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Ross Vs. Day

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Court : US Supreme Court

Decided On : Jan-05-1914

Appeal No. : 232 U.S. 110

Appellant : Ross

Respondent : Day

Judgement :

Ross v. Day - 232 U.S. 110 (1914)
U.S. Supreme Court Ross v. Day, 232 U.S. 110 (1914)

Ross v. Day

No. 122

Argued December 11, 1913

Decided January 5, 1914

232 U.S. 110

ERROR TO THE SUPREME COURT

OF THE STATE OF OKLAHOMA

SYLLABUS

Whether parties had actually improved Cherokee lands in such sense as to give them a preferential right of selection and allotment under 11 of the Act of July 1, 1902, c. 1375, 32 Stat. 716, is not a mere question of law, but one of fact and law, and, so far as it involves the drawing of correct inferences from the evidence, it is a question of fact.

Where, in such a case, the whole controversy depends upon whether the allotment was in accord with actual ownership of the improvements

Page 232 U. S. 111

thereon and there is neither fraud nor clear mistake of law in the decision of the Secretary of the Interior on final appeal to him, his finding are conclusive.

29 Okl. 181 affirmed.

The facts, which involve the title to certain lands allotted under the Cherokee Indian Allotment Act of July 1, 1902, are stated in the opinion.

Page 232 U. S. 112

MR. JUSTICE PITNEY delivered the opinion of the Court.

This action was brought by the present plaintiffs in error for the purpose of obtaining a decree declaring the defendant in error to be a trustee for the plaintiffs with respect to the title to certain lands in the Cherokee Nation (a tract of 20 acres and a separate tract of 10 acres within the same quarter-section) that were allotted to defendant in error under the Act of July 1, 1902 (32 Stat. 716, c. 1375). The decision of the Oklahoma Supreme Court in favor of the latter is reported in 29 Okl. 186.

Plaintiffs are citizens by blood of the Cherokee Nation, and entitled to allotments under 11 of the act; defendant is a registered Delaware, entitled to allotment under

23. Defendant filed applications in the Cherokee Land Office for the lands in controversy on May 5, 1904, and they were set apart to him as portions of his allotment selection. Later, and on July 1 in the same year, the plaintiff, Robert B. Ross, appeared at the Land Office and made application for the same lands, a portion to be set apart to himself and a portion for his wife. These applications being refused because the lands had already been selected by defendant, plaintiffs immediately brought contests, which were consolidated and heard together by

Page 232 U. S. 113

the Commissioner of the Five Civilized Tribes, and he decided in favor of contestants. Upon appeal to the Commissioner of Indian Affairs, this decision was affirmed. But, upon a further appeal to the Secretary of the Interior, there was a decision against the plaintiffs and in favor of defendant. The contests were based upon the same alleged equity upon which the present action is founded -- that is, contestants, admitting the prior allotments to contestee, insisted that his application was subject to their prior right of selection upon the ground that they were the owners of improvements that were upon the property at the time contestee entered upon it. The question turns upon the effect of 11 of the Act of July 1, 1902, already referred to, which reads as follows:

"There shall be allotted by the Commission to the Five Civilized Tribes and to each citizen of the Cherokee tribe, as soon as practicable after the approval by the Secretary of the Interior of his enrollment as herein provided, land equal in value to one hundred and ten acres of the average allottable lands of the Cherokee Nation, to conform as nearly as may be to the areas and boundaries established by the government survey, which land may be selected by each allottee so as to include his improvements."

The findings of the Secretary were as follows: that the lands in question were claimed prior to 1902 by a firm of Johnstone & Keeler, Cherokee citizens, and constituted portions of a large tract which was at one time wholly or partially enclosed by wire fence; that the members of the firm divided their holdings

between them, and Keeler took that part which included the lands in contest; that, on November 1, 1902, Keeler transferred his possessory interest in this land, with the improvements thereon, to the contestants by bill of sale; but at this time the fencing was pretty well down, and the land contained no improvements of material value, except that about one and one-half

Page 232 U. S. 114

acres were under cultivation by one Bixler, a noncitizen who farmed adjacent lands, but whose improvement was not to be credited to contestants; that contestants did nothing in the way of placing improvements upon the property until March 1, 1904, when their son, Dr. Ross, visited the land, and, with the assistance of a surveyor and two other persons, located the lines and indicated them by setting posts or stakes; that these posts were cut and set by two men in about five hours; that some of the posts were about the size of a man's arm, and others were mere stakes or poles; that they were placed from 50 to 100 feet apart, except at the corners, where five posts were set in comparative proximity; the posts bounding the tracts were not joined, by wire or otherwise, so as to make a connected fence, and no further act of improvement or occupation was done in behalf of the contestants. That, on the other hand, the contestee, who had lived in the neighborhood of the land for about thirty years, and claimed to have cut timber, posts, and fuel upon it for twenty-five years past, when he learned on March 1, 1904, of the efforts made by Dr. Ross and his party to survey and enclose it, immediately purchased the necessary wire and proceeded to fence the property, cutting a part of the posts and buying part; that, he being assisted by his son, the work required about two and a half days; that, in constructing this fence, two wires were used for the greater part of its length, and the controverted tracts were substantially enclosed; that, after thus fencing the land and before filing thereon, he erected a three-room house at a cost of about $250 upon one of the tracts, and immediately took up his residence therein.

The Secretary of the Interior concluded that the fences upon the tracts in question at the time of the alleged purchase by the plaintiffs from Keeler were not of sufficient consequence or value in connection with the land to be entitled to be

classed as improvements; that the

Page 232 U. S. 115

posts established by Dr. Ross, March 1, 1904, did not constitute a lawful improvement, but were merely set for the purpose of marking or defining a prospective allotment, and further, that the improvements erected by contestee, while built possibly later than the former, were of material value to the land, and also that contestee actually entered into possession.

The contention of the plaintiffs in error here, as in the court below, is that, under the laws of the Cherokee Nation and the Act of Congress, they acquired the right of possession of the lands in controversy by virtue of the bill of sale from Keeler, dated November 1, 1902, and thereby succeeded to the same right to allot these lands that Keeler had before; that this right was made exclusive by what was done on March 1, 1904, looking to the placing of improvements upon the tracts; that this was sufficient to give notice to other citizens of the Cherokee Nation of the intention of plaintiffs to locate the lands, and that defendant was present at the time and had actual notice of the work done by Dr. Ross. Reference is made to the Constitution of the Cherokee Nation, Art. I., 2, and to its Laws (1892) 706, 761, and 762. It will not be necessary to recite them at length, because all that is claimed with respect to their effect upon the present controversy was conceded or assumed in the decision of the Secretary of the Interior -- that is, that citizens of the Cherokee Nation might improve portions of the public domain within the Nation, and thereby establish a prior right to the possession of the improved lands, which right might be transferred to another citizen by a sale of the improvements. The Secretary evidently construed 11 of the Act of Congress of July 1, 1902, as recognizing and confirming this right. But he held that no valuable interest was acquired by plaintiffs under the purchase from Keeler, because Keeler owned no improvements of material value. He found plaintiffs were not entitled to credit for the

Page 232 U. S. 116

small improvement of the noncitizen Bixler, and there is nothing before us to show that the Keeler bill of sale included the Bixler improvements, or that Bixler held as tenant either of Keeler or of plaintiffs. And he held in effect that the question of the sufficiency of what was done by contestants on March 1, 1904, depended not upon whether it was sufficient to give notice to contestee, but whether it was sufficient to constitute an improvement within the meaning of the Act of Congress. And so the whole controversy in effect depended upon whether the allotment to defendant was in accord with the ownership of the actual improvements upon the land, and the fact respecting the improvements was the principal matter to be determined in the contest proceedings, wherein the final appeal was to the Secretary of the Interior.

In order to obviate the established rule that the decisions of the Executive Departments in matters confided to them by the Acts of Congress are not to be disturbed by the courts unless there be allegations of fraud raised in the pleadings and established at the trial, it is contended that this rule extends only to findings upon mere questions of fact, and that the decision of the Secretary of the Interior upon the contest here in question was based solely upon an erroneous conclusion of law.

But, in our opinion, whether plaintiffs had improved the lands in such sense as to give them a preferential right under the statute was not a mere question of law, but rather a mixed question of law and fact. So far as it involved an appreciation of the term "improvements," as employed in the statute, it was a question of law; so far as it involved the drawing of correct inferences from the evidence, it was a question of fact. At best, it was a close question about which reasonable men might well differ.

In *Whitcomb v. White,* 214 U. S. 15 , 214 U. S. 16 , this Court, speaking by Mr. Justice Brewer, said:

"The decision of the

Land Department was not rested solely upon the fact that White's formal application was filed a few hours before that of the trustee for the occupants of the town site, but rather chiefly upon the priority of the former's equitable rights. So far as such decision involves questions of fact, it is conclusive upon the courts [citing cases]. And this rule is applied in cases where there is a mixed question of law and fact, unless the court is able to so separate the question as to see clearly what and where the mistake of law is. As said by Mr. Justice Miller in *Marquez v. Frisbie,* [101 U.S. 473], p. 101 U. S. 476 :"

"This means, and it is a sound principle, that where there is a mixed question of law and of fact, and the court cannot so separate it as to see clearly where the mistake of law is, the decision of the tribunal to which the law has confided the matter is conclusive."

And see Moore v. Robbins, 96 U. S. 530 , 96 U. S. 535 ; *Quinby v. Conlan,* 104 U. S. 420 , 104 U. S. 426 ; *Gonzales v. French,* 164 U. S. 338 .

There being no fraud, and no clear mistake of law in the decision of the Secretary of the Interior, his findings are conclusive upon the parties in the present controversy.

Judgment affirmed.

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