HECKMAN V. UNITED STATES

224 U.S. 413 (1912)

...MR. JUSTICE HUGHES, after making the above statement, delivered the opinion of the court.

The conveyances, which this suit was brought to cancel, were executed by members of the Cherokee tribe of Indians, of the full-blood, of lands allotted to them in severalty. The statute under which the allotments were made (act of July 1, 1902, c. 1375, 32 Stat. 716), accepted by the Cherokee nation on August 7, 1902, provided that the lands should be inalienable for a period specified. Sections 11-15 (Id., p. 717). The lands in question were "surplus" lands, that is, those other than homesteads. While the restrictions, applicable to lands of this character, were still in force, Congress extended the period of inalienability by the act of April 26, 1906. 34 Stat. 137, c. 1876. Section 19 of this act (Id., p. 144) is as follows:

"SEC. 19. That no full-blood Indian of the Choctaw, Chickasaw, Cherokee, Creek or Seminole tribes shall have power to alienate, sell, dispose of, or encumber in any manner any of the lands allotted to him for a period of twenty-five years from and after the passage and approval of this Act, unless such restriction shall, prior to the expiration of said period, be removed by Act of Congress; and for all purposes the quantum of Indian blood possessed by any member of said tribes shall be determined by the rolls of citizens of said tribes approved by the Secretary of the Interior: Provided, however, That such full-blood Indians of any of said tribes may lease any lands other than homesteads for more than one year under such rules and regulations as may be prescribed by the Secretary of the Interior; and in case of the inability of any full-blood owner of a homestead, on account of infirmity or age, to work or farm his homestead, the Secretary of the Interior, upon proof of such inability, may authorize the leasing of such homestead under such rules and regulations: Provided further, That conveyances heretofore made by members of any of the Five Civilized Tribes subsequent to the selection of allotment and subsequent to removal of restriction, where patents thereafter issue, shall not be deemed or held invalid solely because said conveyances were made prior to issuance and recording or delivery of patent or deed; but this shall not be held or construed as affecting the validity or invalidity of any such conveyance, except as hereinabove provided; and every deed executed before, or for the making of which a contract or agreement was entered into before the removal of restrictions, be and the same is hereby, declared void: Provided further, That all lands upon which restrictions are removed shall be subject to taxation, and the other lands shall be exempt from taxation as long as the title remains in the original allottee."

The power of Congress thus to extend the restriction upon alienation was sustained by this court in *Tiger v. Western Investment Co.*, 221 U.S. 286. There the question related to a conveyance of inherited lands, made by a Creek Indian, of the full-blood, without the approval of the Secretary of the Interior as required by § 22 of the act of 1906.The conveyance had been executed after the expiration of the five-year limitation upon alienation, prescribed by the supplemental agreement with the Creek Nation (act of June 30, 1902, c. 1323, § 16; 32 Stat. 503); but meanwhile, and during the continuance of the original restriction, the act of 1906 had

been enacted. It was held that the restriction of the later statute was valid.

The reasoning of this decision is conclusive as to the validity of the extension by § 19 of the act of 1906 of the period of inalienability of lands allotted, as in this case, to full-blood Cherokees. And the same principle governs the restrictions provided by the act of May 27, 1908, c. 199, 35 Stat. 312.

It is not open to dispute that, upon the facts alleged, all the conveyances specified in the bill in this suit were executed in violation of restrictions lawfully imposed.

The principal question now presented is with respect to the capacity of the United States to sue in its own courts to enforce these restrictions.

The relations of the United States to the Cherokees have repeatedly been described in the decisions of this court. *Cherokee Nation v. Georgia*, 5 Pet. 1; *Worcester v. Georgia*, 6 Pet. 515; *United States v. Rogers*, 4 How. 567; *Mackey v. Coxe*, 18 How. 100; *The Cherokee Trust Funds*, 117 U.S. 288; *Cherokee Nation v. Southern Kansas Ry. Co.*, 135 U.S. 641; *United States v. Old Settlers*, 148 U.S. 427; *Cherokee Nation v. Journeycake*, 155 U.S. 196; *Stephens v. Cherokee Nation*, 174 U.S. 445; *Cherokee Nation v. Hitchcock*, 187 U.S. 294; *Lowe v. Fisher*, 223 U.S. 95...

...The placing of restrictions upon the right of alienation was an essential part of the plan of individual allotment; and limitations were imposed by each of the allotment agreements. The separate statutes were supplemented by the general acts of 1906 and 1908, already mentioned. These restrictions evinced the continuance, to this extent at least, of the guardianship which the United States had exercised from the beginning. That the conferring of citizenship was in no wise inconsistent with the retention of control over the disposition of the allotted lands, was expressly decided in the case of *Tiger v. Western Investment Co., supra*, in which the conclusions of the court were thus stated (p. 316):

"Conceding that Marchie Tiger by the act conferring citizenship obtained a status which gave him certain civil and political rights, inhering in the privileges and immunities of such citizenship unnecessary to here discuss, he was still a ward of the Nation so far as the alienation of these lands was concerned, and a member of the existing Creek Nation. . . . Upon the matters involved our conclusions are that Congress has had at all times, and now has, the right to pass legislation in the interest of the Indians as a dependent people; that there is nothing in citizenship incompatible with this guardianship over the Indian's lands inherited from allottees as shown in this case; that in the present case when the act of 1906 was passed, the Congress had not released its control over the alienation of lands of full-blood Indians of the Creek Nation; that it was within the power of Congress to continue to restrict alienation by requiring, as to full-blood Indians, the consent of the Secretary of the Interior to a proposed alienation of lands such as are involved in this case; that it rests with Congress to determine when its guardianship shall cease, and while it still continues it has the right to vary its restrictions upon alienation of Indian lands in the promotion of what it deems the best interest of the Indian."

During the continuance of this guardianship, the right and duty of the Nation to enforce by all

appropriate means the restrictions designed for the security of the Indians cannot be gainsaid. While relating to the welfare of the Indians, the maintenance of the limitations which Congress has prescribed as a part of its plan of distribution is distinctly an interest of the United States. A review of its dealings with the tribes permits no other conclusion. Out of its peculiar relation to these dependent peoples sprang obligations to the fulfillment of which the national honor has been committed. "From their very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress, and by this court, whenever the question has arisen." *United States v. Kagama*, 118 U.S. 375, 384.

This national interest is not to be expressed in terms of property, or to be limited to the assertion of rights incident to the ownership of a reversion or to the holding of a technical title in trust. When, in 1838, patent was issued to the Cherokees providing that it was subject to the condition that the granted lands should revert to the United States if the Cherokee Nation became extinct or abandoned them, neither the rights nor the duties of the United States were confined to the reversionary interest thus secured. And its relinquishment made it no less a matter of national concern that the restrictions designed to protect the Indian allottees should be enforced. But this object could not be accomplished if the enforcement were left to the Indians themselves. It is no answer to say that conveyances obtained in violation of restrictions would be void. That, of course, is true, and yet, by means of the conveyances and the consequent assertion of rights of ownership by the grantees, the Indians might be deprived of the practical benefits of their allotments. It was the intent of Congress that, for their sustenance and as a fitting aid to their progress, they should be secure in their possession during the period specified and should actually hold and enjoy the allotted lands. As was well said by the court below, "If they are unable to resist the allurements by which they are enticed into making the conveyances, will they be expected to undertake the difficult and protracted litigation necessary to set aside their own acts? To ask these questions is to answer them. Congress intended that both the Indians and the members of the white race should obey its limitations. A transfer of the allotments is not simply a violation of the proprietary rights of the Indian. It violates the governmental rights of the United States. If these Indians may be divested of their lands, they will be thrown back upon the Nation a pauperized, discontented and, possibly, belligerent people." The authority to enforce restrictions of this character is the necessary complement of the power to impose them.

Whether these restrictions upon the alienation of the allotted lands had been violated and the alleged conveyances were void, was a justiciable question; and in order that it might properly discharge its duty, and that it might obtain adequate relief, suited to the nature of the case in accordance with the principles of equity, the United States was entitled to invoke the equity jurisdiction of its courts. It was not essential that it should have a pecuniary interest in the controversy...

...In *United States v. Rickert*, 188 U.S. 432, the suit was brought to restrain the collection of certain county taxes alleged to be due in respect of permanent improvements on, and personal property used in the cultivation of, lands occupied by Sioux Indians in South Dakota. The lands had been allotted under the general allotment act of February 8, 1887, 24 Stat. 389. One of the questions certified to this court was whether the United States had such an interest in the

controversy or in its subjects as entitled it to maintain the suit; and the question was answered in the affirmative. It is true that, in that case, the statute provided that the United States should hold the land allotted for twenty-five years in trust for the sole use and benefit of the Indian allottee. But the decision rested upon a broader foundation than the mere holding of a legal title to land in trust, and embraced the recognition of the interest of the United States in securing immunity to the Indians from taxation conflicting with the measures it had adopted for their protection.The court said (p. 444): "In view of the relation of the United States to the real and personal property in question, as well as to these dependent Indians still under national control, and in view of the injurious effect of the assessment and taxation complained of upon the plans of the Government with reference to the Indians, it is clear that the United States is entitled to maintain this suit." By the act of August 15, 1894, c. 290, 28 Stat. 286, 305, as amended by the act of February 6, 1901, c. 217, 31 Stat. 760, Congress authorized suits to be brought against the United States, in its Circuit Courts, "involving the right of any person, in whole or in part of Indian blood or descent" (with certain exceptions) "to any allotment of lands under any law or treaty." *Sloan v. United States*, 193 U.S. 614. Prior to the amendment of 1901, the United States could not be sued in such a case. But the amendment required that "in said suit the parties thereto shall be the claimant as plaintiff and the United States as party defendant." Commenting upon this, the court said in *McKay v. Kalyton* , 204 U.S. 458, 469:"Nothing could more clearly demonstrate, than does this requirement, the conception of Congress that the United States continued as trustee to have an active interest in the proper disposition of allotted Indian lands and the necessity of its being made a party to controversies concerning the same, for the purpose of securing a harmonious and uniform operation of the legislation of Congress on the subject." And In *Matter of Heff* , 197 U.S. 488, 509,this court said: "In *United States v. Rickert*, 188 U.S. 432, we sustained the right of the Government to protect the lands thus allotted and patented from any encumbrance of state taxation. Undoubtedly an allottee can enforce his right to an interest in the tribal or other property (for that right is expressly granted) and equally clear is it that Congress may enforce and protect any condition which it attaches to any of its grants. This it may do by appropriate proceedings in either a National or a state court."

Not only was the United States entitled to prosecute this suit by virtue of the interest springing from its peculiar relations to the Indians and the course of dealing which had finally led to the plan of separate allotments accompanied by restrictions for the protection of the allottees, but Congress has explicitly recognized the right of the Government thus to enforce these restrictions and has made appropriations for the maintenance of suits of this description. And, at least, the power of Congress to authorize the Government to sue, in view of the relation of the United States to the subject-matter and of the nature of the question to be determined, cannot be doubted. *Minnesota v. Hitchcock*, 185 U.S. 373, 387, 388.

By the act of May 27, 1908, c. 199, 35 Stat. 312, which defined restrictions with respect to allotments to members of the Five Civilized Tribes, the representatives of the Secretary of the Interior were authorized to advise all allottees, having restricted lands, of their rights, and at the request of any such allottee to bring suit in his name to cancel any conveyance or incumbrance in violation of the act and to take all steps necessary to assist the allottees in acquiring and retaining possession. But the following provision was added (p. 314):

"Nothing in this act shall be construed as a denial of the right of the United States to take

such steps as may be necessary, including the bringing of any suit and the prosecution and appeal thereof, to acquire or retain possession of restricted Indian lands, or to remove cloud therefrom, or clear title to the same, in cases where deeds, leases or contracts of any other kind or character whatsoever have been or shall be made contrary to law with respect to such lands prior to the removal therefrom of restrictions upon the alienation thereof; such suits to be brought on the recommendation of the Secretary of the Interior, without costs or charges to the allottees, the necessary expenses incurred in so doing to be defrayed from the money appropriated by this act."

It is urged that this clause did not confer authority to sue, but was inserted merely to rebut any possible inference of an intention to deny this right to the United States. This seems to us a strained construction in view of the obvious purpose of the act. And it fails to give adequate effect to the words "such suits to be brought on the recommendation of the Secretary of the Interior, without costs or charges to the allottees, *the necessary expenses incurred in so doing to be defrayed from the money appropriated by this act.*" In addition to the appropriation of moneys for expenditure under the direction of the Secretary of the Interior, that act appropriated the sum of $50,000 "to be immediately available and available until expended as the Attorney General may direct," which was "to be used in the payment of necessary expenses incident to any suits brought at the request of the Secretary of the Interior in the eastern judicial district of Oklahoma;" with the proviso that $10,000 of this amount, or so much as might be necessary, should be expended in the prosecution of cases in the western judicial district of that State. In 1909 (act of March 4, 1909, c. 299, 35 Stat. 945, 1014), a further appropriation of a like sum for the same purposes was made under the heading "Suits to set aside conveyances of allotted lands." Another appropriation was made in 1910 (act of June 25, 1910, c. 384, 36 Stat. 703, 748), under a similar heading with specific reference to the "Five Civilized Tribes," and also with the provision "and not to exceed ten thousand dollars of said sum shall be available for the expenses of the United States on appeals to the Supreme Court of the United States;" and still another to the same effect in 1911 (act of March 4, 1911, c. 285, 36 Stat. 1363, 1425).

We conclude that the United States has the capacity to prosecute this suit.

It is further urged that there is a defect of parties, on account of the absence of the Indian grantors. It is said that they are the owners of the lands and hence sustain such a relation to the controversy that final decree cannot be made without affecting their interest. *Shields v. Barrow*, 17 How. 130, 139; *Williams v. Bankhead*, 19 Wall. 563.

The argument necessarily proceeds upon the assumption that the representation of these Indians by the United States is of an incomplete or inadequate character; that although the United States, by virtue of the guardianship it has retained, is prosecuting this suit for the purpose of enforcing the restrictions Congress has imposed, and of thus securing possession to the Indians, their presence as parties to the suit is essential to their protection. This position is wholly untenable. There can be no more complete representation than that on the part of the United States in acting on behalf of these dependents -- whom Congress, with respect to the restricted lands, has not yet released from tutelage. Its efficacy does not depend upon the Indian's acquiescence. It does not rest upon convention, nor is it circumscribed by rules which govern private relations. It is a representation which traces its source to the plenary control of Congress in legislating for the protection of the Indians under its care, and it recognizes no limitations that

are inconsistent with the discharge of the national duty.

When the United States instituted this suit, it undertook to represent, and did represent, the Indian grantors whose conveyances it sought to cancel. It was not necessary to make these grantors parties, for the Government was in court on their behalf. Their presence as parties could not add to, or detract from, the effect of the proceedings to determine the violation of the restrictions and the consequent invalidity of the conveyances. As by the act of Congress they were precluded from alienating their lands, they were likewise precluded from taking any position in the legal proceedings instituted by the Government to enforce the restrictions which would render such proceedings ineffectual or give support to the prohibited acts. The cause could not be dismissed upon their consent; they could not compromise it; nor could they assume any attitude with respect to their interest which would derogate from its complete representation by the United States. This is involved necessarily in the conclusion that the United States is entitled to sue, and in the nature and purpose of the suit.

These considerations also dispose of the contention that by reason of the absence of the grantors as parties, the grantees are placed in danger of double litigation; so that if they should succeed here they would still be exposed to suit by the allottees. It is not pertinent to comment upon the improbability of the contingency, if it exists in legal contemplation. But if the United States, representing the owners of restricted lands, is entitled to bring a suit of this character, it must follow that the decree will bind not only the United States, but the Indians whom it represents in the litigation. This consequence is involved in the representation. *Kerrison v. Stewart*, 93 U.S. 155, 160; *Shaw v. Railroad Co.*, 100 U.S. 605, 611; *Beals v. Ill. &c.R.R. Co.*, 133 U.S. 290, 295. And it could not, consistently with any principle, be tolerated that, after the United States on behalf of its wards had invoked the jurisdiction of its courts to cancel conveyances in violation of the restrictions prescribed by Congress, these wards should themselves be permitted to relitigate the question.

In what cases the United States will undertake to represent Indian owners of restricted lands in suits of this sort is left under the acts of Congress to the discretion of the Executive Department. The allottee may be permitted to bring his own action, or if so brought the United States may aid him in its conduct, as in the Tiger Case. And, as already noted, the act of May 27, 1908, makes provision for proceedings by the representatives of the Secretary of the Interior in the name of the allottee. But in the opportunities thus afforded there is no room for the vexation of repeated litigation of the same controversy. And when the United States itself undertakes to represent the allottees of lands under restriction and brings suit to cancel prohibited transfers, such action necessarily precludes the prosecution by the allottees of any other suit for a similar purpose relating to the same property.

It is said that the allottees have received the consideration and should be made parties in order that equitable restoration may be enforced. Where, however, conveyance has been made in violation of the restrictions, it is plain that the return of the consideration cannot be regarded as an essential prerequisite to a decree of cancellation. Otherwise, if the Indian grantor had squandered the money, he would lose the land which Congress intended he should hold, and the very incompetence and thriftlessness which were the occasion of the measures for his protection would render them of no avail. The effectiveness of the acts of Congress is not thus to be

destroyed. The restrictions were set forth in public laws, and were matters of general knowledge. Those who dealt with the Indians contrary to thse provisions are not entitled to insist that they should keep the land if the purchase price is not repaid, and thus frustrate the policy of the statute. *United States v. Trinidad Coal Co.*, 137 U.S. 160, 170, 171.

But it is suggested that there may be instances where the consideration could be restored without interfering with the policy which prohibited the transfer; that is, without in any way impairing the right to the recovery of the land or the assurance to the Indian of his possession free from incumbrance. It is said, for example, that there may have been an exchange of lands, and that the Indian grantor should not, on retaking the restricted lands, be permitted at the same time to retain those which he has received from the grantee. Or there may be other property held by the Indian grantor free from restrictions, so that restoration of the consideration may be enforced without working a deprivation of the restricted lands contrary to the act of Congress. We need not attempt to surmise what cases of this sort may arise. It is sufficient to say that no such case is here presented. It is not presented by the mere allegation of the bill that the conveyances assailed purport to have been made for pecuniary consideration. It will be competent for the court, on a proper showing as to any of the transactions that provision can be made for a return of the consideration, consistently with the cancellation of the conveyances and with securing to the allottees the possession of the restricted lands in accordance with the statute, to provide for bringing in as a party to the suit any person whose presence for that purpose is found to be necessary...

QUESTION AND COMMENTS

1. It should be noted that this case was decided in the same term as the previous case, but about six weeks before the prior decision.

2. Suppose that the restrictions which were extended in this case had in fact run out. Could Congress have reimposed restrictions so as to deprive the individual Indian of his power of alienation when for a period of time he was free to convey his land. Would the result have been the same?