

Lessee of Brewer Vs. Blougher

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SooperKanoon Citation : sooperkanoon.com/79712

Court : US Supreme Court

Decided On : 1840

Appeal No. : 39 U.S. 178

Appellant : Lessee of Brewer

Respondent : Blougher

Judgement :

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U.S. Supreme Court Lessee of Brewer v. Blougher, 39 U.S. 14 Pet. 178 178 (1840)

Lessee of Brewer v. Blougher

39 U.S. (14 Pet.) 178

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF MARYLAND

SYLLABUS

Construction of the Act of the Legislature of Maryland passed December session, 1825, entitled, "An act relating to Illegitimate Children," which provides that "the

illegitimate child or children of any female, and the issue of any such child or children," are declared capable in law

"to take and inherit both real and personal estate from their mother and from each other, and from the descendants of each other, as the case may be, in like manner as if born in lawful wedlock."

J.S., who had several children who were the children of an incestuous connection, conveyed a tract of land in the State of Maryland to one of those children. The grantee died intestate and without issue, seized in fee of the land. Two brothers and one sister of this incestuous intercourse survived him. *Held* that under the act of Maryland "Relating to Illegitimate Children," they inherited the estate of their deceased brother.

It is undoubtedly the duty of the court to ascertain the meaning of the legislature from the words used in the statute and the subject matter to which it relates, and to restrain its operation within narrower limits than its words import if the court is satisfied that the literal meaning of its language would extend to cases which the legislature never designed to include in it. According to the principles of the common law, an illegitimate child is *filius nullius*, and can have no father known to the law, and when the legislature speaks in general terms of children of that description, without making any exceptions, the court is bound to suppose they design to include the whole class.

An action of ejectment was instituted by the plaintiff in error, a citizen of Pennsylvania, in the Circuit Court of the United States for the District of Maryland, for the recovery of a tract of land situated in Allegany County, in the State of Maryland, called "Part of Grassy Cabin."

The following were the facts of the case, as agreed upon by the parties to the suit.

John Sloan, late of Allegany County, was twice married; by his first wife he had but one child, namely Mary Sloan, and by his second wife he had the following children, namely William Sloan, John Sloan, Elizabeth Sloan, Peggy Sloan, Sally Sloan, and Jane Sloan, and that the plaintiff's lessor is the husband of the said

Elizabeth.

After the death of his second wife, John Sloan lived and cohabited with and married Mary Sloan, his daughter, by his first wife, and had by her the following children, viz.: William Sloan, John Joseph Sloan, Mary Sloan, Jesse Sloan, and David Sloan; and William Sloan is since dead.

The said John Sloan, the father, was many years ago seized and possessed of a tract of land lying in Allegany County, Maryland, called "Grassy Cabin," containing four hundred twenty-seven and one-fourth acres, to which tract he had an undisputed legal title.

The said John Sloan being so seized and possessed of the said tract of land, conveyed the same for a valuable consideration, by a deed of bargain and sale, duly executed, acknowledged, and recorded according to law, to John Joseph Sloan, and that the said

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John Joseph Sloan became and was seized and possessed of the said tract of land, under and by virtue of the said deed.

The said John Sloan, the father, and Mary Sloan, his said daughter, by his first wife, both departed this life about the year 1826, and the said John Joseph Sloan died about the year 1832, seized and possessed of the said tract of land, intestate, and without issue, and unmarried, leaving Mary Sloan, Jesse Sloan, and David Sloan, his brothers and sister, children of the said Mary Sloan, by her said father as aforesaid, him surviving.

That the said Mary Sloan, Jesse Sloan, and David Sloan, being possessed of and claiming title to the said tract of land called "Grassy Cabin" by descent from the said John Joseph Sloan, conveyed the same by a deed of bargain and sale duly executed, acknowledged, and recorded according to law to Jacob Blougher and Daniel Blougher, the defendants.

After the death of the said John Joseph Sloan, the plaintiff, Henry Brewer, obtained out of the Western Shore Land Office a special warrant of escheat to resurvey and affect the said tract of land, called "Grassy Cabin," for an alleged want of the heirs of John Joseph Sloan, who died seized thereof in fee and intestate as aforesaid, and the patent was granted to the said Henry Brewer.

The patent was in legal form, and recited the escheat of the land "for want of heirs of John Joseph Sloan, who died seized of the premises."

The question for the decision of the circuit court upon these facts was whether, upon the death of the said John Joseph Sloan, according to the laws and statutes of Maryland, the said tract of land, "Grassy Cabin," did not pass by descent to the said Mary Sloan, Jesse Sloan, and David Sloan, his illegitimate sister and brothers as aforesaid. If the court shall be of opinion that the said tract of land did not so pass by descent, then judgment to be given with costs for the plaintiff. If the court shall be of opinion that the said tract of land did so pass by descent, then judgment to be given with costs, for the defendants. Either party to be at liberty to appeal or sue out a writ of error, it being admitted that the value of the land in controversy is at least twenty-five hundred dollars.

The circuit court gave a judgment for the defendants, and the plaintiff prosecuted this writ of error.

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The CHIEF JUSTICE TANEY delivered the opinion of the Court.

This case depends upon the construction of the Act of Assembly of Maryland, passed at December session, 1825, ch. 156, entitled "An act relating to Illegitimate Children." By this act of assembly, "The illegitimate child or children of any female, and the issue of any such child or children," are declared to be incapable in law

"to take and inherit both real and personal estate from their mother, or from each other, or from the descendants of each other, as the case may be, in like manner as if born in lawful wedlock."

It appears from the record that a man by the name of John Sloan had several children, who were the issue of an incestuous connection of a shocking character. He conveyed a tract of land, called "Grassy Cabin," situated in Allegany County in the State of Maryland, to John Joseph Sloan, one of these children. John Joseph Sloan, the grantee, died about the year 1832 intestate and without issue and seized in fee simple of this land. Two brothers and one sister, the

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issue of the same incestuous intercourse, survived him, and they conveyed the land to Jacob Blougher and Daniel Blougher, the defendants in error.

The plaintiff in error, after the death of John Joseph Sloan, took out an escheat warrant for the above-mentioned tract of land upon the ground that there could be no lawful heirs of the said Sloan, and having obtained a patent for the said land, he brought an ejectment for it in the Circuit Court of the United States for the District of Maryland, and, the judgment of that court being against him, the case has been brought here by a writ of error.

There is no controversy about the facts in the case. It was tried in the circuit court upon a case stated, and has been elaborately argued her, and many authorities cited to show that the court, in construing a statute, may restrict the literal meaning of the words used in order to effectuate the intention of the legislature. The plaintiff in error contends that in passing the act of assembly above mentioned, the legislature never contemplated a case like the present, and never intended to give the right of inheritance to the children of an intercourse so deeply criminal.

It is undoubtedly the duty of the court to ascertain the meaning of the legislature from the words used in the statute and the subject matter to which it relates, and to restrain its operation within narrower limits than its words import if the court is satisfied that the literal meaning of its language would extend to cases which the legislature never designed to embrace in it.

In the case before us the words are general, and include all persons who come within the description of illegitimate children. According to the principles of the

common law, an illegitimate child is *filius nullius*, and can have no father known to the law. And when the legislature speaks in general terms of children of that description without making any exceptions, we are bound to suppose they design to include the whole class. And as illegitimate children, in a question as to the inheritance or distribution of property, can have no father whom the law will acknowledge as such, how can we, in a controversy like this, inquire who was the father of these children in order to determine upon their right to the property?

The expediency and moral tendency of this new law of inheritance are questions for the Legislature of Maryland, and not for this Court. It seems to have been supposed by the legislature that as there could be no doubt of the relation which the mother bears towards her illegitimate children, the reasons of policy which must always preclude such children from claiming the inheritance of anyone upon the ground that he was their father do not apply to the property of the mother or the property of each other. To this extent, therefore, the right to inherit is given by this act of assembly. And it would appear to have been given upon the principle that it is unjust to punish the offspring for the crime of the parents. The right of the children therefore is not made to depend upon the degree of guilt of which they were the offspring. All illegitimate

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children are the fruits of crime -- differing, indeed, greatly in its degree of enormity. And the legislature, if it had been proper to do so, might undoubtedly have made the right to the inheritance to depend upon the character of the offense committed by the parents. But they have used no language showing any such design. On the contrary, they appear to have looked at the unoffending character of the children, rather than at the criminal conduct of the parents of whom they were the offspring.

It has been said that the expressions in the enacting clause of this act of assembly, which declares that the illegitimate children spoken of shall be capable of inheriting from their mother and from each other "in like manner as if born in lawful wedlock" imply that those children only were intended to be provided for whose parents were capable of contracting a lawful marriage with each other. The

same argument has also been urged upon the proviso, which declares, that nothing in the law shall be construed

"to change the law respecting illegitimate persons whose parents marry after the birth of such persons and who are by them acknowledged agreeably to the seventh section of the act of assembly passed at December session, 1820, ch. 191."

We do not perceive the force of this argument. It is admitted that the act of assembly now in question must be taken in connection with the previous laws of Maryland regulating the descent of real estate and the distribution of personal property, for this law forms a part of the entire system of legislation on these subjects. But the expressions referred to in the enacting clause, so far from implying that the parents may marry, presupposes that they never will marry, and provides for the children on that account. The expressions are evidently used merely to denote the shares and proportions in which such children are to take, and the reference for the rule is made to children born in wedlock, in order to save the necessity of introducing into this law, a table of descents as to real property and of distribution as to personal.

In relation to the proviso it is proper to remark that the rights of primogeniture were abolished in Maryland by the act of 1786, ch. 45. There was a provision in this law declaring that illegitimate children whose parents afterwards married and acknowledged them should be thereby legitimated and made capable of taking and inheriting property as if born in lawful wedlock. The act of 1820 embodied the original act to direct descents, with its various supplements, into one law and provided for some laws of descents which had before been omitted. This act of assembly, of course, contained the clause in favor of illegitimate children whose parents should afterwards marry, which had been introduced into the act of 1786 and which had always been the law of the state from the time that act went into operation. And the proviso in the act of assembly now in question was introduced manifestly from the apprehension that the general expressions of the enacting clause of the law might be held to reach those whose parents afterwards

married and deprive them of the greater rights of inheritance which belonged to them under the previous acts of assembly. The proviso, like the expressions in the enacting clause, shows that the legislature was not looking to children whose parents would probably marry, but to children whose parents never would marry, and it make no distinction between the issue of those who could not and of those who would not become lawfully joined in wedlock. If from any cause whatever the parents were never married, the children were illegitimate, and all illegitimate children, under this act of assembly, may inherit from their mother and from each other. It follows that the tract of land called "Grassy Cabin," upon the death of John Joseph Sloan, descended to his brothers and sister before mentioned, and the plaintiff is not entitled to recover.

The judgment of the circuit court is therefore affirmed.

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 Maryland, and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this Court that the judgment of the said circuit court in this cause be and the same is hereby affirmed with costs.