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Sizemore Vs. Brady

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Decided On : Dec-21-1914

Appeal No. : 235 U.S. 441

Appellant : Sizemore

Respondent : Brady

Judgement :

Sizemore v. Brady - 235 U.S. 441 (1914)
U.S. Supreme Court Sizemore v. Brady, 235 U.S. 441 (1914)

Sizemore v. Brady

No. 59

Submitted November 4, 1914

Decided December 21, 1914

235 U.S. 441

ERROR TO THE SUPREME COURT

OF THE STATE OF OKLAHOMA

SYLLABUS

The Original Creek Agreement of March 1, 1901, was not a grant *in praesenti* which invested the then living members of the tribe and their heirs with absolute rights that could not be recalled or impaired by Congress without violating the due process clause of the Fifth Amendment.

Unless and until the Original Creek Agreement of 1901 was carried into effect, Congress possessed plenary power, as before, to deal with the lands and funds to which it related as tribal property. *Choate v. Trapp,* 224 U. S. 665 .

The Supplemental Creek Agreement of 1902 and the Act of May 27, 1902, repealing the provisions of the Act of March 1, 1901, recognizing the tribal laws of descent and distribution and declaring that the descent and distribution of Creek lands and moneys should be in accordance with the specified laws of Arkansas, were valid acts within the plenary power of Congress to deal with Indians and their tribal property.

An exertion of the administrative control of the government over tribal property of tribal Indians is subject to change by Congress at any time before it is carried into effect and while tribal relations continue.

The descent and distribution of a Creek Indian Allotment, not selected or made until after the Supplemental Creek Agreement of 1902 went into effect, are controlled under that agreement by Chapter 49 of Mansfield's Digest of the Law of Arkansas.

Under Chapter 49 of Mansfield's Digest of the Law of Arkansas, a paternal cousin of the intestate inherits real estate to the exclusion of maternal cousins.

33 Okl. 169 affirmed.

The facts, which involve the construction of the provisions in the Original and Supplemental Creek Agreements regarding the descent and distribution of Creek Indian allotments, are stated in the opinion.

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MR. JUSTICE VAN DEVANTER delivered the opinion of the Court.

This was a suit to determine conflicting claims to an allotment selected and made after August 8, 1902, on behalf of Ellis Grayson, a Creek citizen duly entitled to enrollment, who died unmarried March 1, 1901, leaving as his only surviving relatives three first cousins, one on the paternal and two on the maternal side. All were Creek citizens. In the papers evidencing the selection and approval of the allotment, as also in the ensuing tribal deed, the beneficiaries were designated as the "heirs" of the deceased, without otherwise naming them, and this was in accord with the usual practice. The suit was brought by the paternal cousin, who insisted that the title under the allotment and tribal deed passed to him alone. The others were made defendants, and answered asserting an exclusive right in themselves. Each side also advanced an alternative claim that the three took the land in equal parts. Two questions of law were involved: first, whether the beneficiaries were to be ascertained according to the Creek tribal law or according to an Arkansas law presently to be noticed, and second, whether the governing law preferred either paternal or maternal relatives when all were of the same degree. The trial court, concluding that the tribal law was applicable and preferred maternal relatives, gave judgment for the defendants, but the supreme court of the state held that the Arkansas law was controlling and preferred paternal relatives, so the decision below was reversed, with a direction that judgment be entered for the plaintiff. 33 Okl. 169. The defendants then sued out this writ of error.

Anterior to the legislation which we must consider, the Creek lands and funds belonged to the tribe as a community, and not to the members severally or as tenants in common. The right of each individual to participate in

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the enjoyment of such property depended upon tribal membership, and when that was terminated by death or otherwise, the right was at an end. It was neither alienable nor descendible. Under treaty stipulations, the tribe maintained a

government of its own, with legislative and other powers, but this was a temporary expedient, and in time proved unsatisfactory. Like other tribal Indians, the Creeks were wards of the United States, which possessed full power, if it deemed such a course wise, to assume full control over them and their affairs, to ascertain who were members of the tribe, to distribute the lands and funds among them, and to terminate the tribal government. This Congress undertook to do. The earlier legislation was largely preliminary, and need not be noticed.

The first enactment having a present bearing is that of March 1, 1901, 31 Stat. 861, c. 676, called the "Original Creek Agreement," which went into effect June 25, 1901, 32 Stat.1971. It made provision for a permanent enrollment of the members of the tribe, for appraising most of the lands and allotting them in severalty with appropriate regard to their value, for using the tribal funds in equalizing allotments, for distributing what remained, for issuing deeds transferring the title to the allotted lands to the several allottees, and for ultimately terminating the tribal relation. In 28, this act directed that the enrollment, except as to children, should include "all citizens who were living" on April 1, 1899, and entitled to enrollment under the earlier legislation, and then declared that,

"if any such citizen has died since that time, or may hereafter die before receiving his allotment of lands and distributive share of all the funds of the tribe, the lands and money to which he would be entitled, if living, shall descend to his heirs according to the laws of descent and distribution of the Creek Nation, and be allotted and distributed to them accordingly. "

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So much of that act as recognized the tribal laws of descent and distribution was repealed by the Act of May 27, 1902, [Footnote 1] 32 Stat. 258, c. 888, which also provided:

"And the descent and distribution of lands and moneys provided for in said act [March 1, 1901] shall be in accordance with the provisions of chapter forty-nine of Mansfield's Digest of the Statutes of Arkansas in force in Indian Territory."

This was repeated, with a qualification not material here, in 6 of the Act of June 30, 1902, 32 Stat. 500, c. 1323, called the "Supplemental Creek Agreement," which went into effect August 8, 1902. *See* 32 Stat. 2021; *Tiger v. Western Investment Co.,* 221 U. S. 286 , 221 U. S. 301 .

Ellis Grayson was living April 1, 1899, and entitled to enrollment. Had he lived, he would have been entitled, under the original agreement, to participate in the allotment and distribution of the tribal property. But he died March 1, 1901, before the agreement went into effect and without receiving any part of the lands or funds of the tribe. In these circumstances, the agreement contemplated that his heirs should take his place in the allotment and distribution, and should receive "the lands and money to which he would be entitled, if living;" and it also contemplated that effect should be given to the Creek laws of descent and distribution in determining who were his heirs and in what proportions they were to take the property passed to them in his right. But, as before said, the Act of May 27, 1902, and the supplemental agreement repealed the provision giving effect to the Creek laws of descent and distribution and substituted in their stead the laws of Arkansas embodied in Chapter 49 of Mansfield's Digest. This change went into effect before the allotment in question was selected or made, and has an important

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bearing here because, according to the Creek laws, [Footnote 2] the maternal cousins were either the sole heirs or joint heirs with the paternal cousin, while, according to the Arkansas laws, [Footnote 3] the paternal cousin was the only heir.

On the part of the maternal cousins, it is contended that the provisions in the original agreement relating to the allotment and distribution of the tribal lands and funds were in the nature of a grant *in praesenti,* and invested every living member of the tribe and the heirs, designated in the tribal laws, of every member who had died after April 1, 1899, with an absolute right to an allotment of lands and a distributive share of the funds, and that Congress could not recall or impair this right without violating the due process of law clause of the Fifth Amendment to

the Constitution. To this we cannot assent. There was nothing in the agreement indicative of a purpose to make a grant *in praesenti.* On the contrary, it contemplated that various preliminary acts were to precede any investiture of individual rights. The lands and funds to which it related were tribal property, and only as it was carried into effect were individual claims to be fastened upon them. Unless and until that was done, Congress possessed plenary power to deal with them as tribal property. It could revoke the agreement and abandon the purpose to distribute them in severalty, or adopt another mode of distribution, or pursue any other course which to it seemed better for the Indians. And without doubt it could confine the allotment and distribution to living members of the tribe, or make any provision deemed more reasonable than the first for passing to the relatives of deceased members the lands and money to which the latter would be entitled, if living. In short, the power of Congress was not exhausted or restrained by the

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adoption of the original agreement, but remained the same thereafter as before, save that rights created by carrying the agreement into effect could not be devested or impaired. *Choate v. Trapp,* 224 U. S. 665 , 224 U. S. 671 .

In principle, it was so held in *Gritts v. Fisher,* 224 U. S. 640 . There, an act or agreement of 1902 had made provision for allotting and distributing the lands and funds of the Cherokees in severalty among the members of the tribe who were living on September 1, 1902, and an Act of 1906 had directed that Cherokee children born after September 1, 1902, and living on March 4, 1906, should participate in the allotment and distribution. By enlarging the number of participants, the later act operated to reduce the distributive share to which each would be entitled, and, because of this, the validity of that act was called in question, the contention being that the prior act confined the allotment and distribution to the members living on September 1, 1902, and therefore invested them with an absolute right to receive all the lands and funds, and that this right could not be impaired by subsequent legislation. This Court rejected the contention and said (p. 224 U. S. 648):

"No doubt such was the purport of the act. But that, in our opinion, did not confer upon them any vested right such as would disable Congress from thereafter making provision for admitting newly born members of the tribe to the allotment and distribution. The difficulty with the appellants' contention is that it treats the Act of 1902 as a contract when 'it is only an act of Congress, and can have no greater effect.' *Cherokee Intermarriage Cases,* 203 U. S. 76 , 203 U. S. 93 . It was but an exertion of the administrative control of the government over the tribal property of tribal Indians, and was subject to change by Congress at any time before it was carried into effect, and while the tribal relations continued. *Stephens v. Cherokee Nation,* 174 U. S. 445 , 174 U. S. 488 ; *Cherokee Nation v. Hitchcock,* 187 U. S. 294 ; *Wallace v. Adams,* 204 U. S. 415 , 204 U. S. 423 . "

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We have seen that the allotment in question was not selected or made until after the supplemental agreement went into effect. The heirs designated in Chapter 49 of Mansfield's Digest were therefore the true beneficiaries. According to its provisions, as is conceded, the paternal cousin was the sole heir.

Judgment affirmed.

[Footnote 1]

This act went into effect July 1, 1902. *See* Joint Resolution No. 24, 32 Stat. 742.

[Footnote 2]

Perryman's Compiled Creek Laws of 1890, p. 32, 6; Bledsoe's Indian Land Laws,2d ed. 829.

[Footnote 3]

Mansfield's Digest, 2532.

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