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Ewert Vs. Bluejacket

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Court : US Supreme Court

Decided On : May-15-1922

Appeal No. : 259 U.S. 129

Appellant : Ewert

Respondent : Bluejacket

Judgement :

Ewert v. Bluejacket - 259 U.S. 129 (1922)
U.S. Supreme Court Ewert v. Bluejacket, 259 U.S. 129 (1922)

Ewert v. Bluejacket

Nos. 173, 186

Argued March 17, 1922

Decided May 15, 1922

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APPEALS FROM THE CIRCUIT COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

SYLLABUS

1. An attorney at law who is employed at the expense of the United States, by and under the direction of the Attorney General, as a special assistant to assist in the institution and prosecution of suits to set aside deeds of allotted Indian lands at an Indian Agency, his official duties requiring all of his time, is "a person employed in Indian affairs" within the meaning of Rev.Stats., 2078, forbidding such persons to "have any interest or concern in any trade with the Indians, except for and on account of the United States." P. 259 U. S. 135 .

2. The section covers not only trade carried on with the Indians as a business, but also an individual purchase of an Indian's land allotment. P. 259 U. S. 137 .

3. A deed taken in violation of this section is void, passing the legal title only, and neither the state statute of limitations nor the doctrine of laches applies to a suit brought in the district court against

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the grantee by the Indian owner to set the transaction aside, and they are entitled to indemnity against mortgages made by the grantee, as well as to a reconveyance. P. 259 U. S. 137 .

4. So *held* where the land bought by the attorney was not involved in the litigation about which he was employed, and was deeded to him, with the approval of the Secretary of the Interior, pursuant to a public advertised sale of the tract, conducted after appraisement and otherwise pursuant to the rules and regulation of the Department, under the act (32 Stat. 245, 275) authorizing ale of restricted allotment by the heirs of allottees, and after the proposed sale, as to interests of minor heirs, had been approved by the proper state court upon petition of their guardian.

5. An error made by the Interior Department in the interpretation of the statute cannot confer legal rights inconsistent with its express terms. P. 259 U. S. 138 .

265 F. 823 affirmed in part and reversed in part.

Appeal from a decree of the circuit court of appeals in part affirming and in part reversing a decree of the district court dismissing the bill in a suit brought by the heirs of an Indian to set aside a deed of his restricted land allotment, which they had made to the appellant, with the approval of the Secretary of the Interior, pursuant to a public sale, under the act of Congress and departmental regulations governing such transactions. The facts are more fully stated in the opinion of the court below.

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MR. JUSTICE CLARKE delivered the opinion of the Court.

We have here cross-appeals in a suit to have declared invalid a deed to Paul A. Ewert for restricted lands inherited by the widow and adult and minor heirs of Charles Bluejacket, a full-blood Quapaw Indian, and for an accounting for rents and royalties derived from such lands.

On October 23, 1908, Ewert was appointed a special assistant to the Attorney General of the United States, to

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"assist in the institution and prosecution of suits to set aside deeds to certain allotments in the Quapaw Indian Agency," and, by the terms of his appointment, his official residence was fixed at Miami, Oklahoma. He testifies that he took the oath of office on the 10th of November, 1908, and about December 1st opened an office at Miami. In his answer, he alleges that he made his first bid for the land involved on December 21, 1908, within a month after his arrival at his post; that a second bid was made by him on January 25, 1909, and a third on February 22, 1909, all of which were rejected, because less than the appraisement. On March 29, 1909, he made a bid of $5,000 for the land, which was accepted. The deed he received was dated April 8, 1909, and was approved by the Secretary of the Interior on July 26th following.

Charles Bluejacket, the ancestor of the vendors, was a full-blood Quapaw Indian, and as such received a patent for the lands involved, dated September 26, 1896, which provided -- pursuant to 28 Stat. 907 -- that the land should be "inalienable for a period of 25 years" from and after the date of said patent. Thus, the restraint on alienation did not expire until September 26, 1921, and it ran with the land, binding the heirs precisely as it bound the ancestor. *United States v. Noble,* 237 U. S. 74 , 237 U. S. 80 .

Congress provided in 1902 (32 Stat. 245, 275) that adult heirs of a deceased Indian might sell and convey full title to inherited lands free from restrictions, but only by conveyances approved by the Secretary of the Interior, and that the interests of minor heirs might also be so sold and conveyed upon petition of a guardian on order of a proper court and when the sale was approved by the Secretary of the Interior. Under this statute, the lands in controversy were sold in the public manner required by the rules of the Department of the Interior, and, for the

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purposes of this decision, all required action is assumed to have been, in form, properly taken.

The ground upon which the validity of the conveyance to Ewert is assailed is that R.S. 2078 rendered it unlawful for him to become a purchaser of Indian lands while holding the position which he did as a special assistant to the Attorney General "to assist in the institution and prosecution of suits to set aside deeds to certain allotments in the Quapaw Indian Agency," and that therefore the deed to him was void.

Revised Statutes 2078, reads:

"No person employed in Indian affairs shall have any interest or concern in any trade with the Indians, except for, and on account of, the United States, and any person offending herein, shall be liable to a penalty of $5,000 and shall be removed from his office."

The district court held that Ewert was not so employed in Indian affairs as to come within the scope and condemnation of the statute, and dismissed the bill. On appeal, the circuit court of appeals held that he came within the statute, and reversed the decree of the district court as to the minor heirs, but affirmed it as to the adult heirs on the ground that they were guilty of such laches in delaying bringing suit from the date of the deed in 1909 to 1916 that their cause of action was barred. The case is here for construction of this act of Congress.

It is argued that, when the land was purchased by Ewert, he was not "employed in Indian Affairs" within the meaning of Rev.Stats. 2078, which, it is contended, includes only "officers of Indian affairs," provided for in Rev.Stats. Title XXVIII and its amendments.

The section is derived from the Act of June 30, 1834, c. 162, 14, 4 Stat. 738, which declared that "no person employed in the Indian Department shall have any interest or concern in any trade with the Indians," etc. The substitution of "employed in Indian affairs," used in the

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section of the Revised Statutes, for "employed in the Indian Department," used in the prior act, was plainly intended to enlarge the scope of the provision so that it should include all persons employed in Indian affairs, even though they might not be on the roll of the Indian Department, which is really only a bureau of the Interior Department.

The purpose of the section clearly is to protect the inexperienced, dependent, and improvident Indians from the avarice and cunning of unscrupulous men in official position, and at the same time to prevent officials from being tempted, as they otherwise might be, to speculate on that inexperience, or upon the necessities and weaknesses of these "wards of the nation." *United States v. Hutto, No. 1,* 256 U. S. 524 , 256 U. S. 528 .

Since the Act of June 22, 1870, c. 150, 16 Stat. 164, carried into Rev.Stats. 189, no head of any department of the government has been permitted to employ legal

counsel at the expense of the United States, but whenever such counsel is desired, a call must be made upon the Department of Justice, by which it is furnished. In this case, as we have seen, Ewert was specially employed and detailed by the Attorney General not only to devote himself to Indian affairs, but specifically to institute and prosecute suits relating to lands of the Quapaw Indians with which we are here concerned, and he himself testifies that, during his employment, he devoted all of his time to such official duties. He was thus employed to give, and he testifies that at the time of this purchase he was giving, all of his time to the affairs not of the Indians in general, but to matters relating specifically to the titles of the lands of the Quapaw allottees. If he had been employed by the Secretary of the Interior or by the Commissioner of Indian Affairs to perform the same service, no refinement could have suggested the inapplicability to him of the statute, and the fact that, under the form of departmental organization

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of the government provided for by statute, he was under the general direction of the Department of Justice at the time can make no difference.

We fully agree with the circuit court of appeals that Ewert was employed in Indian affairs, within the meaning and intendment of the act, when he purchased the land.

It is next contended that the "trade with the Indians" in which persons employed in Indian affairs were prohibited by the section from engaging must be confined to trade with them when conducted as a business or occupation -- to merchants or dealers supplying the Indians with the necessities or conveniences of life. Having regard to the purpose of the statute as we have stated it, we think that no such narrow interpretation can be given to the section. Congress cannot have intended to prohibit the use of official position and influence for the purpose of overreaching the Indians in the selling to them of clothing or groceries and to permit their use in stripping them of their homes and lands. In *United States v. Douglas,* 190 F. 482, the Circuit Court of Appeals for the Eighth Circuit declined to allow precisely such a construction as it is contended should be here given to the section, and ruled

that the purchase of cattle by an industrial teacher of Indians came within its terms. This decision was rendered over ten years ago, and, if it had been deemed an erroneous construction of the act, Congress would no doubt have long since modified it. Again we agree with the circuit court of appeals that the land was acquired by Ewert in trade with the Indians, within the meaning of the section.

The circuit court of appeals, upon the construction of the statute with which we thus agree, held the sale to Ewert invalid as to the minor Indian heirs, but, while properly regarding the limitation statutes of Oklahoma as inapplicable, held the adult heirs were barred by laches in failing for seven years to institute suit after delivery of the deed to the land. In this the court fell into error.

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"The general rule is that an act done in violation of a statutory prohibition is void, and confers no right upon the wrongdoer." *Waskey v. Hammer,* 223 U. S. 85 , 223 U. S. 94 , and cases cited. The qualification of this rule suggested in the decisions are as inapplicable to this case as they were to the *Waskey* case. The mischief sought to be prevented by the statute is grave, and it not only prohibits such purchases, but it renders the persons making them liable to the penalty of the large fine of $5,000 and removal from office. Any error by the department in the interpretation of the statute cannot confer legal rights inconsistent with its express terms. *Prosser v. Finn,* 208 U. S. 67 .

The purchase by Ewert, being prohibited by the statute, was void. *Waskey v. Hammer, supra.* He still holds the legal title to the land, and the equitable doctrine of laches, developed and designed to protect good faith transactions against those who have slept upon their rights, with knowledge and ample opportunity to assert them, cannot properly have application to give vitality to a void deed and to bar the rights of Indian wards in lands subject to statutory restrictions. *Galliher v. Cadwell,* 145 U. S. 368 , 145 U. S. 372 ; *Halstead v. Griffinnan,* 152 U. S. 412 , 152 U. S. 417 ; *Northern Pacific Railway Co. v. Boyd,* 228 U. S. 482 , 228 U. S. 500 .

It is alleged in the petition, and not denied, that Ewert encumbered the lands involved with a mortgage, and against it indemnification is prayed for, which should be granted if the lien still subsists.

It results that the decree of the circuit court of appeals will be affirmed as to the minor heirs, and that, as to the adult heirs, it must be reversed, and the cause remanded to the district court for an accounting and for further proceedings in conformity with this opinion.

Affirmed in part.

Reversed in part and remanded.

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