

1952

W. M. Young v. Joe Doe Felornia : Brief in Opposition to Petition for Rehearing

Utah Supreme Court

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Recommended Citation

Response to Petition for Rehearing, *Young v. Felornia*, No. 7772 (Utah Supreme Court, 1952).
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In the Supreme Court of the State of Utah

W. R. YOUNG, et al.,
Plaintiffs and Respondent

vs.

JOE DOE FELORNIA, et al.,
Defendants and Appellants

Case No. 7772

W. R. YOUNG, et al.,
Plaintiffs and Respondent

vs.

JOE DOE FELORNIA, et al.,
Defendants and Appellants

Brief in Opposition to Petition for Rehearing

FILE

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McKAY, BURTON, McMILLAN
and RICHARDS,
720 Newhouse Building
Salt Lake City, Utah
Attorneys for Respondents

Clerk, Supreme Court, Utah

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Statement of Points Relied Upon

POINT NO. 1

APPELLANTS HAVE NOT RAISED ANY NEW
QUESTIONS IN THEIR PETITION FOR REHEARING.

POINT NO. II

THE STATE COURT HAS JURISDICTION OF THIS ACTION.

ARGUMENT

POINT NO. 1

APPELLANTS HAVE NOT RAISED ANY NEW QUESTIONS IN THEIR PETITION FOR REHEARING.

In the petition for rehearing and supporting brief, appellants set out nine points which they argue and allege justify a rehearing of this case. It is abundantly clear from prior briefs submitted to this Court by the appellants, however, that each of the arguments and points raised have been previously submitted to the Court and were considered by this Court at the time of the decision and opinion heretofore rendered.

Specifically, the argument and point raised as No. 1 in the petition and supporting brief for rehearing was argued as Point No. 2 in appellants' Reply Brief. Point No. 2 of the Brief in Support of the Application for Rehearing was argued as Point No. 1 in appellants' Reply Brief. Appellants' Point No. 3 relative to the Taylor Grazing Act of 1934 was specifically argued in Point No. 3 of their original brief. Point No. 4 with reference to the Enabling Act of the State of Utah was specifically argued to the Court in Point No. 4 of appellants' original brief. Point No. 5 with respect to defendants' and appellants' desire to prove their claimed aboriginal rights was argued in Point 2 of their original brief, and in Point 3 of their Reply Brief. Points Nos. 6 and 7 are included in the

entire argument made by appellants in their original and reply briefs, and there is nothing new suggested or added in appellants' Brief in Support of Rehearing that was not argued in the original hearing of this cause.

Appellants' Point No. 8 is not argued in any way in the Brief on petition for Rehearing, but rather appellants state that it is self-asserting. It has been argued heretofore in Points Nos. 2 and 6 of the original brief. Moreover, it is clear that the trial court and the Supreme Court did not disregard the allegations of plaintiffs' complaint, wherein it is alleged that the defendants are residents and citizens of San Juan County, State of Utah. There is nothing inconsistent in such an allegation and that the defendants are bound as "treaty Indians." Appellants do not cite any authority in support of such a suggestion, and it is submitted that it is not the law. Point No. 9 is nothing more than a general summary of all the arguments made by the appellants in their original brief and their Reply Brief in this case.

Since no new arguments are made by appellants and no new points raised, and particularly inasmuch as the opinion of this Court treats all of the questions raised by the petition for rehearing, there is no reason for further consideration of the matter by this Court. The petition should be denied.

POINT NO. II

THE STATE COURT HAS JURISDICTION OF THIS ACTION.

On Pages 5 and 6 of their brief, appellants apparently take the position that the State Court did not have jurisdiction to determine the controversy between the parties involved in this lawsuit because the defendants were Indians. It is clear from a reading of the cases cited by appellants that none of them are in point in this case. Inasmuch as these particular cases were not cited in appellants' prior briefs, they are treated briefly here.

In *Caesar v. Krow* (Sup. Ct. Okla. 1918), 176 Pac. 927, it was held that the state court did not have jurisdiction in an action to recover the possession of two *allotments* under the General Allotment Act, approved February 8, 1887 (24 Stat. at L. C. 119), as amended by the Acts of February 28, 1891 (25 Stat. at L. 794, C. 383) and March 3, 1893 (27 Stat. at L. 644, C. 209). In that statute, Congress specifically conferred authority upon the Secretary of the Interior to ascertain heirship of Indians to whom an allotment had been made. Of course, that case is not in point for two reasons. In the first place it is under a specific Act of Congress conferring exclusive jurisdiction for determination of the question in dispute upon the Secretary of the Interior; secondly, the controversy concerns an Indian allotment under a specific Act of Congress.

In the case at bar, appellants were given and expressly declined the opportunity to prove any right to allotments as individuals. Instead they stated to the Court, through their counsel, that their claim was to the aboriginal possessory rights as a band and not as individuals. This is clear from the following colloquy between Court and Counsel at the pre-trial (R. 87):

"THE COURT: For the purpose of this pretrial, you indicated to the Court, Mr. Patterson, that these defendants do not claim any inclosed, cultivated pieces of ground within this area.

MR. PATTERSON: True that some of these Indians have little garden spots which are fenced off with brush and willows and the like, but I think that your statement is right, generally, that is not what we are suing for. We are suing for the right to live there of course, but we are suing for range land.

THE COURT: You are not asking the Court to set apart any particular land to the Indians?

MR. PATTERSON: That is right.

THE COURT: You are claiming that these defendants have a right to this land as a Clan or a Tribe, separate and distinct, from those that are on the reservation as a band?

MR. PATTERSON: Yes * * * ."

The defendants moreover expressly disclaimed any right to possession of the lands in question through any Act of Congress. This appears at Page 97 of the record, where various stipulations were being made between counsel:

"MR. BURTON: And that any rights or claims being asserted by defendants have not been recognized by any act of Congress?

MR. PATTERSON: Yes."

An allotment theory, of course, would be based upon a Congressional Act authorizing or creating the allotment. Defendants made no such claim either at the pretrial or in any pleading filed in this action.

In *United States v. Kagema, et al.* (1885), 118 U. S. 375, 30 L. Ed. 228, the question presented was whether the United States had jurisdiction of a murder committed upon an Indian reservation situated wholly within the State of California. The Court held that as long as the Indian maintained the tribal relationship on the reservation, no allegiance was owed to a state, and the state gave the Indian no protection. A crime committed upon the reservation was subject to the exclusive jurisdiction of the United States. Of course, this principle of law is uncontroverted and it is not involved in any manner or respect in the case at bar. None of the Indians involved here are on a reservation, nor are the acts of trespass complained of upon a reservation. In fact, the controversy here arose because of defendants' failure to stay on the reservation.

McKay v. Kalyton (1906), 204 U. S. 458, 51 L. Ed. 566, cited by appellants at Page 7, involves a controversy with respect to the right to possession of an Indian allotment while it was held in trust by the United States under the provision of the Act of August 15,, 1894 (24 Stat. at L. 286, C. 290), which vested exclusive jurisdiction in the Federal Court of questions concerning allotments under the Act. Of course, the Court held that the State Court had no jurisdiction of such a controversy, but, as heretofore pointed out, the right to the possession of an allotment is not involved in this proceeding.

Minnesota v. Hitchcock (1901), 185 U. S. 372, 46 L. Ed. 954, cited by appellants at Page 7, involved the right of the State of Minnesota to bring an action originally in the United States Supreme Court. The case involved lands known as the "Red Lake Indian Reservation." The Court held that the land

was in fact an Indian Reservation, and the State of Minnesota received no interest therein.

In the cases of *Patalla v. United States* (Cir. Ct. Dist. of Ore., 1904), 132 F. 893, and *Parr v. United States* (Cir. Ct. Dist. of Ore., 1904), 132 F. 104, involve a right to lands subject to the Act of August 15, 1884 (28 Stat. 305), in which the Circuit Court was given exclusive jurisdiction. The action in each case was by Indians to recover allotted lands. Of course, there can be no controversy that under these conditions the Circuit Court had exclusive original jurisdiction, but the difficulty with appellants' position in the case at bar with respect to these cases is that appellants do not make any claim by reason of allotments. They reject their right to stand on any allotment theory, and they do not have any standing in court by reason of allotment claims. The cases are certainly not in point for the proposition contended for by appellants in their brief.

An Indian who is not physically upon an Indian Reservation is subject to the laws of the state or territory in which he finds himself to the same extent that a non-Indian citizen or alien would be subject to these laws. *Hunt v. State*, 4 Kan. 60 (1866), murder of an Indian by another Indian; *In re Woolf*, 27 F. 606, 610 (D. C. W. D. Ark.), conspiracy by Indians to obtain money by false pretenses from an Indian nation in the District of Columbia; *State v. Williams*, 43 Pac. 15 (Sup. Ct. of Wash., 1895), murder of Indian by Indian outside of an Indian reservation; *Pablo v. People*, 23 Colo. 134, 46 Pac. 636 (1896), murder of Indian by another Indian outside the reservation; *State v. Spotted Hawk*, 22 Mont. 33, 55 Pac. 1026 (1899), murder of a white man by an Indian;

State v. Little Whirlwind, 22 Mont. 425, 56 Pac. 820 (1899), murder of a white man by an Indian; Ex Parte Moore, 28 S.D. 339, 133 N. W. 817 (1911), murder of an Indian by another Indian on a public domain allotment, commented on in Annotated Cases 1914B, 648, 652.

Except with respect to questions involving tribal relations as such, or the Federal Government as such, an Indian has the same status to sue and be sued in state courts as any other citizen. *Felix v. Patrick*, 145 U. S. 317, 332, 36 L. Ed. 719, 726 (1892). In *Ke-Tuc-e-Mun-Guah v. McClure*, 122 Ind. 541, 23 N. E. 1080 (1890), it was held that a suit could not be maintained against an Indian on a promissory note in a State Court. In *Stacy v. LaBelle*, 99 Wis. 520, 75 N. W. 60 (1898), it was held that suit could be maintained against an Indian in a State Court on a contract. In *Missouri-Pacific R. R. Co. v. Cullers*, 81 Tex. 382, 17 S. W. 19 (1891), a cause of action was owned by an Indian against the railroad company and his rights were assigned. The assignee was held to have the right to maintain the action against the railroad company.

In discussing the various incidents of Federal and State jurisdiction over Indians, Cohen summarizes the cases and the principles announced therein as follows (Cohen, Handbook of Federal Indian Law, P. 121):

“(1) In matters involving only Indians on an Indian reservation, the State has no jurisdiction in the absence of specific legislation by Congress. (2) In all other cases, the State has jurisdiction unless there is involved a subject matter of special Federal concern.”

At Page 9 of appellants' brief in support for their Peti-

tion for Rehearing, counsel urges—apparently as a final, last-ditch argument—that the State Court does not have jurisdiction because it allegedly could not enforce its decree. This was the basis for the refusal of the United States District Court in a similar case. *United States v. Hosteen Tse-kesi, et al.* (U. S. District Court Dist. of Utah, 1950), 93 Fed. Sup. 745. The Tenth Circuit Court expressly reversed the district judge on this point, however. The Court said:

“While there may be cases where the court would be justified in refusing to exercise jurisdiction, ordinarily it is under a duty to decide cases upon their merits and may not arbitrarily refuse to exercise its jurisdiction when invoked by appropriate proceedings. As Chief Justice Marshall said in an early case, ‘With whatever doubts, with whatever difficulties, a case may be attended, we must decide it if it be brought before us.’ * * *

“Injunctive relief for continued and repeated trespasses should not be denied because it is thought that such an injunction will not be obeyed and that it would be difficult to enforce. We think the court should assume that its orders and decrees will be promptly obeyed by litigants rather than assuming they would be disobeyed. We find nothing in the record which would indicate that the defendants intended to defy an adverse ruling of the court. * * *

“The fact that the court had no power to provide another place for the defendants to live, whereas the United States had such power, was not an adequate or legal ground for denying the relief. The defendants were charged with being wilful and continuous trespassers upon the lands of the United States. If this charge was proved to the satisfaction of the Court an injunction should issue. Where the trespassers might

reside after the injunction issues cannot be determined in this action." (191 Fed. (2d) 519, at 520).

It does not appear to be unduly charitable to presume that the defendants in this case will obey the order of the District Court upon final determination of this litigation. In the event, however, that defendants fail to abide the decision in a lawful manner, the District Court has already made evident that it has the ingenuity and power to effectively cope with a violation of its decree. Certainly, as was stated by the Circuit Court of Appeals, it would be unwarranted under the circumstances of this case for a trial court having jurisdiction of the subject matter to refuse to exercise its powers because it was intimidated by defendants' counsel that defendants might not choose to abide by its decree.

CONCLUSION

The defendants and appellants in this action admittedly make no claim to the land in question as though the land was a part of an Indian reservation (R. 97). Defendants have likewise expressly relinquished any claim to specific enclosed land on the theory that defendants have some allotments (R. 87). It is therefore apparent that trespass of the land in question, whether by Indians or by any other persons, is subject to the jurisdiction of the State Court. No question has been raised by the defendants as to the right of plaintiffs to maintain this action. Defendants concede that the plaintiffs have sufficient interest to maintain an action to enjoin repeated trespass.

The parties being before the Court and the subject matter being within the power of the Court, it follows that the Court was not only within its power but it was exercising the duties of its office in rendering the decision in this case. The appellants have raised no new issues in asking for a rehearing, but on the contrary all of the issues discussed in their Petition and Brief were decided upon the record and arguments before this Court at the time of the decision of May 21, 1952.

The suggestion made in the petition that the State Court does not have jurisdiction of the action is absolutely unsupported by the authorities and is contrary to law. The petition for rehearing should be denied.

Respectfully submitted

McKAY, BURTON, McMILLAN
and RICHARDS,
720 Newhouse Building
Salt Lake City, Utah
Attorneys for Respondents