

Opinion of STEVENS, J.

SUPREME COURT OF THE UNITED STATES

No. 04–1544

VICKIE LYNN MARSHALL, PETITIONER *v.* E. PIERCE
MARSHALL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[May 1, 2006]

JUSTICE STEVENS, concurring in part and concurring in the judgment.

The administration of decedents’ estates typically is governed by rules of state law and conducted by state probate courts. Occasionally, however, disputes between interested parties arise, either in the probate proceeding itself or elsewhere, that qualify as cases or controversies that federal courts have jurisdiction to decide. See, *e.g.*, *Reed v. Reed*, 404 U. S. 71 (1971). In her opinion for the Court, JUSTICE GINSBURG has cogently explained why this is such a case. I write separately to explain why I do not believe there is any “probate exception” that ousts a federal court of jurisdiction it otherwise possesses.

The familiar aphorism that hard cases make bad law should extend to easy cases as well. *Markham v. Allen*, 326 U. S. 490 (1946), like this case, was an easy case. In *Markham*, as here, it was unnecessary to question the historical or logical underpinnings of the probate exception to federal jurisdiction because, whatever the scope of the supposed exception, it did not extend to the case at hand. But *Markham*’s obiter dicta—dicta that the Court now describes as redundant if not incoherent, *ante*, at 14—generated both confusion and abdication of the obligation Chief Justice Marshall so famously articulated, see *Cohens v. Virginia*, 6 Wheat. 264, 404 (1821); see also

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ante, at 1. While the Court today rightly abandons much of that dicta, I would go further.

The Court is content to adopt the approach it followed in *Ankenbrandt v. Richards*, 504 U. S. 689 (1992), and to accept as foundation for the probate exception *Markham*'s bald assertion that the English High Court of Chancery's jurisdiction did not "extend to probate matters" in 1789. 326 U. S., at 495; see *ante*, at 11. I would not accept that premise. Not only had the theory *Markham* espoused been only sporadically and tentatively cited as justification for the exception,¹ but the most comprehensive article on the subject has persuasively demonstrated that *Markham*'s assertion is "an exercise in mythography."²

Markham's theory apparently is the source of the Court's reformulated exception, which "reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate." *Ante*, at 14. Although undoubtedly narrower in scope than *Markham*'s ill-considered description of the probate carve-out, this description also sweeps too broadly. For the Court has correctly upheld the exercise of federal jurisdiction over actions involving the annulment of wills and the admini-

¹Notably, Justice Joseph Bradley, a strong proponent of the theory that federal courts sitting in equity cannot exercise jurisdiction over probate matters because in England in 1789 such jurisdiction belonged to the ecclesiastical courts, see *Case of Broderick's Will*, 21 Wall. 503 (1875), *Gaines v. Fuentes*, 92 U. S. 10, 24-25 (1876) (dissenting opinion), urged that "even in matters savoring of [e]cclesiastical process, after an issue has been formed between definite parties," the controversy should be heard by a federal court. See *Rosenbaum v. Bauer*, 120 U. S. 450, 460-461 (1887) (dissenting opinion) (citing *Gaines*, 92 U. S., at 17, and *Hess v. Reynolds*, 113 U. S. 73 (1885)).

²Winkler, *The Probate Jurisdiction of the Federal Courts*, 14 Probate L. J. 77, 126 (1997); see *ante*, at 1-2 (acknowledging Winkler's analysis). Winkler also observes, citing Charles Dickens' *Bleak House* (1853), that *Markham*'s "suggestion that the High Court of Chancery had lacked jurisdiction to 'administer an estate' was preposterous." 14 Probate L. J., at 125, and n. 256.

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stration of decedents' estates. In *Gaines v. Fuentes*, 92 U. S. 10 (1876), for example, the Court held that a defendant in an action to annul a will should be permitted to remove the case to federal court. In so doing, it explained:

“[W]henever a controversy in a suit . . . arises respecting the validity or construction of a will, or the enforcement of a decree admitting it to probate, there is no more reason why the Federal courts should not take jurisdiction of the case than there is that they should not take jurisdiction of any other controversy between the parties.” *Id.*, at 22.

Likewise, in *Payne v. Hook*, 7 Wall. 425 (1869), the Court explained that it was “well settled that a court of chancery, as an incident to its power to enforce trusts, and make those holding a fiduciary relation account, has jurisdiction to compel executors and administrators to account and distribute the assets in their hands.” *Id.*, at 431. (In that same case, a federal court later appointed a Special Master to administer the estate. This Court upheld some of the Master's determinations and rejected others. See *Hook v. Payne*, 14 Wall. 252, 255 (1872).)

To be sure, there are cases that support limitations on federal courts' jurisdiction over the probate and annulment of wills and the administration of decedents' estates. But careful examination reveals that at least most of the limitations so recognized stem not from some *sui generis* exception, but rather from generally applicable jurisdictional rules. Cf. *Ellis v. Davis*, 109 U. S. 485, 497 (1883) (“Jurisdiction as to wills, and their probate as such, is neither included in nor excepted out of the grant of judicial power to the courts of the United States”). Some of those rules, like the rule that diversity jurisdiction will not attach absent an *inter partes* controversy, plainly are still relevant today. See, e.g., *Waterman v. Canal-Louisiana Bank & Trust Co.*, 215 U. S. 33, 44–45 (1909); see also *id.*,

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at 46 (reaffirming the *in gremio legis* principle). Others, like the rule that a bill in equity will lie only where there is no adequate remedy elsewhere, have less straightforward application in the wake of 20th-century jurisdictional developments. See, e.g., *Case of Broderick's Will*, 21 Wall. 503, 510–512 (1875); *Ellis*, 109 U. S., at 503 (denying relief where plaintiff had “a plain, adequate, and complete remedy at law”); see also Winkler, *supra*, n.2, at 112–113. Whatever the continuing viability of these individual rules, together they are more than adequate to the task of cabining federal courts’ jurisdiction. They require no helping hand from the so-called probate exception.

Rather than preserving whatever vitality that the “exception” has retained as a result of the *Markham* dicta, I would provide the creature with a decent burial in a grave adjacent to the resting place of the *Rooker-Feldman* doctrine. See *Lance v. Dennis*, 546 U. S. ___, ___ (2006) (STEVENS, J., dissenting) (slip op., at 2–3).