

**Kendall Vs. United States**

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**Court :** US Supreme Court

**Decided On :** 1868

**Appeal No. :** 74 U.S. 113

**Appellant :** Kendall

**Respondent :** United States

**Judgement :**

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**Kendall v. United States**

**74 U.S. (7 Wall.) 113**

*APPEAL FROM THE*

*COURT OF CLAIMS*

## **SYLLABUS**

A claim which has never received the assent of the person against whom it is asserted and which remains to be settled by negotiation or suit at law cannot be so assigned as to give the assignee an equitable right to prevent the original parties

from compromising or adjusting the claim on any terms that may suit them.

A. and J. Kendall made an agreement in the year 1843 with persons representing a branch of the Cherokee tribe of Indians called the Western Cherokees to prosecute a claim

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which these Indians set up against the United States. It was a part of the agreement that the Kendalls were to receive, directly from the United States, 5 percent upon all sums that might be collected on the claim.

The justice of this claim, which it was thus agreed that the Kendalls should prosecute, had never been acknowledged by the United States, and the amount of it was uncertain. A treaty was finally made in 1846, not with the Western Cherokees, who were but a part of the Cherokee tribe, but with the whole tribe, and it embraced not only the claim set up by the Western Cherokees, but many other matters, setting matters between the United States and the tribe, as also between the Western Cherokees and the main body. The treaty, as finally ratified by the Senate and by the tribe, provided that the sum of money found due (and which included moneys to the main tribe), should be held in trust by the United States and paid out to each individual Indian, or head of a family, and that this per capita allowance should not be assignable, but should be paid directly to the person so entitled. On the 30th September, 1850, Congress made an appropriation of the amount necessary to fulfill this treaty, and the act contained a provision that *no part of the money should be paid to any agents of said Indians, or to any other person than the Indian to whom it was due.*

The Kendalls having thus failed to get anything from the appropriations, presented a petition to the Court of Claims. They set forth in it the fact and history of the treaty, the great labor which they had had, and the value of which their services had been in procuring the treaty and appropriation (with interest, about \$887,000); all, as they alleged, due to those services. That they had repeatedly given specific notice to Congress and to its committees, and to all proper officers of the

government, of the contract made by them with the Indians, and of their claim under it, and of the justice of the same.

There was no answer or evidence produced on the other side.

The Court of Claims dismissed the petition.

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MR. JUSTICE MILLER delivered the opinion of the Court.

As the case was decided on demurrer, or what is equivalent to a demurrer, the statements of the petition must be taken to be true. They show a faithful and laborious performance of their contract by the plaintiffs, for which no compensation was ever received.

It is insisted by plaintiffs, that because the government of the United States was aware of the contract between them and the Indians, and failed to reserve and pay over to them the five percent which by that contract they had a right to claim of the Indians, the United States is liable to them for the amount. It is supposed that the doctrine of an equitable assignment of a debt or fund due from one person to another, by the order of the creditor to pay it to a third party, when brought to the notice of the debtor, is a sufficient foundation for the claim. But, if we concede that the government is to be treated in the present case precisely as a private individual, it is not easy to see how that doctrine can be made to apply. The debt or fund as to which such an equitable assignment can be made, must be some recognized or definite fund or debt, in the hands of a person who admits the obligation to pay the assignor, or, at least, it must be some liquidated demand, capable of being enforced in a court of justice. We apprehend that the doctrine has never been held, that a claim of no fixed amount, nor time, or mode of payment; a claim which has never received the assent of the person against whom it is asserted, and which remains to be settled by negotiation or suit at law, can be so assigned as to give the assignor an equitable right to prevent the original parties

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from compromising or adjusting the claim on any terms that may suit them. That is just what is claimed in this case. For it is very clear that if this equitable claim in the hands of plaintiffs was not effectual before the treaty, it can have no effect afterwards.

The treaty, by its terms, is incompatible with the claim of plaintiffs. None of the money could be paid to the plaintiffs if all of it was to be paid to the Indians individually in proportions to be determined by their numbers.

This principle of paying to the Indians per capita was not adopted with any reference to the plaintiffs' claim as a means of exclusion. The treaty was made with the entire tribe of Cherokees, of which these Western Cherokees were but a small part, and the claims which they were urging on our government constitute a still smaller part of the matters settled by the treaty.

Land claims were adjusted, the difficulties between this branch and the main body of the tribe were arranged. Other payments were made to the main tribe, in which the rule of paying per capita was adopted. Now the argument assumes that unless in adjusting all these important interests the United States kept in view the sum to be paid to plaintiffs, by their contract with the Indians, and provided for it, they must either make no treaty at all or must pay their claim. It cannot be permitted that by contracting with other parties, without requiring or asking the consent of the government, anyone can establish such a right to control the action of that government in making treaties or contracts.

The claim of the Western Indians was nothing more than a claim prior to the treaty. Its justice had never been admitted. Its amount was uncertain. These, together with the mode of payment, were all unsettled and open to negotiation. Is it possible that by making a contract with claimants to prosecute this demand against the government, the plaintiffs thereby acquired such a hold on that government as not only made the claim good to that extent, but prevented it from compromising or settling with the claimants on the best terms to be obtained?

We have no hesitation in saying that the United States, under the circumstances, had the right to make the treaty that was made without consulting plaintiffs or incurring any liability to them. The act of Congress which appropriated the money only followed the treaty in securing its payment to the individual Indians, without deduction for agents. And both the act and the treaty are inconsistent with the payment of any part of the sum thus appropriated to plaintiffs.

The judgment of the Court of Claims rejecting the demand is therefore

*Affirmed.*

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