Adkins Vs. Arnold

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Appeal No. : 235 U.S. 417

Appellant : Adkins

Respondent : Arnold

Judgement :

Adkins v. Arnold - 235 U.S. 417 (1914)
U.S. Supreme Court Adkins v. Arnold, 235 U.S. 417 (1914)

Adkins v. Arnold

No. 52

Submitted November 5, 1914

Decided December 14, 1914

235 U.S. 417

ERROR TO THE SUPREME COURT

OF THE STATE OF OKLAHOMA

SYLLABUS

Under 16 of the Creek Indian Allotment Act of June 30, 1902, c. 1323, 32 Stat. 500, only allotments to living members of the tribe in their own right were subjected to restrictions upon alienation. Allotments on behalf of deceased members were left unrestricted. *Skelton v. Dill, ante,* p. 235 U. S. 206 .

In putting the laws of Arkansas in force in the Indian Territory by the Acts of May 2, 1890, and February 19, 1903, Congress intended that those laws should have the same force and meaning that they had in Arkansas, and that they should be construed as they had theretofore been interpreted by the supreme court of that state. *Robinson v. Belt,* 187 U. S. 41 .

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Although the laws of Arkansas were put in force in the Indian Territory by different acts of Congress, they were not adopted as unrelated, but as parts of a single system of laws whose relative operation, as determined by the Supreme Court of Arkansas, had become an integral part of them.

The Supreme Court of Arkansas having held prior to the acts of Congress putting either section in force in the Indian Territory that 4621, Mansfield's Digest was a later enactment than 648 and superseded it so far as they were in conflict, Congress must have intended that those sections should be so regarded in the Indian Territory, although 648 was part of a chapter put in force by the later act of Congress.

32 Okl. 167 affirmed.

The facts, which involve the construction of statutes relating to Creek Indian allotments and the laws of descent applicable thereto, are stated in the opinion.

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

This is a suit to foreclose a mortgage upon real property, 80 acres of which were part of a Creek allotment. The allotment was made on behalf of Otheola Adkins, after her death, which occurred in her infancy. Her mother was a Creek woman, duly enrolled as such, but her father was not a Creek citizen. The date of the allotment is not given, but it is conceded that the allotment passed a life estate or more to the mother and nothing to the father. After the allotment was completed and the usual tribal deed issued, the father and mother joined in executing and delivering a deed for the 80 acres to one Arnold, who in turn mortgaged it to the plaintiff. The mother was made a defendant to the suit, and by her answer set up two defenses requiring notice here. One was to the effect that the deed to Arnold was made in violation of restrictions imposed by Congress upon the right to alienate the land, and therefore was void, and the other was to the effect that the deed did not satisfy the requirements of a law of Arkansas, put in force in the Indian Territory by Congress, and therefore did not affect or pass her title. Upon a demurrer to the answer, which set forth the deed and the certificate of its acknowledgment,

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these defenses were held not well taken and there was a judgment for the plaintiff. The judgment was affirmed by the supreme court of the state. 32 Okl. 167,.

Other rulings than those just mentioned were made in the cause, but they need not be noticed, for no federal question was involved in them.

The claim that the deed to Arnold was made in violation of existing restrictions rests upon the assumption that 16 of the Act of June 30, 1902, 32 Stat. 500, c. 1323, imposed restrictions upon the alienation of all Creek allotments. That this is an erroneous assumption is shown is *Skelton v. Dill, ante,* p. 235 U. S. 206 . Only allotments to living members in their own right were subjected to restrictions. Allotments on behalf of deceased members were left unrestricted. Thus, the mother was at liberty to make a sale of her interest to Arnold if she chose.

A right appreciation of the claim respecting the insufficiency of the deed involves a consideration of the acts of Congress adopting and extending over the Indian Territory certain statutes of Arkansas. The Act of May 2, 1890, 26 Stat. 81, c. 182, 31, put in force, until Congress should otherwise provide, several general laws of Arkansas appearing in Mansfield's Digest of 1884, among them being c. 104, concerning the rights of married women. Section 4621 of this chapter reads as follows:

"The real and personal property of any *femme covert* in this state, acquired either before or after marriage, whether by gift, grant, inheritance, devise, or otherwise, shall, so long as she may choose, be and remain her separate estate and property, and may be devised, bequeathed, or conveyed by her the same as if she were a *femme sole,* and the same shall not be subject to the debts of her husband."

The act of February 19, 1903, 32 Stat. 841, c. 707, put in force c. 27 of the Mansfield's Digest of 1884 concerning

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conveyances of real estate insofar as it was applicable and not inconsistent with any law of Congress. Section 648 of this chapter declares:

"A married woman may convey her real estate or any part thereof by deed of conveyance, executed by herself and her husband, and acknowledged and certified in the manner hereinafter prescribed."

The deed to Arnold, if tested by 4621 and the applicable decisions of the Supreme Court of Arkansas, was sufficient to pass the mother's title, but, if tested by 648, it probably was insufficient, because not acknowledged and certified in the manner contemplated by that section.

It is insisted that 648 is inconsistent with 4621, and should be treated as controlling because its adoption by Congress was the later in time. Assuming that the two sections are inconsistent, as claimed, we think 4621 is controlling. While

both were embodied in the Arkansas compilation known as Mansfield's Digest of 1884, 4621 was a later enactment than 648, and superseded the latter insofar as they were in conflict. This was settled by the supreme court of the state before either section was put in force in the Indian Territory (*Bryan v. Winburn,* 43 Ark. 28; *Stone v. Stone,* 43 Ark. 160; *Criscoe v. Hambrick,* 47 Ark. 235), and we think Congress intended they should have the same force and meaning there that they had in Arkansas. *See Robinson v. Belt,* 187 U. S. 41 , 187 U. S. 47 -48. Although put in force in the Indian Territory by different acts, they were not adopted as if they were unrelated, but as parts of a single system of laws whose relative operation, as determined by the Supreme Court of Arkansas, had become an integral part of them. *Pennock v. Dialogue,* 2 Pet. 1, 27 U. S. 18 ; *Cathcart v. Robinson,* 5 Pet. 264, 30 U. S. 280 . It was upon this theory that the Supreme Court of Oklahoma held the mother's deed sufficient.

Judgment affirmed.