BRADER V. JAMES

246 U.S. 88 (1918)

...MR. JUSTICE DAY delivered the opinion of the court.

This case involves the right of Rachel James, a fullblood Choctaw Indian, to convey certain land. The land was originally allotted to Cerena Wallace under the Supplemental Agreement with the Choctaws and Chickasaws of July 1, 1902, 32 Stat. 641. As to the homestead allotment, which is here in question, § 12 of said agreement provided that it should be inalienable during the lifetime of the allottee, not exceeeding twenty-one years from the date of the certificate of allotment. Cerena Wallace, mother of Rachel James, and herself a full-blood Choctaw Indian, died October 27, 1905, leaving her daughter, Rachel James, sole surviving heir at law. On August 17, 1907, Rachel James, joined by her husband, conveyed the land, embraced in the original homestead allotment, with some other lands, to Tillie Brader, who conveyed by quit-claim deed of September 13, 1909, to the plaintiff in error. The conveyance by Rachel James to Tillie Brader was not approved by the Secretary of the Interior. Rachel James prosecuted this suit to recover the land, and for use and occupation thereof, basing her right of recovery on the fact that her conveyance had not been approved by the Secretary of the Interior. She succeeded in the court of original jurisdiction, and the judgment was affirmed by the Supreme Court of Oklahoma. 49 Oklahoma, 734.

The case as brought to our attention involves two questions:

1. Could a full-blood Choctaw Indian, after the passage of the Act of April 26, 1906, 34 Stat. 137, convey the lands inherited from a full-blood Choctaw Indian, to whom the lands had been allotted in her lifetime, without the approval of the Secretary of the Interior?

2. If such conveyance were made valid by the act of Congress only with the approval of the Secretary of the Interior, is such legislation constitutional?

As to the homestead allotment to the mother, Cerena Wallace, under the Supplemental Choctaw and Chickasaw Agreement of July 1, 1902, Rachel James as her heir at law received the land free from restriction, and had good right to convey the same unless prevented from so doing by the Act of April 26, 1906. *Mullen v. United States*, 224 U.S. 448. As the conveyance here in question was subsequent to the Act of April 26, 1906, if that act covers the case, and is constitutional, Rachel James may not convey without the approval of the Secretary of the Interior, and the judgment below was right.

The Act of April 26, 1906, was before this court in *Tiger v. Western Investment Co.*, 221 U.S. 286. In that case it was held that a full-blood Indian of the Creek Tribe, after the passage of the Act of April 26, 1906, could not convey land which he had inherited, and which was allotted under the act of Congress known as the Supplemental Creek Agreement of June 30, 1902, 32 Stat. 500, and as to which the five years named in § 16 of that act had not expired when Congress

passed the Act of April 26, 1906, without the approval of the Secretary of the interior. In that case, as in this, a construction of § 22 of the last-named act was directly involved. That section provides:

"That the adult heirs of any deceased Indian of either of the Five Civilized Tribes whose selection has been made, or to whom a deed or patent has been issued for his or her share of the land of the tribe to which he or she belongs or belonged, may sell and convey the lands inherited from such decedent; and if there be both adult and minor heirs of such decedent, then such minors may join in a sale of such lands by a guardian duly appointed by the proper United States court for the Indian Territory. And in case of the organization of a State or Territory, then by a proper court of the county in which said minor or minors may reside or in which said real estate is situated, upon an order of such court made upon petition filed by guardian. All conveyances made under this provision by heirs who are full-blood Indians are to be subject to the approval of the Secretary of the Interior, under such rules and regulations as he may prescribe."

The conveyance by Rachel James is within the terms of the section as construed in the *Tiger Case*, unless the fact that the restriction of the act under which she inherited had expired when the Act of April 26, 1906, was passed, whereas in the *Tiger Case* the former limitation had not expired when the act was passed, makes such difference as to require a different ruling in the present case. We are of opinion that this fact does not work a difference in result. As set forth in the opinion in the *Tiger Case*, the Act of April 2l, 1906, was a comprehensive one, and intended to apply alike to all of the Five Civilized Tribes, and to make requirements as to conveyances by full-blood Indians and the full-blood heirs of Indians, which should take the place of former restrictions and limitations. The purpose was to substitute a new and uniform scheme controlling alienation in such cases, operating alike as to all the Civilized Tribes. Notwithstanding Rachel James might have conveyed the homestead allotment after it descended to her, she was a Tribal Indian, and as such still subject to the legislation of Congress enacted in discharge of the Nation's duty of guardianship over the Indians. Congress was itself the judge of the necessity of legislation for this purpose; it alone might determine when this guardianship should cease.

The argument that the language in the last sentence of § 22 must be taken to mean that Congress had no intention to deal with restrictions under former acts, certainly not with those which had expired, is answered by the consideration that Congress was dealing with Tribal Indians, still under its control and subject to national guardianship. In the terms of this act Congress made no exception as to rights of alienation which had arisen under former legislation, and it undertook, as we held in the Tiger Case, to pass a new and comprehensive act declaring conveyances, of the class herein under consideration, to be valid only when approved by the Secretary of the Interior.

In view of the repeated decisions of this court we can have no doubt of the constitutionality of such legislation. While the tribal relation existed the national guardianship continued, and included authority to make limitations upon the rights which such Indians might exercise in respect to such lands as are here involved. This authority did not terminate with the expiration of the limitation upon the rights to dispose of allotted lands; the right and duty of Congress to safeguard the rights of Indians still continued. It has been frequently held by this court that the grant of citizenship is not inconsistent with the right of Congress to continue to exercise this

authority by legislation deemed adequate to that end. It is unnecessary to again review the decisions of this court which support that authority. Some of them were reviewed in the Tiger Case. The doctrine is reiterated in *Heckman v. United States*, 224 U.S. 413, and *United States v. Nice*, 241 U.S. 591, 598.

The plaintiff in error relies upon *Choate v. Trapp*, 224 U.S. 665, in which this court sustained a contrctual exemption as to taxation of certain Indian lands. In that case the right of exemption was based upon a valid and binding contract, and that decision in no wise militates against the right of Congress to continue to pass legislation placing restrictions upon the right of Indians to convey lands allotted as were those in question here. In *United States v. First National Bank*, 234 U.S. 245, and *United States v. Waller*, 243 U.S. 452, this court dealt with lands as to which certain mixed-blood Indians by act of Congress had been given full ownership with all the rights which inhere in ownership in persons of full legal capacity. Those decisions do not place limitations upon the right of Congress to deal with a Tribal Indian whose relation of ward to the Government still continues, and concerning whom Congress has not evidenced its intention to release its authority.

We find no error in the judgment of the Supreme Court of Oklahoma, and the same is affirmed.

Affirmed.

QUESTION AND COMMENTS

1. Soon after the present management started teaching this course, he attempted to explain several of these cases to lawyers who had been his classmates at the University of Illinois College of Law. They sputtered about Quia Emptores et cetera. I have since furnished them with citations. They remain dubious.

2. I thought I had seen the epitome of bewilderment in the case of my law school classmates, see 1 just above. However, at least equal thereto was the consternation and disbelief of a full-blooded Kiowa law student who had inherited trust land when she was first exposed to the proposition that Quia Emptores had made all land owned in fee simple freely alienable.