

**Jackson Vs. Chew**

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**Court :** US Supreme Court

**Decided On :** 1827

**Appeal No. :** 25 U.S. 153

**Appellant :** Jackson

**Respondent :** Chew

**Judgement :**

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**Jackson v. Chew**

**25 U.S. (12 Wheat.) 153**

*ERROR TO THE CIRCUIT COURT FOR*

*THE SOUTHERN DISTRICT OF NEW YORK*

## **SYLLABUS**

E. being seized of certain lands in the State of New York, devised the same by his last will and testament to his son Joseph in fee, and other lands to his son Medcef in fee, and added:

"It is my will and I do order and appoint that if either of my said sons should depart this life without lawful issue, his share or part shall go to the survivor, and in case of both their deaths without lawful issue, then I give all the property to my brother John E. and my sister Hannah J. and their heirs."

Joseph, one of the sons, died without lawful issue in 1812, leaving his brother Medcef surviving, who afterwards died without issue. *Held* that Joseph took an estate in fee defeasible in the event of his dying without issue in the lifetime of his brother, that the limitation over was good as an executory devise, and on the death of Joseph vested in his surviving brother Medcef.

This Court adopts the local law of real property, as ascertained by the decisions of the state courts, whether those decisions are grounded on the construction of the statutes of the state or form a part of the unwritten law of the state.

The court therefore considered it unnecessary to examine the question arising upon the above devise as a question of general law or to review and attempt to reconcile the cases in the English courts upon similar clauses in wills, the construction of this clause having been long settled by a uniform series of adjudications in New York, and having become a fixed rule of property in that state.

The question presented by the special verdict in this case, arose upon the will of Medcef Eden the elder, bearing date 29 August, 1798, by which will the testator devised to his son Joseph certain portions of his real and personal property, among which were the premises in question in this cause, "to have and to hold the same to him, his heirs, executors, and administrators forever." In like manner he devised to his son Medcef, his heirs and assigns, certain other portions of his property, and after making some other provisions, added the following clause:

"Item. It is

my will, and I do order and appoint that if either of my said sons should depart this life without lawful issue, his share or part shall go to the survivor. And in case of both their deaths without lawful issue, then I give all the property aforesaid to my brother, John Eden, of Loftus, in Cleveland, in Yorkshire, and my sister, Hannah Johnson of Whitby, in Yorkshire, and their heirs."

And the question was what estate Joseph Eden (under whom the lessor of the plaintiff claimed) took in the premises in question. The testator died soon after making his will, leaving his two sons, Joseph and Medcef, living. Joseph died in August, 1812, without issue, leaving his brother Medcef alive. The lessor of the plaintiff claimed title derived from Joseph Eden, under the sale of the premises in question, by virtue of a judgment and execution against him and sundry conveyances thereafter made of such title as set out in the special verdict. The defendant claimed under a title derived from Medcef Eden under the above mentioned clause in his father's will, he having survived his brother. If Joseph Eden took an estate tail, it was, by operation of the statute of the State of New York abolishing entails, converted into a fee simple absolute, and the subsequent limitation became inoperative. That statute, passed 23 February, 1786, declares

"That in all cases where any person would, if this act had not been passed, at any time hereafter become seized in fee tail of any lands by virtue of any devise before made or hereafter to be made, such person, instead of becoming seized thereof in fee tail, shall be deemed and adjudged to become seized thereof in fee simple absolute."

So that if Joseph would have taken an estate tail under the will if the act of 1786 had not been passed, by operation of the statute he became seized of an estate in fee simple absolute, which was liable to be sold on the judgment against him, and the title under which the lessor claimed would be complete. But if Joseph took an estate in fee, defeasible in the event of his dying without issue in the lifetime of his brother (which event happened), then Joseph's interest in the land became extinct on his death and the limitation over to his brother Medcef was

good as an executory devise, and the defendant would consequently be entitled to judgment.

A judgment was entered upon the special verdict in the court below for the defendant *pro forma* by consent of parties for the purpose of bringing the cause before this Court.

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MR. JUSTICE THOMPSON delivered the opinion of the Court, and after stating the case, proceeded as follows:

Questions growing out of devises of this description are among the most difficult and intricate doctrines of the law, and from the numerous cases that have arisen, as found reported in the books, it will be seen that nice and almost imperceptible distinctions have been resorted to with the avowed object of carrying into effect the intention of the testator. To review the cases that have arisen in the English

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courts on these questions would be an arduous, and to reconcile them, a difficult if not a fruitless undertaking. Nor are the decisions of the state courts in our own country in perfect harmony with each other. It is not deemed necessary, however, in the present case to enter into an examination of these various decisions either for the purpose of attempting to reconcile them or to extract from them principles which might be applicable to the case now before the Court if the question was considered entirely an open question. The inquiry is very much narrowed by applying the rule which has uniformly governed this Court that where any principle of law, establishing a rule of real property has been settled in the state courts, the same rule will be applied by this Court that would be applied by the state tribunals.

This is a principle so obviously just and so indispensably necessary under our system of government that it cannot be lost sight of.

The inquiry, then, is whether the question arising in this case has been so settled in the state courts of New York, as to be considered at rest there. Numerous cases have come before those courts upon this question, some on the very clause in the will now under consideration, others on wills containing clauses very analogous, and which, in those courts at least, have been considered identical with the present.

I shall proceed to notice some of the leading cases there decided, to see how the law on this question is held to have been settled in that state. In the case of *Anderson v. Jackson*, 16 Johns. 382, decided in the Court for the Trial of Impeachments and Correction of Errors in the year 1819, the decision turned solely upon the construction of this very clause in the will of Medcef Eden, the elder, affirming the judgment of the supreme court, which had been given without argument, the court considering the question raised to have been settled by former cases, and the Court of Errors, in affirming the judgment of the supreme court, put it principally upon the same ground and considered the question at rest by the repeated and uniform decisions of the supreme court for the last twelve or fourteen years. It may be useful to recur to the progress of

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these decisions, to see the steady and uninterrupted course of the courts upon the question, and how firmly the principle has become engrafted in the law of that state as a rule of landed property.

The first case that arose was that of *Fosdick v. Cornell*, 1 Johns. 440, in the year 1806. By the will there in question, the devise over was

"My mind and will is that if any of my said sons, William, Jacob, Thomas, and John, or my daughter Mary shall happen to die without heirs male of their own bodies, then that the lands shall return to the survivors, to be equally divided between them."

And it was held by the court unanimously that this clause did not create an estate tail, but was to take effect as an executory devise. In the case of *Anderson v.*

*Jackson*, the doctrine of that case was considered applicable to the Eden will and to govern its construction. And it was not pretended by the dissenting members of the Court of Errors, but that if the case of *Fosdick v. Cornell* was correctly decided, it would govern the case then before the Court. And the whole strength of the argument in the very elaborate opinions given by the dissenting members was applied to the purpose of endeavoring to show that the decisions in that case and in those which rested upon it had proceeded upon incorrect views of the law as decided both in the English and American courts. Chancellor Kent here took occasion to announce his change of opinion on this question, and to say that although he did not deliver the opinion of the court, he would not shelter himself under his silence, but partook of the error; but that he had discovered years ago that the case of *Fosdick v. Cornell* was decided on mistaken grounds. If this should be admitted (which I certainly do not mean to admit), it is an error which has been so repeatedly sanctioned by all the courts of that state for the last twenty years that it has ripened into a settled rule of law. And a reference to the cases which followed that of *Fosdick v. Cornell*, will show that it has become a rule so fastened upon the law of real property in that state as to make it unwise and unsafe to disturb it.

In the case of *Jackson v. Blanshaw*, 3 Johns. 289, decided in the year 1808. The question before the court

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arose upon a will, where the testator devised

"all his estate, real and personal, to his six children, to be equally divided between them, share and share alike, but if any of them died before arriving at full age, or without lawful issue, that then his, her, or their part should devolve upon and be equally divided among the surviving children and to their heirs and assigns, forever."

This was held to be a good devise over by way of executory devise, and Chief Justice Kent, in delivering the opinion of the court, refers to the case of *Fosdick v.*

*Cornell*, and observes that the court there reviewed the leading authorities and held that the devise over was a good executory devise, and that the true construction was, a devise over to take effect on failure of male issue during the life of the first taker. That the ancient case of *Hanbury v. Cockrill*, 1 Roll.Abr. 835, was quite analogous in favor of the executory devise. The devise there was to the two sons in fee, with a proviso that if either died before they should be married or before they should attain the age of 21 years and without issue of their bodies, then his share should go to the survivor. That Lord Kenyon, in the two cases of *Porter v. Bradly* and *Roe v. Jeffery*, 3 Term 143, 7 Term 589, supported this established construction in a very forcible manner, and that the case before the court could not be distinguished in principle from those in which this rule of law is settled beyond controversy. Again, in the case of *Executors of Moffat v. Strong*, 10 Johns. 12, decided in the year 1813, the testator, after giving certain specific parts of his real and personal estate to his sons, adds this provision: "And if any of my sons aforesaid should die without lawful issue, then let his or their part or parts be divided equally among the survivors." Although this was a case of personal property, the judgment of the court did not rest upon that distinction. Chief Justice Kent, in delivering the opinion of the court, says

"The greatest difficulty that arises in starting the main point for consideration, is to avoid being overwhelmed and confounded by the multitude of cases. Lord Thurlow said there were fifty-seven cases on this point, and we know they have greatly increased since."

And after reviewing many of the leading cases, the Chief

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Justice observes if the limitation rested solely on the words dying without issue, it would fail, but the will proceeds, and gives the part of the son so dying without issue to the survivors. The term "survivors" will be found to rescue the limitation from the operation of the general principle and to bring it within the reach of other cases which have adjudged that expression to be the cause of a different construction, and for the reason that it could not have been intended that the

survivor was to take only after an indefinite failure of issue, as that event might happen long after the death of all the survivors. Thus stood the question when the Chief Justice was transferred to the court of chancery no diversity of opinion having existed on the bench upon the question, according to the reported cases. The next case that came before the court was that of *Jackson v. Staats*, 11 Johns. 337, in the year 1814, and the construction of a similar clause in a will was under consideration. Spencer, J., in delivering the opinion of the court, observes that

"The point whether the limitation over operates as an executory devise, or to create an estate tail, admits of very little difficulty. The case of *Fosdick v. Cornell* is in point, that this is a good executory devise,"

and adds,

"I believe none of us have ever doubted the correctness of the decision in that case, and it would be a waste of time to review the authorities there cited."

So that the law on this point was considered settled, and not open to argument, until it was again stirred, in the case of *Anderson v. Jackson*, in the Court of Errors, upon the clause in Eden's will, now under consideration, and the rule of construction settled in the supreme court was considered applicable to this will, and governed the decision in the Court of Errors. Again, in the year 1823, the construction of this same clause in Eden's will came before the supreme court in the case of *Lion v. Burtis*, 20 Johns. 483, and Spencer, Ch.J., in delivering the opinion of the court, referred to the case of *Anderson v. Jackson*, in the Court of Errors, and said it was there decided that the devise to Joseph Eden did not create an estate tail, but that the devise over, upon the event of his dying without issue, was a limitation over as an executory devise to Medcef, the survivor. That the opinion

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of the court was that the devise over to the survivor did not depend on an indefinite failure of issue, but only on a failure of issue at the time of Joseph's death. "This,

then," said the Chief Justice,

"is the law of the land, and must govern every other case coming within the same principle. And I must be allowed to say that subsequent reflection has confirmed my conviction of the soundness of the decision in the Court of Errors. *Stare decisis* is a maxim essential to the security of property. The decisions of courts of law become a rule for the regulation of the alienation and descent of real estate, and when that rule has been sanctioned and adopted in our courts, it ought to be adhered to unless manifestly wrong and unjust."

Other questions were, however, embraced in this case, and it was afterwards brought before the Court of Errors, 2 Owen. 333, and a preliminary question was made whether the court would hear an argument on the point decided in the case of *Anderson v. Jackson*. But as that question was so involved with other questions in the cause, it was found difficult entirely to separate them, and the argument proceeded; the president of the court at the same time observing that he should suppose counsel would not question any point plainly decided in *Anderson v. Jackson*, both in its principle and object, and that he had no doubt the court would abide by its decision in that case. In the course of the argument, when the bearing of the case of *Anderson v. Jackson* was fully understood, it was proposed to stop the counsel, so far as the decision in that case was called in question, and the Chancellor (Sanford) expressed his determination to adhere to that decision. That he understood it to fix distinctly a construction upon the clause which devises to Joseph Eden, and was prepared to say it did not carry an estate tail, but a fee determinable on his death without issue then living. And although the counsel were allowed to proceed, and the question again fully argued, the court, when they came to pronounce judgment, disclaimed in very strong language any intention to call in question the decision of *Anderson v. Jackson*. Cramer, Senator, observes:

"The court has been called upon in a very solemn manner to review its decision on an important

rule of law affecting titles to real property. But we have not, in my view of the subject, the power (and by power I mean right) now to question or impeach that judgment rendered by this Court, and founded on the uniform decisions of the supreme court during a period of more than seventeen years. Wills have been made and estates settled on the principle of these cases, which have been deemed and treated as the settled law of the land."

And the judgment of the supreme court was unanimously affirmed, with the exception of one senator.

After such a settled course of decisions, and two of them in the highest court of law in the state, upon the very clause in the will now under consideration, deciding that Joseph Eden did not take an estate tail, a contrary decision by this Court would present a conflict between the state courts and those of the United States, productive of incalculable mischief. If, after such an uninterrupted series of decisions for twenty years, this question is not at rest in New York, it is difficult to say when any question can be so considered. And it will be seen by reference to the decisions of this Court that to establish a contrary doctrine here would be repugnant to the principles which have always governed this Court in like cases.

It has been urged, however, at the bar that this Court applies this principle only to state constructions of their own statutes. It is true that many of the cases in which this Court has deemed itself bound to conform to state decisions, have arisen on the construction of statutes. But the same rule has been extended to other cases, and there can be no good reason assigned why it should not be when it is applying settled rules of real property. This Court adopts the state decisions because they settle the law applicable to the case; and the reasons assigned for this course, apply as well to rules of construction growing out of the common law, as the statute law of the state, when applied to the title of lands. And such a course is indispensable in order to preserve uniformity, otherwise the peculiar Constitution of the judicial tribunals of the states and of the United States would be productive of the greatest mischief and confusion.

The case of *McKeen v. Delancy's Lessee*, 5 Cranch 32, arose upon the construction of a statute. And the Court said

"If the act then in question was for the first time to be construed, the opinion of the court would be, that the deed was not properly proved, and therefore not legally recorded. But in construing the statutes of a state on which land titles depend, infinite mischief would ensue should this Court observe a different rule from that which has been long established in the state."

And whether these rules of land titles grow out of the statutes of a state or principles of the common law adopted and applied to such titles can make no difference. There is the same necessity and fitness in preserving uniformity of decisions in the one case as in the other. So also in the cases of *Polk's Lessee v. Wendal*, 9 Cranch 98, and *Thatcher v. Powell*, 6 Wheat. 127, the construction of state statutes respecting real property was under consideration, and the Court said they will adopt and be governed by the state construction when that is settled, and can be ascertained, especially where the title to lands is in question. But in the case of *Blight's Lessee v. Rochester*, 7 Wheat. 550, which arose in Kentucky, the question was not upon the construction of any statute, but related to the doctrine of estoppel, between vendor and vendee, and it was urged at the bar, that the question was settled by authority in Kentucky, and cases cited to establish the point. The authorities were examined, and considered by the court as not deciding the question; but no intimation is given that they were inapplicable, because the question did not involve the construction of a statute. And the case of *Daly v. James*, 8 Wheat. 535, which arose in Pennsylvania, is directly in point. The question there was upon the interpretation of a clause in a will, which had received a judicial construction by the supreme court of that state. And it was urged, as it has been here, that it was not one of those cases where the decisions of state courts on questions of local law established rules of property which this Court could not disturb. But the court said it always listened with respect to the adjudications of the different states, when they apply. And in a question of so much doubt, they were disposed

upon this point, to acquiesce in the decision of the supreme court of that state, *Smith v. Folwell*, 1 Binn. 546, that the word "heirs" in the will is to be construed to be a word of limitation.

In that case this Court adopted a single decision of the state court upon the question. But in the case now under consideration there have been two decisions in the two highest courts of law in the state upon the identical question now in judgment, and which were in conformity to a settled course of adjudications for twenty years past.

After such a series of adjudications for such a length of time in the state courts upon the very point now before us and relating to a rule of landed property in that state, we do not feel ourselves at liberty to treat it as an open question.

*Judgment affirmed with costs.*