CHAPTER 19

CIVIL JURISDICTION

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SECTION 1. INTRODUCTION

As applied to the courts, jurisdiction may be defined as the power of a court to hear and determine matters or controversies of a justiciable nature arising within the limits to which the judicial power of those courts extends. We may consider the subject of civil jurisdiction[1] from the standpoint of the federal courts, including constitutional and legislative courts, such as the Court of Claims, and federal administrative tribunals, and also from the standpoint of the state courts, and the tribal courts.

[1] On criminal jurisdiction, see Chapter 18. On the constitutional Power of federal, state, and tribal governments, see Chapters 5, 6, and 7.

SECTION 2. FEDERAL COURTS

Speaking generally, it may be said that the judicial power of the United States is vested by the Constitution in the Supreme Court and such other courts as Congress shall from time to time ordain and establish.[2]

In considering the jurisdiction of the federal courts, it may be observed that under the Constitution [3] and laws [4] of the United States the federal courts exercise jurisdiction in two different classes of cases: cases where the jurisdiction depends upon the character of the parties, and cases where the jurisdiction depends upon the subject matter of the suit. The distinction between these two classes of cases has been recognized from the beginning. Thus, in *Cohens* v. Virginia[5] the Supreme Court of the United States, speaking through Mr. Justice Marshall, said:

> In one description of cases, the jurisdiction of the court is founded entirely on the character of the parties; and the nature of the controversy is not contemplated by the constitution-the character of the parties is everything, the nature of the case nothing. In the other description of cases, the jurisdiction is founded entirely on the character of the case, and the parties are not contemplated by the constitution-in these, the nature of the ease is everything, the character of the parties nothing. * * *. (P. 393.)

Taking this proposition as a point of departure, we shall consider the subject briefly. in so far as the Indians are concerned, inder the following headings:

A. Cases where the jurisdiction of the court depends on the character of the parties, including the United States as plaintiff, defendant or intervener; eases where an Indian tribe is plaintiff, defendant or intervener; cases where individual Indians are plaintiffs, defendants or interveners.

B. Cases where the jurisdiction of the court depends on the character of the subject matter.

A. JURISDICTION DEPENDENT UPON PARTIES

(1) United States as plaintiff.

(a) *Generally.*—It may be stated as a general proposition that under subdivision 1 of section 41 of title 28 of the United States Code. the district courts of the United States have jurisdiction of all suits of a civil nature, at common law or in equity, in which the United States is the plaintiff. Ordinarily the general jurisdiction of the district court is established by the mere fact that the United States is plaintiff. Thus, in United *States* v. *Board of County* Commissioners of *Grady County, Oklahoma,*[6] wherein the United States sought to enjoin the defendants from

[2] U. S. Const., *Art.* III, sec. 1.
[3] Art. III, sec. 2.
[4] 28 U. S. C. A. 41.
[5] 6 Wheat. 264 (1821).
[6] 54 F. 2d 593 (C. C. A. 10, 1931).

diverting surface drainage water from a state public highway over an Indian allotment, the Circuit Court of Appeals for the Eighth Circuit, notwithstanding the claim of the defendants and the decision of the court that the suit was virtually one against the State of Oklahoma and could not be maintained, upheld the jurisdiction of the district court, saying:

> "There was no tenable objection to the general jurisdiction of the District Court. It was expressly conferred by title 28, § 41, subd. 1, of the U. S. Code, 28 U. S. C. A. § 41 (1), in providing that the District Courts shall have jurisdiction, 'first, of all suits of a civil nature, at common law or in equity, brought by the United States * * *.'" (P. 595.)

Nevertheless, as suggested above, in order for the United States to maintain a suit so that the court may pass upon the merits of the case and enter a valid judgment therein, it must be a suit which the United States is authorized to maintain.[7] In cases where the United States is seeking to enforce a measure of government enacted in the exercise of its constitutional powers, there is or can be no question as to the authority of the United States to apply to its own courts for relief.[8] In cases where the United States sues for the benefit of a third party, it may be stated that as a general rule it must have an interest in the subject matter or purpose of the suit and the relief sought. Its interest does not necessarily have to be a pecuniary one; it is sufficient if it is a governmental one.[9]

(b) Indian cases.—A pecuniary interest of the United States itself need not exist in cases involving restricted Indian lands[10] or land in which the United States is trustee.[11] It is well settled that the United States, by virtue of its peculiar relations with the Indians—often called "guardianship"[12]—or as trustee of their property, has the capacity and the duty to effectuate Government policies by protecting and enforcing their rights in property held by it as trustee,[13] or by the Indians themselves in fee simple, subject to restrictions on alienation.[14]

The United States acts in behalf of itself and as trustee or guardian for the Indians.[15] When proceeding on its own behalf the United States is *(a)* protecting its guardianship over the Indian, and *(b)* removing unlawful obstacles to the fulfillment of its obligations.[16] In *United States* v. *Fitzgerald* [17] the court said:

> The United States may lawfully maintain suits in its own courts to prevent interference with the means it adopts to exercise its powers of government and to carry into effect its policies. It may maintain such suits, although it has no pecuniary interest in the subject-matter thereof, for the purpose of protecting and enforcing its governmental rights and to aid in the execution of its governmental policies. (P. 296–297.)

The right of maintaining a suit arises pursuant to provisions in treaties with Indian tribes,[18] or congressional laws, or by virtue of the fact that legal title to land is vested in the United States, subject to the Indian right of occupancy or by reason of the fact that the Indian enjoys a vested right, granted by the Government, to hold land tax-exempt for a specified period.[19] Usually the property involved is restricted land held by an Indian under a trust or other patent from the United States, or purchased for an Indian out of funds derived from the sale of allotted lands and restricted by the Secretary of the Interior;[20] or by a mere right of occupancy, title being in the United States. Sometimes the case involves personal property furnished by the Government to the Indian, to be used by him in connection with an allotment, without the right of disposal except to other Indians, or held in trust by the United States for him, or affected by such trusts.

(c) Suits involving land.—It has often been held that the United States lacks the capacity to sue regarding lands held by Indians which have been freed from restrictions,[21] because it is under no duty to the Indians and has no interest in the matter.[22] However, the Government has a duty and an interest to protect the right of the Indian to hold his land free from taxation for the trust period of 25 years, and the relationship between the United States and the Indian with respect to this vested right is regarded as the legal relationship of trusteeship which gives the United States the capacity to sue on behalf of the Indians.

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[7] See cases cited in note 181 of sec. 41 (1) of 28 U. S. C. A.

[8] See *Heckman* v. *United States*, 224 U. S. 413 (1912), and cases cited therein.

[9] On the general question of the right of the United States to institute suit for the benefit of a third party, see *United States* v. *San Jacinto Tin Co.*, 125 U. S. 273, 286 (1888); *Gurtner* v. *United States*, 149 U. S. 662, 671-673 (1893). On the general subject of the right of the Government to sue, see *In re Debs*, 158 U. S. 564, 584 (1895).

[10] *Heckman* v. *United States*, 224 U. S. 413 (1912); also see 25 Harv. L. Rev. 733, 740 (1912).

[11] *Morrow* v. *United States*, 243 Fed. 854 (C. C. A. 8, 1917).

[12] See Chapter 8, sec. 9.

[13] *United States* v. *Candelaria*, 271 U. S. 432 (1926).

[14] *Goat* v. *United States*, 224 U. S. 458 (1912); *Deming Investment Co.* v. *United States*, 224 U. S. 471 (19x2); *Heckman* v. *United States*, 224 U. S. 413 (1912). The United States represents its own interest in enforcing laws for the protection of Indians for whose benefit the suit was brought. *Heckman* v. *United States*, 224 U. S. 413, 444-446 (1912). Also see *United States* v. *Minnesota*, 270 U. S. 181 (1926).

[15] By virtue of its own interest and the interest of the tribe, see *Brewer Elliott Oil & Gas Co.* v. *United States*, 260 U. S. 77 (1922); by virtue of its interest *in* maintaining restrictions and Indians in possession, *Privett* v. *United States*, 256 U. S. 201 (1921). Also see *Heckman* v. *United States*, 224 U. S. 413 (1912); *United States* v. *Title Insurance Co.*, 265 U. S. 472 (1924); *Osage County Motor Co.* v. *United States*, 33 F. 2d 21 (C. C. A. 8, 1929), cert. den. 280 U. S. 577.

[16] The Supreme Court of the United States, in *United States* v. *Minnesota*, 270 U. S. 181, 194 (1926) said:

> * * * the United States has a real and direct interest in the matter presented for examination and adjudication. Its interest arises out of its guardianship over the Indians and out of its right to invoke the aid of a court of equity in removing unlawful obstacles to the fulfillment of its obligations; and in both aspects the interest is one which is vested in it as a sovereign. *Heckman* v. *United States*, 224 U. S. 413, 437–444; *United States* v. *Osage County*, 251 U. S. 128, 132–133; *LaMotte* v. *United States*, 254 U. S. 570, 575; *Cramer* v. *United States*, 261 U. S. 219, 232; *United States* v. *Beebe*, 127 U. S. 338, 342–343; *United States* v. *New Orleans Pacific Ry. Co.*, 248 U. S. 507, 518.

And see *United States* v. *Nashville, Chattanooga & St. Louis Ry. Co.*, 118 U. S. 120, 126 (1886).

[17] 201 Fed. 295 (C. C. A. 8, 1912). This case was quoted with approval in *Cramer* v. *United States*, 261 U. S. 219, 232–233 (1923).

[18] See *United States* v. *Winans*, 198 U. S. 371 (1905); *Seufert Bros. Co.* v. *United States*, 249 U. S. 194 (1919) (suits brought to prevent interference with Indian fishing rights secured by treaty).

[19] The Circuit Court of Appeals in the case of *United States* v. *Colvard*, 89 F. 2d 312 (C. C. A. 4, 1937) said:

> * * * even if the title were not in the United States, there can be no question as to the right of the United States to institute suit for the protection of the rights of these wards of the nation in and to their property. (P. 314.)

But cf. *Hy-yu-tse-mil-kin* v. *Smith*, 194 U. S. 401 (1904).

[20] *United States* v. *Brown*, 8 F. 2d 564 (C. C. A. 8, 1925), cert. den. 270 U. S. 644 (1926); but cf. *McCurdy* v. *United States*, 246 U. S. 263 (1918).

[21] *Deming Investment Co.* v. *United States*, 224 U. S. 471 (1912); *Mullen* v. *United States*, 224 U. S. 448 (1912); *Goat* v. *United States*, 224 U. S. 458 (1912); *United States* v. *Waller*, 243 U. S. 452 (1917). Accord: *United States* v. *Bartlett*, 235 U. S. 72 (1914); *United States* v. *Chase*, 245 U. S. 89 (1917). Also see *United States* v. *Hemmer*, 241 U. S. 379 (1916). Contra: *United States* v. *Apple*, 262 Fed. 200 (D. C. Kan. 1919).

[22] When an Indian is granted full title, including the right of alienation, and when he conveys such property, the United States cannot maintain suit for his benefit to annul the deed on the ground that it was procured by fraud. *United States* v. *Waller*, 243 U. S. 452 (1917). Also see *United States* v. *Hemmer*, 241 U. S. 379, (1916), and *Larkin* v. *Paugh*, 276 U. S. 431 (1928).

to recover illegal taxes or restrain collection of taxes levied on land freed from restrictions.[23]

The United States may sue to enjoin the imposition of local or state taxes on allotted lands or permanent improvements thereon, or personal property obtained from the United States and used by the Indians on the allotted lands. The leading case in which the United States obtained an injunction against county officials attempting to tax allotted lands during the trust period is the case of *United States v. Rickert.*[24] The Supreme Court said:

> We do not perceive that the Government has any remedy at law that could be at all efficacious for the protection of its rights in the property in question and for the attainment of its purposes in reference to these Indians. If the personal property and the structures on the land were sold for taxes and possession taken by the purchaser, then the Indians could not be maintained on the allotted lands and the Government, unless it abandoned its policy to maintain these Indians on the allotted lands, would be compelled to appropriate more money and apply it in the erection of other necessary structures on the land and in the purchase of other stock required for purposes of cultivation. And so on, every year. It is manifest that no proceedings at law can be prompt and efficacious for the, protection of the rights of the Government, and that adequate relief can only be had in a court of equity, which, by a comprehensive decree, can finally determine once for all the question of validity of the assessment and taxation in question, and thus give security against any action upon the part of the local authorities tending to interfere with the complete control, not only of the Indians by the Government, but of the property supplied to them by the Government and in use on the allotted lands. *Railway Co.* v. *McShane,* 22 Wall. 444; *Coosaw Mining Co. v. South Carolina, 144* U. S. 550, 564-66.
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> Some observations may be made that are applicable to the whole case. It is said that the State has conferred upon these Indians the right of suffrage and other rights that ordinarily belong only to citizens, and that they ought, therefore, to share the burdens of government like other people who enjoy such rights. These are considerations to be addressed to Congress. It is for the legislative branch of the Government to say when these Indians shall cease to be dependent and assume the responsibilities attaching to citizenship. That is a political question, which the courts may not determine. We can only deal with the case as it exists under the legislation of Congress.

The Supreme Court,[25] in holding that the United States may sue to enjoin discriminatory state taxes levied on allotments of noncompetent Osage Indians, said:

> Certain is it that as the United States as guardian of the Indians had the duty to protect them from spoliation and, therefore, the right to prevent their being illegally deprived of the property rights conferred under the Act of Congress of 1906, the power existed in the officers of the United States to invoke relief for the accomplishment of the purpose stated. Indeed the Act of Congress of 1917, providing for the appraisement of the lands in question, by necessary implication, if not in express terms, treated the power of the officers of the United States to resist the illegal assessments as undoubted.
>
> And the existence of power in the United States to sue which is thus established disposes of the proposition that because of remedies afforded to individuals under the state law the authority of a court of equity could not be invoked by the United States. This necessarily follows because, in the first place, as the authority of the United States extended to all the non-competent members of the tribe it obviously resulted that the interposition of a court of equity to prevent the wrong complained of was essential in order to avoid a multiplicity of suits (see *Union Pacific Ry. Co.* v. *Cheyenne,* 113 U. S. 516; *Smyth* v. *Ames,* 169 U. S. 466, 517; *Cruickshank* v. *Bidwell,* 176 U. S. 73, 81; *Boise Artesian Water Co.* v. *Boise City,* 213 U. S. 276, 283; *Greene* v. *Louisville & Interurban R. R. Co.,* 244 U. S. 499, 506); in the second place because, as the wrong relied upon was not a mere mistake or error committed in the enforcement of the state tax laws, but a systematic and intentional disregard of such laws by the state officers for the purpose of destroying the rights of the whole class of non-competent Indians, who were subject to the protection of the United States, it follows that such class wrong and disregard of the state statute gave rise to the right to invoke the interposition of a court of equity in order that an adequate remedy might be afforded. *Cummings* v. *National Bank,* 101 U. S. 153; *Reagan* v. *Farmers' Loan & Trust Co.,* 154 U. S. 362, 390; *Pittsburgh, etc., Ry. Co.* v. *Backus,* 154 U. S. 421; *Coulter* v. *Louisville & Nashville R. R. Co.,* 196 U. 8.599; *Raymond* v. *Chicago Union Traction Co..* 207 U. S. 20; Greene v. *Louisville & Interurban R. R. Co.,* 244 U. S. 499, 507. In fact the subject is fully covered by the ruling in *Union Pacific R. R. Co.* v. *Weld County, 247* U. S. 282 (pp. 133, 134).

Where restrictions on land are transgressed, the Government can choose such legal remedies as are necessary to protect the Indian. It may maintain an action to quiet the title to land;[26] set aside conveyances made prior to the expiration of the trust period, restore possession to the Indian even though the allottee is a citizen,[27] or where title has been vested in the allottee but the right of alienation is restricted.[28] The Government may bring suit to cancel deeds and mortgages;[29] to set aside conveyances;[30] to annul a patent issued by the United States in order to establish possessory rights of individual Indians;[31] to set aside inequitable contracts;[32] to sue for a cancellation of a mining lease and assignment of rents and royalties issuing therefrom;[33] to cancel oil and gas leases.[34] The Government may sue a lessee and a surety company which signed a faithful performance bond, for a breach of a lease, involving trust lands, made

[23] *Morrow* v. *United States, 243* Fed. 854 (C. C. A. 8. 1917); *McCurdy* v. *United States,* 264 U. S. 484 (1924). Also see *Board of County Commissioners of Tulsa County, Oklahoma* v. *United States, 94* F. 2d 450 (C. C. A. 10. 1938): and *United States v. Moore. 284* Fed. 86 (C. C. A. 8. 1922). in which the United States brought suit to recover royalties paid under an assignment illegally made during the period of restrictions, after the period had expired. The court said, in *United States v. Southern Surety* Co., 9 F. 2d 664 (D. C. E. D. Okla. 1925):

> * * * removal of restrictions against the alienation of allotted land does not preclude the United States from maintaining an action to remove a cloud illegally placed on such title during the restricted period. This action is properly brought in the name of the United States. (P. 665.)

United States v. *Gray,* 201 Fed. 291 (C. C. A. 8, 1912); and *United States* v. *Sherburne Mercantile Co., 68* F. 2d 155 (C. C. A. 9. 1933).

The Federal Government may sue to recover taxes illegally levied upon Personal property such as livestock and farm implements which it issued to members or to a tribe, *United States v. Dewey County, S. D.,* 14 F. 2d 784 (D. C. S. Dak. 1926).

[24] 188 U. S. 432, 444, 445 (C. C. A. 8, 1903).

[25] *United States* v. *Osage County,* 251 U. S. 128 (1919).

[26] Title to distributed land claimed by, or thought to be the property of, an Indian, may be determined by suit brought by the United States to quiet Indian title. *United States* v. *Wildcat,* 244 U. S. 111 (1917); United *States* v. *Atkins, 260* U. S. *220* (1922); *United States* v. *Title Insuronce Co.,* 265 U. S. *472* (1924); *United States v. Jackson,* 280 U. S. 183 (1930).

[27] *Bowling* v. *United* States, 233 U. S. 528 (1914); and Tiger v. *Western Inrcetaerrt Co.,* 221 U. S. 286 (1911). Knoepfler, Legal Status of the American Indian and His Property (1922), 7 Ia. L. B.. pp. 232, 246. The- Act of June 25. 1910. 36 Stat. 703, 744, and the Act of July 1. 1916, 39 Stat. 262, 312, and subsequent appropriation acts provided for the expenses of such, suits.

[28] All conveyances of such land made prior to the expiration of the restriction on alienation are void. *United States* v. *Noble, 237* U. S. *74* (1915).

[29] *Deming Investment CO.* v. *United Staten, 224* U. S. 471 (1912).

[30] *United States* v. *First National Bank, 234* U. S. 245 (1914).

[31] *Cramer* v. *United States,* 261 U. S. 219, 232–233 (1923).

[32] *United States* v. *Boyd, 68* Fed. 577 (C. C. W. D. N. C. 1895).

[33] *United States v.* Noble, 237 U. S. 74 (1915).

[34] *Brewer Elliott Oil and Gas Co. v. United States, 260* U. S. 77 (1922).

by an allottee and approved by the Secretary.[35] The United States may sue to enjoin trespassing on tribal lands and on restricted allotments.[36] It may enjoin the assertion of rights under leases of restricted allotments or of land held by the United States in trust for a tribe obtained from an Indian without conforming to the statutory and administrative requirements, and may enjoin the negotiation of such unlawful leases in the future.[37]

Even where unrestricted Indians are involved, the federal court has jurisdiction over cases based on statutory tax-exemptions.[38] The right of the United States to bring suits in behalf of Indians involving their lands after the period of trust or restrictions has expired, and to which the United States has no title, is upheld in many cases, among them *United States* v. *Moore*,[39] in which the United States brought suit to recover royalties paid under an assignment illegally made during the period of restrictions; the suit being brought after the period had expired.[40]

(*d*) *Suits involving personal property.-The* United States may maintain an action for trover;[40a] an action to replevy timber cut by a few members of a tribe from a part of a reservation not occupied in severalty, and made into saw logs and sold to a third party;[41] and to replevy a team of horses bought by the superintendent of an Indian agency with the trust money of an incompetent Indian, where the bill of sale recited the source of the purchase money, even though the defendant had incurred expenses for veterinary services and for care of the team while it was in the control of the Indian.[42]

The United States may recover damages for the wrongful taking of wool sheared from sheep furnished to an Indian by the Government to be used on his allotment,[43] and for the recovery of funds disbursed after a certificate of competency was issued,[44] and may bring action for rent on behalf of an individual Indian[45] or a tribe.[46] It may recover restricted funds deposited in a local bank, such indebtedness of the bank being an indebtedness to the United States and entitled to priority over other deposits.[47]

(*e*) *Other suits.*-The right of the United States to bring suit in behalf of Indians has been upheld in a variety of cases not involving restricted property. Thus it has been held that the Government may recover, in a suit filed in connection with a contract of employment of Indians in a wild-west show. The damages would include breach of contract and expenses incurred in returning the Indians to the agency, as well as the amount due the Indians.[48]

(*f*) *Effect of judgment.*—The Government is not bound unless it is a party to the litigation.[49] No judgment of any court, state or federal, rendered in a suit between an Indian and a private party, involving property under the control of the Government, to which the Government is a stranger, can bind the Government or its administrative officers.[50] Where the Government has employed and paid a special attorney to represent the Indians, or the United States Attorney has joined as associate counsel with the attorneys representing the Indians in the litigation and filed a motion to vacate the judgment, the United States is bound as effectively as if it were a party, by the judgment in a suit instituted and prosecuted to final judgment by this special attorney.[51]

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[35] *United States* v. *Gray*, 201 Fed. 291 (C. C. A. 8, 1912).

[36] *Ash Sheep* Co. v. United. *States*, 252 U. S. 159 (1920). Also see *Taylor* v. *United States*, 44 F. (2d) 531 (C. C. A. 9. 1930).

[37] *United States* v. *Flournoy Live-Stock and Real Estate Co.*, 71 Fed. 576 (C. C. Nebr. 1896). Also see *Brewer Elliott Oil and Gas* Co. v. *United States*, 260 U. S. 77 (1922).

[38] *In United States v. Morrow*, *243* Fed. 854 (C. C. A. 8, 1917), suit was brought by the United States not as guardian but as trustee of lands for a mixed-blood Indian against Becker County, Minn., officials to restrain collection of taxes levied upon certain allotted lands. In this case the Government had terminated the guardianship over the Indian owner with respect to his land by the Acts of June 21. 1906. 34 Stat. 325, 353, and March 1, 1907, 34 Stat. 1015, 1034. The court held that the right of the Indian to hold his land free from taxation for the trust period of 25 *years was a vested right* which the Government could not alter and that hence where the Indian was claiming no rights under the Acts of June 21, 1906, and March 1, 1907, but was insisting upon holding his land under the trust patent his land could not be taxed by the state. The relationship between the United States and the Indian with respect to this vested right was looked upon by the court as the legal relationship of trusteeship, giving the United States capacity to sue in behalf of the Indian.

[39] 284 Fed. 86 (C. C. A. 8, 1922).

[40] See also *United States v. Gray*, 201 Fed. 291 (C. C. A. 8. 1912). and *United States* v. *Southern Surety Co.*, 9 F. 2d, 664 (D. C. E. D. Okla. 1925), in which it was said.

> . . . removal of restrictions against the alienation of allotted land does not preclude the United States Prom maintaining an action to remove a cloud illegally placed on such title during the restricted period. This action is properly brought in the name of the United States. (P. 665.)

And *see United States* v. *Sherburne Mercantile Co.*, *68* F. 2d 155 (C. C. A. 9. 1933).

[40a] *Pine River Logging & Improvement Co. v. United States*, 186 U. S. 279 (1902).

[41] *United States* v. *Cook*, 19 Wall. (86 U. S.) 591 (1873).

[42] *United States* v. *O'Gorman*, *287* Fed. 135 (C. C. A. 8, 1923).

[43] *United States v. Fitzgerald*, 201 Fed. 295 (C. C. A. 8, 1912).

[44] *In* the case of *United States v. Mashunkashey*, *72* F. 2d. 847 (C. C. A 10, 1934). the court said :

> Put we entertain no doubt that a court of equity has the power to cancel it (certificate of competency) effective from the date of its issuance as to persons participating in the acts *evoking* the cancellation or having knowledge of the facts and acquiring rights with that knowledge. (P. 850.)

[45] *United States* v. *Chase*, 245 U. S. 89 (1917).

[46] *Kirby* v. *United States*, 260 U. S. 423 (1922).

[47] *Bramwell* v. *U. S. Fidelity Co.*, 269 U. S. 483 (1926).

[48] *United States* v. *Pumphrey*, 11 App. D. C. 44 (1897).

[49] *Sunderland* v. *United States*, 266 U. S. 226 (1924); *Privett* v. *United States*, 256 U. S. 201 (1921). The United States is an indispensable party to condemnation proceedings brought by the state to acquire a right-of-way over lands which the United States holds in trust for Indian allottees. *Minnesota* v. *United States*, 305 U. S. 382 (C. C. A. 8, 1939).

[50] *Bowling* v. *United States*, *233* U. S. 528 (1914); *United States* v. *Board of Nat. Missions of Presbyterian Church*, *37* F. 2d 272 (C. C. A. 10, 1929).

[51] *United States* v. *Candelaria*, 271 U. S. 432 (1926). Also see Op. Sol. I. D., M.27788, August 6, 1934. For other examples of a special attorney employed to assist in the conduct of legal proceedings pertaining to claims in behalf of Osage Indians for the recovery of royalties on oil produced from tribal lands, see Act of August 25, 1937, 50 Stat. 805; Act of March 2, 1895, 28 Stat. 843, 859–860; Act of June 4, 1897, 30 Stat. 11, 56; Act of July 1, 1898, 30 Stat. 597, 641; Act of March 3, 1899, 30 Stat. 1074, 1113; Act of June 25, 1910, 36 Stat. 703, 744; Act of August 24, 1912, 37 Stat. 417, 464; Act of August 1, 1914, 38 Stat. 609, 653; Act of March 3, 1915, 38 Stat. 822, 866; Act of July 1, 1916, 39 Stat. 262, 312; Act of June 12, 1917, 40 Stat. 105, 156; Act of July 19, 1919, 41 Stat. 163, 208; Act of March 4, 1921, 41 Stat 1367, 1411.

Mr. Justice Van Devanter, in the case of *United States* v. *Candelaria*, said :

> The Indians of the pueblo are wards of the United States and hold their lands subject to the restriction that the same cannot be alienated in any-wise without its consent. A judgment or decree which operates directly or indirectly to transfer the lands from the Indians, where the United States has not authorized or appeared in the suit, infringes that restriction. The United States has an interest in maintaining and enforcing the restriction which cannot be affected by such a judgment or decree. This Court has said in dealing with a like situation: "It necessarily follows that, as a transfer of the allotted lands contrary to the inhibition of Congress would be a violation of the governmental rights of the United States arising from its obligation to a dependent people, no stipulations, contracts, or judgments rendered in suits to which the Government is a stranger, can affect its interest. The authority of the United States to enforce the restraint lawfully created cannot be impaired by any action without its consent." *Bowling and Miami Improvement Co.* v. *United States*, 233 U. S. 528, 534. And that ruling has been recognized and given effect in other cases. *Privett* v. *United States*, 256 U. S. 201, 204; *Sunderland* v. *United States*, 266 U. S. 226, 232, (Pp. 443–434.)
>
> But, as it appears that for many years the United States has employed and paid a special attorney to represent the Pueblo

In *United States* v. *Candelaria*[52] two judgments had been obtained against a Pueblo in New Mexico in suits brought by it to clear title to its land—one in a territory court, concluded in the state courts after statehood, and the other in the federal court—in neither of which the United States was a party. Ordinarily, judgments rendered in a suit to which the United States is not a party are not binding upon the United States. The court, after adverting to the fact that under territorial laws, sanctioned by Congress, the Pueblo was a juristic person, with capacity to sue and defend with respect to its land, citing *Lane* v. *Pueblo of Santa Rosa*,[53] held that the state court of New Mexico had jurisdiction to enter a judgment in an action by an Indian Pueblo against opposing claimants concerning title to land, which would be conclusive on the United States if the latter authorized the bringing or prosecution of the suit, or if an attorney employed by the United States appeared on behalf of the Pueblo in the case.

The United States is not bound by a judgment in which a tribal attorney, employed by the tribe under a contract approved by the Secretary of the Interior and paid from tribal funds, had appeared and represented individual Indians. In *Logan* v. *United States*,[54] the Circuit Court of Appeals, said:

> * * . To sustain the plea, appellant's counsel relies upon United States v. Candelaria, 271 U. S. 432, 46 S. Ct. 561, 70 L. Ed. 1023. The distinction, as we see it, between that case and this is that it appears therein that the attorney who represented prior litigation in a case of the same character and between the same parties in the state court was employed and paid by the United States, whereas in this case the superintendent and his attorney, in making the interplea in the probate court, were not paid as such officers by the United States; but annual appropriations have been made by Congress and were being made at that time, and it was provided that they should be paid out of the funds held by the Secretary of the Interior for the Osage Indians. The tribal attorney was selected by the tribe. They were not, therefore, the representatives of the United States in making the interplea. There is no showing that the Secretary of the Interior advised that the interplea be made. We, therefore, conclude that the United States, as plaintiff in this suit, was not bound by the action of the county court in denying the interplea. * * . (P. 698.)

If the United States is entitled to institute an action on its own behalf and on behalf of the Indians, the Indians cannot determine the course of the suit or settle it contrary to the position of the Government.[55] The Indians, being represented by the Government, are not necessary parties.[56]

The 6-year statute of limitations which runs against the United States in relation to annulling land patents is inapplicable when the suit is to protect the rights of Indians,[57] and does not run against members of Indian tribes for claims on federal income taxes wrongfully deducted by the Indian superintendent from funds due to them.[58] It is also settled that said statutes of limitation or other state statutes neither bind nor have any application to the United States when suing to enforce a public right or to protect the interests of its wards.[59]

If Congress provides a statutory method for determining Indian land claims, and the claim is held invalid, the United States cannot later reopen the question.[60]

Some statutes instruct the Attorney General to bring suit in the name of the United States to quiet title to Indian land;[61] or authorize the Attorney General, upon the request of the Secretary of the Interior, to appear in suits involving Indian tribal lands,[62] without requiring Indians to be made parties; or, authorize the Secretary to instruct the Attorney General to bring suit in the name of the United States to quiet and settle title to distributed tribal[63] or allotted lands.[64]

(2) United States as defendant.—The general rule is that the United States cannot be sued in any court, whether state or federal, without its consent.[65]

The immunity of the United States to suit without its consent

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Indians and look after their interests, our answer is made with the qualification that, if the decree was rendered in a suit begun and prosecuted by the special attorney so employed and paid, we think the United States is as effectually concluded as if it were a party to the suit. *Souffront* v. *Compagnie des Sucreries*, 217 U. S. 475, 486; *Lovejoy* v. *Murray*, 3 Wall. 1, 18; *Claflin* v *Fletcher*, 7 Fed. 851, 852; *Maloy* v. *Duden*, 86 Fed. 402, 404; *James* v. *Germania Iron Co.*, 107 Fed. 597, 613. (PP. 443–444.)

[52] 271 U. S. 432 (1926). See sec. 2A(1)(f), *supra*. See Chapter 20, sec. 7.

[53] 249 U. S. 110 (1919).

[54] 58 F. 2d 697 (C. C. A. 10, 1932).

[55] *Heckman* v. *United States*, 224 U. S. 413 (1912); also see *Pueblo of Picuris in State of New Mexico* v. *Abeyta*, 50 F. 2d 12 (C. C. A. 10, 1931).

[56] *Minnesota* v. *Hitchcock*, 185 U. S. 373, 387 (1902). In the case of *Heckman* v. *United States*, the Supreme Court said:

> The argument necessarily proceeds upon the assumption that the representation of these Indians by the United States is of an incomplete or inadequate character; that although the United States, by virtue of the guardianship it has retained, is Prosecuting this suit for the purpose of enforcing the restrictions Congress has imposed, and of thus securing possession to the Indians, their presence as parties to the suit is essential to their Protection. This position is wholly untenable. There can be no more complete representation than that on the part of the United States in acting on behalf of these dependents whom Congress, With respect to the restricted lands, has not set released from tutelage. Its efficacy does not depend upon the Indian's acquiescence. It does not rest upon convention, nor is it circumscribed by rules which govern private relations. It is a representation which traces its source to the plenary control of Congress in legislating for the protection of the Indians under its care, and it recognizes no limitations that are inconsistent with the discharge of the national duty.
>
> When the United States instituted this suit, it undertook to represent, and did represent, the Indian grantors whose conveyances it sought to cancel. It was not necessary to make these grantors parties, for the Government was in court on their behalf. Their presence as parties could not add to, or detract from, the effect of the proceedings to determine the violation of the restrictions and the consequent invalidity of the conveyances. As by the act of Congress they were precluded from alienating their lands, they were likewise precluded from taking any position in the legal proceedings instituted by the Government to enforce the restrictions which would render such proceedings ineffectual or give support to the prohibited acts. The cause colud not be dismissed upon their consent; they could not compromise it; nor could they asume any attitude with respect to their interest which would derogate from its complete representation by the United States. This is involved necessarily in the conclusion that the United States is entitled to sue, and in the nature and purpose of the suit. (Pp. 444–445.)

[57] *Cramer* v. *United States*, 261 U. S. 219 (1923). See also *United States* v. *Minnesota*, 270 U. S. 181, 196 (1926).

[58] 34 Op. A. G. 302 (1924).

[59] *United States* v. *Thompson*, 98 U. S. 486 (1878); *Ches. & Del. Canal Co.* v. United States, 250 U. S. 123, 125 (1919). United *States* v. *Minnesota*, 270 U. S. 181, 196 (1926).

The same rule is applicable to the principle of laches. See *United States* v. *Nashville, etc., R'y Co.*, 118 U. S. 120 (1886). The Government retains such an interest in restricted lands as would render applicable the well-settled rule that the statute of limitations does not run against the sovereign. *Schrimpscher* v. *Stockton*, 183 U. S. 290 (1902).

When the United States sues on behalf of an Indian tribe to recover compensation from a railroad, it stands in the shoes of the tribe and is bound by estoppel. *United States* v. *Ft. Smith & W. R. Co.*, 195 Fed. 211 (C. C. A. 8, 1912).

[60] *United States* v. *Atkins*, 260 U. S. 220 (1922); *United States* v. *Title Insurance Co.*, 265 U. S. 472 (1924). Also see *United States* v. *Wildcat*, 244 U. S. 111 (1917).

[61] Joint Resolution of March 3, 1879, 20 Stat. 488 (Shawnee).

[62] Act of March 2, 1901, 31 Stat. 950, 43 U. S. C. 868. The Attorney General is sometimes authorized to employ a special attorney, upon the recommendation of the Secretary. Act of March 3, 1901, 31 Stat. 1133, 1181; Act of April 28, 1904, 33 Stat. 452, 506.

[63] Joint Resolution of March 3, 1879, 20 Stat. 488 (Shawnee); Act of March 1, 1889, 25 Stat. 768 (Shawnee).

[64] Act of March 3, 1915, 38 Stat. 822, 866.

[65] * * * the decisions that no suit or action Can be maintained against the Nation In any of its courts without its consent. * * * only recognize the obvious truth that a nation is not without its consent subject to the controlling action of any Of its instrumentalities or agencies. The creature cannot rule the creator. *Kawananakoa* v. *Polyblank, Trustee, &c.*, 205 U. S. 349. * * * (Kansas v. Colorado, 206 U. S. 46, 83 (1907).)

See also *Minnesota* v. *United States*, 305 U. S. 382 (1939), and cases cited therein, and sec. 3, *infra*.

extends to cases in which a state of the Union is the plaintiff. Thus in *Minnesota* v. *United States* [66] the Supreme Court held that the United States could not be made a party defendant in proceedings instituted by the State of Minnesota to condemn allotted Indian lands held in trust by the United States for the allottee. The court said:

> * * * A proceeding against property in which the United States has an interest is a suit against the United States. *The Siren*, 7 Wall. 152, 154; *Carr* v. *United States*, 98 U. S. 433, 437; *Stanley* v. *Schwalby*, 162 U. S. 255. Compare *Utah Power & Light Co.* v. *United States*, 243 U. S. 389. It is confessedly the owner of the fee of the Indian allotted lands and holds the same in trust for the allottees. As the United States owns the fee of these parcels, the right of way cannot be condemned without making it a party. (P. 386.)

But the United States cannot be made a party in such a suit without its consent. The court further said:

> The exemption of the United States from being sued without its consent extends to a suit by a State. Compare *Kansas* v. *United States*, 204 U. S. 331, 342; *Arizona* v. *California*, 298 U. S. 558, 568, 571, 572. Compare *Minnesota* v. *Hitchcock*, 185 U. S. 373, 382–387; *Oregon* v. Hitchcock, 202 U. S. 60. Hence Minnesota cannot maintain this suit against the United States unless authorized by some act of Congress. (P. 387.)

If the required consent is given, the objection being removed, the court may settle the controversy involved.[67]

The United States is improperly joined as a party defendant in a suit against an Indian tribe under a special act authorizing the Court of Claims to consider and adjudicate such claim where neither the special act nor any general statute authorized suit against the United States, although the United States is joined in the suit in the capacity of trustee for an Indian tribe.[68]

Term and conditions on which consent is given may be prescribed and must be met- Not only may the sovereign prescribe the terms and conditions on which it consents to be sued, but It may also determine the manner in which the suit shall be conducted and may withdraw its consent whenever it supposes that justice to the public requires such withdrawal.[70]

The cases in which the United States has expressly given its consent to be sued in Indian matters either in the Court of Claims or in the district courts are numerous.[71]

Cases in which consent to be sued seem to have been attributed to the United States without express authority from Congress are not so numerous. An instance is the case of *United States* v. *Equitable Coust o.*[72] in that case a suit was instituted by a next friend in behalf of an incompetent full-blood Creek Indian under guardian hip to recover accumulated royalties which had come into the hands of the Secretary of the Interior in trust for the Indian and were subsequently distributed upon a written request in the name of' the Indian procured by fraud. The United States intervened in the litigation. By this act, the Supreme Court held, It impliedly consented to reasonable allowances for services and expenses, even if the fund was subject to statutory restrictions. This decision, however, may be explained by the fact that the United States had intervened in the suit in the character of a party plaintiff.

(3) United States as intervener.—In view of the established doctrine that the United States cannot be sued without its consent, the question arises whether the United States can become a party to a pending suit by intervention; and, if so, under what circumstances It appears 'that where an intervention places the Government in the position of a plaintiff, as in *New York* v. *New Jersey* [73] and Oklahoma v. *Texas*,[74] the Government may properly become an intervener. It is clear, however, that if by such intervention the Government would become virtually a defendant in the suit, its appearance as an intervener would come in direct conflict with the ruling that the United States cannot be sued. The consent of the United States cannot be given by any officer of the United States unless authority to do so has been conferred upon him by some act of Congress. This proposition is illustrated in the case of *Stanley* v. *Schwalby*,[75] in which the Supreme Court said:

> * * * The United States, by various acts of Congress, hare consented (to be sued in their own courts in certain classes of cases; but they have never consented to be sued in the courts of a State in any case. Neither the Secretary of War nor the Attorney General, nor any subordinate of either, has been authorized to waive the exemption of the United States from judicial Process, or to submit the United States, or their property, to the jurisdiction of the court in a suit brought against their officers. *Case* v. *Terrell*, 11 Wall. 199, 202; *Carr* v. *United States*, 98 U. S. 433, 438; *United States* v. *Lee*, 106 U. S. 196, 205. * * * (P. 270.)

In other words, in the absence of congressional authority no officer of the United States can bind the United States as a party defendant, whether in an original suit or by way of intervention. Instances in which the United States has given such consent are to be found in the Act of February 6, 1901,[76] permitting suits for allotment in the district courts of the United States, providing for service of process upon the Attorney General and requiring the District Attorney, upon whom service is also to be made, to appear and defend the interests of the United States in the suit; and in the Act of April 10, 1926,[77] providing a process whereby the United States may be compelled to appear and defend its interests in any suit pending in the federal or state courts of Oklahoma in which restricted members of the Five Civilized Tribes are parties. The practice adopted under this statute is for the United States Attorney to appear for and in behalf of the United States, within the statutory period, upon service of the notice upon the superintendent as provided by the statute.

(4) Indian tribe as party litigant.-As already seen,[78] the Indian tribes within the territory of the United States, while

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[66] 305 U. S. 382 (1939).

[67] *National Casket Co.* v. *United States*, 263 Fed. 246 (D. C. S. D. N. Y. 1920); *Keokuk & Hamilton Bridge Co.* v. *United States*, 260 U. S. 125 (1922). See sec. 3. *infra*.

[68] *Turner* v. *United* States, 248 U. 9.354 (1919). Cf. *Green* v. *Menominee Tribe*, 233 U. S. 558 (1914). Also *see Winton* v. *Amos*, 255 U. S. 373 (1921).

[69] *Trest* v. *Farmers' Loan & Trust Co.*, 185 Fed. 760 (C. C. A. 2. 1911) Reid *Wrecking* Co. v. United *States*, 202 Fed. 314 (D. C. N. D. Ohio 1913).

[70] *United States* v. *Clarke*, 8 Pet. 436 (1834); *Murray's Lessee* v. *Hoboken Land and Improvement Co.*, 18 How. 272 (1855); *Beers* v. *Arkansas*, 20 How. 527 (1857); *Ball* v. *Halsell*, 161 U. S. 72 (1896).

[71] See *infra*. sec. 3, Court of Claims. See also Act of December 21, 1911, 37 Stat. 46, amendatory of Act of August 15, 1894. 28 Stat. 286, 305. as amended by *Act* of February 6. 1901, 31 Stat. 760, and Act of March 3, 1911. 36 Stat. 1094, 26 U. S. C. 345. conferring jurisdiction upon the district courts of the United States of

> * * * all actions, suits, or proceedings involving the right of any person, in' whole or in part of Indian blood or descent, to any allotment of land under any law or treaty.

and authorizing and directing that the United States be made a party to such suit. This act followed the decisions of the Supreme Court in the cases of *Hy-yu-tse-mil-kin* v. *Smith*, 194 U. S. 401 (1904) and *McKay* V. *Kalyton*, 204 U. S. 458 (1907), In which the Supreme Court had held that the United States was not a necessary party to such suit for allotment. And see fn. 184, *infra*.

[72] 283 U. S. 738 (1931).

[73] 256 U. S. 296 (1921).

[74] 258 U. S. 574 (1922).

[75] 162 U. S. 255 (1896).

[76] 31 Stat. 760, 25 U. S. C. 345.

[77] 44 Stat. 239.

[78] See Chapter 14, sec. 8.

having some of the attributes of sovereignty usually possessed by independent communities, have been declared by the Supreme Court not to be either states of the Union or foreign nations within the meaning of Article III, section 2 of the United States Constitution giving original jurisdiction to the Supreme Court in controversies in which a state of the Union or a citizen thereof, and a foreign state or subjects and citizens thereof are parties.[78] Consequently, an Indian tribe as such cannot sue, be sued, or intervene in any case where the original jurisdiction of the Supreme Court is invoked.[79]

Whether a tribe can sue or be sued under the diversity of citizenship clause of section 41 (1) of title 28 of the United States Code in the federal courts is a moot question. An Indian tribe as such is not a citizen within the meaning of that clause. If it were incorporated under the laws of the United States it could not sue or be sued under the, diversity of citizenship clause unless there were an act of Congress providing that a tribe should be considered as possessing a state citizenship for jurisdictional purposes.[81]

The statutes which confer upon tribes capacity to sue or to be sued, and the question of whether, in the absence of such a statute such suits may be maintained, are elsewhere treated.[82]

(5) Individual Indian as party litigant.-As a general rule, an Indian irrespective of his citizenship or tribal relations, may sue in any state court of competent jurisdiction to redress any wrong committed against his person or property outside the limits of the reservation.[83] But the mere fact that the plaintiff is an Indian does not vest jurisdiction in *the* federal courts.[84]

This being true, the only grounds upon which a federal court could take jurisdiction of a suit by an Indian would be either because of diversity of citizenship between the plaintiff and defendant or because the cause of action arose under the Constitution, treaties, or laws of the United States. In *Deere v. St. Lawrence River Power Company*,[85] the rule as to the first branch of this proposition is succinctly stated:

> Diversity of citizenship is not relied upon to grant jurisdiction. Nor may this action be maintained merely because the appellant is an Indian. . * . (P. 551.)

Originally the members of an Indian tribe were not regarded as citizens unless naturalized, either collectively or individually under some treaty or law of the United States, and, consequently, they could not sue in the federal courts on the ground of diversity of citizenship.[86] In cases, however, where an individual Indian, although a member of a tribe, was a citizen of the United States by virtue of some treaty or law of Congress, if all other elements of federal jurisdiction were present, he could sue under his clause.[87]

B. JURISDICTION DEPENDENT UPON CHARACTER OF SUBJECT MATTER

As to the character of the subject matter as an element of federal jurisdiction, it is to be observed that the cases are considerably in conflict in determining whether an action arises under the Constitution, treaties, or laws of the United States. It is quite clear, however, that the federal question must appear by specific allegations in the bill of complaint, and not from facts developed either in the answer or in the course of the trial.[88]

A number of general statutes contain jurisdictional provisions conferring jurisdiction over defined subjects of Indian concern upon the federal courts.[89]

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[78] *Cherokee Nation* v. *Georgia*, 5 Pet. 1 (1831).

[79] Congress cannot refer directly to the Supreme Court for adjudication of the claim of an Indian tribe, for that would be equivalent to invoking an original Jurisdiction which that court cannot exercise under the Constitution, but the matter may be referred to an inferior court and brought to the Supreme Court by appeal if the necessary legislation to that end is provided. *Yankton Sioux Tribe* v. *United States*, 272 U. S. 351 (1926).

[80] *See Banker's Trust Co. v. Tex. & Pac. Ry.*, 241 U. S. 295 (1916). The words "citizens" and "aliens," as used in the judiciary acts, have been considered as including corporations. *Barrow S. S. Co.* v. Kane, 170 U. S. 100 (1898).

[81] See Chapter 14, sec. 6.

[82] *Wiley* v. *Keokuk*, 6 Kan. 94. 110 (1870) : *Ain-Dus-Oke-Shig* v. *Beaulieu*, 98 Minn. 98, 100, 107 N. W. 820 (1906) : *Brown* v. Anderson, 61 Okla. 136. 160 Pac. 724. 726 (1916) ; *Y-ta-tah-wah* v. *Rebock et* al. 105 Fed. 257 (C. C. N. D. Iowa 1900) ; *Felix* v. *Patrick*, 145 U. S. 317, 330 (1892). See Chapter 8. sec. 6.

[83] *United States* v. *Seneca* Nation of New York *Indians*, 274 Fed. 946 950 (D. C. W. D. N. Y. 1921).

[84] 32 F. 2d 550 (C. C. A. 2. 1929).

[85] *Elk* v. *Wilkins*, 112 U. S. 94 (1884). see Chapter 8, sec. 2.

[87] See *Felix* v. *Patrick*, 145 U. S. 317 (1892) wherein the Supreme Court said :

> It is scarcely necessary to say in this connection that, while until this time [the granting of citizenship under Art. VI, Treaty of April 29, 1868, 15 Stat. 635] they were not citizens of the United States, capable of suing as such in the Federal courts, the courts of Nebraska were open to them as they are to all persons irrespective of race or color. *Swartzel* v. *Rogers*, 3 Kansas, 374 ; *Blue Jacket* v. *Johnson County*, 3 Kansas 299 ; *Wiley* v. *Keokuk*, 6 Kansas 94. (P. 332.)

and see Chapter 8. sec. 6.

[88] *Schulthis* v. *McDougal*, 225 U. S. 561 (C. C. A. 8. 1012) :

> To sustain the contention that the suit was one arising under the laws of the United States, counsel for the appellants point out the statutes (Acts March 1, 1901, 31 Stat. 861, c. 676 ; June 30, 1902, 32 Stat. 500, c. 1323 ; April 26, 1906, 34 Stat. 137, c. 1876, § 22) relating to the allotment in severalty of the lands of the Creek Nation, the leasing and alienation thereof after allotment, the making of allotments to the heirs of deceased children, and the rights of the heirs, collectively and severally, under such allotments ; but the bill makes no mention of those statutes or of any controversy respecting their validity, construction or effect. Neither does it by necessary implication point to such a controversy. True, it contains enough to indicate that these statutes constitute the source of the complainant's title or right, and also shows that the defendants are in some way claiming the land, and particularly the oil and gas, adversely to him ; but beyond this the nature of the controversy is left unstated and uncertain. Of course, it could have arisen in different ways wholly independent of the source from which his title or right was derived. So, looking only to the bill, as we have seen that we must, it cannot be held that the case as therein stated was one arising under the statutes mentioned. As was said in *Blackburn* v. *Portland Gold Mining Co.*, *supra*, a controversy in respect of lands has never been regarded as presenting a Federal question merely because one of the parties to it has derived his title under an act of Congress. (P. 570.)
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> 3. A suit to enforce a right which takes its origin in the laws of the United States is not necessarily, or for that reason alone, one arising under those laws, for a suit does not so arise unless it really and substantially involves a dispute or controversy respecting the validity, construction or effect of such a law, upon the determination of which the result depends. This is especially so of a suit involving rights to land acquired under a law of the United States. If it were not, every suit to establish title to land in the central and western States would so arise, as all titles in these States are traceable back to those laws. *Little York Gold-Washing and Water Co.* v. *Keyes*, 96 U. S. 199 ; *Colorado Central Mining Co.* v. *Turck*, *supra* ; *Blackburn* v. *Portland Gold Mining Co.*, 175 U. S. 571 ; *Florida Central & P. Railroad Co.* v. *Bell*, 176 U. S. 321 ; *Shoshone Mining Co.* v. *Rutter*, 177 U. S. 505 ; *De Lamar's Nevada Co.* v. *Nesbitt*, *Id.* 523. (P. 569–570.)

Where a bill involving the right to a lease of Indian land fails to show that the right depended upon construction of an act of Congress, but the parties and courts below proceeded upon the theory that it did so, the Supreme Court of the United States may permit amendment of the bill so as to allege that fact, and so establish jurisdiction. *Smith* v. *McCullough*, 270 U. S. 456 (1926). See also *Woodhouse* v. *Badoesky*, 70 F. 2d 61 (C. C. A. 4, 1934).

[89] Act of June 30, 1834, 4 Stat. 729, 733, 734 (trade and intercourse) ; Act of March 30, 1802, 2 Stat. 139, 145 (trade and intercourse).

Civil rights : Act of March 1, 1875, 18 Stat. 335.

Naturalization and citizenship : Act of June 29, 1906, 34 Stat. 596.

Bankruptcy : Act of July 1, 1898, 30 Stat. 544, 11 U. S. C. 1, 11, 110.

Statutes of limitation : Act of May 31, 1902, 32 Stat. 284, 25 U. S. C. 347.

Right to allotment : Act of February 6, 1901, 31 Stat. 760, 25 U. S. C. 345 ; Act of December 21, 1911, 37 Stat. 46 :

> "And the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when

Other statutes contain provisions conferring jurisdiction over various matters upon territorial courts or courts of the United States in the territories.

properly certified to the Secretary of the Interior as if such allotment had been allowed and approved by him; but this provision shall not apply to any lands now or heretofore held by either of the Five Civilized Tribes, the Osage Nation of Indians, nor to any of the lands within the Quapaw Indian Agency: *Provided*, That the right of appeal shall be allowed to either party as in other cases."

And see Chapter 11, sec. 2; Chapter 4, sec. 12. In *Hy-Yu-tse-mil-kin* v. *Smith*, 194 U. S. 401 (1904), the Supreme Court held that the United States was not a necessary party to a suit brought under this statute.

Approval of expenditures made by guardians and trustees of Indian minors of pensions and bounties money: Joint Resolution of July 14, 1870, 16 Stat. 390.

[90] Idaho Territory: Act of July 3, 1882, 22 Stat. 148.

Montana Territory—damages from construction of railroad: Act of July 10, 1882, 22 Stat 157.

Indian Territory: Act of March 1, 1889, 25 Stat. 783, 784 (extent of court's jurisdiction); Act of October 1, 1890, 26 stat. 655, 656; Act of March 3, 1891, 26 Stat. 826; Act of March 1, 1895, 28 Stat. 693. 694; Joint Resolution of March 2. 1895, 28 Stat. 974; Act of May 7, 1900, 31 Stat. 170; Act of February 18, 1901, 31 Stat 794; Act of February 8, 1896, 29 Stat. 6; Act of June 7, 1897, 30 Stat. 62, 83; Act of June 28, 1898. 30 Stat 495, 496, 497; Act of July 1, 1898. 30 Stat. 567, 569; Act of March 1, 1901, 31 Stat 861, 869; Act of March 24, 1902, 32 Stat 90; Act of June 30, 1902, 32 Stat. 500, 501; Act, of March 7, 1904, 33 Stat. 60: Act of April 28, 1904, 33 Stat 573; Act of June 21, 1906, 34 Stat. 325, 342; Act of March 3, 1909, 35 Stat. 838.

Territory of Oklahoma: Act of May 2, 1890, 26 Stat. 81, 86; Act of June 7, 1897, 30 Stat 62, 70–71; Act of June 16, 1906, 34 Stat. 267, 277.

Michigan Territory: Act of January 30, 1823, 3 Stat. 722.

[91] Accounting disputes concerning Iowa Indian trust lands: Act of June 9, 1892, 27 Stat 768.

Prohibiting ejectment suits by Pueblo Indians in certain cases: Act of May 31, 1933, 48 Stat 108, 111.

Cancellation of leases on lands upon Shoshone Indian Reservation: Act of August 21, 1916, 39 Stat. 519.

Finally, numerous special statutes contain jurisdictional provisions, relating to specific subjects.[91]

To quiet and finally settle the titles to the lands claimed by or under the Black Bob Band of Shawnee Indians in Kansas: Joint Resolution of March 3, 1879, 20 Stat. 488.

Controversies between the Fort Smith and Chocktaw Bridge Co. and the Chocktaw Tribe of Indians: Act of March 2, 1889, 25 Stat. 884.

Private land claims: Act of March 3, 1891, 26 Stat. 854.

Condemnation of Pueblo lands in the State of New Mexico: Act of May 10, 1926, 44 Stat. 498.

Condemnation of Indian lands in the Colville Reservation in the State of Washington: Act of July 1, 1892, 27 Stat. 62, 64; and see Act of April 5, 1890, 26 Stat. 45.

Accountings under any trust created under the act involved, Indians of the Five Civilized Tribes: Act of January 27, 1933, 47 Stat. 777, 778.

Cancellations of trust created under the act involving Indians of the Five Civilized Tribes: Act of January 27, 1933, 47 Stat. 777, 778–779.

Appeals to district courts from approval by county courts of conveyances of inherited lands by full-blood Indians of the Five Civilized Tribes: Act of January 27, 1933, 47 Stat. 777, 779.

Partition of Kickapoo Indian lands: Act of June 29, 1936, 49 Stat. 2368.

Ownership of Pipestone Reservation: Act of August 15, 1894, 28 Stat. 286. 317–318.

Enforcement of certain awards in State of Kansas: Act of March 3, 1873, 17 Stat. 623. 625.

Removal of restrictions upon lands of members of the Eastern Band of Cherokee Indians of North Carolina not to affect jurisdictions of United States courts to entertain suit by United States to protect such lands: Act of June 4, 1924, 43 Stat 376, 381.

Quieting title of lands of Seneca Indian: Act of May 29, 1908, 35 Stat. 444, 445.

To quiet title to lands of Pueblo Indians of New Mexico under certain conditions: Act of June 7, 1924, 43 Stat. 636, 637.

Process for making United States party in certain suits involving Indians of the Five Civilized Tribes: Act of April 10, 1926, 44 Stat. 239, 240.

SECTION 3. COURT OF CLAIMS

While the United States cannot be sued without its consent,[92] yet it may be sued with its consent in any court or tribunal which Congress shall create or designate for the purpose, upon such terms or conditions and regulations as Congress shall see fit to prescribe; and the jurisdiction thus conferred must be held to he subject to whatever limitations are prescribed in the act or resolution of 'Congress conferring such jurisdiction.

So far as the Court of claims is concerned its jurisdiction rests upon these general propositions, and therefore the extent of that Jurisdiction is to be measured by the provisions of the jurisdictional act of Congress by which it is conferred in particular instances where such jurisdiction is invoked.[93] In other words, the Court of Claims has no general jurisdiction over claims against the United States, and can take cognizance only of those which by the terms of some act of Congress are committed to it.[94] Statutes which extend the jurisdictions of the Court of Claims and permit the Government to be sued are usually strictly construed, and the grant of jurisdiction therein contained must be shown clearly to cover the case and if it does not it will not be applied.[96]

With reference o claims by Indians against the United States the rule is not di erent from that stated above, since "the moral obligations of the vemment toward the Indians, whatever they may be, are for Congress alone to recognize, and the courts can exercise only such jurisdiction over the subject as Congress may confer upon them."[96] In *Klamath Indians* v. *United States*,[97] the Supreme Court, in construing the Act of May 26, 1920,[98] conferring jurisdiction upon the Court of Claims to adjudicate "all claims of whtsoever nature" of the Klamath Indians against the United States "which had not theretofore been determined by that Court," declared that jurisdictional acts conferring upon an Indian tribe the privilege of suing the United States in the Court of Claims are to be strictly construed and held, accordingly, that the Act of 1920 did not embrace a claim which the Indians had settled with the Government before and for which they had given a valid release, even though the consideration for this release was grossly inadequate. In this connection the Supreme Court said:

> If the release stands, no money or property is due plaintiffs, for the settlement and release wiped out the claim.

[92] See Section 2A(2), *supra*.

[93] See *De Groot* V. *United States*, 5 Wall. 419 (1866); *Ex parte* Russell, 13 Wall. *664* (1871); *McElrath* v. *United States*, 102 U. S. 426 (1880); *United States* v. *Gleeson*, 124 U. S.255 (1888); *Johnson* v. *United States*, 160 U. S. *546* (1896); *Thurston* v. *United States*, *232* U. S. 469 (1914); *Harley* v. *United States*, 198 U. S. *229* (1905); *Kendall* v. *United States*, 107 U. S. 123 (1882); Hussey v. *United States*, 222 U. S. 88 (1911).

[94] *Thurston* v. *United States*, *232* U. S. 469, 476 (1914); citing *Johnson* v. *United States*, 160 U. S. 546, 549 (1396). Note, however, that under 28 U. S. C. 257 (Judicial Code, sec. 151), either house of Congress may refer a pending bill to the Court of Claims for a report on the law and the facts. See *Creek Nation* v. *United States*, 74 C. Cls. *663* (1932) for a discussion of the conditions under which such report will be made.

[95] *Blackfeather* v. *United States*, 190 U. S. 368 (1903). *Cf. Shillinger* v. *United States*, 155 U. S. 163 (1894).

[96] *Blackfeather* v. *United States*, 190 U.S. *368*, 373 (1903); *Klamath Indians* v. *United States*, *296* U. *S. 244* (1935). *Cf.* Johnson v. *United States*. 160 U. S. 546 (1896); *Yerke* v. United *States*, 173 U. S. 439 (1899).

[97] 296 U. S. 244 (1935).

[98] 41 Stat 623, amended by Act of May 15, 1936, 49 Stat. 1276; and see United *States* v. *Klamath Indians*, *304* U. S. 119 (1938).