Mcdougal Vs. Mckay

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Decided On : Apr-26-1915

Appeal No. : 237 U.S. 372

Appellant : Mcdougal

Respondent : Mckay

Judgement :

McDougal v. McKay - 237 U.S. 372 (1915)
U.S. Supreme Court McDougal v. McKay, 237 U.S. 372 (1915)

McDougal v. McKay

No. 676

Argued April 14, 1915

Decided April 26, 1915

237 U.S. 372

ERROR TO THE SUPREME COURT

OF THE STATE OF OKLAHOMA

SYLLABUS

In construing an Act of Congress, its known purpose must be effectuated as nearly as may be.

This Court will not disregard the effect of decisions of the state and federal courts in regard to descent of Indian allotments which have become rule of property and on which many titles have been acquired.

Under the Supplemental Creek Agreement of June 20, 1902, the descent

Page 237 U. S. 373

and distribution of allotments is in accordance with Chapter 49, Mansfield's Digest of the Laws of Arkansas, provided, however, that only Creek citizens and their descendants shall inherit lands of the Creek nation unless there are no Creek citizen heirs.

The provision in Mansfield's Digest distinguishing between ancestral estates which came to a decedent by a parent and new acquisitions and prescribing different rules of inheritance apply to allotments of a Creek infant born in May, 1901, and dying in November, 1901, and whose name was placed on the tribal rolls in October, 1902, pursuant to the provision in the Supplemental Creek Agreement of 1902.

An allotment made under the Supplemental Creek Agreement of 1902 must be treated not as a new acquisition, but as an ancestral estate within the meaning of Chapter 49 of Mansfield's Digest.

Where a Creek infant whose allotment was made under the Supplemental Agreement of 1902 died leaving a father of Creek blood and a mother not of Creek blood, the father takes a fee simple to such allotment; had both parents been of Creek blood and duly enrolled, each would have taken one-half.

43 Okl. ___ affirmed.

The facts, which involve the construction and effect of the Supplemental Creek Agreement of June 30, 1902, and the ascertainment of heirs of an infant of the Creek Nation enrolled after death, are stated in the opinion.

Page 237 U. S. 380

MR. JUSTICE Mc REYNOLDS delivered the opinion of the Court.

The solution of this controversy requires ascertainment of the *heirs* of an infant who was enrolled after death, within the intendment of the Supplemental Creek Agreement -- Act of June 30, 1902, 32 Stat. 500, c. 1323.

Andrew J. Berryhill, born in May, 1901, died during the following November, leaving his father, George Franklin Berryhill, an enrolled Creek Indian, his mother, a noncitizen of that Nation, and seven paternal uncles and aunts. His name was duly placed on the tribal rolls in October, 1902, and during the years 1904 and 1905, the land presently in controversy (with others) was allotted and patented to his heirs. The father, claiming to be Andrew's sole heir, the mother joining, conveyed it June 5, 1906, to defendants in error, Edmond and Perry McKay. Afterwards the paternal uncles and aunts undertook to convey the fee subject to a life estate in the father to McDougal, plaintiff in error. The McKays and parties claiming under them being in possession of the property and extracting oil and gas therefrom, McDougal instituted this proceeding to restrain them and to have his remainder interest declared and confirmed.

The Supreme Court of Oklahoma (43 Okl. 251) held the land must be treated as an ancestral estate in Andrew J. Berryhill, and declared the father sole heir. Plaintiff in error maintains that it passed as a new acquisition, and the father took a life estate with remainder over to the uncles and aunts. Counsel, appearing as *amici curiae,* insist Andrew J. Berryhill had no estate therein, and that the word heirs designates persons who themselves took as purchasers.

Under treaty stipulations with the United States, the Creek Tribe of Indians as a community for a long time owned and occupied large areas now within the borders

of

Page 237 U. S. 381

Oklahoma and maintained there an organized government. Congress finally assumed complete control over them and undertook to terminate their government and distribute the tribal lands among the individuals. *Washington v. Miller,* 235 U. S. 422 .

The Act of March 1, 1901 -- Original Creek Agreement (31 Stat. 861, 870, c. 676) -- effective June 25, 1901 (32 Stat.1971), provided for the enrollment of members living on April 1, 1899, and their children born up to July 1, 1900, and also for allotment of tribal lands. It prescribed further (28) that

"if any such child die after said date, the lands and moneys to which it would be entitled, if living, shall descend to its heirs according to the laws of descent and distribution of the Creek Nation, and be allotted and distributed to them accordingly."

The Supplemental Creek Agreement -- Act of June 30, 1902, 32 Stat. 500, 501, c. 1323, effective August 8, 1902 (32 Stat. 2021) -- repealed that portion of the original one establishing descent and distribution under the Creek law, and directed that thereafter these

"shall be in accordance with Chapter 49 of Mansfield's Digest of the Statutes of Arkansas now in force in Indian Territory: *Provided,* That only citizens of the Creek Nation, male and female, and their Creek descendants shall inherit lands of the Creek Nation: *And provided further,* That if there be no person of Creek citizenship to take the descent and distribution of said estate, then the inheritance shall go to noncitizen heirs in the order named in said Chapter 49."

It also extended the right of enrollment to children born after July 1, 1900, and up to May 25, 1901, and declared,

"if any such child has died since May 25, 1901, or may hereafter die before receiving his allotment of lands and distributive share of the funds of the tribe, the

lands and moneys to which he would be entitled if living shall descend to his heirs as herein provided, and be allotted and distributed to them accordingly. "

Page 237 U. S. 382

The pertinent sections of Mansfield's Digest are copied in the margin. * They sharply distinguish between an estate

Page 237 U. S. 383

which came to a decedent by a parent and a new acquisition, and prescribe different rules of inheritance.

In *Shulthis v. McDougal,* 170 F. 529, decided June 3, 1909, by the Circuit Court of Appeals for the Eighth Circuit, title to another portion of the Andrew J. Berryhill allotment was involved, and it became necessary to ascertain his heirs. Having carefully considered the whole subject, that court summed up its conclusions thus (pp. 534-535):

"So long as the tribal relations continued, a member had no right to have a share of the tribal property set off to him as his private, separate estate, for the constitutional policy of the tribe was ownership in common. But when, as here, the time came to disband the tribe, its ownership as a political society could no longer continue, and the division of its property was far more nearly akin to the partition of property among tenants in common than the grant of an estate by a sovereign owner. Under such a scheme, it cannot be said that the property which passed to an allottee is a new right or acquisition created by the allotment. The right to the property antedates the allotment, and is simply given effect to by that act. Viewing the tribal property and its division in this light, Andrew J. Berryhill acquired his right to the land in question by his membership in the tribe. It was his birthright. It came to him by the blood of his tribal parent, and not by purchase. In applying the Arkansas statute, we shall accomplish the purpose of Congress and the Creek Nation best by treating the lands not as a new acquisition by him, but as an inheritance from his parents as members of the tribe. His father was the only parent through whom he

derived his right, and to the father the land should pass. If the mother had been a member of the tribe, then the land should properly pass to the parents equally. From this premise it necessarily follows that George Franklin Berryhill succeeded to the entire estate of the property in question."

An appeal to this Court was dismissed June 7, 1912, for lack of jurisdiction (225 U.S. 561).

The Supreme Court of Oklahoma, in *Pigeon v. Buck,* 38 Okl. 101 (April 23, 1913), determined the heirs of a full-blooded Creek citizen who, having been duly enrolled, received a patent to her allotment and then died intestate, without descendants, leaving father, mother, brothers, sister, and her husband. After reference to the above-quoted portions of Mansfield's Digest it said (pp. 103, 104):

"That the land in question was not a new acquisition, and pursuant to these sections, when construed together, passed to John Pigeon and Mate Pigeon, the father and mother of the deceased, is no longer an open question in this jurisdiction, having in effect been decided by the Circuit Court of Appeals for the Eighth Circuit in *Shulthis v. McDougal, supra.* . . . Many titles to lands on the eastern side of this state have been acquired on the strength of this decision, and to such an extent that the same has become a rule of property there (*Dewalt v. Cline,* 35 Okl.197; *MaHarry v. Eatman,* 29 Okl. 46; *Duff v. Keaton,* 33 Okl. 92). We hold that John Pigeon and Mate Pigeon, his wife, are the persons to whom, on the death of the allottee, this estate passed in equal moities, and that plaintiffs in error, plaintiffs below, have no interest therein."

We recognize the unusual difficulties surrounding the problem presented upon the record, and appreciate the very forceful arguments offered in support of the conflicting theories. The circumstances are novel, and the canons

of descent contained in Mansfield's Digest are not precisely applicable thereto, but these rules must be accommodated to the facts, and the great purpose of Congress effectuated as nearly as may be. And not only would it be improper for us to disregard the effect of the decisions already announced by the circuit court of appeals and the Supreme Court of Oklahoma, which are supported by cogent reasoning, but, considering the peculiar and rapidly changing conditions within that state, especial consideration must be accorded to them. We accordingly accept the doctrine announced therein and hold: (1) the property must be treated as an ancestral estate which passed in accordance with the applicable provisions of Chapter 49, Mansfield's Digest; (2) as the father, George Franklin Berryhill, was of Creek Blood, and the mother not, he took a fee simple title to all the land in question. If both parents had been of Creek blood and duly enrolled, each would have taken one half.

Sizemore v. Brady, 235 U. S. 441 , has been referred to as in conflict with the doctrine herein approved. In that case, lands were allotted and patented after August 8, 1902, to the heirs of Grayson, an enrolled Creek, who died March 1, 1901, and a contest arose between a paternal cousin and cousins on the maternal side. The former -- Brady -- claimed descent should be determined according to Mansfield's Digest, and that he was sole heir. The latter -- Sizemore and Newberry -- maintained the Creek law applied and that they were the only heirs. The Supreme Court of Oklahoma decided in favor of Brady (33 Okl. 169), and in this Court the plaintiffs in error expressly admitted that he should prevail

"in event the Court should hold said lands passed under Chapter 49 of Mansfield's Digest of the Laws of Arkansas, in accordance with the act of Congress known as the Creeks' Supplemental Agreement."

We concluded the Arkansas statute controlled, and, of course, did not undertake to decide the

question here presented. Moreover, it is not possible from the record in the cause accurately to trace the blood of the maternal relatives.

The judgment of the court below must be

Affirmed.

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" *Section 2522.* When any person shall die, having title to any real estate of inheritance, or personal estate, not disposed of, nor otherwise limited by marriage settlement, and shall be intestate as to such estate, it shall descend and be distributed, in parcenary, to his kindred, male and female, subject to the payment of his debts and the widow's dower, in the following manner:"

" *First.* To children, or their descendants, in equal parts."

" *Second.* If there be no children, then to the father, then to the mother; if no mother, then to the brothers and sisters, or their descendants, in equal parts."

" *Third.* If there be no children, nor their descendants, father, mother, brothers or sisters, nor their descendants, then to the grandfather, grandmother, uncles and aunts and their descendants, in equal parts, and so on in other cases, without end, passing to the nearest lineal ancestor, and their children and their descendants, in equal parts."

" *Section 2531.* In cases where the intestate shall die without descendants, if the estate come by the father, then it shall ascend to the father and his heirs; if by the mother, the estate, or so much thereof as came by the mother, shall ascend to the mother and her heirs; but if the estate be a new acquisition it shall ascend to the father for his lifetime, and then descend, in remainder, to the collateral kindred of the intestate in the manner provided in this act, and, in default of a father, then to the mother, for her lifetime, then to descend to the collateral heirs as before provided."

" *Section 2532.* The estate of an intestate, in default of a father and mother, shall go first to the brothers and sisters, and their descendants, of the father; next to the brothers and sisters, and their descendants, of the mother. This provision applies only where there are no kindred, either lineal or collateral, who stand in a nearer relation."

" *Section 2533.* Relations of the half blood shall inherit equally with those of the whole blood in the same degree, and the descendants of such relatives shall inherit in the same manner as the descendants of the whole blood, unless the inheritance come to the intestate by descent, devise, or gift, of some one of his ancestors, in which case all those who are not of the blood of such ancestor shall be excluded from such inheritance."

" *Section 2534.* In all cases not provided for by this act, the inheritance shall descend according to the course of the common law."

" *Section 2543.* The expression used in this act, 'where the estate shall have come to the intestate on the part of the father,' or 'mother,' as the case may be, shall be construed to include every case where the inheritance shall have come to the intestate by gift, devise or descent from the parent referred to, or from any relative of the blood of such parent."