

**Jacobs Vs. Prichard**

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**SooperKanoon Citation :** [sooperkanoon.com/91330](http://sooperkanoon.com/91330)

**Court :** US Supreme Court

**Decided On :** Feb-19-1912

**Appeal No. :** 223 U.S. 200

**Appellant :** Jacobs

**Respondent :** Prichard

**Judgement :**

Jacobs v. Prichard - 223 U.S. 200 (1912)

U.S. Supreme Court Jacobs v. Prichard, 223 U.S. 200 (1912)

**Jacobs v. Prichard**

**No. 93**

**Submitted December 8, 1911**

**Decided February 19, 1912**

**223 U.S. 200**

*ERROR TO THE SUPREME COURT*

*OF THE STATE OF WASHINGTON*

## SYLLABUS

In allotting Indian lands, Congress can determine the conditions under which they shall be alienated by the allottees, and titles resting on deeds of Commissioners and consents of the allottees required by the statute under which the lands were allotted are to be determined by the federal statute, and not by the laws of the states.

Under the Act of March 3, 1893, 27 Stat. 612, c. 209, and the amendatory act of June 7, 1897, 30 Stat. 62, c. 3, carrying out the treaty with the Omaha Indians of 1854, the consent required to be given to the Commissioner for sale of land of allottee Indians in the Puyallup Reservation in Washington was not a mere power to sell

Page 223 U. S. 201

which terminated with the death of the giver, but an agreement which continued in force after death.

The rule that, where ambiguity exists, courts will follow the construction placed on a statute by the department charged with its execution is strengthened where the statute itself directs such department to make the necessary regulations to carry it into effect.

Habits of Indian life will be considered in construing a statute providing methods for a sale of Indian lands, and it will not be presumed that Congress would insert therein a condition which defeats an approved sale by the death of a roving Indian before the delivery of the deed.

46 Wash. 562 affirmed.

The facts, which involve the title to lands in the Puyallup Indian Reservation allotted under the treaty with the Omaha Indians and the Acts of March 3, 1893, and June 7, 1897, are stated in the opinion.

Page 223 U. S. 207

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

Error to the Supreme Court of Washington to review a decree of that court which affirmed a decree of the Superior Court of the County of Pierce adjudging defendant in error, who was plaintiff in the trial court, to be the owner of the East Half and the East Half of the East Half to the West Half of the Northeast Quarter of the Northwest Quarter of Section 35, Township 21 N., R. 3 East of the Willamette Meridian, Pierce County, Washington, formerly in King County, Washington.

The land lies in the Puyallup Indian Reservation, and was allotted or patented by the United States on January 30, 1886, to Charley Jacobs, the head of a family consisting of himself, Julia, Annie, Frank, and Oscar, all Puyallup Indians, the allotment or patent being subject to the stipulations and conditions contained in Art. 6 of the treaty of the United States with the Omaha Indians. Plaintiffs in error were not named in the patent, they not then being born.

Page 223 U. S. 208

Defendant in error claims title under a deed dated February 27, 1901, from C. A. Snowden, Trustee and Commissioner of Puyallup Lands, appointed by the United States government under an act of Congress dated March 3, 1893, 27 Stat. 612, c. 209, and an amendatory act passed June 7, 1897, 30 Stat. 62, c. 3.

Plaintiffs in error claim title to an undivided one-third part of the lands as heirs of Charley and Julia Jacobs, deceased, and contend that the deed from Snowden is void as to them or as to the interest they would take as such heirs for the reason that the Snowden sale and deed were after the death of Charley and Julia Jacobs.

Article 6 of the treaty of the United States with the Omaha Indians, to the conditions of which the patent to Charley Jacobs was made subject, empowered the President to cause allotments to be made from reservation lands to such Indians as were willing to avail themselves of the privilege, and who would locate on the same as permanent homes. The patent was to be issued upon the further condition that the assigned land should not "be aliened or leased for a longer term

than two years," and "should be exempt from levy, sale, or forfeiture." Upon the formation of a state, these restrictions could be removed by the legislature, but it was provided that they could not be removed without the consent of Congress. It was also provided that lands not necessary for assignment might be sold for the benefit of the Indians under such rules and regulations as might thereafter be prescribed by Congress or the President of the United States.

Under the Act of March 3, 1893, the President was empowered to appoint a commission of three persons to select and appraise such portion of the allotted lands not required for homes of the Indian allottees. It was provided that, if the Secretary of the Interior approved the selections and the appraisement, the lands selected should

Page 223 U. S. 209

be sold for the benefit of the allottees, after due notice at public auction at no less than the appraised value.

It was the duty of the commission to superintend the sale of the lands, ascertain the true owners thereof, and have guardians appointed for minor heirs of deceased allottees, and make deeds of the lands to the purchasers thereof, subject to the approval of the Secretary of the Interior. The deeds, it was provided, should operate as a complete conveyance of the lands upon a full payment of the purchase money. The disposition of the money was provided for, and it was provided further that no part of the lands should be offered for sale until the Indian or Indians entitled to the same should sign a written agreement consenting to the sale thereof, and appointing the commissioners, or a majority of them, trustees to sell the land and make deeds to the purchasers. The approval of the Secretary was made necessary to the validity of the deeds, and he was directed to make all necessary regulations to carry out the provisions of the act.

On November 6, 1893, the Secretary instructed the commissioners, in accordance with the terms of the act, as to the appraisement of the lands, and to ascertain who were allottees or the heirs of allottees, or heads of families under the laws of

Washington, to have guardians appointed for the minor heirs of deceased allottees, and to obtain the consent of the heirs to twenty-one years and of such guardians. The commissioners were directed to report to the Secretary their action for approval, and, if approved, further instructions were to be given.

By an act subsequent to that of March 3, 1893, to-wit, an Act of June 7, 1897, the number of commissioners was reduced to one, and Clinton A. Snowden was appointed commissioner. Instructions were given to him, and he was informed as follows:

"That the title under these patents vests in the family whose names are recited in the patent, and not in the head of the family. It is

Page 223 U. S. 210

necessary to obtain the written consent of all the members of the family named in the patent. That it is necessary to have legal guardians appointed for minors who are themselves allottees, but not minor heirs of deceased allottees. It is necessary to obtain the written consent of sale of allotments of all members of the family named in the patent, and natural guardians and parents of minors are incompetent for this purpose, as in the case of minor heirs of deceased allottees."

On January 18, 1901, in answer to an inquiry of Snowden, the Secretary instructed him that, where the allottees and true owners of the lands had executed consents of sale which had been approved by the Secretary, it was the practice of the Department to continue the sale of the lands covered thereby, though the allottee or owner died, and to distribute the funds arising therefrom to his or her heirs, the department regarding the "consents as remaining in full force upon the decease of the Indian executing the same," they being "in the nature of an agreement or contract to be carried out for the sole benefit of his heirs in case of his decease."

The Secretary added:

"These lands are sold under the provision of the Act of Congress, March 3, 1893, and not under the laws of Washington. . . . It is for the department to pass upon the sufficiency of consents, and not the courts of Washington."

Charley Jacobs was, as we have seen, the grantee in the patent as the head of a family consisting of himself, Julia, Annie, Frank, and Oscar. Julia was his wife, Annie his sister, Frank his son by a former wife, and Oscar his son by his wife, Julia.

Lillie Jacobs and Ruther Jacobs, plaintiffs in error, are, respectively, a daughter and son of Charley and Julia, and were born, respectively, in the years 1888 and 1891 -- that is, after the patent was issued -- and necessarily were not named therein.

Page 223 U. S. 211

Annie, who was named in the patent, died in November, 1888, never having been married, and leaving Charley Jacobs her sole heir. He, on the seventh of March, 1898, Julia Jacobs, and Frank Jacobs, all of age and named in the patent, executed a written consent required by the statute, directing Commissioner Snowden to sell the lands.

Charley Jacobs, as guardian of Oscar Jacobs, named in the patent, having been previously appointed by the Superior Court of Pierce County, executed a similar consent, and also a similar consent as the sole heir of Annie, named in the patent.

These consents and other papers were duly transmitted to the Secretary of the Interior and approved by him, and Snowden, on the twenty-seventh of February, 1901, duly offered the lands for sale at public auction. They were purchased by A. G. Prichard, trustee, in accordance with the statute, he making the payment required. Snowden executed a deed to him, which was duly approved by the Secretary of the Interior and duly recorded in the Office of Indian Affairs.

Prior to the commencement of this action, Prichard made the payments required, which were received and accepted by the Interior Department for distribution to those entitled to the same, including Ruther Jacobs and Lillie Jacobs, plaintiffs in error. Their guardian, E. D. Wilcox, has not received the same, and refused to accept the sum except a cash payment of \$420.

Charley Jacobs died January 2, 1900, leaving surviving him, among others, the plaintiffs in error, who, as we have said, were not named in the patent. His death was reported to the Commissioner of Indian Affairs by Snowden May 1, 1900.

Wilcox is the duly appointed guardian of plaintiffs in error, and reported to the court the receipt by him of the payment of \$420, made by Prichard. He did not know, however, that the sale by Snowden was after the death of

Page 223 U. S. 212

Charley Jacobs, father of plaintiffs in error, until after the commencement of this suit, and, as soon as he discovered that fact, refused to receive any further payment. The money received by plaintiffs in error as their share of the purchase price of the land was tendered to defendant in error prior to the trial of the action.

At the time Prichard, defendant in error, purchased the land, he did not know of the death of Charley Jacobs, and was at no time advised of it or of the existence of plaintiffs in error until shortly before bringing this action. He purchased the property in good faith, relying upon the representations of Snowden, and in the full belief of the regularity of the proceedings.

We have stated the facts thus fully, although they are not disputed, as they exhibit clearly upon what right the Secretary of the Interior proceeded in his instructions to Commissioner Snowden, and the strict compliance of the latter with those instructions. It will be observed that where the allottees and true owners executed consents which had been approved by the Secretary, it was the practice of the department to continue the sale of the lands covered thereby, though the allottee or owner died, and to distribute the funds arising therefrom to his or her heirs, the department regarding the "consents as remaining in full force upon the decease of the Indian executing the same," they being "in the nature of an agreement or contract to be carried out for the sole benefit of his heirs in case of his decease." The Secretary expressed the view that the

"lands are sold under the provisions of the Act of Congress, March 3, 1893, and not under the laws of Washington. . . . It is for the department to pass upon the

sufficiency of consents, and not the courts of Washington."

Defendant in error takes the view that the consents remained good after the decease of the Indian who gave them, in this case Charley Jacobs, and were "in the nature

Page 223 U. S. 213

of a permanent power or trusteeship." On the other hand, plaintiffs in error contend that the consent was a "naked power to sell," and terminated with the death of the giver.

There can be no doubt of the power of Congress to give character to the consents. *United States ex Rel. Lowe v. Fisher, ante*, p. [223 U. S. 95](#) ; *Cherokee Nation v. Whitmire, Trustee, ante*, p. [223 U. S. 108](#) . The questions in the case therefore turn upon the statute, and both sides invoke it to sustain their respective contentions.

The patent to Charley Jacobs was made subject to the conditions and restrictions of the sixth article of the treaty. In other words, there was a limitation upon the right of alienation of the patented lands, and the ultimate power to remove this restriction and grant a right of full alienation was reserved to Congress. The Act of 1893 was an exercise of this power. It provided for the sale of such part of the allotted lands as was not required for the homes of the Indians, and prescribed the conditions of the sale to be "a written agreement consenting to the sale," signed by the Indian or Indians entitled to the allotted land offered for sale. And it was provided further that the agreement should constitute the commissioners, or a majority of them (subsequently, one commissioner), trustees to sell the lands and "make deeds to the purchasers for the same," subject to the approval of the Secretary of the Interior, which deeds should "operate as a complete conveyance of the land upon the full payment of the purchase money." It is manifest that the "consent" required created something more than a mere revocable agency. It was a written agreement giving the commissioner (we drop the plural) full power to execute the provision and policy of the Act of Congress -- a power which could be

confidently counted on as continuing against contingencies, and to terminate in a "complete conveyance of the land."

That the "consent" was to have this character was the

Page 223 U. S. 214

immediate and continued construction of the act of Congress by the Interior Department, and such construction would determine against ambiguity in the act even if we should admit ambiguity existed. The rule which gives strength to the construction of the officers who are directed to execute the law, and who, it has been said, may have written or suggested it, is given an added force from one of the provisions of the act of Congress. It directs the Secretary of the Interior "to make the necessary regulations to carry out the purposes" of its enactment.

But we find no ambiguity in the act when we consider its purpose and the habits of Indian life. It could not have been intended that, when proceedings had been instituted under it, they should be embarrassed always by the possibility of defeat, and, it may be, progressing up to the moment of the delivery of the deed to a purchaser, should be made useless and nugatory by the death of some roving Indian. It is to be noted that all the proceedings are under the control of the Secretary of the Interior, and that any irregularity in them or improvidence in the consents can be corrected by him.

We do not answer in detail the argument of plaintiffs in error based on the law of agency, because we do not think its analogies are applicable to the situation.

The Supreme Court of Washington has repeated its ruling in this case in two others, *Little Bill v. Swanson*, 64 Wash. 650; *Little Bill v. Dyslin*, 64 Wash. 697.

*Judgment affirmed.*