

**Olmsted Vs. Olmsted**

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**Court :** US Supreme Court

**Decided On :** Feb-21-1910

**Appeal No. :** 216 U.S. 386

**Appellant :** Olmsted

**Respondent :** Olmsted

**Judgement :**

Olmsted v. Olmsted - 216 U.S. 386 (1910)

U.S. Supreme Court Olmsted v. Olmsted, 216 U.S. 386 (1910)

**Olmsted v. Olmsted**

**No. 102**

**Argued January 25, 1910**

**Decided February 21, 1910**

**216 U.S. 386**

*ERROR TO THE SUPREME COURT*

*OF THE STATE OF NEW YORK*

## **SYLLABUS**

The law of a state in which land is situated controls and governs its descent, alienation, and transfer, and neither a decree of a court or a statute of another state can have any efficacy as to title of real estate beyond the jurisdiction of that state.

The full faith and credit clause of the federal Constitution does not require the courts of a state to give effect to a statute legitimatizing children born before wedlock after marriage of their parents so as to affect interests which, under the law of the state where the property is located, had been so vested that it cannot be affected by subsequent legislation, and so held that the courts of New York are not required to give effect to a statute of Michigan so as to vest in children of the testator legitimatized by such statute property, the title to which had already vested in his other legitimate children.

190 N.Y. 458 affirmed.

The facts are stated in the opinion.

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MR. JUSTICE DAY delivered the opinion of the Court.

This case is brought here because of alleged violation, in the judgment of the supreme court of New York, of the full faith and credit clause of the federal Constitution. The judgment was entered in the supreme court of New York by an order of the Court of Appeals of the same state. 190 N.Y. 458.

The facts, in substance, are: Silas Olmsted, a resident of the State of New York, died in that state in 1874, devising by his will, duly probated, a one-half interest in certain real estate in New York to his son, Benjamin F. Olmsted, with the remainder over to the lawful issue of said Benjamin. In 1850, Benjamin F. Olmsted, while a resident of the State of New York, married Mary Jane Olmsted, of the State of New York, and lived with her in that state until January, 1870.

Benjamin F. Olmsted had children by that marriage, who are defendants in error in this case. On February 28, 1874, without procuring a divorce from his first wife, Benjamin F. Olmsted went through a marriage ceremony in New Jersey with Sarah Louise Welchman. Two children, John H. and William H. Olmsted, who are the plaintiffs in error in this case, were born, in the State of New Jersey, of this attempted marriage. Thereafter, in 1880, Benjamin F. Olmsted and Sarah Louise Welchman, with their two children, went to live in the State of Michigan. In 1882, Benjamin F. Olmsted secured a divorce from his first wife, Mary Jane Olmsted, in accordance with the laws of Michigan, in the Circuit Court of Wayne County, Michigan. Service was made of process by publication in a Detroit newspaper, and no personal service was made on Mary Jane Olmsted, nor did she appear in the action, judgment being granted by default. On August 22, 1882, Benjamin F. Olmsted and Sarah Louise Welchman were married in the State of Michigan. By the provision of a statute enacted in that state in 1881, children born out of wedlock became legitimate upon the subsequent marriage of

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their parents. In January, 1883, in an action in the supreme court of New York, a decree of separation and for alimony was granted to Mary Jane Olmsted from her husband, Benjamin F. Olmsted. Benjamin F. Olmsted did not appear in that action, and the record contains no evidence of service of summons upon him. He was represented by counsel on a motion to sequester his property, and upon appeal from an order thereon. The judgment was affirmed. January 22, 1902, and Benjamin F. Olmsted 30, 1900; Mary Jane Olmsted died January 22, 1902, and Benjamin F. Olmsted July 16, 1905.

The action was for partition of the New York real estate devised under the will of Silas Olmsted. The plaintiffs in error, John H. and William H. Olmsted, children of the marriage with Sarah Louise Welchman, claim the right to participate equally with the children of Benjamin F. Olmsted and Mary Jane Olmsted, as lawful issue of Benjamin F. Olmsted, in the real estate located in the State of New York and devised under the will of Silas Olmsted. The supreme court of New York, by its judgment, denied the right of the plaintiffs in error to thus participate.

The opinion delivered in the New York Court of Appeals shows that its decision was rested, in part, upon the invalidity of the Michigan marriage, because the courts of Michigan had never obtained jurisdiction over Mary Jane Olmsted, the first wife of Benjamin F. Olmsted. For that view, the learned court, in denying that it was bound to give full faith and credit to such a decree and to the Michigan statute of 1881, cited *In re Kimball*, 155 N.Y. 68; *Winston v. Winston*, 165 N.Y. 555; *Haddock v. Haddock*, [201 U. S. 562](#) ; *Atherton v. Atherton*, 155 N.Y. 129, [181 U. S. 181](#) U.S. 155.

It also puts its decision on the ground that the Michigan statute of 1881, legitimating the children born previous to marriage, could not have the effect of admitting them to participate in the division of the real estate in the State of New York, as it was passed long after the death of Silas

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Olmsted and the probate of his will, under which his legitimate grandchildren had vested estates as remaindermen, subject to the life use in the father. And further, said the Court of Appeals of New York, in speaking of the contention that the Michigan act should be given full faith and credit in the State of New York:

"Should we sanction the doctrine contended for, then the legislature in any state could in effect nullify our own statutes and deprive our own citizens of property which, under our laws, they had become lawfully vested with and entitled to receive. Not only this, but the statute of Michigan passed in 1881 could change the provisions of a will executed here and probated in 1874, bringing in persons as remaindermen who, under the provisions of the will, were not remaindermen, nor entitled to share in the estate. We think this should not be permitted."

By the laws of New York, 1895, c. 531, it is provided:

"SEC. 1. All illegitimate children whose parents have heretofore intermarried, or shall hereafter intermarry, shall thereby become legitimized and shall be considered legitimate for all purposes. Such children shall enjoy all the rights and privileges of legitimate children, provided, however, that vested interests or estates

shall not be divested or affected by this act."

By Chapter 272 of the laws of New York of 1896, Vol. 1, it is provided, 18:

"An illegitimate child whose parents have heretofore intermarried, or shall hereafter intermarry, shall thereby become legitimized and shall be considered legitimate for all purposes, entitled to all the rights and privileges of a legitimate child; but an estate or interest vested [or trust created] before the marriage of the parents of such child shall not be divested or affected by reason of such child being legitimized."

The question therefore is as to the title to real estate in the State of New York. Does the full faith and credit clause of the federal Constitution require that effect be given to the

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Michigan Act of 1881, under the circumstances which we have detailed?

In *Clarke v. Clarke*, [178 U. S. 186](#) , the question was as to the effect to be given to a judgment rendered in the supreme court of South Carolina in the courts of the State of Connecticut respecting real estate situated in the latter state. The South Carolina court held that a certain will worked an equitable conversion into personalty at the time of the death of the testatrix of all her real estate, wherever situated, and that the executor of the will was authorized to administer the same as personalty, and to sell and convey the same for the purpose of executing the will. The Supreme Court of Connecticut refused to follow the judgment of the Supreme Court of South Carolina, and the case was brought here under the full faith and credit clause. This Court, in disposing of the question, said:

"It is a doctrine firmly established that the law of a state in which land is situated controls and governs its transmission by will or its passage in case of intestacy. This familiar rule has been frequently declared by this court, a recent statement thereof being contained in the opinion delivered in *DeVaughn v. Hutchinson*, [165 U. S. 566](#) , where the Court said (p. [165 U. S. 570](#) ):"

" It is a principle firmly established that to the law of the state in which the land is situated we must look for the rules which govern its descent, alienation, and transfer, and for the effect and construction of wills and other conveyances. [United States v. Crosby](#), 7 Cranch 115; [Clark v. Graham](#), 6 Wheat. 577; [McGoon v. Scales](#), 9 Wall. 23; *Brine v. Hartford Insurance Co.*, [96 U. S. 627](#) ."

In speaking of the contention of the plaintiff in error, that the South Carolina judgment must be given full force and effect, the Court further said:

"The proposition relied on therefore is this although the court of last resort of Connecticut (declaring the law of that state) has held that the real estate in question had not become

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personal property by virtue of the will of Mrs. Clarke, nevertheless it should have decided to the contrary, because a court of South Carolina had so decreed. This, however, is but to argue that the law declared by the South Carolina court should control the passage by will of land in Connecticut, and therefore is equivalent to denying the correctness of the elementary proposition that the law of Connecticut, where the real estate is situated, governed in such a case."

In the case of *Fall v. Eastin*, decided at this term, [215 U. S. 1](#) , the same principle was recognized. In that case, it was held that a deed made by a master, by order of the court, in the State of Washington, in execution of a decree where the court had jurisdiction of the parties, did not have any efficacy as to the title to real estate beyond the jurisdiction of the court. It is unnecessary to review the previous cases from this Court; a number of them are examined in the opinion in *Fall v. Eastin*.

After stating the principle that the disposition of real estate, whether by deed, descent, or otherwise, must be governed by the laws of the state where the real estate is situated, this Court said (215 U.S. [215 U. S. 12](#) ):

"This doctrine is entirely consistent with the provision of the Constitution of the United States which requires a judgment in any state to be given full faith and credit in the courts of every other state. This provision does not extend the jurisdiction of the courts of one state to property situated in another, but only makes the judgment rendered conclusive on the merits of the claim or subject matter of the suit."

"It does not carry with it into another state the efficacy of a judgment upon property or persons, to be enforced by execution. To give it the force of a judgment in another state, it must become a judgment there, and can only be executed in the latter as its laws permit."

" [M'Elmoyle v. Cohen](#), 13 Pet. 312."

The principle established by these cases is applicable to the case at bar. The full faith and credit clause of the Constitution

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applies with no more effect to the legislative acts of a foreign state than it does to the judgments of the courts of such state. The controversy herein concerns an interest in real estate located in the State of New York. Under a will probated in the State of New York, where the land is situated, it was devised to the lawful issue of Benjamin F. Olmsted. The contention of the plaintiffs in error is that, by the act of 1881 of the State of Michigan, they had become legitimate, and are accordingly entitled to participate in the division of the estate. To this contention the highest court of the State of New York has answered that neither the law of the State of Michigan nor the act of the State of New York legitimating children under such circumstances can have the effect and force of disturbing interests already vested when the acts were passed.

We think there is nothing in the due faith and credit clause which requires the courts of New York to give the effect contended for to the Michigan statute. The Legislature of Michigan had no power to pass an act which would affect the transmission of title to lands located in the State of New York. No more had it

power to legislate concerning the titles to lands in New York than the courts of Michigan, by their judgments, would have authority to adjudicate such rights.

We are not concerned with the correctness of the decision of the Court of Appeals of New York interpreting its statutes and applying the law of its jurisdiction to the construction of the will of Silas Olmsted. We hold that there is nothing in the federal Constitution requiring the courts of the State of New York to give force and effect to the statute of the State of Michigan so as to control the devolution of title to lands in New York.

*Judgment affirmed.*

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