

14 S.Ct. 783
38 L.Ed. 669
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WHARTON v. WISE
April 23, 1894.

So, in the present case, looking at the object evidently intended by the prohibition of the articles of confederation, we are clear they were not directed against agreements of the character expressed by the compact under consideration. Its execution could in no respect encroach upon or weaken the general authority of congress under those articles. Various compacts were entered into between Pennsylvania and New Jersey and between Pennsylvania and Virginia, during the confederation, in reference to boundaries between them, and to rights of fishery in their waters, and to titles to land in *171 their respective states, without the consent of congress, which indicated that such consent was not deemed essential to their validity. Virginia and Maryland were sovereign states, with no common superior and no tribunal to determine for them the true construction and meaning of its provisions in case of a conflict of opinion upon the subject. Each state was left to decide for itself as to their true construction and meaning, and to its own sense of the obligations of the compact for their enforcement. If, therefore, the congress of the United States, which, as said above, never complained of the compact of 1785, had interposed objections to its adoption or enforcement as being within the meaning of the terms 'treaty' or 'confederation,' or as establishing an alliance within the prohibition of the articles mentioned, yet it would not lie in either of the states that were parties to the contract to allege its invalidity on the subject. As said by Mr. Steele in his very able and elaborate opinion upon the construction of provisions of the compact given to the governor of Maryland, and which is referred to in the record, they cannot complain that there was in its adoption any breach of good faith towards themselves; and we may add, or any rupture by them of the league of friendship declared to be the object of the articles to establish.

In our judgment, the compact of 1785 was **788 not prohibited by the articles of confederation. It was not a treaty, confederation, or alliance within the meaning of those terms as there used, and it remained as a subsisting operative contract between them, in full force, when the confederation went out of existence upon the adoption of the present constitution of the United States; and it was not affected or set aside by the prohibitory clause of that instrument. Its prohibition extends only to future agreements or compacts, not against those already in existence, except so far as their stipulations might affect subjects placed under the control of congress, such as commerce and the navigation of public waters, which is included under the power to regulate commerce.

As stated by counsel, stipulations as to riparian rights of fishery, and as to jurisdiction in and over waters lying between *172 the two states, remained as they previously existed, neither suspended or impaired.

We are therefore of opinion that the compact continued in full force after the adoption of the constitution, except so far as inconsistent with its provisions; and such we understand has been the clear declaration of the two states whenever they have been called upon to express their opinion upon the subject, and such is the concession of counsel. In the acts of both states, passed in 1874, designating arbitrators to ascertain and fix the boundary between them, the validity of the compact was affirmed in the declaration that 'neither of the said states, nor the citizens thereof, shall, by the decision of the said arbitrators, be deprived of any of the rights and privileges enumerated and set forth in the compact between them, entered into in the year 1785, but that the same shall remain to and be enjoyed by the said states and the citizens thereof forever.' Laws Va. 1874, c. 135; Laws Md. 1874, c. 247.