

Bilby Vs. Stewart

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Court : US Supreme Court

Decided On : Mar-04-1918

Appeal No. : 246 U.S. 255

Appellant : Bilby

Respondent : Stewart

Judgement :

Bilby v. Stewart - 246 U.S. 255 (1918)

U.S. Supreme Court Bilby v. Stewart, 246 U.S. 255 (1918)

Bilby v. Stewart

No. 160

Submitted January 25, 1918

Decided March 4, 1918

246 U.S. 255

ERROR TO THE SUPREME COURT

OF THE STATE OF OKLAHOMA

SYLLABUS

The court may not review a judgment of a state supreme court resting on a nonfederal ground adequate to support it.

Where the probate of the will of a full-blood Creek Indian was refused solely on the nonfederal ground of mental incapacity, questions sought to be raised under acts of Congress concerning the execution of the will, its legal effect, and the necessity for probate *held* immaterial.

An attempt to raise federal questions through an application to file a second petition for rehearing in the state court comes too late.

Writ of error to review 153 P. 1173 dismissed.

The case is stated in the opinion.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

This is a writ of error to the Supreme Court of Oklahoma, which affirmed on appeal the judgment of the district

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court declining to probate an alleged will of Bruner, a full-blood Creek Indian who, in the year 1912, died in that state possessed of his allotment, a bachelor without surviving parent.

Act April 26, 1906, c. 1876, 34 Stat. 137, relating to the Five Civilized Tribes, by 19, prohibits members, for a period of twenty-five years, from alienating lands allotted to them; but by 23 as amended by 8 of Act May 27, 1908, c.199, 35 Stat. 312, 315, provides that:

"Every person of lawful age and sound mind may by last will and testament devise and bequeath all of his estate, real and personal, and all interest therein: *Provided*, that no will of a full-blood Indian devising real estate shall be valid if

such last will and testament disinherits the parent, wife, spouse, or children of such full-blood Indian, unless acknowledged before and approved by a judge of the United States court for the Indian Territory, or a United States commissioner, or a judge of a county court of the State of Oklahoma."

Section 1 of the Acts of Oklahoma for 1909, chapter 41, provides:

"That no person who is prevented by law from alienating, conveying or incumbering real property while living shall be allowed to bequeath the same by will."

Bilby, the main beneficiary named in the alleged will, and Moffitt, the executor, had first petitioned for its probate in the county court, where the heirs contested on the grounds of mental incapacity and undue influence and also on the ground that Bruner was by law prohibited from alienating or conveying his land. Probate was denied on the last ground, and the proponents appealed to the district court, where, as provided by the state law, it was tried *de novo*. That court, after an advisory verdict of a jury, denied probate solely on the ground of mental incapacity, and the errors assigned in the supreme court were substantially that the judgment of the district

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court was against the evidence. 153 P. 1173. The supreme court affirmed the judgment of the lower court, and a petition for rehearing was denied without a statement of reasons. No federal question had been raised in the district court, nor apparently up to that time in the supreme court. But an application was then made for leave to file a second petition for rehearing, and in it proponents set up, among others, the claim that, because Bruner was full-blood Creek Indian

"the execution of said will and the legal effect thereof and the necessity or nonnecessity of the probate of said will is thereby involved in this cause, and presents federal questions."

We need not, however, consider this contention. For, since the supreme court rested its judgment upon a nonfederal ground adequate to support it, the existence of a federal question is of no significance. *Cuyahoga Power Co. v. Northern Realty Co.*, [244 U. S. 300](#) . And, besides, the attempt to raise it comes too late. *St. Louis & San Francisco R. Co. v. Shepherd*, [240 U. S. 240](#) . The writ of error is *Dismissed*.

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