THE

# AMERICAN DECISIONS

CASES OF GENERAL VALUE AND AUTHORITY

DECIDED IN

## THE COURTS OF THE SEVERAL STATES

FROM THE EARLIEST ISSUE OF THE STATE REPORTS TO THE YEAR 1869.


COMPILED AND ANNOTATED BY

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EXTRA ANNOTATED

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waived them. And if he does waive them, the process should not be set aside, even on motion. In the present case, if Burditt and Calvert, for the purpose of avoiding the expense, perhaps, of a *scire facias*, see *Arnold* v. *Fuller's Heirs*, 1 Ohio, 458, at any rate, of some proceeding to get rid of the former invalid levy, expressly waived all objection to the issuing of the *alias fi. fa.*, we can see no justice in permitting their grantee, or the grantee of either of them, now to object that that *fi. fa.* was erroneous. Whether they did make such waiver, or what were the circumstances under which that *fi. fa.* issued, can not be ascertained in a collateral proceeding.

It follows from what we have said that the sale in question was not void for the reasons alleged in this suit against it, and the judgment of the court below must be reversed.

It is proper to remark that this case does not extend to irregularities committed by the sheriff in proceeding under an execution. Whether the same rule will apply as to them in regard to purchasers with or without notice, is not a question for our consideration here.

The judgment is reversed, with costs. Cause remanded, etc.

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LEVY, WHAT CONSTITUTES: See *Weatherby* v. *Covington*, 49 Am. Dec. 621, note 626, where other cases are collected.

PURCHASER UNDER VOIDABLE EXECUTION will be protected in his title *Ingram* v. *Belk*, 47 Am. Dec. 591.

LEVY, WHEN A SATISFACTION: See *Walker* v. *McDowell*, 43 Am. Dec. 476 note 480, where other cases are collected. The principal case is cited in *Barret* v. *Thompson*, 5 Ind. 458, and in *Lindley* v. *Kelley*, 42 Id. 307, to the point that a levy on property of sufficient value is presumed to be a satisfaction of the judgment until the property is disposed of; and in *Law* v. *Smith*, 4 Id. 58, and in *Applegate* v. *Mason*, 13 Id. 79, to the point that a levy is but *prima facie* satisfaction, and may be shown to have proved not an actual one.

EXECUTION MERELY VOIDABLE MAY BE SET ASIDE ON MOTION, but until set aside, all acts done under it are valid: *Sowle* v. *Champion*, 16 Ind. 167; *Ewing* v. *Hatfield*, 17 Id. 514; *Culbertson* v. *Milhollin*, 22 Id. 364, all citing the principal case.

THE PRINCIPAL CASE IS CITED in *Hutchins* v. *Hanna*, 8 Ind. 537, to the point that a levy on property that does not belong to the defendant in execution is futile, and may be properly abandoned by the officer who makes it.

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## JORDAN *v.* COREY.

[2 INDIANA, 385.]

MARRIED WOMAN'S CERTIFICATE OF ACKNOWLEDGMENT MUST SHOW that she was examined without the hearing of her husband, or the deed, as to her, will be invalid.

MISTAKE IN CERTIFICATE OF ACKNOWLEDGMENT MAY BE CORRECTED at any time by the officer that made it.

CERTIFICATE OF ACKNOWLEDGMENT DOES NOT DEPEND FOR ITS VALIDITY upon its being made matter of record, but a deed can not be recorded without such a certificate as the statute requires.

CERTIFICATE OF ACKNOWLEDGMENT OF MARRIED WOMAN MAY BE AMENDED by inserting therein, by the officer who made it, a statement of the fact that her acknowledgment was made without the hearing of her husband; and the certificate, when so amended, will have the same effect as if it had been properly made at first.

APPEAL from the Tippecanoe court of common pleas. The opinion states the case.

*Z. Baird and S. A. Huff*, for the appellant.

*G. S. Orth and E. H. Brackett*, for the appellee.

By Court, BLACKFORD, J. This was an action of *assumpsit* brought by Corey against Jordan on the indorsement of a promissory note. The note was made by one Bean to the defendant for the payment of three hundred and seventy-three dollars, on the fifteenth of September, 1848, at the Lafayette branch of the State Bank of Indiana. The declaration alleges that the note was made without consideration. The defendant pleaded the general issue. Verdict and judgment for the plaintiff.

It appears that in May, 1847, the defendant executed to said Bean a general warranty deed, purporting to convey to him eight undivided tenths of two certain tracts of land, in consideration of one thousand three hundred and seventy-three dollars. One thousand dollars of the price were paid down, and the said note was given from the residue. It also appears that the defendant had no title to three of those eight tenths of said lands, except what he derived from a conveyance executed in February, 1847, by John Burns and Eleanor, his wife, Thomas Murphy and Mary, his wife, and William Coon and Margaret, his wife. The said married women having each a title by descent to one of those eight tenths.

The plaintiff contends that the last-mentioned conveyance is invalid as to said married women, because the certificates of their acknowledgments are defective. These certificates state that those married women were examined separate and apart from their husbands, as required by law. The objection made to the certificates is, that they do not state that the married women were examined without the hearing of their husbands.

The statute is as follows: "Sec. 40. The acknowledgment of the execution of any deed or conveyance by which a married

woman releases, etc., or by which the husband and wife convey the real estate of the wife, may be taken before any officer, etc.; but such acknowledgment shall not be taken by such officer, unless he shall first make known to her the contents and purport of such deed or conveyance, and she acknowledge, on a separate examination, separate and apart from him, and without the hearing of her husband, that she executed such deed or conveyance of her own free-will and accord, and without any coercion or compulsion from her husband; all of which shall be certified by such officer in his certificate of such acknowledgment." "Sec. 42. No dower estate or interest whatever of any married woman shall be barred, passed, or conveyed by any deed or conveyance purporting to be executed by her, unless the same shall be acknowledged, and such acknowledgment certified as above provided." R. S. 1843, p. 421.

There can be no doubt, we think, but that under this statute of 1843, the certificate of the acknowledgment of a married woman as to her execution of a deed, must show, by the facts stated in it, that she had been examined in the manner prescribed by the statute, or the deed, as to her, will not be valid. The certificates in question are defective for not showing that the married women were examined without the hearing of their husbands.

The defendant refers us to the case of *Stevens* v. *Doe*, 6 Blackf. 475. But that case was governed by the statute of 1824, which differs materially from that of 1843, above cited. The case of *Stevens* v. *Doe* is, therefore, not applicable.

The transcript shows the following admissions of the defendant, namely, "Three of the grantors in said deed C (the deed last above mentioned), viz., Margaret Coon, Mary Murphy, and Eleanor Burns, when said deed C was executed, and delivered to defendant Jordan, owned each in their own right, as heir at law of William Jordan, deceased, one undivided tenth of the fee-simple estate in said lands; and their estate in the same was and is, unless the same is conveyed by deed C, of more value than the amount of the note and interest sued on; and they were each and every of them at the date, acknowledgment, and delivery of said deed C, *femes covert;* and they are now living."

As the said estates of said married women were worth more than the amount of said note, it follows that if those estates were not conveyed to the defendant, and by him to Bean, the note was given without consideration.

According to the face of said certificates, the said estates of

said married women were not conveyed to the defendant. It appears that the court decided that they could not (the plaintiff objecting) allow the officers who made said certificates to insert in them at the trial the fact that the acknowledgments were made by said married women without the hearing of their husbands. We think that the officers had the right, and indeed that it was their duty, to correct at any time any mistake in their certificates. Such a certificate is an act *in pais*, which may be altered at any time by the officer who made it: *Elliott et al.* v. *Peirsol et al.*, 1 Pet. 328. The certificate does not depend for its validity upon its being made matter of record. A deed without such a certificate as the statute requires can not be recorded. If the acknowledgments were really made by said married women without the hearing of their husbands, that fact might have been inserted in the certificates, at the trial, *nunc pro tunc*, by the officers who made them. The certificates, after such amendment, would have had the same effect, as respects this cause, as if they had at first been properly made.

The decision of the court below, therefore, relative to the amendment of said certificates, is erroneous.

The judgment is reversed, and the verdict set aside, with costs. Cause remanded for further proceedings. Costs here.

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AMENDING AND PERFECTING CERTIFICATE OF ACKNOWLEDGMENT.—The acknowledgment of a deed, executed by a person who is under no disability, is not essential to the validity of the deed. The execution and delivery of such a deed will pass the title just as effectually without as with an acknowledgment, and such execution and delivery may be proved by any competent evidence. The acknowledgment of a deed so executed is generally required to entitle it to be recorded. But it has reference merely to the proof of the execution, not to the force or effect of the instrument: *Jackson* v. *Allen*, 30 Ark. 110; *Gray* v. *Ulrich*, 8 Kan. 112; *Dole* v. *Thurlow*, 12 Met. 157; *Gibbs* v. *Swift*, 12 Cush. 393; *Harrison* v. *McWhirter*, 12 Neb. 152; *Brown* v. *Manter*, 22 N. H. 468; *Elwood* v. *Klock*, 13 Barb. 50; *Knight* v. *Leary*, 54 Wis. 459.

BUT THE DEED OF A FEME COVERT, NOT ACKNOWLEDGED in the mode prescribed by the statute, is absolutely void: *Jourdan* v. *Jourdan*, 11 Am. Dec. 724; *Doe* v. *Howland*, 18 Id. 445; note to *Tiernan* v. *Poor*, 19 Id. 230; *Martin* v. *Dwelly*, 21 Id. 245; *Barnett* v. *Shackleford*, 22 Id. 100; *Payne* v. *Parker*, 25 Id. 221; *Carr* v. *Williams*, 36 Id. 87; *Dickinson* v. *Glenney*, 27 Conn. 104; *Hamar* v. *Medsker*, 60 Ind. 413; *Pribble* v. *Hall*, 13 Bush, 61; *Dodge* v. *Hollinshead*, 6 Minn. 25. The common law rendered her incapable of conveying or of contracting to convey her interest in real estate, except by a written instrument duly acknowledged by her: *Knowles* v. *McCamly*, 10 Paige, 342. The certificate of acknowledgment of a deed of a married woman is, therefore, an essential part of its due execution, and unless there is a substantial compliance with the requirements of the statute, no title passes by such deed: *Mason* v. *Brock*, 12 Ill. 273; S. C., *ante*, 490; *Elwood* v.

*Klock*, 13 Barb. 50. In the case last cited, Allen, J., who delivered the opinion of the court, in discussing this subject, said: "I think that a conveyance of a married woman can only become operative upon her private examination before a proper officer, duly certified by him, and that it can not be established by parol. A deed duly acknowledged may be read in evidence upon the certificate of the acknowledgment, without further evidence of its execution; but I apprehend that if the certificate omitted to state some essential fact—as, for instance, that the officer knew the grantor, or the subscribing witness, if the execution was proved by him—it could not be helped out by evidence of the fact omitted, so as to entitle the deed to be read in virtue of the certificate thus fortified. The acknowledgment is a nullity unless properly certified."

DEFECTIVE ACKNOWLEDGMENT OF MARRIED WOMAN CAN NOT BE AMENDED BY PAROL EVIDENCE showing that everything required by the statute was done, but that the officer by whom it was taken, by mistake, omitted to certify a part. This subject is discussed at some length in the note to *Smith* v. *Ward*, 1 Am. Dec. 80. The following cases subsequently reported in this series maintain the same doctrine: *Watson's Lessee* v. *Bailey*, 2 Id. 462; *Evans* v. *Commonwealth*, 8 Id. 711; *Watson* v. *Mercer*, 9 Id. 411; *Jourdan* v. *Jourdan*, 11 Id. 724; *Barnett* v. *Shackleford*, 22 Id. 100. And the following recent cases are to the same effect: *Marston* v. *Brittenham*, 76 Ill. 611; *Warrick* v. *Hull*, 102 Id. 280; *O'Ferrall* v. *Simplot*, 4 Iowa, 162; *Central Bank of Frederick* v. *Copeland*, 18 Md. 305; *Johnson* v. *Van Velsor*, 43 Mich. 208; *Looney* v. *Adamson*, 48 Tex. 619; *First Nat. Bank of Harrisonburg* v. *Paul*, 75 Va. 594; S. C., 40 Am. Rep. 740; *Leftwich* v. *Neal*, 7 W. Va. 569; *Smith* v. *Allis*, 52 Wis. 337; *Insurance Co.* v. *Nelson*, 103 U. S. 544.

POWER OF OFFICER TO AMEND IMPERFECT CERTIFICATE OF ACKNOWLEDGMENT.—The doctrine of the principal case, that an officer who correctly takes an acknowledgment, but by mistake or accident fails to make a proper certificate of it, may at any time amend his certificate so as to make it state the fact as it really was, seems to be still recognized by the supreme court of Indiana. In the recent case of *Stott* v. *Harrison*, 73 Ind. 20, the court, referring to the officer who took the acknowledgment of the deed under consideration in that case, said: "If in truth he had not stamped the certificate with his official seal, he still had the power to do it." And the court cited the principal case in support of the proposition quoted. The supreme court of Missouri, in the case of *Wannall* v. *Kem*, 51 Mo. 150, decided that the officer who fails to set forth in his certificate the facts necessary to constitute a good acknowledgment may voluntarily amend it, or he may be compelled to do so by *mandamus* in case he refuses. In delivering the opinion of the court in that case, Adams, J., said: "If the officer fails to set forth in his certificate the facts necessary to constitute a good acknowledgment, a court of equity is not the proper forum to afford the relief. The officer may voluntarily correct his certificate, or make out a proper certificate where he has given a defective one, if the facts really exist to warrant such action. If the officer refuses to make a proper certificate, he may be compelled to do so by *mandamus*, but a court of equity has no jurisdiction to correct such defects. The notary derives his authority to take acknowledgments from the statute, and courts of equity do not aid the defective execution of statutory powers." In the case of *Harmon* v. *Magee*, 57 Miss. 410, it was decided that an officer who has properly exercised the judicial function of taking a married woman's acknowledgment to her deed may perform the clerical act of making out the certificate at any time while he remains in office, provided the rights

of third persons do not intervene to prevent its performance. In that case, a *feme covert* acknowledged her deed in the proper mode, and the officer wrote out the certificate in the proper form, but, through inadvertence, neglected to sign it. The deed was recorded while the certificate was in this condition. Ten months afterwards the officer discovered the mistake, and on her admission then that she had acknowledged the deed ten months before, he appended an additional certificate to that effect, and the deed was held by the court to have been properly executed. These are the only cases that we have been able to find which support the view that the officer has the power to amend the certificate of acknowledgment. On grounds of reason and expediency, the doctrine of the Mississippi case seems to have much to commend it. Whether the act of the officer who takes an acknowledgment be regarded as a judicial or a ministerial one, there seems to be no good reason why he should not be allowed, within reasonable limits, to amend his certificate, so as to make it speak the truth and conform to the actual fact. The power to amend is freely exercised in many analogous cases, and it is not easy to see why it should not be permitted in this. Be this as it may, it must be admitted that the greater weight of authority is on the other side of the question. In the case of *Bours* v. *Zachariah*, 11 Cal. 281, it was decided that the certificate of a notary public to a deed is not an act *in pais*, which he may exercise by virtue of his office at any time while in office; that he derives his power from the statute, acts under a special commission for that particular case, and after taking the acknowledgment and making and delivering the return, his functions cease, and he is discharged from all further authority, and can not alter or amend his certificate. Mr. Justice Baldwin, who delivered the opinion in that case, thus referred to the principal case: "We do not deem it necessary to criticise the case of *Jordan* v. *Corey*, in 2 Carter's Indiana Reports. That case we think wholly unsupported by authority."

The following cases hold that where an officer has taken an acknowledgment of a deed and made his certificate, he can not afterwards amend or change the certificate so as to correct an error or mistake therein: *Wedel* v. *Herman*, 59 Cal. 507; *Merritt* v. *Yates*, 71 Ill. 636; *Newman* v. *Samuels*, 17 Iowa, 528; *Elwood* v. *Klock*, 13 Barb. 50; *First Nat. Bank of Harrisonburg* v. *Paul*, 75 Va. 594; S. C., 40 Am. Rep. 740; *Elliott* v. *Peirsol*, 1 Pet. 328. In the case of *Merritt* v. *Yates*, 71 Ill. 638, Walker, J., delivering the opinion of the court, said: "It is also contended that the subsequent certificate, written by the justice of the peace on the deed some years after the first was made, cured the defective certificate, although the deed was not reacknowledged. We have been referred to no precedent for such action, and we should confidently expect that none such could be found. Anciently, such acknowledgments could only be taken in open court and entered on the records of the court in proceedings tedious, expensive, and incumbered with much form. It was at that time regarded of too much moment to be left to the loose and uncertain action of unskillful persons, and the title to property held by married women was guarded with such care as only to permit it to be divested by the judgment of a court of record. Justices of the peace and other enumerated officers have, however, under our laws, been intrusted with the power to take and certify such acknowledgments, and when, in conformity with the statute, the act is clothed with the same force and effect that was anciently produced by the judgment of a court of record." In the case of the *First National Bank of Harrisonburg* v. *Paul*, 75 Va. 594; S. C., 40 Am. Rep. 740, the bank applied to Mr. Gray, who was clerk at the time

when the acknowledgment in question in that case was taken, and who had recorded it, to make a full record as of the date of the former certificate, which was made and recorded in 1869. The bank then, in the year 1880, had the deed re-recorded by the clerk who was in office at the last-named date. But the court refused to allow the certificate so amended to be given in evidence, and rejected the parol evidence offered to show that the acknowlment had been properly taken but imperfectly certified. And Staples, J., delivering the opinion of the court, said: "The amended certificate relied upon by the bank is in no just sense of the word an official act. At the time it was given, Mr. Gray had long ceased to be clerk. It is, therefore, the mere declaration of a private person giving his recollection in 1880 of what occurred before him as clerk in 1869. We must assume, however, that the bank, had the opportunity been given it, would have proved by Mr. Gray every fact stated by him."

It seems that where the certificate of acknowledgment is defective the body of the deed may be referred to to supply the defect: *Carpenter* v. *Dexter*, 8 Wall. 513; *Bradford* v. *Dawson*, 2 Ala. 203. And in *Hardin* v. *Osborne*, 60 Ill. 93, where a certificate of acknowledgment was held to be defective, because it was entitled simply "County of New York," without showing in what state the act was done, it was decided that the defect was cured by the certificate of the county clerk, stating that the commissioner who made the certificate was duly commissioned for the city, county, and state of New York, residing in the county and duly authorized to take acknowledgments. But in *Willard* v. *Cramer*, 36 Iowa, 22, where the certificate was defective because it failed to show the county of the notary who made it, the court decided that reference could not be had to the seal attached, to supply the omission. And in *Newman* v. *Samuels*, 17 Id. 528, the word "voluntary" was omitted from the certificate of the officer, but the recorder corrected the mistake in the recorded copy. The deed, however, was held not to be constructive notice to a subsequent purchaser.

POWER OF COURTS TO AMEND CERTIFICATES OF ACKNOWLEDGMENT.—The power of a court of equity to perfect defectively acknowledged instruments of married women is incidentally discussed at some length in the note to *Tiernan* v. *Poor*, 19 Am. Dec. 230, where it is shown that a court of equity is not regarded as possessing that power. The same doctrine seems to be maintained in the English courts. In the *Matter of Lætitia Millard*, 5 Man. G. & S. 753, Sergeant Byles moved for leave to amend the certificate of an acknowledgment by a married woman of a deed conveying her interest in certain property. It seemed that the commission went out to Canada in January, 1848, and that the acknowledgment was duly made by Mrs. Millard on the twenty-fifth of February of that year, but the certificate erroneously stated the acknowledgment to have been taken on the twenty-fifth of February, 1847. Chief Justice Wilde, in delivering his opinion, said: "I think we have no authority to do that which is asked. It seems to be very generally held that, independent of express statutory provision, neither courts of law nor courts of equity have power to correct or amend defective certificates of acknowledgment of married women." See, in addition to the cases cited in the note to *Tiernan* v. *Poor*, above referred to, the following cases: *Elliott* v. *Peirsol*, 1 Pet. 328; *Purcell* v. *Goshorn*, 49 Am. Dec. 448, note 451, where other cases are cited; *Martin* v. *Hargardine*, 46 Ill. 322; *Hamar* v. *Medsker*, 60 Ind. 413; *Shroyer* v. *Nickell*, 55 Mo. 264; *Knowles* v. *McCamly*, 10 Paige, 342.

The decision in the case of *Hamar* v. *Medsker*, *supra*, is peculiar, the court

holding that although the deed of a *feme covert* which is defective from not complying with a statutory requirement can not be amended by a court of equity, yet a mistake in the description of the premises conveyed by the deed may be so amended. In Arkansas, however, it seems that a court of equity has power to correct a mistake made by a commissioner in his certificate of acknowledgment: *Simpson* v. *Montgomery*, 25 Ark. 365. In California, also, since the adoption of the codes of that state, a court of equity has power to reform or amend a certificate of acknowledgment, where the acknowledgment was properly taken but a defective certificate has been made by the officer: *Wedel* v. *Herman*, 59 Cal. 507. Section 1202 of the civil code of that state provides, that "when the acknowledgment or proof of the execution of an instrument is properly made, but defectively certified, any party interested may have an action in the superior court to obtain a judgment correcting the certificate. But an action to correct a defective certificate of a notary public of the acknowledgment by a married woman of her execution of an instrument, purporting to be a conveyance of her separate real property, was held, in *Judson* v. *Porter*, 53 Cal. 482, not to be maintainable when the defective certificate was made prior to the enactment of the code. Prior to the adoption of the codes, the act of California of April 13, 1860, section 1, provided, that "when the certificate of acknowledgment or proof of any deed, or other instrument in writing, whereby the title of any real estate situated within the state is or may be in any manner affected, heretofore executed in good faith by husband and wife, or any other person of lawful age, and acknowledged or proved before any officer authorized by law to take the acknowledgment and proofs of deeds, shall be defective by reason of not setting forth any or all of the particulars of such acknowledgment or proof as required by law, it shall be competent for any person claiming title under or through such deed or instrument of writing, to apply to the county judge of the county in which the real estate affected thereby may be situated, to have such certificate corrected." Before the enactment of this statute, the supreme court of California decided that no court had power to correct a defective acknowledgment: *Selover* v. *American R. C. Co.*, 7 Id. 267; *Barrett* v. *Tewksbury*, 9 Id. 14; *Bours* v. *Zachariah*, 11 Id. 281.

IN MICHIGAN the statute provides, that "no conveyance of land, or instrument intended to operate as such conveyance, made in good faith and upon a valuable consideration, whether heretofore made or hereafter to be made, shall be wholly void by reason of any defect in any statutory requisite in the sealing, signing, attestation, acknowledgment, or certificate of acknowledgment thereof; but the same, when not otherwise effectual to the purpose intended, may be allowed to operate as an agreement for a proper and lawful conveyance of the premises in question, and may be enforced specifically by suit in equity in any court of competent jurisdiction, subject to the rights of subsequent purchasers in good faith and for a valuable consideration; and when any such defective instrument has been or shall hereafter be recorded in the office of the register of deeds of the county in which such lands are situate, such record shall hereafter operate as legal notice of all the rights secured by such instrument:" 2 Comp. Laws Mich. 1351. In *Healy* v. *Worth*, 35 Mich. 166, it was decided that this act extends to defective acknowledgments. But in *Buell* v. *Irwin*, 24 Mich. 145, it was held that an acknowledgment of a deed, defective in not having a seal added to the certificate by a commissioner of deeds in New York, appointed by the governor of Michigan to take acknowledgments, was void, and could not be amended by the curative provisions of the statute given above.

THE OHIO STATUTE PROVIDES, that "the court of common pleas and superior courts are hereby authorized and empowered to correct, amend, and relieve against any errors, defects, or mistakes occurring in the deed or other conveyance of a husband and wife heretofore or hereafter executed, and intended to convey or encumber the lands or estate of the wife, or her right of dower in the lands of her husband, in the same manner and to the same extent as the said courts are or shall be authorized or empowered to correct errors, mistakes, or defects in the deeds or conveyances of any other persons:" 75 Ohio Laws, 783. In *Kilbourn* v. *Fury*, 26 Ohio St. 153, it was decided that where an officer, before whom a deed executed by a husband and wife, for the wife's estate in lands, was acknowledged, omits by mistake to certify the separate examination of the wife, such mistake may be corrected under the provisions of this act. And in *Dengenhart* v. *Cracraft*, 36 Id. 549, it was held that where a married woman by mistake made her acknowledgment before an officer not authorized to act, and by his mistake or omission the certificate failed to embody a substantial statement of all the material matters required, the certificate could be amended under this statute. In delivering the opinion of the court in the case last named, Johnson, J., said: "The real question is, Did the party intend to convey? If she did, and made a mistake which defeated that intention, it may be cured, whatever its form or character, if justice and equity demand. This is the rule as to all persons *sui juris*, independent of the statute, and the object of the statute was to make this power retroactive, and to extend it to deeds or other conveyances of married women."

IN TENNESSEE the code has the following provisions: "Sec. 2081. If the omission be matter of substance, the clerk, on the application of either party interested, may correct such mistake or omission of words in such certificate, or any such deed or other instrument. Sec. 2082. If a clerk omit any words in the certificate of a privy examination by him taken of a married woman, touching the execution of any deed or other instrument by her executed, he may at any time, on application of either of the parties interested, correct such error, mistake, or omission, making oath in open court to the truth of such correction. Sec. 2083. The register shall record the correction in the proper book of his office, and make a reference to the same on the margin opposite the original registration of the certificate." A notary public as well as a clerk may, under these provisions, correct a certificate of a privy examination of a married woman, by making oath in open court, and the oath may be taken in another state: *Brinkley* v. *Tomeny*, 9 Baxt. 275. The correction may be made by the clerk after he goes out of office, and the oath need only be made in open court, but need not be entered on the minutes: *Grotenkemper* v. *Carver*, 4 Lea, 375. A deed of land in Tennessee was acknowledged by a married woman before a clerk of the probate court of Mississippi, who omitted to state in the certificate of privy examination that he was personally acquainted with her, and that she admitted that she had "understandingly" executed the deed. It was decided that after the clerk went out of office he could amend the certificate, and that she could not be called as a witness to prove that the certificate as amended was untrue: *Vaughn* v. *Carlisle*, 2 Id. 525.

CURING DEFECT BY REACKNOWLEDGING.—A defective acknowledgment of a married woman may be validated by her reacknowledging it after she becomes discovert: *Riggs* v. *Boylan*, 4 Biss. 445; *Cahall* v. *Citizen's M. B. Ass.*, 61 Ala. 233; *Price* v. *Hart*, 29 Mo. 171; *Newell* v. *Anderson*, 7 Ohio St. 12. And where she and her husband jointly acknowledged the defective

deed, her reacknowledgment alone is sufficient: *Newell* v. *Anderson*, *supra*. In the case of *Conklin* v. *Bush*, 8 Pa. St. 517, it was decided that a deed of a *feme covert* defectively acknowledged by her may be ratified by her after the disability of coverture is removed, and that this ratification may be implied from long acquiescence. But in *Price* v. *Hart*, 29 Mo. 171, and in *Smith* v. *Shackleford*, 9 Dana, 452, it was held that such ratification could not be made by parol merely.

ACTS PASSED FOR THE PURPOSE OF CURING DEFECTS IN ACKNOWLEDGMENTS of deeds of married women are constitutional, although they extend to deeds acknowledged previous to their passage. This subject is discussed at length in the note to *Barnet* v. *Barnet*, 16 Am. Dec. 518; see also *Raverty* v. *Fridge*, 3 McLean, 230; *Doe ex dem. Moore* v. *Nelson*, Id. 383. In those states in which a married woman is by statute permitted to convey her separate property in the same manner as if she were unmarried, the certificate of acknowledgment is, of course, no longer regarded as an essential part of her conveyance: *Hawes* v. *Mann*, 8 Biss. 21; *Terry* v. *Eureka College*, 70 Ill. 236; *Wedel* v. *Herman*, 59 Cal. 507.

THE PRINCIPAL CASE IS CITED in *Woods* v. *Polhemus*, 8 Ind. 65, to the point that the acknowledgment is the chief essential element to give efficacy to the deed of a *feme covert*, and that solemnity must be in substantial compliance with the statute.