

CHEROKEE NATION V. HITCHCOCK

187 U.S. 194 (1902)

... This brings us to consider the fundamental question which the case involves, that is, the contention on behalf of the government that the decree below should be sustained because the act of June 28, 1898, is a valid exercise of power vested in Congress, and fully authorized the Secretary of the Interior to do and perform the things which the complainants seek to have him enjoined from doing...

... The act of June 28, 1898, 30 Stat. 495, entitled "An act for the protection of the people of the Indian Territory, and for other purposes," contains provisions for the completion of the rolls of citizenship of said tribes, for the reservation of townsites and the sale of lots therein, and for the allotment of the exclusive use and occupancy of the surface of all lands susceptible of allotment among the citizens of the respective tribes, with a provision as follows (sec. 11):

"But all oil, coal, asphalt, and mineral deposits in the lands of any tribe are reserved to such tribe, and no allotment of such land shall carry the title to such oil, coal, asphalt, or mineral deposits."

Section 13 of said act contains provisions for leasing the oil, coal, asphalt, and mineral deposits as follows:

"That the Secretary of the Interior is hereby authorized and directed from time to time to provide rules and regulations in regard to the leasing of oil, coal, asphalt, and other minerals in said Territory, and all such leases shall be made by the Secretary of the Interior; and any lease for any such minerals otherwise made shall be absolutely void. No lease shall be made or renewed for a longer period than fifteen years, nor cover the mineral in more than six hundred and forty acres of land, which shall conform as nearly as possible to the surveys. Lessees shall pay on each oil, coal, asphalt, or other mineral claim at the rate of one hundred dollars per annum, in advance, for the first and second years; two hundred dollars per annum, in advance, for the third and fourth years, and five hundred dollars, in advance, for each succeeding year thereafter, as advanced royalty on the mine or claim on which they are made. All such payments shall be a credit on royalty when each said mine is developed and operated and its production is in excess of such guaranteed annual advanced payments; and all lessees must pay said annual advanced payments on each claim, whether developed or undeveloped; and should any lessee neglect or refuse to pay such advanced annual royalty for the period of sixty days after the same becomes due and payable on any lease, the lease on which default is made shall become null and void, and the royalties paid in advance shall then become and be the money and property of the tribe. Where any oil, coal, asphalt, or other mineral is hereafter opened on land allotted, sold, or reserved, the value of the use of the necessary surface for prospecting or mining, and the damage

done to the other land and improvements, shall be ascertained under the direction of the Secretary of the Interior and paid to the allottee or owner of the land, by the lessee or party operating the same, before operations begin: *Provided*, That nothing herein contained shall impair the rights of any holder or owner of a leasehold interest in any oil, coal rights, asphalt, or mineral, which have been assented to by act of Congress, but all such interest shall continue unimpaired hereby, and shall be assured to such holders or owners by leases from the Secretary of the Interior for the term not exceeding fifteen years, but subject to payment of advance royalties as herein provided, when such leases are not operated, to the rate of royalty on coal mined, and the rules and regulations to be prescribed by the Secretary of the Interior, and preference shall be given to such parties in renewals of such leases: *And provided further*, That when, under the customs and laws heretofore existing and prevailing in the Indian Territory, leases have been made of different groups or parcels of oil, coal, asphalt, or other mineral deposits, and possession has been taken thereunder and improvements made for the development of such oil, coal, asphalt, or other mineral deposits, by lessees or their assigns, which have resulted in the production of oil, coal, asphalt, or other mineral in commercial quantities by such lessees or their assigns, then such parties in possession shall be given preference in the making of new leases, in compliance with the directions of the Secretary of the Interior; and in making new leases due consideration shall be made for the improvements of such lessees, and in all cases of the leasing or renewal of leases of oil, coal, asphalt, and other mineral deposits preference shall be given to parties in possession who have made improvements. The rate of royalty to be paid by all lessees shall be fixed by the Secretary of the Interior."

Section 16 contains a provision as to the payment and distribution of rents and royalties due said tribes, as follows:

"That it shall be unlawful for any person, after the passage of this act, except as hereinafter provided, to claim, demand, or receive, for his own use or for the use of any one else, any royalty on oil, coal, asphalt, or other mineral, or on any timber or lumber, or any other kind of property whatsoever, or any rents on any lands or property belonging to any one of said tribes or nations in said Territory, or for any one to pay to any individual any such royalty or rents or any consideration therefor whatsoever: and all royalties and rents hereafter payable to the tribe shall be paid, under such rules and regulations as may be prescribed by the Secretary of the Interior, into the Treasury of the United States to the credit of the tribe to which they belong."

As the acts done and contemplated to be done by the appellee and assailed by the bill of complaint, are presumably not the subject of criticism, in the event that the act of June 28, 1898, was a constitutional and valid exercise of power by Congress, we will now address ourselves to a consideration of that statute.

Prior to the act of March 3, 1871, 16 Stat. 544, 566, now section 2079 of the Revised Statutes, which statute, in effect, voiced the intention of Congress thereafter to make the Indian tribes amenable directly to the power and authority of the laws of the United States by the immediate exercise of its legislative power over them, the customary mode of dealing with the Indian tribes was by treaty. As however held in *Cherokee Nation v. Southern Kansas Railway Co.*, 135 U.S. 641, 653, reaffirmed in *Stephens v. Cherokee Nation*, 174 U.S. 445, 484, while the Cherokee Nation and other Indian tribes domiciled within the United States had been recognized

by the United States as separate communities, and engagements entered into with them by means of formal treaties, they were yet regarded as in a condition of pupilage or dependency, and subject to the paramount authority of the United States.

Reviewing decisions of this court rendered prior to the act of 1871, and particularly considering the status of the very tribe of Indians affected by the present litigation, the court commented upon a declaration made in a previous decision that this government had "admitted, by the most solemn sanction, the existence of the Indians as a separate and distinct people, and as being invested with rights which constitute them a state, or separate community." It was observed of this declaration that it fell "far short of saying that they are a sovereign state, with no superior within the limits of its territory." Considering the treaty of 1835 with the Cherokee Nation, under which it is now claimed, on behalf of the appellants, that the Cherokees became vested with the sole control over the lands ceded to them, the court observed (p. 484):

"By the treaty of New Echota, 1835, the United States covenanted and agreed that the lands ceded to the Cherokee Nation should at no future time, without their consent, be included within the territorial limits or jurisdiction of any State or Territory, and that the government would secure to that nation 'the right by their national councils to make and carry into effect all such laws as they may deem necessary for the government of the persons and property within their own country, belonging to their people or such persons as have connected themselves with them;' and, by the treaties of Washington, 1846 and 1866, the United States guaranteed to the Cherokees the title and possession of their lands, and jurisdiction over their country. Revision of Indian Treaties, pp. 65, 79, 85. But neither these nor any previous treaties evinced any intention, upon the part of the government, to discharge them from their condition of pupilage or dependency, and constitute them a separate, independent, sovereign people, with no superior within its limits."

It results then from the doctrine of the decisions of this court that the demurrer was properly sustained, because of the fact that the matters named in the bill were matters of administration, to which the act of June 28 was applicable, and they were solely cognizable by the executive department of the government. The decision in *Stephens v. Cherokee Nation*, 174 U.S. 445, is particularly in point, as that case involved the validity of the very act under consideration, and the precedent correlative legislation, wherein the United States practically assumed the full control over the Cherokees as well as the other nations constituting the five civilized tribes, and took upon itself the determination of membership in the tribes for the purpose of adjusting their rights in the tribal property. The plenary power of control by Congress over the Indian tribes and its undoubted power to legislate, as it had done through the act of 1898, directly for the protection of the tribal property, was in that case reaffirmed. Thus, in the course of its opinion, after alluding to the legislation concerning the Dawes Commission, the court said:

"It may be remarked that the legislation seems to recognize, especially the act of June 28, 1898, a distinction between admission to citizenship merely and the distribution of property to be subsequently made, as if there might be circumstances under which the right to a share in the latter would not necessarily follow from the concession of the former. But in any aspect, we are of opinion that the constitutionality of these acts in respect of the determination of citizenship cannot be successfully assailed on the ground of the impairment or destruction of vested rights.

The lands and moneys of these tribes are public lands and public moneys, and are not held in individual ownership, and the assertion by any particular applicant that his right therein is so vested as to preclude inquiry into his status involves a contradiction in terms."

The holding that Congress had power to provide a method for determining membership in the five civilized tribes, and for ascertaining the citizenship thereof preliminary to a division of the property of the tribe among its members, necessarily involved the further holding that Congress was vested with authority to adopt measures to make the tribal property productive, and secure therefrom an income for the benefit of the tribe.

Whatever title the Indians have is in the tribe, and not in the individuals, although held by the tribe for the common use and equal benefit of all the members. *The Cherokee Trust Funds*, 117 U.S. 288, 308. The manner in which this land is held is described in *Cherokee Nation v. Journeycake*, 155 U.S. 196, 207, where this court, referring to the treaties and the patent mentioned in the bill of complaint herein, said: "Under these treaties, and in December, 1838, a patent was issued to the Cherokees for these lands. By that patent, whatever of title was conveyed was conveyed to the Cherokees as a nation, and no title was vested in severalty in the Cherokees, or any of them."

There is no question involved in this case as to the taking of property; the authority which it is proposed to exercise, by virtue of the act of 1898, has relation merely to the control and development of the tribal property, which still remains subject to the administrative control of the government, even though the members of the tribe have been invested with the status of citizenship under recent legislation.

We are not concerned in this case with the question whether the act June 28, 1898, and the proposed action thereunder, which is complained of, is or is not wise, and calculated to operate beneficially to the interests of the Cherokees. The power existing in Congress to administer upon and guard the tribal property, and the power being political and administrative in its nature, the manner of its exercise is a question within the province of the legislative branch to determine, and is not one for the courts.

Affirmed.

QUESTIONS AND COMMENTS

1. Evaluate this proposition: "Whatever title the Indians have is in the tribe, and not in the individuals, although held by the tribe for the common use and equal benefit of all the members" in the context of this case. Recall that the tribe is the plaintiff.
2. Does a beneficiary of the "garden variety" of a trust having the present right of enjoyment have a "vested right"?

3. Does the trustee of a garden variety trust have a "vested right"?