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Johnson v. DeGrandy

Henry L. Chambers, Jr.
University of Richmond, hchamber@richmond.edu

pragmatism. Johnson's death was unexpected. In July 1834, he traveled to New York for jaw surgery; shortly after the painful procedure, he died, apparently of "exhaustion."

Donald G. Morgan, *Justice William Johnson, the First Dissenter; The Career and Constitutional Philosophy of a Jeffersonian Judge* (1954).

SANDRA F. VANBURKLEO

JOHNSON AND GRAHAM'S LESSEE v. MCINTOSH, 8 Wheat. (21 U.S.) 543 (1823), argued 17 Feb. 1823, decided 10 Mar. 1823 by vote of 7 to 0; Marshall for the Court. This was the first Supreme Court case to define the legal relationship of *Native Americans to the United States. It began in 1775 when the Piankeshaws ceded land in Illinois to a group of speculators, including William Johnson. However, Virginia in 1783 conveyed to the federal government its Illinois claims for the public domain.

In 1818 William McIntosh bought from the United States 11,560 acres of Illinois land that were part of Johnson's purchase. These same lands were claimed by Joshua Johnson and his son, Thomas J. Graham, and they brought an ejectment action against McIntosh. After losing in the lower courts, Johnson and Graham appealed.

The Supreme Court, in a unanimous decision written by Chief Justice John *Marshall, found for McIntosh. Marshall held that the principle of discovery gave European nations an absolute right to New World lands. Once established, Native Americans had only a lesser right of occupancy that could be abolished. Marshall also found that the United States acquired title to Native American lands through Great Britain's conquest. He mistakenly declared that a conquered people's rights to property could not be applied to Native Americans because Indians were "fierce nomadic savages" (p. 590).

Thus, Indians could not transfer lands to individuals, such as William Johnson, or to nations other than the United States. Subsequent decisions of the Supreme Court eroded *McIntosh*, although this decision has yet to be specifically overruled.

JOHN R. WUNDER

JOHNSON v. DE GRANDY, 512 U.S. 997 (1994), argued 4 Oct. 1993, decided 30 June 1994 by vote of 7 to 2; Souter for the Court, O'Connor concurring, Kennedy concurring in part and concurring in the judgment, Thomas and Scalia in dissent.

One of the Supreme Court's first voting rights cases after *Shaw v. Reno (1993), *De Grandy* involved a challenge by groups of Hispanic and African voters to Florida's redistricting of Dade County's (Miami) state legislative districts after the 1990 census. The plaintiffs argued that the redistricting plan violated section 2 of the *Voting Rights Act of 1965 by diluting minority voting strength. Yet the plan yielded functional proportionality in Dade County by providing a proportion of majority-minority districts that roughly equaled the proportion of the minority voting-age population.

The plaintiffs specifically argued that more majority-minority districts could have been drawn had the legislature not lessened minority voting power by packing minority voters into districts in some instances and cracking minority voting strength by dividing cohesive minority populations among multiple districts in other instances. The federal district court found that Florida's failure to create as many majority-minority districts as possible necessarily yielded a section 2 violation. In response, the Supreme Court reiterated the totality-of-the-circumstances test, finding that the plaintiffs' evidence was insufficient to establish vote dilution in substantial measure because the plan provided rough proportionality for minority groups in the Dade County area. Justices Clarence *Thomas and Antonin *Scalia dissented on the grounds that an apportionment plan is not subject to section 2 challenge.

De Grandy reiterated that districting is more art than science and stressed that voting rights violations do not always flow from proof of certain background facts. Though the Court's analysis cut against the minority plaintiffs in *De Grandy*, its general thrust would later benefit minority voters in cases such as *Easley* v. *Cromartie* (2001).

HENRY L. CHAMBERS, JR.

JOHNSON v. LOUISIANA, 400 U.S. 356 (1972), argued 1 Mar. 1971, reargued 10 Jan. 1972, decided 22 May 1972 by vote of 5 to 4; White for the Court, Blackmun and Powell concurring, Douglas, Brennan, Marshall, and Stewart in dissent. The issues in *Johnson*, and its companion case *Apodaca* v. *Oregon* (1972), which had been left unresolved by *Duncan v. Louisiana (1968), were whether the *Fourteenth Amendment due process and equal protection clauses required states to observe *jury unanimity in criminal cases, as is required in the federal courts. A jury had convicted Johnson of robbery by a 9-to-3 vote. Since Johnson's trial began before *Duncan* was decided, and that ruling had not been applied retroactively, its *Sixth Amendment protections were not available.

Johnson contended that he had been denied due process because a nonunanimous verdict meant the reasonable-doubt standard of guilt had not been met. The fact that three jurors disagreed with the verdict indicated doubt, and the nine-person majority could not have voted conscientiously in favor of guilt beyond a reasonable doubt.