Sage Vs. Hampe

Sage Vs. Hampe

SooperKanoon Citation : sooperkanoon.com/91725

Court : US Supreme Court

Decided On : Nov-30-1914

Appeal No. : 235 U.S. 99

Appellant : Sage

Respondent : Hampe

Judgement :

Sage v. Hampe - 235 U.S. 99 (1914)
U.S. Supreme Court Sage v. Hampe, 235 U.S. 99 (1914)

Sage v. Hampe

No. 82

Argued November 12, 13, 1914

Decided November 30, 1914

235 U.S. 99

ERROR TO THE SUPREME COURT

OF THE STATE OF KANSAS

SYLLABUS

Where plaintiff in error was defendant in the state court in a suit upon a contract to convey Indian allottee lands and relied as a defense upon an act of Congress making the conveyance invalid, he is entitled to come to this Court. *Nutt v. Knut,* 200 U. S. 12 .

While one may contract that a future event shall come to pass over which he has no, or only a limited, power, *Globe Re;fining Co. v. Landa Cotton Co.,* 190 U. S. 540 , he is not liable for nonperformance of, nor can he be compelled to perform, a contract that, on its face requires an illegal act either of himself or of a third party.

A contract that invokes prohibited conduct makes the contractor a contributor to such conduct. *Kalem Co. v. Harper Bros.,* 222 U. S. 55 .

A contract tending to bring to bear improper influence upon an officer of the United States and to induce attempts to mislead him is contrary to public policy, and nonenforceable.

The protection of the Indians in their title to allotments is the policy of the United States, and one that the states cannot regard or disregard at will.

Where a contract affecting Indian lands might be held unenforceable as a matter of common law, but this Court construes a federal statute

Page 235 U. S. 100

broadly so as to include such a contract within its prohibitions, this Court has jurisdiction to review under 237, Judicial Code.

The United States can make its prohibitions on alienation of Indian allotments binding upon others than Indians to the extent necessary to carry out its policy of protecting the Indians in retaining title to the land allotted to them.

87 Kan. 536 reversed.

The facts, which involve the validity of a contract for sale of allotted Indian lands during the period of restriction on alienation, are stated in the opinion.

Page 235 U. S. 103

MR. JUSTICE HOLMES delivered the opinion of the Court.

This is an action brought by the defendant in error (Hampe) to recover damages for breach of a contract to

Page 235 U. S. 104

purchase certain land and to convey to the plaintiff certain other land of greater value. The answer alleges that the land to be conveyed by the defendant (Sage) was Indian land, not belonging to him but allotted and patented to members of the Pottawatomie Tribe under the Act of Congress of February 8, 1887, c. 119, 24 Stat. 388. By 5 of that act, any conveyance or contract touching such land within twenty-five years from the date of the allotment and trust patent was made null and void, and it is alleged that the period had not expired and had not been abrogated at the date of the contract. Evidence was offered to prove the facts alleged, but was excluded, subject to exception. It is unnecessary to set forth the contract more particularly because, whatever doubts might be felt whether it was or could be shown to be a contract for specific land, the case was tried on the footing that it was such a contract, and the breach and the damages, so far as we can judge, both depended on that view. The Supreme Court of Kansas was of the same opinion, and held that, notwithstanding the character of the land contracted for and the statute, the defendant, being a stranger to the allotment, was bound by his contract so far as to be liable in damages at law. 87 Kan. 536.

The defendant relied upon the act of Congress as a defense, and is entitled to come to this Court. *Nutt v. Knut,* 200 U. S. 12 . With regard to that defense, no doubt it is true that a man may contract that a future event shall come to pass over which he has no, or only a limited, power. *Globe Refining Co. v. Landa Cotton Oil Co.,* 190 U. S. 540 , 190 U. S. 545 . And we assume in accordance with the

decision of the Kansas courts that the principle applies to contracts for the conveyance of land that the contractor does not own. But that principle is not enough to dispose of the case, even if, subject to what we have to say hereafter, the universality of the invalidating language of the statute ("any contract") be confined to

Page 235 U. S. 105

contracts by the owners of the land. A contract that, on its face, requires an illegal act either of the contractor or a third person no more imposes a liability to damages for nonperformance than it creates an equity to compel the contractor to perform. A contract that invokes prohibited conduct makes the contractor a contributor to such conduct. *Kalem Co. v. Harper Brothers,* 222 U. S. 55 , 222 U. S. 63 . And, more broadly, it long has been recognized that contracts that obviously and directly tend in a marked degree to bring about results that the law seeks to prevent cannot be made the ground of a successful suit. *Providence Tool Co. v. Norris,* 2 Wall. 45; *Trist v. Child,* 21 Wall. 441; *Oscanyan v. Winchester Repeating Arms Co.,* 103 U. S. 261 ; *Fuller v. Dame,* 18 Pick. 472. It appears to us that this is a contract of that class. It called for an act that could not be done at the time, and it tended to lead the defendant to induce the Indian owner to attempt what the law, for his own good, forbade. Such contracts, if upheld, might be made by parties nearly connected with the Indian, and strongly tend by indirection to induce him to deprive himself of rights that the laws seeks to protect.

It is true that later statutes in force when the contract was made allowed a conveyance with the approval of the Secretary of the Interior. Act of August 15, 1894, c. 290, 28 Stat. 286, 295. Act of May 31, 1900, c. 598, 7, 31 Stat. 221, 247. The Kansas court laid these statutes on one side, and, in our view, also they do not affect the case. The purpose of the law still is to protect the Indian interest, and a contract that tends to bring to bear improper influence upon the Secretary of the Interior, and to induce attempts to mislead him as to what the welfare of the Indian requires, are as contrary to the policy of the law as others that have been condemned by the courts. *Kelly v. Harper,* 7 Ind. Terr. 541. *See Larson v. First National Bank,* 62 Neb. 303, 308.

The only doubt open in the present position of the case is whether the ground upon which we hold the contract unenforceable is not a matter of common law, which we may think that the Kansas courts ought to apply, but which is not open to review here. The case at first sight seems like those in which a state decides to enforce or not to enforce a domestic contract notwithstanding or because of its tendency to cause a breach of the law of some other state. *Graves v. Johnson,* 176 Mass. 53, 156 Mass. 211. But the policy involved here is the policy of the United States. It is not a matter that the states can regard or disregard at their will. There can be no question that the United States can make its prohibitions binding upon others than Indians to the extent necessary effectively to carry its policy out, and therefore, as on the grounds that we have indicated, the contract contravenes the policy of the law, there is no reason why the law should not be read, if necessary, as broad enough to embrace it in terms.

Judgment reversed.