

Kansas Vs. United States

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Appeal No. : 204 U.S. 331

Appellant : Kansas

Respondent : United States

Judgement :

Kansas v. United States - 204 U.S. 331 (1907)

U.S. Supreme Court Kansas v. United States, 204 U.S. 331 (1907)

Kansas v. United States

No. 11, Original

Submitted November 12, 1906

Decided February 25, 1907

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Where the name of a state is used simply for the prosecution of a private claim, the original jurisdiction of this Court cannot be maintained.

Although a state may be sued by the United States without its consent, public policy forbids that the United States may, without its consent, be sued by a state.

The facts are stated in the opinion.

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MR. CHIEF JUSTICE FULLER delivered the opinion of the Court.

On April 30, 1906, the State of Kansas applied for leave to file a bill of complaint against the United States and others, to which the United States objected on the ground of want of jurisdiction. May 21 leave was granted, without prejudice, and the bill was accordingly filed. As such an application by a state is usually granted as of course, we thought it wiser to allow the bill to be filed, but reserving to the United States the right to object to the jurisdiction thereafter, and hence the words "without prejudice" were inserted in the order. October 9, leave was granted to the United States to file a demurrer, and, in lieu of this, a motion to dismiss was substituted, which was submitted November 12 on printed briefs on both sides.

The bill was filed by the Attorney General of Kansas, on behalf of the state, as trustee for the Missouri, Kansas & Texas Railway Company, of certain lands in the Indian Territory alleged to have been granted to the state for the benefit of the railway company.

It is stated by counsel for complainant, as appearing from the bill, that in 1866,

"there were three Kansas railroad companies running through the state to the Indian Territory line. The first was the Union Pacific Railway Company, Southern Branch, since the Missouri, Kansas & Texas Railway Company, extending from Fort Riley, now Junction City, Kansas, in a southeasterly direction, down the valley of the Neosho River to the southern line of the State of Kansas, near Chetopa, Kansas; the second was the Leavenworth, Lawrence &

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Fort Gibson Railway Company, since conveyed to the Atchison, Topeka & Santa Fe Railroad Company, extending from Leavenworth, through Lawrence, to the northern line of the Indian Territory, near Coffeyville, Montgomery County, Kansas, in the direction of Galveston Bay, in Texas, and the third was the Kansas & Neosho Valley Railway Company, since the Kansas City, Fort Scott & Memphis, and now a part of the St. Louis & San Francisco Railroad Company, extending from a point of connection with the Union Pacific Railroad at or near the mouth of the Kansas River, thence southeasterly, through the eastern tier of counties, to the northern line of the Indian Territory at or near Baxter Springs, in Cherokee county, Kansas."

On July 25, 1866, an act of Congress was passed entitled "An Act Granting Lands to the Kansas to Aid in the Construction of the Kansas & Neosho Valley Railroad and Its Extension to Red River." 14 Stat. 236, c. 241. On the next day, July 26, an act was passed, using the same language, except as to the routes, entitled "An Act Granting Lands to the Kansas to Aid in the Construction of a Southern Branch of the Union Pacific Railway and Telegraph, from Fort Riley, Kansas, to Fort Smith, Arkansas," 14 Stat. 289, c. 270, which provided as follows:

"That, for the purpose of aiding the Union Pacific Railroad Company, Southern Branch, the same being a corporation organized under the laws of the State of Kansas, to construct and operate a railroad from Fort Riley, Kansas, or near said military reservation, thence down the valley of the Neosho River to the southern line of the State of Kansas, with a view to an extension of the same through a portion of the Indian Territory to Fort Smith, Arkansas, there is hereby granted to the State of Kansas, for the use and benefit of said railroad company, every alternate section of land or parts thereof designated by odd numbers to the extent of five alternate sections per mile on each side of said road, and not exceeding in all ten sections per mile. . . . "

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"SEC. 3. . . . And the lands hereby granted shall inure to the benefit of said company, as follows: when the Governor of the State of Kansas shall certify that

any section of ten consecutive miles of said road is completed in a good, substantial, and workmanlike manner as a first-class railroad, then the said Secretary of the Interior shall issue to the said company patents for so many sections of the land herein granted within the limits above named, and coterminous with said completed section hereinbefore granted. . . ."

"SEC. 8. *And be it further enacted,* That said Pacific Railroad Company, Southern Branch, its successors and assigns, is hereby authorized and empowered to extend and construct its railroad from the southern boundary of Kansas, south through the Indian Territory, with the consent of the Indians, and not otherwise, along the valley of Grand and Arkansas Rivers, to Fort Smith, in the State of Arkansas, and the right of way through said Indian Territory is hereby granted to said company, its successors and assigns, to the extent of one hundred feet on each side of said road or roads, and all necessary grounds for stations, buildings, workshops, machine shops, switches, side tracks, turntables, and water stations."

"SEC. 9. *And be it further enacted,* That the same grant[s] of lands through said Indian Territory are hereby made as provided in the first section of this act, whenever the Indian title shall be extinguished by treaty or otherwise, not to exceed the ratio per mile granted in the first section of this act: *Provided,* That said lands become a part of the public lands of the United States."

The bill averred that the road was constructed through the Indian Territory, and set forth at length Indian treaties and congressional legislation with reference to that territory, under which it was alleged that the Creek Indian Nation had ceased to occupy or claim the lands in question as a tribe or nation, and that some of the lands had been allotted in severalty to individual members of the Creek Nation, and that thereby

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said lands passed to the state under the provisions of the grant mentioned. It was prayed that a decree be entered adjudging the state to be the owner, as trustee for

the railway company, of all odd-numbered sections of land to the extent of the grant along the line of the road through the Creek Nation, in the Indian Territory, and that the allottees be directed to surrender the possession to the state as trustee, and be enjoined from disposing of said lands, or,

"in the event that, from any equitable considerations, the court shall entertain the view that the allottees and those claiming under them should not be disturbed, then that an account be taken of the value of the lands in controversy,"

and that the United States be adjudged to pay to the state, as trustee, the sum of such values, estimated at more than \$10,000,000.

In our opinion, it appears upon the face of the bill that the State of Kansas is only nominally a party, and that the real party in interest is the railroad company. Section 3 provided that patents should be issued not to the state, but to the company direct, which made the state nothing but a mere conduit for the passage of title. And this is so even if it were ruled that the State of Kansas was made trustee under section 9, because it would only be trustee of the bare legal title. In very many cases

"in which the grant was directly to the railroad company, or in which the act of Congress required that the patents for lands earned should be issued not to the state, for the benefit of the railroad company, but directly to the company itself,"

it has been held that the title vested absolutely in the railroad company. *Sioux City &c.; Railroad Co. v. United States*, [159 U. S. 349](#) , [159 U. S. 364](#) .

Title passed by the grant on the performance of its conditions and to the grantees to whom the patents were to be issued, and here section 3 provided that patents should issue not to the state, but to the railroad company direct.

And if the lands in the Indian Territory could be held in any view to have been granted *in praesenti*, such grant was certainly not to the State of Kansas.

The road, in aid of which the grant was made to the state, extended no farther than the southern boundary thereof, and the patents were to be issued to the company. True, as declared in section 1, the road was to be constructed "with a view to an extension of the same through a portion of the Indian Territory to Fort Smith, Arkansas," and that extension was authorized by section 8, but the lands referred to in section 9 were not lands in the State of Kansas, nor was that state mentioned in the section. It seems clear that those lands were not intended to be granted to that state for the construction of a road beyond its boundaries.

Moreover, the bill sets forth many communications and protests by the railroad company to the Dawes Commission, the townsite commission, the Indian agent, and the Secretary of the Interior, in all of which the tracts in controversy were claimed by the railroad company as its own without reference to any interest of the State of Kansas therein.

In these circumstances, we think it apparent that the name of the state is being used simply for the prosecution in this Court of the claim of the railroad company, and our original jurisdiction cannot be maintained.

Again, the United States is the real party in interest as defendant, and has not consented to be sued, which it cannot be without its consent. *Minnesota v. Hitchcock*, [185 U. S. 373](#) , [185 U. S. 387](#) ; *Oregon v. Hitchcock*, [202 U. S. 60](#) ; *United States v. Lee*, [106 U. S. 196](#) , [106 U. S. 207](#) .

"If whether a suit is one against a state is to be determined not by the fact of the party named as defendant on the record, but by the result of the judgment or decree which may be entered, the same rule must apply to the United States. The question whether the United States is a party to a controversy is not determined by the merely nominal party on the record, but by the question of the effect of the judgment or decree which can be entered."

In the present case, the parties defendant other than the United States and its officers are Creek Indian allottees and

persons claiming under them, and, if their allotments should be taken from them, which is part of the relief sought by the bill, the United States would be subject to a demand from them for the value thereof or for other lands, while the bill prays in the alternative that,

"in the event that from any equitable considerations the court should entertain the view that the allottees and those claiming under them should not be disturbed, then that an account be taken of the value of the lands in controversy at the time of the respective allotments, and the defendants, the United States of America, be ordered, adjudged, and decreed to pay to your oratrix, as trustee, the sum of such values."

It does not follow that, because a state may be sued by the United States without its consent, therefore the United States may be sued by a state without its consent. Public policy forbids that conclusion.

In *United States v. Texas*, [143 U. S. 621](#) , [143 U. S. 646](#) , it was held that the exercise by this Court of original jurisdiction

"in a suit brought by one state against another to determine the boundary line between them, or in a suit brought by the United States against a state to determine the boundary between a Territory of the United States and that state, so far from infringing, in either case, upon the sovereignty, is with the consent of the state sued. Such consent was given by Texas when admitted into the Union upon an equal footing in all respects with the other states."

That case was quoted from with approval in *Minnesota v. Hitchcock*, *supra*, where MR. JUSTICE BREWER, delivering the opinion, pointed out that the judicial power of the United States extends to cases in which the United States is a party plaintiff, as well as to cases in which it is a party defendant, for,

"while the United States, as a government, may not be sued without its consent, yet, with its consent, it may be sued, and the judicial power of the United States extends to such a controversy."

We are not dealing here with the merits of the controversy raised by the bill, but solely with the question of the original

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jurisdiction of this Court. And, as the United States has not consented to be sued, it results that, on this ground also, the bill must be dismissed.

And it is so ordered.

MR. JUSTICE MOODY took no part in the disposition of this case.

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