

Starr Vs. Campbell

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Court : US Supreme Court

Decided On : Feb-24-1908

Appeal No. : 208 U.S. 527

Appellant : Starr

Respondent : Campbell

Judgement :

Starr v. Campbell - 208 U.S. 527 (1908)

U.S. Supreme Court Starr v. Campbell, 208 U.S. 527 (1908)

Starr v. Campbell

No. 132

Argued January 23, 24, 1908

Decided February 24, 1908

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ERROR TO THE CIRCUIT COURT OF THE UNITED STATES

FOR THE WESTERN DISTRICT OF WISCONSIN

SYLLABUS

The restriction on the right of alienation of land to be allotted in severalty under the Chippewa Treaty of 1854 extend to the disposition of timber on the land as well as to the land itself, and the consent of the President to a contract for cutting timber doe not end his control over the matter; he may put conditions upon the disposition of the proceeds. *United States v. Paine Lumber Co.*, [206 U. S. 467](#) , distinguished.

The facts are stated in the opinion.

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MR. JUSTICE Mc KENNA delivered the opinion of the Court.

This writ of error is directed to a judgment sustaining a demurrer to a complaint in an action to recover certain moneys

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collected by the defendant, who is an Indian agent, for timber cut off plaintiff's allotment. The case comes directly from the circuit court, as involving the construction of a treaty.

The plaintiff is an infant Indian of the Chippewa Indians of the Lake Superior, and Tomkins is his duly appointed guardian.

A summary of the complaint is as follows:

On the first of October, 1901, the plaintiff then residing on the Bad River Indian Reservation, the President of the United States, in accordance with the provisions of the third article of the treaty concluded September 30, 1854, with the Chippewa Indians of the Lake Superior, approved a selection of land made by plaintiff, and assigned to him the West Half of the Southeast Quarter of Section Four, Township Forty-six North, of Range Three, West of the Fourth Principal Meridian in the State

of Wisconsin.

Article three of the treaty is as follows:

"Article 3. The United States will define the boundaries of the reserved tracts, whenever it may be necessary, by actual survey, and the President may, from time to time at his discretion, cause the whole to be surveyed, and may assign to each head of a family, or a single person over twenty-one years of age, eighty acres of land for his or their separate use, and he may at his discretion, as fast as the occupants become capable of transacting their own affairs, issue patents therefor to such occupants, with such restrictions of the power of alienation as he may see fit to impose. And he may also, at his discretion, make rules and regulations respecting the disposition of the lands in case of the death of the head of a family or single person occupying the same, or in case of its abandonment by them. And he may also assign other lands in exchange for mineral lands, if any such are found in the tracts herein set apart. And he may also make such changes in the boundaries of such reserved tracts or otherwise as shall be necessary to prevent interference with any vested rights. All necessary roads, highways, and railroads, the lines of which may run through any

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of the reserved tracts, shall have the right of way through the same, compensation being made therefor as in other cases."

By the Act of Congress of February 11, 1901. 31 Stat. 766, c. 350, the right to allotments was extended to all Indians then residing on the La Pointe or Bad River Reservation, irrespective of age or condition. A patent was duly issued on the twenty-ninth of June, 1905, to plaintiff, and the land conveyed, exclusive of the merchantable timber standing thereon, is of the value of \$1,000. On the eighth of January, 1902, the plaintiff made a contract with one Justus S. Stearns by which he agreed to sell him the merchantable lumber under the rules and regulations approved by the President, December 6, 1893, standing or fallen, on said lands, and the said Stearns agreed to cut and remove the same, employing Indian labor

therein, and pay to the United States Indian agent for the La Pointe agency, in trust for the plaintiff, certain designated sums, according to the kind of lumber cut. There were other details which need not be mentioned. The agreement was subject to the approval of the Commissioner of Indian Affairs.

A copy of the regulations made in 1893 is attached to the contract, Rule 7 of which is the only one material, and is as follows:

"7. After deducting one-half of the cost of the scaling and other necessary expenses chargeable against the same, the proceeds of timber sold from the unallotted portions of the reservation shall be paid to the Indian agent, to be expended for the relief and benefit of the Indians of the reservation under the direction of the Commissioner of Indian Affairs, and the proceeds of timber taken from the allotted lands of the reservation shall, after the deductions above stated, be deposited in some national bank subject to check of the Indian owner of the allotment, countersigned by the Indian agent of the La Pointe agency, unless otherwise stipulated in contracts with particular Indians."

In December, 1902, the President amended that rule by adding thereto the following:

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"If the Indian agent shall in any case be of the opinion that the allottee is not competent to manage his own affairs, he shall, subject to the approval of the Commissioner of Indian Affairs, have authority to fix the sum or sums, if any, such allottee shall be permitted to withdraw from deposit."

The Commissioner of Indian Affairs modified the agreement so as to make it subject to the amendment, and approved it as modified.

Between January, 1902, and the first of October, 1905, Stearns cut and removed, under the contract, timber of the value at least of \$15,000, and paid that amount to the defendant for the use and benefit of the plaintiff, and that of that sum defendant has paid plaintiff only the sum of \$3,100. Demand was made upon the

defendant for the payment of the balance, but he refused, and still refuses, to pay the same, and announces that he will only pay plaintiff the sum of \$10 per month, and claims the right to hold the same and pay the same out as he may be directed by the Commissioner of Indian Affairs.

Prior to the amendment of Rule 7, it had been for many years the established custom of the agents of the La Pointe Indian agency to pay the allottees under timber contracts the amount payable as fast as demanded by such allottees, such payments being left entirely to the Indian agents, the Commissioner of Indian Affairs in no manner interfering or attempting to control such payments, and that the defendant was the first to adopt the rule and practice of limiting payments to \$10 per month, as he, in his discretion, thought best, giving as a reason therefor instructions from the Commissioner of Indian Affairs.

Plaintiff alleges that it does not fall within the scope of the authority of the Commissioner to interfere with the disposition of the money by the Indian agent, and that the guardian of the plaintiff is the proper party to determine how much shall be paid to and expended for plaintiff.

Damages are alleged at \$11,900, and judgment is prayed for that amount.

The argument of this case has taken a somewhat wide range,

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and counsel in other litigations for the Red Cliff Lumber Company have, by permission of this Court, submitted a brief in support of the judgment of the circuit court. We think, however, the case is in narrow compass and depends for its decision upon the power reserved to the President by article 3 of the treaty, the patent, and the terms of the contract with Stearns. It must at the outset be kept in mind that a policy of control over the Indians has always been observed by the government. The many exercises of the policy which have been sustained by this Court we need not stop to comment on. This policy is exercised in article 3 in the power reserved to the President to put in the patent "such restrictions upon the power of alienation as he may see fit to impose." In the exercise of this power, the

patent to plaintiff contains the condition that he shall not "sell, lease, or in any manner alienate" the tract conveyed "without the consent of the President of the United States." There is a careful repetition of the conditions in the habendum that "all the rights, privileges, immunities, and appurtenances" conveyed should be limited by the condition.

On December 6, 1893, the President made rules and regulations to govern contracts for the sale of timber by the Indians to whom allotments had been made and patents issued, prescribing certain conditions and prices, and requiring such contracts to be approved by the Commissioner of Indian Affairs, which approval, it was provided, should "operate as specific consent of the Executive to the sale of the timber to which the contract relates." Rule 7, which we have already given, was part of these rules and regulations. In December, 1902, however, the President made an order amending Rule 7, giving the Indian agent, subject to the approval of the Commissioner of Indian Affairs, authority to fix the sum or sums, if any, an allottee should be permitted to withdraw from deposit. Subject to this addition to Rule 7, the contract with Stearns was made and the timber cut. We cannot yield to the contention that the consent of the President to the contract ended his authority over the matter. In other words, that he could put

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no conditions upon it. *United States v. Thurston County*, 143 F. 287; *National Bank of Commerce v. Anderson*, 147 F. 87.

The restriction upon alienation, however, it is contended, does not extend to the timber, and *United States v. Paine Lumber Co.*, [206 U. S. 467](#), is adduced as conclusive of this. We do not think so. There, as said by the Solicitor General, the land granted was arable, and could be of no use until the timber was cut; here, the land granted is all timber land. And that the distinction is important to observe is illustrated by the allegations of the complaint. It is alleged that the value of the land, exclusive of the timber, is no more than \$1,000; fifteen thousand dollars' worth of lumber has been cut from the land. The restraint upon alienation would be reduced to small consequence if it be confined to one sixteenth of the value of the

land and fifteen sixteenths left to the unrestrained or unqualified disposition of the Indian. Such is not the legal effect of the patent.

Judgment affirmed.

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