary War a military warrant (No. 1,921) for ten thousand acres of land, which, before 4 June, 1794, was located in the Virginia Military District in tracts of one thousand acres each, under the following numbers of entries: 1,704, 1,705, 1,706, 1,707, 1,714, 1,715, 1,716, 1,717, 1,718, 1,719.

On 4 June, 1794, an indenture tripartite was executed between Robert Lawson, of the first part, Sarah, his wife, of the second part, and James Speed, George Thompson, Joseph Crocket, and George Nicholas, of the third part, by which, for the consideration therein expressed, Robert Lawson conveyed to the parties of the third part, among other things,

"two thousand acres of military land, situated on White Oak Creek on the north side of the Ohio, being the land mentioned in the first entry made for the said Lawson on the surveyor's books,"

in special trust that they will

"permit said Lawson and his wife, and the survivor, and the said Sarah, if she should again separate from her husband, to use, occupy, possess, and enjoy, during their natural lives and the life of the survivor, the lands on Fayette County, Kentucky,"

&c.; And also that they will convey the two thousand acres of land on White Oak Creek to either of the sons of the marriage to whom the said Sarah shall direct &c.; And the said Lawson covenanted with the trustees that he would at no future time

"offer any personal violence or injury to his wife, and that he would abstain from the intemperate use of every kind of spirituous liquors and that, if he should at any time thereafter again offer any personal violence or injury to his wife,"

the trustees were authorized to dispossess him of the hundred and fifty acres of land &c.;

The complainants aver also that the two entries numbered 1,707 and 1,714 covered the two thousand acres conveyed by this deed.

The bill further states that on 16 August, 1796, Lawson made an assignment to one John O'Bannon of three thousand three hundred and thirty-three acres of his warrant which had not been surveyed, and charges that, at the time of making said assignment, Robert Lawson was, as O'Bannon well knew, habitually intemperate and had been so for a long time previous; that the faculties of his mind were much impaired, and that he was wholly incapable of making any valid contract; that the said assignment was without consideration, and procured by O'Bannon under false and fraudulent pretenses.

That O'Bannon, well knowing that the aforesaid entry of 1,707 had been conveyed by the trust deed on 25 August,

1796, fraudulently withdrew it, and reentered in his own name nine hundred and sixty-five acres under the same number on the waters of Straight Creek -- the tract in controversy in the present suit. That O'Bannon, having obtained the plat and certificate, deposited them, before 12 February, 1799, in the Department of State, and applied for a patent, and Joshua Lewis, the son-in-law of Lawson, as agent for the trustees, entered on that day a caveat against the issuing of a patent to O'Bannon.

Lawson and his wife lived together but a short time after the execution of the trust deed. Mrs. Lawson went to Virginia, where she died in 1809, never having appointed, as provided by the trust deed, to whom conveyance should be made. Lawson died in Virginia, in 1805, the victim of intemperance. They left three children -- America, intermarried with Joshua Lewis in 1797, and two sons, under whom complainants claim. In 1800, George Nicholas, one of the trustees, died, and sometime afterwards James Speed and Joseph Crocket, and the trust thus became vested in George Thompson, the survivor. In 1834, George Thompson died, leaving George C. Thompson, one of the complainants, his son and heir at law, in whom the trust vested.

John O'Bannon died in January, 1812, having made a will and appointed Robert Alexander and George T. Cotton, his son-in-law, his executors. Alexander never qualified as executor. Cotton, as acting executor, on 16 July, 1813, executed a deed of the nine hundred and sixty-five acres to William Lytle, under whom the defendants claim. The deed of Cotton recites a patent to John O'Bannon in his lifetime, and warrants the title. Afterwards, on 21 December, 1816, a patent issued from the United States to Cotton, "as executor of the last will and testament of John O'Bannon, in trust for the uses and purposes mentioned in his will."

The defendants plead in bar that they are purchasers from Lytle and those claiming under him, without notice, and exhibit their deeds. They also file an answer in support of their plea, in which the fraud alleged in the bill, and all facts going to show equity in the claim of complainants, are denied. And in an amended

answer they set up the plea of the statute of limitations, and insist

"that the deed of trust under which complainants claim is a stale claim, not attended with any circumstances to relieve it from such staleness, and that the bill should be dismissed on that account."

Various questions have been made before us as to the nature and character of this deed of trust: whether its loss is sufficiently accounted for; whether, as a settlement of family difficulties,

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it was not abandoned by all the parties concerned in it; whether it described the land in controversy; whether O'Bannon purchased with notice of it; whether he paid any consideration; whether the assignment to him by Lawson was fraudulently obtained; whether the legal title was vested in defendants by virtue of the patent to Cotton and his warranty; and whether the statute of limitations operated as a bar to complainants' claim.

On these and other questions which were argued with so much ability by the learned counsel it is not the intention of the Court to express an opinion, because in our view of the case they are not necessary to a correct decision of it.

The important question is whether the complainants are barred by the length of time.

In cases of concurrent jurisdiction, courts of equity consider themselves bound by the statutes of limitation which govern courts of law in like cases, and this rather in obedience to the statutes than by analogy. In many other cases they act upon the analogy of the limitations at law, as where a legal title would in ejectment be barred by twenty years' adverse possession, courts of equity will act upon the like limitation, and apply it to all cases of relief sought upon equitable titles or claims touching real estate.

But there is a defense peculiar to courts of equity, founded on lapse of time and the staleness of the claim where no statute of limitations directly governs the case.

In such cases, courts of equity often act upon their own inherent doctrine of discouraging, for the peace of society, antiquated demands by refusing to interfere where there has been gross laches in prosecuting rights or long acquiescence in the assertion of adverse rights. 2 Story Eq. 1520.

A court of equity will not give relief against conscience or public convenience where a party has slept upon his rights. "Nothing," says Lord Camden, 4 Bro.Ch. 640,

"can call forth this Court into activity but conscience, good faith, and reasonable diligence; when these are wanting, the court is passive, and does nothing."

Length of time necessarily obscures all human evidence and deprives parties of the means of ascertaining the nature of original transactions; it operates by way of presumption in favor of the party in possession. Long acquiescence and laches by parties out of possession are productive of much hardship and injustice to others, and cannot be excused but by showing some actual hindrance or impediment caused by the fraud or concealment of the party in possession, which will appeal to the conscience of the chancellor. The party guilty of such laches cannot screen his title

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from the just imputation of staleness merely by the allegation of an imaginary impediment or technical disability.

This doctrine has been so often asserted by this Court, that it is unnecessary to vindicate it by argument. It will be sufficient to refer to [Piatt v. Vattier](#), 9 Pet. 405, a case much resembling the present, and [Bowman v. Wathen](#), 1 How. 189.

Can the complainants' case stand the test of this reasonable and well established rule of equity?

The bill does not assert that either the trustees or the *cestuis que trust* were ignorant of the transaction between Lawson and O'Bannon, or of the fraud practiced on Lawson, if any there was. Yet with the exception of the caveat filed in

Washington in 1799, they show no assertion of claim under this voluntary postnuptial settlement, from its date (June, 1794) till the filing of this bill in 1840. John O'Bannon lived till 1812, yet in all this time (sixteen years) no bill is filed to set aside his assignment from Lawson for the fraud now alleged while the circumstances were fresh and capable of proof or explanation.

In 1813 (perhaps in 1811), the defendants, or those under whom they claim, entered upon these lands; they paid large and valuable considerations for their respective portions without any knowledge of this lost deed of family settlement or reason to suspect fraud in the transfer to O'Bannon. And whether the patent obtained by Cotton and his warranty had the effect of conferring on them the legal title or not, they reposed in confidence on it. By their industry and expenditure of their capital upon the land for a space of twenty-seven years, they have made it valuable, and what was a wilderness, scarce worth fifty cents an acre, is now enhanced by their labor a hundred fold.

No bad faith, concealment, or fraud can be imputed to them. If the trustees or *cestuis que trust* chose to reside in Kentucky and not look after these lands for near half a century, they can have no equity from a disability that was voluntary and self-imposed. The residence of the trustees in Kentucky was not considered as an obstacle or objection in the minds of those who executed the deed to their assuming the trust and care of lands in Ohio. There was no greater impediment to the prosecution of their claim in a court of equity at any time within forty years than there is now. They have shown nothing to mitigate the effect of their laches and long acquiescence or which can entitle them to call upon a court of equity to investigate the fairness of transactions after all the parties to them have been so long in their graves, or grope after the truth of facts involved in the mist and obscurity consequent on the lapse of nearly half a century.

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We are all of opinion, therefore, that the lapse of time in the present case is a complete bar to the relief sought, and that the decree of the circuit court dismissing

the bill should be

*Affirmed with costs.*

## **ORDER**

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Ohio and was argued by counsel. On consideration whereof it is now here ordered and decreed by this Court that the decree of the said circuit court in this cause be and the same is hereby affirmed with costs.

MR. JUSTICE Mc KINLEY did not sit in this cause.

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