

HALLOWELL V. COMMONS

239 U.S. 506 (1916)

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a bill to establish the equitable title of the plaintiff to an allotment made to Jacob Hallowell, deceased, a member of the Omaha Tribe, in accordance with §§ 5, 6, of the act of August 7, 1882, c. 434, 22 Stat. 341. The patent to Jacob Hallowell followed the language of § 6 and declared that the United States would hold his land for the period of 25 years in trust for the sole use of the allottee, 'or in case of his decease, of his heirs according to the laws of the State of Nebraska.' The plaintiff says that he is the sole heir as against various other claims set forth in the bill. We do not go into further particulars as we are of opinion that the Circuit Court of Appeals was right in holding that the District Court had no jurisdiction of the case. 210 Fed. Rep. 793. 127 C.C.A. 343.

It is unnecessary to consider whether there was jurisdiction when the suit was begun. By the act of June 25, 1910, c. 431, 36 Stat. 855, it was provided that in a case like this of the death of the allottee intestate during the trust period the Secretary of the Interior should ascertain the legal heirs of the decedent and his decision should be final and conclusive; with considerable discretion as to details. This act restored to the Secretary the power that had been taken from him by acts of 1894 and February 6, 1901, c. 217, 31 Stat. 760. *McKay v. Kalyton*, 204 U.S. 458, 468. It made his jurisdiction exclusive in terms, it made no exception for pending litigation, but purported to be universal and so to take away the jurisdiction that for a time had been conferred upon the courts of the United States. The appellee contends for a different construction on the strength of Rev. Stats., § 13, that the repeal of any statute shall not extinguish any liability incurred under it, *Hertz v. Woodman*, 218 U.S. 205, 216, and refers to the decisions upon the statutes concerning suits upon certain bonds given to the United States. *United States Fidelity & Guaranty Co. v. United States*, 209 U.S. 306. But apart from a question that we have passed, whether the plaintiff even attempted to rely upon the statutes giving jurisdiction to the courts in allotment cases, the reference of the matter to the Secretary, unlike the changes with regard to suits upon bonds, takes away no substantive right but simply changes the tribunal that is to hear the case. In doing so it evinces a change of policy, and an opinion that the rights of the Indians can be better preserved by the quasi-paternal supervision of the general head of Indian affairs. The consideration applies with the same force to all cases and was embodied in a statute that no doubt was intended to apply to all, so far as construction is concerned.

There is equally little doubt as to the power of Congress to pass the act so construed. We presume that no one would question it if the suit had not been begun. It is a strong proposition that bringing this bill intensified, strengthened or enlarged the plaintiff's rights, as suggested in *De Lima v. Bidwell*, 182 U.S. 1, 199, 200. See *Simmons v. Hanover*, 40 Pick. 188, 193, 194.

Hepburn v. Curts, 7 Watts, 300. *Welch v. Wadsworth*, 30 Connecticut, 149, 154. *Atwood v. Buckingham*, 78 Connecticut, 423. The difficulty in applying such a proposition to the control of Congress over the jurisdiction of courts of its own creation is especially obvious. See *Bird v. United States*, 187 U.S. 118, 124. In any event the rights of the Indians in this matter remained subject to such control on principles that have been illustrated in many ways. See *Tiger v. Western Investment Co.*, 221 U.S. 286; *Hallowell v. United States*, 221 U.S. 317.

The decision of the Circuit Court of Appeals in this case is in accord with such earlier decisions as we have seen. *Bond v. United States*, 181 Fed. Rep. 613; *Pel-ata-yakot v. United States*, 188 Fed. Rep. 387; *Parr v. Colfax*, 197 Fed. Rep. 302.

Decree dismissing the bill for want of jurisdiction affirmed.