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Johnson Vs. Riddle

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Court : US Supreme Court

Decided On : Mar-20-1916

Appeal No. : 240 U.S. 467

Appellant : Johnson

Respondent : Riddle

Judgement :

Johnson v. Riddle - 240 U.S. 467 (1916)
U.S. Supreme Court Johnson v. Riddle, 240 U.S. 467 (1916)

Johnson v. Riddle

No. 161

Argued January 12, 1916

Decided March 20, 1916

240 U.S. 467

ERROR TO THE SUPREME COURT

OF THE STATE OF OKLAHOMA

SYLLABUS

Under the provisions relating to town sites in the Atoka Agreement between the United States and the Choctaw and Chickasaw tribes (found in Act of June 28, 1898, c. 517; 30 Stat. 495, 505, 508), the preferential right to purchase improved town lots was conferred upon the owner of "permanent, substantial, and valuable improvements, other than fences, tillage, and temporary houses," without regard to the lawfulness or unlawfulness of the previous possession of the land by the owner of the improvements.

Under the provisions of the Atoka Agreement relating to purchase of town lots (30 Stat. 508) and regulations contained in subsequent legislation, authority to appraise lots, improved or unimproved, to ascertain the ownership and value of the improvements, and to dispose of the lots in conformity to the provisions of the Agreement was conferred upon the town site commission, and afterwards upon the United States Indian Inspector, subject to the supervision of the Secretary of the Interior.

In case of contest, the findings of fact by the Commission or the Inspector, affirmed on final appeal by the Secretary of the Interior, are binding upon the courts in the absence of gross mistake or fraud, and the judicial inquiry is limited to determining whether there was clear error of law that resulted in awarding the right of purchase, and ultimately issuing the patent, to the wrong party.

The Atoka Agreement (Act of June 28, 1898, c. 517, 30 Stat. 505, 508), when ratified by Congress and by the Choctaw and Chickasaw tribes, superseded all customs, if such there were, that had sanctioned the leasing of town lots to noncitizens of the tribes, and its provisions could not be carried into effect without terminating existing rights of occupancy, if any, saving as these coincided with the ownership of permanent improvements.

A tenant is not estopped to show that his landlord's title has expired or has been terminated by operation of law.

That a tenant holding a town lot in the Chickasaw District of the Choctaw Nation, under lease from a noncitizen having no rights

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in the land, had retained possession after refusal to pay rent, thereby preventing the landlord from erecting improvements such as described in the Atoka Agreement, did not estop the tenant, who had erected substantial and permanent improvements thereon, from acquiring the lot in his own right under the provisions of the Agreement.

41 Okl. 75 affirmed.

The facts, which involve the title to a town lot in the town of Chickasha in the Chickasaw District of the Choctaw Nation, and the construction and application of the town site provisions of the Atoka Agreement, the Curtis Act and other statutes affecting the property of the Chickasaw and Choctaw tribes, are stated in the opinion.

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MR. JUSTICE PITNEY delivered the opinion of the Court.

This was an action of ejectment, commenced before the admission of Oklahoma as a state, in the United States court for the Southern District of the Indian Territory, and brought to a conclusion in the state courts. There have been many changes of interest *pendente lite,* and corresponding changes of parties. The original plaintiffs were Riddle, now defendant in error, and one Cook, whose interest Riddle has since acquired. The interests of the original defendants have been acquired by plaintiffs in error through mesne conveyances that will be stated below. The subject of the action is a town lot in the Town of Chickasha, in the Chickasaw District of the Choctaw Nation, to which plaintiff claimed title by purchase under the town site provisions of the Atoka Agreement with the Choctaw and Chickasaw tribes, found in the act of Congress known as the Curtis Act (June 28, 1898, c. 517, 30 Stat. 495, 505, 508), followed by a patent executed, after the

commencement of the action, in accordance with the supplemental agreement with the same tribes (Act of July 1, 1902, c. 1362, 51, 32 Stat. 641, 653), and

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set up in a supplemental complaint. The defendants admitted the legal title to be in Riddle, but, by cross-complaint, sought to have him declared a trustee for their benefit, and decreed to convey the title to them. A judgment refusing to declare such a trust and awarding the lot to Riddle was affirmed by the Supreme Court of Oklahoma (41 Okl. 759), and the case is brought here, under 237, Jud. Code, upon the ground that the decision was against rights set up by plaintiffs in error under the provisions of the Agreement.

The facts are as follows: some years prior to the making of the Agreement, one Fitzpatrick, a white man not entitled to citizenship in any Indian tribe, made a lease of the lot in controversy, then vacant and unimproved, to one Barnhart, who went into possession and erected a substantial house and other improvements, which were to belong to him, subject to the payment of a ground rent to Fitzpatrick. There is nothing to show what right Fitzpatrick claimed, or that in fact he had any right to seize upon vacant tribal lands and contract concerning them as he did. In the year 1897, Barnhart sold the improvements and transferred the possession of the lot to one Ellis, who entered into possession and made further improvements. About April 1, 1898, Ellis refused to pay rent, and on July 7 in the same year, Fitzpatrick brought a suit for unlawful detainer against him in the United States court, alleging, in an amended complaint filed in February, 1899, that he desired possession for the purpose of being able to place upon the lot such improvements as would protect his right to the land under the provisions of the Agreement. Fitzpatrick prevailed in the United States court, and, on appeal, in the Court of Appeals for the Indian Territory (*Ellis v. Fitzpatrick,* 3 Ind.Terr. 656, 64 S.W. 567), and also in the Circuit Court of Appeals for the Eighth Circuit, whose decision was rendered October 27, 1902 (118 F. 430).

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Meanwhile, Ellis retained possession by means of a supersedeas bond.

In February, 1902, the town site commission for the Chickasaw Nation, organized pursuant to the provisions of the Atoka Agreement, visited Chickasha for the purpose of appraising town lots and awarding them to persons having the preferential right to purchase under the terms of the Agreement. Ellis having conveyed his rights to Riddle and Cook, the lot was scheduled to them, and on June 12, 1902, they were notified that they had the right to purchase it. A week later, they availed themselves of this right by paying to the United States Indian agent the proper percentage of the appraised value to make up the full purchase price of the lot, and took from him a proper receipt.

Pending the unlawful detainer suit, Fitzpatrick conveyed whatever interest he had in the lot to a Mrs. Cross, and she conveyed an undivided half interest to one Bourland. In January, 1903, after the decision of the circuit court of appeals, Bourland and Cross obtained possession of the lot with the improvements, and in the following month the present action of ejectment was commenced by Riddle and Cook against Fitzpatrick and the persons in possession. Thereafter, Bourland and Cross conveyed their interest to E. B. and H.B. Johnson, the present plaintiffs in error, and they were substituted as defendants. Riddle bought the interest of Cook, and thus became the sole plaintiff. Pending the action, a contest was instituted, either by Bourland and Cross or by the Johnsons, against Riddle and Cook, concerning the award and scheduling of the lot to the latter. The town site commission having been abolished by the Secretary of the Interior pursuant to act of March 3, 1905, c. 1479, 33 Stat. 1048, 1059, the contest was heard before the United States Indian Inspector assigned to the Indian Territory, upon whom this duty was imposed by regulations approved

by the Secretary. Rep.Ind.Inspec.1905, pp. 5, 22, 23; House Doc. No. 5, 59th Cong. 1st Sess. vol.19, pp. 705, 722, 723. The inspector made full findings of fact, and in an elaborate opinion decided in favor of contestees. Upon appeal, this decision was affirmed by the Commissioner of Indian Affairs, and, upon appeal to

the Secretary of the Interior, it was again affirmed. These decisions proceeded upon findings to the effect that, at the time of the ratification of the Atoka Agreement and at the time the town site of Chickasha was laid out by the town site commission, and when the plats prepared by the Commission were finally approved by the Secretary of the Interior, Ellis was the owner of permanent, substantial, and valuable improvements, other than fences, tillage, and temporary houses, on said lot; that none of these improvements was in any way in issue in the unlawful detainer suit, and Ellis' ownership of them was not denied or disputed, but, on the contrary, was admitted by Fitzpatrick in his pleadings, and they were in no way adjudicated upon in that suit; that Riddle and Cook afterwards purchased the improvements from Ellis, and, having received notice from the town site Commission, as already mentioned, of their right to purchase the lot under the provisions of the Atoka Agreement, they forwarded to the United States Indian agent the proper percentage of the appraisement to make up the full purchase price of the lot, and received his receipt for the same. After the final determination of the contest before the Department of the Interior, a patent was issued to Riddle and his associate dated in May, 1907.

The Atoka Agreement between the United States and the Choctaw and Chickasaw tribes, negotiated April 23, 1897, amended by 29 of the Curtis Act (June 28, 1898, c. 517, 30 Stat. 495, 505), and thereby submitted for ratification by the members of the tribes, was ratified by a majority of votes at a special election held on August 24,

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1898, the result of which was ascertained and proclaimed on August 30th by a board of commissioners for that purpose, designated by the act, and the agreement thus became effective. (*See* 6th Ann.Rep. Dawes Comm., September 1, 1899, House Doc. No. 5, 56th Cong. 1st Sess. vol.19, p. 9; Homer's Const. and Laws of Chickasaw Nation, 1899, p. 420.) It contains provisions respecting town sites (30 Stat. 508, c. 517), of which the pertinent portions are set forth in the margin. *

Regulatory provisions, embodied in an act of May 31,

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1900 (c. 598, 31 Stat. 221, 237, 238), were assented to by the Choctaws and Chickasaws in the supplemental agreement (Act of July 1, 1902, c. 1362, 32 Stat. 641, 652), and other regulations were thereby added. Authority to appraise town lots, improved or unimproved, to ascertain the ownership and value of the improvements, and to dispose of the lots in conformity to the provisions of the Agreement, was thereby conferred upon the town site commission, subject to the supervision of the Secretary of the Interior. (*See Ross v. Stewart,* 227 U. S. 530 , 227 U. S. 534 .) Their unfinished duties were devolved upon the Secretary by the Act of 1905, under whose authority the Indian inspector acted, as already shown. The Supreme Court of Oklahoma therefore was correct in holding that the findings of the inspector respecting matters of fact, affirmed on final appeal by the Secretary, were binding upon the courts in the absence of gross mistake or fraud (neither of which is here present), and that the judicial inquiry is limited to determining whether there was clear error of law that resulted in awarding the preferential right of purchase, and ultimately issuing the patent, to the wrong party. *Johnson v. Towsley,* 13 Wall. 72, 80 U. S. 85 ; *Shepley v. Cowan,* 91 U. S. 330 , 91 U. S. 340 ; *Marquez v. Frisbie,* 101 U. S. 473 , 101 U. S. 476 ; *Gonzales v. French,* 164 U. S. 338 , 164 U. S. 342 ; *Ross v. Day,* 232 U. S. 110 , 232 U. S. 116 .

Since the findings are to the effect that the improvements upon the lot were owned by Ellis, and by defendant in error through a purchase from him, the contentions of the plaintiffs in error are reduced to these: that the decision of the Indian inspector, approved by the Secretary of the Interior, to the effect that the Atoka Agreement terminated the relation of Landlord and tenant, was based upon an erroneous construction of the Agreement, and ignored the equities of the landlord as against the tenant; that, under a correct construction of the provision permitting the owner of the improvements to buy a town lot

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at a fraction of the appraised value, a tenant who wrongfully withheld possession of such a lot from his landlord, thereby preventing him from erecting improvements thereon, could not acquire title to the lot as against the landlord, and that a tenant who, under the provisions of the Agreement, but in violation of the rights of his landlord, has acquired a deed for such a lot holds the title as trustee for the landlord.

The Atoka Agreement, of course, is to be read in the light of the conditions out of which it arose. The Choctaw Indians acquired the territory in question under a treaty with the United States made at Dancing Rabbit Creek in the year 1830 (7 Stat. 333). In accordance with the provisions of the treaty, and pursuant to authority conferred by act of May 28, 1830 (c. 148, 3, 4 Stat. 412), a patent was issued by the President of the United States, March 23, 1842, granting the land to the Choctaw Nation

"in fee simple to them and their descendants, to inure to them, while they shall exist as a nation and live on it, liable to no transfer or alienation, except to the United States, or with their consent."

(Durant's Const. & Laws of Choctaw Nation, 1894, p. 31.) In 1837, the Choctaws entered into a treaty with the Chickasaws by which the latter were privileged to form a district within the limits of the Choctaw country,

"to be held on the same terms that the Choctaws now hold it, except the right of disposing of it, which is held in common with the Choctaws and Chickasaws."

This received the approval of the President and Senate of the United States. 11 Stat. 573, 575. In the year 1855, a new treaty was made between the United States and these tribes (11 Stat. 611) by which the boundaries of their country were defined and the United States guaranteed the lands embraced within the specified limits

"to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common, so that

each and every member of either tribe shall have an equal, undivided interest in the whole; *Provided, however,* no part thereof shall ever be sold without the consent of both tribes, and that said land shall revert to the United States if said Indians and their heirs become extinct, or abandon the same."

The westerly part of the country was established as a district for the Chickasaws, the easterly part for the Choctaws. After the Civil War, and in the year 1866, a new treaty was made, by the eleventh article of which it was recited that the land described in the treaty of 1855 "is now held by the members of said nations in common under the provisions of the said treaty." 14 Stat. 769, 774. A plan for a survey, division, and allotment of the land was proposed by the same article, but this came to naught because of the nonassent of the Choctaw people. *Woodward v. DeGraffenried,* 238 U. S. 284 , 238 U. S. 294 . Thus matters remained until, in the course of time, the influx of white people into this and other parts of the Indian Territory created a new situation of great complexity, calling for a readjustment of the affairs of the Five Civilized Tribes. In 1893, the Dawes Commission was appointed, under authority of an act of Congress (c. 209, 16, 27 Stat. 645), to enter into negotiations with those tribes for the purpose of extinguishing the tribal titles to lands. The annual reports of the Commission, a reference list of which is printed in 238 U.S. 238 U. S. 296 , give a complete and instructive account of its labors. The first of these reports, dated November 20, 1894, shows that, among the original propositions submitted to the several tribes as a basis of negotiations, it was suggested that town sites should be the subject of special agreements such as would secure to the Indians and to investors "a just protection and adjustment of their respective rights." In explanation, it was stated:

"There are towns in the Territory ranging in population from a few people to 5,000 inhabitants. Nearly all of

them are noncitizens. . . . Many large and valuable stone, brick, and wooden buildings have been erected by noncitizens of these towns, and the lots on which they stand are worth many thousands of dollars. These town sites are not susceptible of division among the Indians, and the only practicable method of adjusting the equities between the tribes who own the sites and those who constructed the buildings is to appraise the lots without the improvements and the improvements without the lots and allow the owners of the improvements to purchase the lots at the appraised value, or to sell lot and improvements, and divide the money according to the appraisement."

House Ex.Doc. pt. 5, 53d Cong.3d Sess., Vol. 14, pp. lxii., lxv.

The first agreement to be negotiated by the Commission was with the Choctaws under date December 18, 1896, but the Chickasaws refused to concur in this, and another was negotiated at Atoka, April 23, 1897, with both tribes. In its original form, it is appended to the Fourth Report of the Commission, dated October 11, 1897 (House Doc. No. 5, 55th Cong.2d Sess., Vol. 12, pp. cxvii., cxxii.). It provided that a town site commission should be appointed for each of the two nations; that each existing town site should be laid out and platted, and that

"each lot on which permanent, substantial, and valuable improvements, other than fences, tillage, and temporary houses, have been made shall be valued by the Commission . . . at the price a fee simple title to the same would bring in the market at the time the valuation is made, but not to include in such value the improvements thereon. The owner of the improvements on each lot shall have the right to buy the same at 62 1/2 percent of the said market value within sixty days from date of notice served on him that such lot is for sale."

It further provided that, if the owner of the improvements should fail to purchase, the lot with improvements should be sold at auction, the

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purchaser to pay the price to the owner of the improvements, less 62 1/2 percent of the appraised value of the lot, which was to be paid into the United States

Treasury for the benefit of the Indians. This agreement, with some amendments, was ratified by Congress in 29 of the Curtis Act, and afterwards ratified by the voters of the two tribes, as already mentioned. The provision as to purchase of town lots was amended only by giving to the owner of the improvements the right to buy one residence and one business lot at 50 percentum and the remainder of such improved property at 62 1/2 percentum of the appraised market value.

The same act contained, in its 15th section (June 28, 1898, c. 517, 30 Stat. 500) a provision for the appointment of a town site commission for each of the Chickasaw, Choctaw, Creek, and Cherokee tribes, allowing "the owner of the improvements upon any town lot, other than fencing, tillage, or temporary buildings" to deposit in the United States Treasury one half of the appraised value of the lot, excluding improvements, as a tender to the tribe of the purchase money for the lot, and permitting improved lots to be sold at auction if the owner of the improvements thereon failed to deposit the purchase money within a limited time, in which case the purchaser at auction might, by appropriate proceedings in the United States court, require the owner of the improvements to either accept their appraised value or remove the improvements from the lot. The same section provided for the sale of unimproved lots, the purchase money to be deposited with like effect as in the case of improved lots, and authorized the tribes to make deeds to the purchasers conveying the title to such town lots, whereupon the purchase money was to become the property of the tribe. These provisions would appear to have been superseded, as to the Choctaw and Chickasaw tribes, by their acceptance

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of the Atoka Agreement, and are mentioned only to show that, in 15, as in the Agreement, it was the owner of the improvements, and he alone, who was recognized as entitled to be considered in the sale of the town lots.

It is not necessary to say that the Agreement, when thus ratified by Congress and by the tribes, became the law of the land, and superseded all customs, if such there were, that had sanctioned the making of leases to noncitizens. By its terms,

towns, so far as they had been established within the domain of the tribes, were recognized, and provision was made for platting them and for selling the lots, both improved and unimproved, the proceeds to become the property of the tribes. It was recognized that the money expended by white men in constructing the buildings and other permanent improvements had increased the value not only of the improved lots, but of all lands within the town, and hence a preferential right of purchase was conferred upon "the owner of the improvements on each lot." But there is nothing in the history of the matter, any more than in the language employed, to give the least countenance to the suggestion that prior rights of occupancy were intended to be recognized in this Agreement. Ownership of improvements actually upon the soil was adopted as the sole foundation of the newly conferred right to acquire title to the soil itself. And these improvements must be "permanent, substantial, and valuable improvements other than fences, tillage, and temporary houses." The exclusion of these latter, indicative merely of occupancy, is highly significant.

The provisions of the Agreement respecting the sale of town lots could not be carried into effect without terminating existing rights of occupancy, if such there were, saving as these coincided with the ownership of permanent improvements. Hence, if Fitzpatrick had any right to the soil, it came to an end either when the Agreement took effect in August, 1898, or, at latest, when its town site provisions

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were put in operation at Chickasha. It is insisted that Ellis, as tenant, was estopped to deny his landlord's title, and that Riddle is in no better case. *Blight v. Rochester,* 7 Wheat. 535, 20 U. S. 547 . But a tenant is not estopped to show that his landlord's title has expired or has been terminated by operation of law. *England v. Slade,* 4 T. R. 682; *Blake v. Foster,* 8 T. R. 487; *Neave v. Moss,* 1 Bing. 360; *Hopcroft v. Keys,* 9 Bing. 613; *Doe d. Higginbotham v. Barton,* 11 Ad. & El. 307; *Den ex dem. Howell v. Ashmore,* 22 N.J.L. 261, 265; *Shields v. Lozear,* 34 N.J.L. 496, 50; *Hilbourn v. Fogg,* 99 Mass. 11; *Lamson v. Clarkson,* 113 Mass. 348.

The argument that Ellis, by withholding possession of the lot from Fitzpatrick, prevented him from erecting improvements such as would have satisfied the requirements of the Atoka Agreement so as to confer upon Fitzpatrick the preferential right to purchase the lot, and hence that Ellis and those claiming under him are estopped to purchase the land for themselves and must be held to have acquired it in trust for Fitzpatrick and those claiming under him, cannot prevail. The facts do not show that Ellis' refusal to pay rent, and his resistance to the forcible entry and detainer suit, were other than *bona fide.* Nor does it appear that Fitzpatrick, even before the Atoka Agreement, had any right of possession of the land as against the Indians. So far as the facts appear, he had no rights at all except as against the tenant, and against him only because of the estoppel. In order to show that the tenant, by withholding possession, deprived the landlord of the opportunity of exercising a valuable right, it must be made to appear that, with the tenant out of the way, the right would have existed. But if Ellis had given up possession, Fitzpatrick would have had no more right than any other white man to enter and erect improvements -- that is to say, none at all. At most, he would have had a mere opportunity, without right,

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and the deprivation of this cannot furnish a foundation for impressing a trust upon the title afterwards acquired by Ellis' grantee by direct purchase from the owners of the paramount title. Even were it made to appear that there was error in adjudging the title to the patentee, this would not raise a trust in favor of the contestant unless he could show that, by the law, properly administered, the title ought to have been awarded to him. *Bohall v. Dilla,* 114 U. S. 47 , 114 U. S. 51 ; *Sparks v. Pierce,* 115 U. S. 408 , 115 U. S. 413 .

What, then, was the nature of Fitzpatrick's equity? Under the facts found, both he and Ellis were trespassers upon the lands of the Indians, in disregard of rights secured to the latter by treaty with the United States, and in violation of 2118, Rev.Stats. The lease created a mere estoppel between trespassers. The rights, if they may be called rights, of lessor and lessee alike were terminated by the force of the agreement. Individual ownership of the land originated with that instrument,

and can be only such as, by its terms, was created. It was competent for Congress, or for the Indian tribes, with the concurrence of Congress, to deal as they deemed proper with the practical situation resulting from the building of towns by white men within their borders. They chose to confer a preferential right of purchase at a discount from the appraised value not upon the "occupant," or "possessor," or "landlord," or "tenant," but upon "the owner of the improvements" other than those of a temporary nature. This did not cut off any pertinent equity, but it rendered all equities impertinent except such as related to the ownership of the improvements.

The Atoka Agreement, while accepting existing improvements of a substantial nature as part consideration for the purchase of town lots, contained no recognition of legitimacy in the previous occupation of the soil by white men, nor any official ratification of their intrusion upon the Indian lands. It laid aside, as immaterial, the question

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whether improvements had been constructed with or without rightful possession of the land. In this respect, it differed from the Original Creek Agreement of March 8, 1900 (Act of March 1, 1901, c. 676, 31 Stat. 861, 866), the proposed Cherokee agreement of April 9, 1900 (Act of March 1, 1901, c. 675, 31 Stat. 848, 853), which failed of ratification by the tribe (8th Ann.Rep. Dawes Comm'n Oct. 1, 1901; House Dec. No. 5, 57th Cong. 1st Sess., Vol. 24, p. 11), and the Cherokee agreement of July 1, 1902 (c. 1375, 32 Stat. 716, 723), which was ratified by the tribe (10th Ann.Rep. Dawes Comm'n Sept. 30, 1903; House Doc. No. 5, 58th Cong.2d Sess., Vol. 20, p. 115).

If Fitzpatrick had had any equitable right or interest in the improvements upon the lot in controversy, a very different question would be presented. But he had none.

We are referred to two decisions of the United States Court of Appeals for the Indian Territory that are said to uphold the legal validity of grants of leasehold interests in lands in the Choctaw and Chickasaw country prior to the Atoka

Agreement. *Kelly v. Johnson* (1897), 1 Ind.Terr. 184, 189, 39 S.W. 352, 354; *G. W. Walker Trading Co. v. Grady Trading Co.* (1897), 1 Ind.Terr.191, 196-198, 39 S.W. 354, 356. These cases, however, go no further than to hold that a possessory right might pass by transfer from a citizen of one of the Indian tribes to a noncitizen, and would protect the latter against forcible entry by others not showing a better right to the possession, nor acting under authority of the tribe, and that a lease of such lands with improvements estopped the lessee to question the lessor's title. *See also Wilson v. Owens* (1897), 1 Ind.Terr. 163, 38 S.W. 976, *aff'd* in 86 F. 571; *Hockett v. Alston,* 110 F. 910, *rev'g,* s.c. 3 Ind.Terr. 432, 58 S.W. 675; *Williams v. Works,* 4 Ind.Terr. 587, 76 S.W. 246; *Fraer v. Washington,* 125 F. 280. These decisions leave untouched the authority of Congress, with

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or without the consent of the tribe, to terminate all possessory interests and dispose of the fee in any manner deemed proper.

Much reliance is placed upon the decision of this Court in *Rector v. Gibbon,* 111 U. S. 276 , which turned upon the effect of an act of Congress in relation to the Hot Springs Reservation in the State of Arkansas (Act of March 3, 1877, c. 108, 19 Stat. 377). The statute was passed to relieve the peculiar hardship resulting from a decision of the Court of Claims, affirmed by this Court (*Hot Springs Cases,* 92 U. S. 698 , 92 U. S. 713 , 92 U. S. 715 -716), holding invalid, for reasons more or less technical, certain land titles set up against the United States, some of them under claims of preemption and one under a New Madrid location, followed in each case by long years of possession. *Rector v. Gibbon* construed the legislation in the light of the circumstances out of which it arose, and so as to relieve those who had made improvements or claimed possession under the titles that had been found defective. It has no proper bearing upon the questions presented in the case at bar. *Lamb v. Davenport,* 18 Wall. 307; *Atherton v. Fowler,* 96 U. S. 513 , and *Trenouth v. San Francisco,* 100 U. S. 251 , cited by plaintiffs in error, are likewise aside from the point.

It is, perhaps, unnecessary to mention that the matter at issue here is not concluded by the decision in *Ellis v. Fitzpatrick,* 3 Ind.Terr. 656, 64 S.W. 567, s.c., *aff'd* 118 F. 430, for that case concerned only the right of possession as between landlord and tenant, and Ellis' ownership of the improvements was admitted in the pleadings. The legal or equitable title to the soil was not involved.

From the views above expressed, it results that the judgment of the Supreme Court of Oklahoma must be affirmed.

*

"TOWN SITES. It is further agreed that there shall be appointed a Commission for each of the two nations. . . . Each of said Commissions shall lay out town sites, to be restricted as far as possible to their present limits, where towns are now located in the nation for which said Commission is appointed. . . . When said towns are so laid out, each lot on which permanent, substantial, and valuable improvements, other than fences, tillage, and temporary houses, have been made shall be valued by the Commission provided for the nation in which the town is located at the price a fee simple title to the same would bring in the market at the time the valuation is made, but not to include in such value the improvements thereon. The owner of the improvements on each lot shall have the right to buy one residence and one business lot at fifty percentum of the appraised value of such improved property, and the remainder of such improved property at sixty-two and one half percentum of the said market value within sixty days from date of notice served on him that such lot is for sale, and if he purchases the same, he shall, within ten days from his purchase, pay into the Treasury of the United States one-fourth of the purchase price, and the balance in three equal annual installments, and, when the entire sum is paid, shall be entitled to a patent for the same. . . . If such owner of the improvements on any lot fails within sixty days to purchase and make the first payment on same, such lot, with the improvements thereon, shall be sold at public auction to the highest bidder, under the direction of the aforesaid Commission, and the purchaser at such sale shall pay to the owner of the improvements the price for which said lot shall be sold, less sixty-two and one half percent of said appraised value of the lot, and shall pay the sixty-two and one half percent of said

appraised value into the United States Treasury. . . . All lots not so appraised shall be sold from time to time at public auction. . . ."

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