Messenger Vs. Anderson

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Court : US Supreme Court

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Appeal No. : 225 U.S. 436

Appellant : Messenger

Respondent : Anderson

Judgement :

Messenger v. Anderson - 225 U.S. 436 (1912)
U.S. Supreme Court Messenger v. Anderson, 225 U.S. 436 (1912)

Messenger v. Anderson

No. 150

Argued January 19, 22, 1912

Decided June 2, 1912

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CERTIORARI TO THE CIRCUIT COURT OF APPEALS

FOR THE SIXTH CIRCUIT

SYLLABUS

Where the circuit court of appeals has before it, in the second trial of the same case, a will previously construed by it, and meanwhile the highest court of the state in which the real estate affected is situated has construed the will differently, the circuit court of appeals is not bound to adhere to it previous decision as being the law of the case. It may follow, and in such a case it should lean toward an agreement with, the state court.

In the absence of statute, the phrase " law of the case," as applied to the effect of previous order on the later action of the court rendering them in the same case, merely expresses the practice of courts generally to refuse to open what has been decided -- not a limit to their power.

In a conflict between decisions of the state and federal courts, this Court is free when the case comes here.

In this case, in which the circuit court of appeals construed a will as giving testator's son a life interest only, with remainder that he could not affect, and the state court construed it as giving him the estate subject to the divesting clause, *held* that the construction given by the state court was right, and that the circuit court of appeals should have followed it.

Quaere whether the decision of the state court did not finally adjudicate the question of title as between the parties so as to be binding upon every court before which the title might subsequently be discussed.

171 F. 785 reversed.

The facts, which involve the construction of a will affecting real estate in Ohio, and the question of whether the federal courts should follow the state court in such a case, are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

This is an action of ejectment for land in Toledo, Ohio,

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brought by the respondent, Anderson. The case went three times to the circuit court of appeals, and ended in a judgment for the plaintiff. 146 F. 929; 158 F. 250; 171 F. 785. The facts that need to be stated are these: in 1841, Charles Butler assigned an overdue mortgage of the land to Henry Anderson as security for a note of his own. He made default, Anderson brought a bill to foreclose (Butler not being served with process), got a decree, bought in, and got the sale confirmed. For the purposes of this decision, it may be assumed that Anderson got the land in fee simple, subject to some question as to Butler's rights. The plaintiff below, the respondent here, claimed as remainderman under the will of Henry Anderson, who was his grandfather. The petitioner claims under a conveyance from Butler. If the plaintiff's title is bad, that is an end of the case.

In 1846, Henry Anderson, then domiciled in Mississippi, made his will and died, leaving two sons, William and James. These sons executed deeds declaring that their father, Henry, held and intended to hold the land in trust to secure the payment of Butler's note, and Butler subsequently made such payments on the same that it may be assumed that, unless the plaintiff has a title that his father, James, could not affect by the above-mentioned deed, he has none. Whether he has such a title depends on the terms of Henry's will. That instrument, after creating a general trust of substantially all the testator's property, went on thus:

"Item. It is my will that, when my son William arrives at the age of twenty-one years, the trustees . . . shall deliver to him a settlement of the affairs of the trust, and if my debts are then paid, and as soon as that takes place, they shall put him in possession of one-half of my property, reserving thereout two-fifth parts of said moiety, by valuation, which my said trustees shall hold in trust and properly invest and pay over to

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him at the age of twenty-five years. . . . And it is my will that my said trustees hold and invest and pay over the remaining moiety of my estate to my son James at the respective periods of twenty-one and twenty-five years of age, being governed as to the amounts to be paid at each of the respective periods by the same rules and directions as are above laid down in the bequest to William,"

etc.

If these clauses were all, there would be no doubt that William and James got an absolute title when they reached the age mentioned. But a following paragraph reads:

"If either of my sons die without lineal descendants, the one surviving shall take his estate above bequeathed, and if the survivor die without lineal descendants, then"

over to brothers and sisters of the testator. Later in the paragraph, the testator says:

"I make the following explanation: the limitations over on the death of my surviving son without lineal descendants is intended to take effect if there be no lineal descendants living at the time of the decease of such son. Nothing in the foregoing will shall be construed as to deprive either of my sons of disposing of their portions by will on their attaining the age of twenty-one years respectively. The above limitations over shall give way to the provision of such wills."

The testator's son William died in 1850, unmarried and intestate. The other son, James, died in 1902, intestate and leaving the plaintiff his only child.

The circuit court of appeals, when this case first came up, held that James took only a life estate, and that the plaintiff got a remainder that his father could not affect. 146 F. 929. But, pending the proceedings, another case was tried in the state courts between these same parties concerning other parcels of land in Toledo, depending on the same title, in which it was decided by the lower court and affirmed on writ of error by the Supreme Court of Ohio that James took a fee, subject to be defeated

only by his leaving no lineal descendant. *Anderson v. United Realty Co.,* 79 Ohio St. 23, *s.c.,* 222 U. S. 222 U.S. 164. The judgment of the lower court was pleaded, but it was held by the circuit court of appeals, after the affirmance by the supreme court, that its own previous decision was the law of the case, and that it was not at liberty to reverse the judgment, even if the matter was *res judicata* on the principle laid down in *New Orleans v. Citizens' Bank,* 167 U. S. 371 , 167 U. S. 396 . *See* *Parrish v. Ferris,* 2 Black 606. In the absence of statute, the phrase, "law of the case," as applied to the effect of previous orders on the later action of the court rendering them in the same case, merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power. *King v. West Virginia,* 216 U. S. 92 , 216 U. S. 100 ; *Remington v. Central Pacific R. Co.,* 198 U. S. 95 , 198 U. S. 99 -100; *Great Western Telegraph Co. v. Burnham,* 162 U. S. 339 , 162 U. S. 343 . Of course, this Court, at least, is free when the case comes here. *Panama R. Co. v. Napier Shipping Co.,* 166 U. S. 280 ; *United States v. Denver & Rio Grande R. Co.,* 191 U. S. 84 . In our opinion, even apart from the effect of the state judgment as an adjudication, it should have been followed, if for no other reason, because at least as against the decision of the circuit court of appeals, it was right.

The later clauses that we have quoted from the will make a difference, it is true, according to whether the sons leave lineal descendants at their death or not. But the interest thus exhibited in descendants is satisfied by the probability that they would inherit the property or be provided for out of it. It is not shown to be so definite and paramount as to cut down the gifts imported by the previous words except in the single event in which the will does so in terms. On the contrary, the still later provision that nothing shall be construed to "deprive" the sons of the power to dispose of "their portions" by will

indicates that the testator meant the sons to be owners of his estate, subject to the divesting clause.

We should lean toward an agreement with the state courts, especially in a matter like this. In the present instance we see no sufficient reason for refusing to follow their judgment even if, for any cause not pointed out to us, it did not finally adjudicate the question of title as between these parties in such wise as to be binding upon every court before which that title subsequently might be discussed.

Judgment reversed.