

Co. v. Kirby, 225 U. S. 155, 166. The liability in this instance is thus governed by the provisions of the applicable tariff and no recovery could be had in excess of the amount permitted by its terms. *New York, P. & N. R. Co. v. Peninsula Exchange*, *supra*, pp. 41, 42; *Southern Express Co. v. Byers*, 240 U. S. 612, 614; *Southern Ry. Co. v. Prescott*, 240 U. S. 632, 638; *American Railway Express Co. v. Daniel*, 269 U. S. 40, 42.

The judgment is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

Reversed.

MR. JUSTICE STONE took no part in the consideration or decision of this case.

CATE ET AL. v. BEASLEY ET AL.

CERTIORARI TO THE SUPREME COURT OF OKLAHOMA.

No. 30. Argued October 19, 1936.—Decided November 9, 1936.

By a construction of the Seminole Agreement (Act of June 2, 1900) long established as a rule of property in Oklahoma, which this Court accepts, land allotted to a Seminole Indian who died after selecting his allotment and before Oklahoma became a State, descended to his heirs in accordance with Arkansas laws of descent, without regard to whether heirs were Seminole citizens. 175 Okla. 494; 53 P. (2d) 549, affirmed.

Mr. Richard W. Stoutz submitted for petitioners.

Mr. Lloyd G. Owen, with whom *Messrs. James A. Veasey, Guy H. Woodward, and R. J. Roberts* were on the brief, for respondents.

PER CURIAM.

John Wadsworth, enrolled as a Seminole Indian, died on August 3, 1907, after selecting his allotment and prior

to the admission of Oklahoma to statehood. Surviving him were his mother, brothers and sisters, enrolled as Seminoles, and his wife and three children enrolled as Creeks. In an action to quiet title the Supreme Court of Oklahoma affirmed a judgment sustaining demurrers to the petition. 175 Okl. 494; 53 P. (2d) 549. The Court said [pp. 494-495]:

"For 25 years it has been the settled rule of law in this State, in reliance upon which the stability and dependability of titles has depended, that the allotted land of a Seminole Indian, who died (1) after selecting his allotment, and (2) before statehood, descended to his heirs, in accordance with the Arkansas laws of descent and distribution, without regard to the above limitation to tribal citizens. . . . There is some merit in the assertion of plaintiffs in error that the first pronouncement of that rule, in *Bruner v. Sanders*, 26 Okl. 673, 110 P. 730, decided in the year 1910, is dictum. Nevertheless, if it was dictum, it was repeatedly followed by subsequent decisions of this court wherein it emerged from the realm of dictum into the point actually decided. Those cases are *Heliker-Jarvis Seminole Co. v. Lincoln*, 33 Okl. 425, 126 P. 723, *Thorn v. Cone*, 47 Okl. 781, 150 P. 701, *Rentie v. Rentie*, 70 Okl. 103, 172 P. 1083, *Dickinson v. Abb*, 73 Okl. 322, 176 P. 523, *Lasiter v. Ferguson*, 79 Okl. 200, 192 P. 197, and *Stewart v. Billington*, 122 Okl. 9, 250 P. 84."

In view of the long established rule in Oklahoma as to the descent of the allotted land of a Seminole Indian who died after selecting his allotment and before statehood, the judgment is affirmed.

This decision is not to be construed as impairing the authority of our earlier decisions under the agreements made with other Indian tribes or under the Seminole Agreement with respect to a Seminole who died before selecting his allotment. See *Washington v. Miller*, 235 U. S. 422; *McDougal v. McKay*, 237 U. S. 372; *Camp-*

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bell v. Wadsworth, 248 U. S. 169; *Grayson v. Harris*, 267 U. S. 352.

Affirmed.

MR. JUSTICE McREYNOLDS is of opinion that the challenged judgment should be reversed.

MR. JUSTICE STONE took no part in the consideration or decision of this case.

VALENTINE, CHAIRMAN OF THE IOWA STATE
BOARD OF ASSESSMENT AND REVIEW, ET AL.
v. GREAT ATLANTIC & PACIFIC TEA CO.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF IOWA.

No. 13. Argued October 14, 1936.—Decided November 9, 1936.

Iowa Chain Store Tax Act of 1935, § 4 (b), *held* unconstitutional.
Stewart Dry Goods Co. v. Lewis, 294 U. S. 550.

Mr. Frank F. Messer and *Mr. Edward L. O'Connor*, Attorney General of Iowa, with whom *Mrs. W. E. Wallace* and *John Connolly, Jr.*, were on the brief, for appellants.

Mr. Joseph G. Gamble, with whom *Messrs. Ralph L. Read*, *Alden B. Howland*, and *Joseph F. Rosenfield* were on the brief, for appellees.

PER CURIAM.

Appellees brought these suits to restrain the enforcement of a statute of Iowa known as the "Chain Store

* Together with No. 14, *Valentine, Chairman, et al. v. Graham Department Stores Co. et al.*; and No. 15, *Valentine, Chairman, et al. v. Walgreen Co. et al.* Appeals from the District Court of the United States for the Southern District of Iowa.