> If the Act is sufficient to give jurisdiction of this claim, then it permits plaintiffs to bring into the Court of Claims for determination *de novo* all claims, whether released or not, that they ever had against the United States, excepting only those already there determined. It goes without saying that, if Congress intended to grant so sweeping and unique a privilege it would have made that purpose unmistakably plain. As shown in the opinion below, Acts intended to waive settlements employ terms quite different from the provisions under consideration. (Pp. 250–251.)

The jurisdiction of the Court of Claims under the several acts of Congress concerning claims by Indian tribes or members thereof against the United States, varies considerably as to particular tribes. In some cases the jurisdiction is conferred as to "the claims of" [99] or "all claims" [100] or "all claims of whatsoever nature" [101] or "all legal and equitable claims" [102] or "all legal and equitable claims of whatsoever nature" [103] or "all questions of difference arising out of treaty stipulations" [104] or "claims to some right, title and interest or to lands ceded by treaty" [105] or "just rights in law or in equity" [106] or "as justice and equity shall require" [107] or "any claim arising under treaty stipulations or otherwise" [108] or "all claims according to principles of justice and equity, and as upon a full and fair arbitration." [109]

In some instances, the court is also to consider any right of set-off or counter-claim by the United States as against the tribe,[110] sometimes to exclude gratuities,[111] and sometimes to include gratuities.[112]

In some of these cases the jurisdiction is limited to claims arising under the provisions of treaties or acts of Congress, or both.[113] In some other cases the jurisdiction is limited to a

[99] Act of February 25, 1889, 25 Stat. 694 (Western Cherokees); Act of January 28. 1893. 27 Stat 426 (New York Indians); Act of March 3. 1919. 40 Stat. 1316 (Cherokee Nation); Act of April 28, 1920, 41 Stat. 585 (Iowa tribe), amended by Act of January 11. 1929, 45 Stat. 1073: Act of February 6, 1921, 41 Stat. 1097 (Osage Nation); Act of March 3, 1931; 46 Stat. 1487 (Pillager Bands of Chippewas).

[100] Act of March 1, 1907. 34 Stat. 1055 (Sac and Fox); Act of July 3, 1926. 44 Stat. 807 (Crow tribe), amended by Joint Resolution of August 15, 1935, 49 Stat. 655; Act of March 2. 1927. 44 Stat. 1263 (Assiniboine Indians); amended by Joint Resolution of June 9, 1930. 46 Stat. 531; Act of June 28. 1938. 52 Stat. 1212 (Red Lake Band of Chippewas).

[101] Act of June 22, 1910, 36 Stat. 580 (Omaha tribe), see *United States* v. *Omaha Tribe of Indians*, 253 U. S. 275 (1920); Act of April 11. 1916. 39 Stat. 47 (Sisseton and Wahpeton Sioux), see *Sioux Indians* v. *United States*, 58 C. Cls. 302 (1923). cert. den. 275 U. S. 528 (1927). and *Sioux Indians* v. *United States*, 277 U. S. 424 (1928); Act of February 11, 1920, 41 Stat. 404 (Fort Berthold Indians); Act of May 26. 1920, 41 Stat. 623 (Klamath, etc.), amended by Act of May 15. 1936. 49 Stat. 1276. *see Klamath Indians* v. *United States*. 296 U. S. 244 (1935). and *United States* v. *Klamath Indians*. *304* U. S. 119 (1938) : Act of June 3. 1920. 41 Stat. 738 (Sioux). amended by Act of June 24. 1926, 44 Stat. 764; Act of February 7. 1925. 43 Stat. 812 (Delaware Indians); Act of May 18. 1928, 45 Stat. 602 (Indians of California); Act of August 30, 1935. 49 Stat. 1049 (Chippewa).

[102] Act of February 11, 1920. 41 Stat. 404 (Fort Berthold Indians); Act of March 13, 1924, 43 Stat. 21 (Indians in Montana, Idaho. and Washington), amended by Act of February 3. 1931. c. 101, 46 Stat 1060; Act of March 19. 1924. 43 Stat. 27 (Cherokee), amended by Joint Resolution of May 19. 1926, 44 Stat. 568. Joint Resolution of February 19, 1929, 45 Stat. 1229. Act of June 16, 1934. 18 Stat. 972, and Act of August 16, 1937. 50 Stat. 650; Act of May 20, 1924. 43 Stat 133 (Seminole), amended by Joint Resolution of May 19, 1926, 44 Stat 568. Joint Resolution of February 19, 1929, 45 Stat. 1229, and Act of August 16, 1937, 50 Stat. 650; Act of May 24. 1924. c. 181. 43 Stat. 139 (Creek). amended by Joint Resolution of May 19, 1926. 44 Stat. 568. Joint Resolution of February 19. 1929. 45 Stat. 1229. and Act of August 16, 1937, 50 Stat. 650. see *United States* v. *Creek Nation*. 295 U. S. 103 (1935); Act of June 7. 1924. 43 Stat. 537 (Choctaw and Chickasaw), amended by Joint Resolution of May 19, 1926. 44 Stat. 568. Joint Resolution of February 19. 1929. 45 Stat. 1229, and Act of August 16, 1937. 50 Stat. 650; Act of June 7. 1924. 43 Stat. 644 (Stockbridge); Act of March 3. 1925. 43 Stat. 1133 (Kansas or Kaw). amended by Act of February 23, 1929. 45 Stat. 1258; Act of May 14. 1926, 44 Stat. 555 (Chippewa), amended by Act of April 11. 1928. 45 Stat. 423. Act of May 18. 1928. 45 Stat. 601. Act of June 18, 1934. 48 Stat. 979, Act of May 15, 1936. 49 Stat. 1272. and Joint Resolution of June 22, 1936, 49 Stat. 1826; Act of July 2. 1926. 44 Stat. 801 (Pottawatomie); Act of March 3. 1927. 44 Stat. 1349 (Shoshone of Wind River Reservation); Act of December 17, 1928, 45 Stat. 1027 (Winnebago tribe); Act of February 23. 1929, 45 Stat. 1256 (Indians of Oregon). amended by Act of June 14. 1932. 47 Stat. 307; Act of April 25. 1932. 47 Stat. 137 (Eastern Cherokee and Western or Old Settler Cherokee). amended by Act of June 16. 1934, 48 Stat.. 972; Act of August 26. 1935. 49 Stat. 801 (Indians of Oregon).

[103] Act of January 9. 1925, 43 Stat. 729 (Ponca tribe); Act of February 12. 1925. 43 Stat. 886 (Indians in State of Washington); Act of February 20. 1929. 45 Stat. 1249 (Nez Perce); Act of December 23. 1930. 46 Stat. 1033 (Oregon or Warm Springs tribe); Act of June 19. 1935, 49 Stat. 388 (Tlingit and Haida Indians); Act of September 3. 1935. 49 Stat. 1085 (Menominee), amended by Act of April 8, 1938. 52 Stat. 208; Act of June 28. 1938, 52 Stat. 1209 (Ute).

[104] Act of March 3, 1881, 21 Stat. 504 (Choctaw Nation). See *Choctaw Nation* v. *United States*, 119 U. S. 1 (1886); Act of March 19, 1890, 26 Stat. 24 (Pottawatomie).

[105] Act of June 6, 1900, 31 Stat. 672 (Fort Hall Indian Reservation).

[106] Act of October 1, 1890, 26 Stat. 636 (Shawnee., Delaware. and freedmen of Cherokee Nation), amended by Act of July 6. 1892, 27 Stat. 86. See *Blackfeather* v. *United States*, 190 U. S. 368 (1903).

[107] Act of March 1, 1907. 34 Stat. 1055 (Sac and Fox).

[108] Act of June 25, 1910, 36 Stat. 829 (Chippewa).

[109] Act of April 28. 1920. 41 Stat. 585 (Iowa tribe)., amended by Joint Resolution of January 11, 1929, 45 Stat. 1073; Act of February 6, 1921, 41 Stat. 1097 (Osage Nation); Act of March 3, 1931, 46 Stat. 1487 (Pillager Bands of Chippewa); Act of June 28, 1938, 52 Stat. 1212 (Red Lake Band of Chippewa).

[110] Act of February 25, 1889. 25 Stat. 694 (Old Settlers or Western Cherokees): Act of June 22, 1910, 36 Stat. 580 (Omaha tribe), see *United States* v. *Omaha Tribe of Indians*, 253 U. S. 275 (1920); Act of April 11, 1916. 39 Stat. 47 (Sissetoo and Wahpeton Sioux). See *Sioux Indians* v. *United States*, 58 C. Cls. 302 (1923). cert. den. 275 U. S. 528, and *Sioux Indians* v. *United States*, 277 U. S. 424 (1928) : Act of February 11, 1920, 41 Stat. 404 (Fort Berthold Indians); Act of April 28. 1920. 41 Stat. 585 (Iowa tribe). amended by Act of January 11. 1929. 45 Stat. 1073; Act of March 13, 1924. 43 Stat. 21 (Indians in Montana. Idaho. and Washington), amended by Act of February 3, 1931, c. 101, 46 Stat. 1060.

[111] Act of April 11, 1916, 39 Stat. 47 (Sisseton and Wahpeton Sioux). See *Sioux Indians* v. *United States*, 58 C. Cls. 302 (1923). cert. den. 275 U. S. 528 and *Sioux Indians* v. *United States*, 277 U. S. 424 (1928).

[112] Act of February 11, Act of May 26, 1920, 41 Stat 623(Klamath, etc)amended by Act of ["move to Feb. 11"--1920, 41 Stat. (Fort Berthold Indians);] May 15, 1936. 49 Stat. 1276. *See Klamath Indians* v. *United States*. 296 U. S. 244 (1935) and *United* States v. *Klamath Indians*, 304 U. S. 119 (1938); Act of June 3. 1920. 41 Stat. 738 (Sioux). amended by Act of June 24. 1926, 44 Stat. 764; Act of February 6. 1921. 41 Stat 1097 (Osage Nation); Act of March 13. 1924. 43 Stat. 21. (Indians in Montana. Idaho. and Washington). amended by Act of February 3, 1931. c. 101, 46 Stat. 1060; Act of February 12. 1925. 43 Stat. 886 (Indians In State of Washington); Act of March 3. 1925. 43 stat. 1133 (Kansas or Kaw tribe), amended by Act of February 23, 1929. 45 Stat. 1258: Act of May 14. 1926. 44 Stat. 555 (Chippewa), amended by Act of April 11. 1928. 45 Stat. 423. Act of May 18, 1928. 45 Stat. 601. Act of June 18. 1934. 48 Stat. 979. Act of May 15,1936. 49 Stat. 1972. and Joint Resolution of June 22, 1936. 49 Stat. 1826; Act of July 2, 1926. 44 Stat. 801 (Pottawatomie); Act of August 12. 1935. 49 Stat. 571. 596.

[113] Act of February 25, 1889. 25 Stat. 694 (Old Settlers or Western Cherokee Indians); Act of October 1, 1890. 26 Stat. 636 (Shawnee, Delaware Indians, and freedmen of Cherokee Nation). amended by Act of July 6. 1892. 27 Stat. 86: Act of April 21, 1904. 33 Stat. 189, 208. See *Blackfeather* v. *United* States. 190 U. S. 368 (1903) : Act of January 28, 1893, 27 Stat. 426 (New York Indians); Act of March 3, 1919. 40 Stat. 1316 (Cherokee); Act of April 28. 1920. 41 Stat. 585 (Iowa tribe), amended by Joint Resolution of January 11. 1929. 45 Stat. 1073: Act of March 13, 1924. 43 Stat. 21 (Indians in Montana, Idaho, and Washington). amended by Act of February 3. 1931, c. 101. 46 Stat. 1060; Act of March 19, 1924, 43 Stat. 27 (Cherokee), amended by Joint Resolution of May 19, 1926, 44 Stat. 568, Joint Resolution of February 19, 1929, 45 Stat. 1229, Act of June 16, 1934, 48 Stat. 972, and Act of August 16, 1937, 50 Stat. 650; Act of May 20, 1924, 43 Stat. 133 (Seminole Indians), amended by Joint Resolution of May 19, 1926, 44 Stat. 568. Joint Resolution of February 19, 1929, 45 Stat. 1229, and Act of August 16, 1937, 50 Stat. 650; Act of May 24, 1924, 43 Stat. 139 (Creek), amended by Joint Resolution of May 19, 1926, 44 Stat. 568, Joint Resolution of February 19, 1929, 45 Stat. 1229, and Act of August 16, 1937, 50 Stat. 650. See *United States* v. *Creek Nation*, 295 U. S. 103 (1935); Act of June 7, 1924, 43 Stat. 537 (Choctaw and Chickasaw),

determination of the amounts of sums due or claimed to be due the Indians from the United States under any treaty or law of Congress.[114]

In most instances, the jurisdiction is conferred to hear, determine, and render judgment,[115] or "to hear and determine and to render final judgment"[116] or "to hear, examine, and adjudicate, and render judgment,"[117] or "to hear, adjudicate, and render judgment"[118] or "to hear, determine, adjudicate, and render final judgment"[119] or "to consider and determine"[120] or "to hear, examine, adjudicate, and render final judgment"[121] or "to consider and adjudicate"[122] or "to hear and determine"[123] or "to try and determine"[124] or "to try and render judgment"[125] or "to determine and report from findings of fact reported before"[126] or "to proceed upon findings of fact already made"[127] or "to hear and enter up judgment"[128] or "to hear and report a finding of fact"[129] or "to hear, consider, and determine"[130] or "to hear, ascertain, and report" to Congress.[131]

In many of the cases, the court is to take jurisdiction "notwithstanding the lapse of time or statutes of limitations"[132] and

amended by Joint Resolution of May 19, 1926, 44 Stat. 568, Joint Resolution of February 19, 1929, 45 Stat. 1229, and Act of August 16, 1937, 50 Stat. 650; Act of June 7, 1924, 43 Stat. 644 (Stockbridge); Act of February 12, 1925, 43 Stat. 886 (Indians in State of Washington); Act of March 3, 1925, 43 Stat. 1133 (Kansas or Kaw), amended by Act of February 23, 1929, 45 Stat. 1258; Act of May 14, 1926, 44 Stat. 555 (Chippewa), amended by Act of April 11, 1928, 45 Stat. 423, Act of May 18, 1928, 45 Stat. 601, Act of June 18, 1934, 48 Stat. 979, Act of May 15, 1936, 49 Stat. 1272, and Joint Resolution of June 22, 1936, 49 Stat. 1826; Act of July 2, 1926, 44 Stat. 801 (Pottawatomie); Act Of July 3, 1926, 44 Stat. 807 (Crow tribe), amended by Joint Resolution Of August 15, 1935, 49 Stat. 655; Act of March 2, 1927, 44 Stat. 1263 (Assiniboine), amended by Joint Resolution of June 9, 1930, 46 Stat 531; Act of March 3, 1927, 44 Stat. 1349 (Shoshone tribe of Wind River Reservation). See *Shoshone Tribe* v. *United States*, 299 U. S 476 (1937); Act of December 17, 1928, 45 Stat. 1027 (Winnebago); Act of February 28, 1929, 45 Stat. 1407 (Sboahoae); Act of March 3, 1931, 40 Stat. 1487 (Pillager Band of Chippewa); Act of April 25. 1932, 47. Stat. 137 (Eastern Cherokee and Western Cherokee or Old Settler), amended by Act of June 16. 1934. 48 Stat 972; Act of August 26, 1935, 49 Stat. 801 (Indians in Oregon).

[114] Act of April 11, 1916. 39 Stat. 47 (Sisseton and Wahpeton Sioux). See *Sioux Indians* v. *United States*, 58 C. Cls. 302 (1923), cert. den. 275 U. S. 528, and *Sioux Indians* v. *United States*, 277 U. S. 424 (1928); Act of March 4. 1917, 39 Stat. 1195 (Medawakanton and Wahpakoota Sioux); Act of February 11, 1920, 41 Stat. 404 (Fort Berthold Indians); Act of May 26, 1920, 41 Stat. 623 (Klamath, etc.). amended by Act of May 15, 1936; *49 Stat.* 1276. *See Klamath Indians* v. *United States*, *296* U. S. *244* (1935) and *United States* v. *Klamath Indians*, *304* U. S. 119 (1938); Act of June 3, 1920, 41 Stat. 738 (Sioux), amended by Act of June 24, 1926, 44 Stat, 764; Act of February 6. 1921. 41 Stat. 1097 (Osage Nation); Act of March 3, 1931, 46 Stat. 1487 (Pillager Band of Chippewa); Act of June 19, 1935. 49 Stat. 388 (Tlingit and Haida Indians); Act of August 30, 1935, 49 Stat. 1049 (Chippewa); Act Of June 28. 1938. 52 Stat. 1212 (Red Lake Band of Chippewa).

[115] Act of March 2. 1895, 28 Stat. 876. 898 (Choctaw and Chickasaw) See *United States* v. *Choctaw Nation and Chickasaw Nation*, 179 U. S 494 (1900); Act of June 6, 1900, 31 Stat. 672. 680 (Choctaw and Chickasaw); Act of March 3, 1903. 32 Stat 982. 1010, 1011. See *United States* v. *Cherokee Nation. 202* U. S. 101 (1906); Act of June 22, 1910. 36 Stat. 580 (Omaha tribe). *See United States v. Omaha Tribe of Indians*, 253 U. S. 275 (1920); Act of April 11, 1916. 39 Stat. 47 (Sisseton and Wahpeton Sioux). See *Sioux Indians* v. United *States* 58 C. Cls. 302 (1923), cert. den. 275 U. S. 528, and *Sioux Indians v. United States*, 277 U. S. 424 (1928); Act of April 28. 1920, 41 Stat. 585 (Iowa tribe), amended by Act Of January 11. 1929, 45 Stat. 1073: Act of May 26, 1920, 41 Stat. 623 (Klamath, etc.). amended by Act of May 15. 1936, 49 Stat, 1276. See *Klamath Indians* V. United States, 296 U. *S. 244* (1935), and *United States* v. *Klamath Indians. 304* U. S. 119 (1938); Act of June 3, 1920. 41 Stat. 738 (Sioux), amended by Act of June 24, 1926, 44 Stat. 764; Act of February 6, 1921. 41 Stat. 1097 (Osage Nation); Act of February 7, 1925. 43 Stat. 812 (Delaware Indians); Act of March 3, 1931, 46 Stat. 1487 (Pillager Bands of Chippewa); Act of June 19, 1935, 49 Stat. 388 (Tlingit and Haida Indians).

[116] Act of March 4. 1917. 39 Stat. 1195 (Medawakanton and Wahpakoota Sioux); Act of January 9. 1925, 43 Stat. 729 (Ponca tribe); Act of February 12, 1925, 43 Stat. 886 (Indians in State of Washington); Act of May 18, 1928, 45 Stat. 602 (Indians of California); Act of June 28. 1938, 52 Stat. 1209 (Ute); Act of June 28, 1938. 52 Stat. 1212 (Red Lake Band of Chippewa).

[117] Act of March 19, 1924, 43 Stat. 27 (Cherokee). amended by Joint Resolution of May 19, 1926, 44 Stat. 568. Joint Resolution of February 19. 1929. 45 Stat. 1229, Act of June 16, 1934. 48 Stat. 972, and Act of August 16, 1937, 50 Stat. 650; Act of May 20. 1924. 43 Stat. 133 (Seminole), amended by Joint Resolution of May 19, 1926, 44 Stat. 568, Joint Resolution of February 19. 1929. 45 Stat. 1229. and Act of August 16. 1937, 50 Stat. 650; Act of May 24, 1924, c. 181, 43 Stat. 139 (Creek), amended by Joint Resolution of May 19. 1926. 44 Stat. 568, Joint Resolution of February. 19. 1929. 45 Stat. 1229. and Act of August 16, 1937, 50 Stat. 650, see *United States v. Creek Nation, 295* U. S. 103 (1935); Act of June 7, 1924. 43 Stat. 537 (Choctaw and Chickasaw), amended by Joint Resolution of May 19, 1926, 44 Stat. 568, Joint Resolution of February 19, 1929, 45 Stat. 1229, and Act of August 16, 1937, 50 Stat. 650; Act of June 7, 1924, 43 Stat. 644 (Stockbridge); Act of March 3, 1925, 43 Stat. 1133 (Kansas or Kaw), amended by Act of February 23, 1929, 45 Stat. 1258; Concurrent Resolution No. 21 of June 5, 1924, 43 Stat. 1612 (Choctaw and Chickasaw); Act of May 14, 1926, 44 Stat. 555 (Chippewa), amended by Act of April 11, 1928, 45 Stat. 423, Act of May 18, 1928, 45 Stat. 601, Act of June 18, 1934, 48 Stat. 979. Act of May 15, 1936, 49 Stat. 1272, and Joint Resolution of June 22, 1936, 49 Stat. 1826; Act of March 2, 1927, 44 Stat. 1263 (Assiniboine), amended by Joint Resolution of June 9. 1930, 46 Stat. 531; Act of March 3, 1927, 44 Stat. 1349 (Shoshone tribe of Wind River Reservation). See *Shoshone Tribe* v. *United States*, 299 U. S. 476 (1937): Act of December 17, 1928, 45 Stat. 1027 (Winnebago tribe); Act of April 25, 1932; 47 Stat. 137 (Eastern Cherokee and Western or Old Settler Cherokee), amended by Act of June 16, 1934. 48 Stat. 972; Act of August 30, 1935, 49 Stat. 1049 (Chippewa).

[118] Act of July 3, 1926, 44 Stat. 807 (Crow), amended by Joint Resolution of August 15, 1935, 49 Stat. 655; Act of February 28, 1929, 45 Stat. 1407 (Shoshone).

[119] Act of March 1, 1907, 34 Stat. 1055 (Sac and Fox); Act of February 20, 1929, 45 Stat. 1249 (Nez Perce).

[120] Act of March 3. 1909, 35 Stat. 781. 789 (Ute): Act of March 13, 1924, 43 Stat. 21 (Indians in Montana, Idaho, and Washington), amended by Act of February 3, 1931, c. 101, 46 Stat. 1060.

[121] Act of February 23, 1929, 45 Stat. 1256 (Indians of State of Oregon), amended by Act of June 14. 1932. 47 Stat. 307; Act of December 3. 1930, 46 Stat. 1033 (Middle Oregon or *Warm* Springs Tribe); Act of August 26, 1935, 49 Stat. 801 (Indians in Oregon); Act of September , 1935, 49 Stat. 1085 (Menominee), amended by Act of April 8. 1938, 2 Stat. 208.

[122] Act of June 25. 1910, 36 Stat. 829 (Chippewa).

[123] Act of October 1, 1890, 26 Stat. 636 (Shawnee, Delaware. and freedmen of Cherokee Nation), amended by Act of July 6. 1892. 27 Stat. 6. *See Blackfeather* v *United States*. 190 U. S. 368 (1903); Act of March 3, 1891, 26 Stat. 989, 1021 (Pottawatomie).

[124] Act of February 25, 1889. 25 Stat. 694 (Old Settlers or Western Cherokee); Act of June 6, 1900, 31 Stat. 672 (Fort Hall Indian Reservation).

[125] Act of March 3, 1881, 21 Stat. 504 (Choctaw Nation). See *Choctaw Nation* v. *United States*, 119 U. S. 1 (1886): Act of March 19. 1890, 26 Stat. 24 (Pottawatomie).

[126] Act of January 9, 1925, 43 Stat. 730 (Yankton Sioux).

[127] Act of January 28, 1893. 27 Stat. 426 (New York Indians).

[128] Act of January 28, 1893, 27 Stat. 426 (New York Indians).

[129] Act of April 4, 1910, 36 Stat. 269, 284 (Sioux).

[130] Act of March 3, 1919, 40 Stat. 1316 (Cherokee Nation).

[131] Act of March 3. 1901. 31 Stat. 1058, 1078.

[132] Act of March 3, 1891, 26 Stat. 989, 1021 (Pottawatomie); Act of June 22, 1910, 36 Stat. 580 (Omaha); Act of February 11. 1920. 41 Stat. 404 (Fort Berthold Indians); Act of May 26, 1920. 41 Stat. 623 (Klamath, etc.), amended by Act of May 15, 1936, 49 Stat. 1276. See *Klamath Indians* v. *United States*, *296* U. *S. 244* (1935) and *United States* v. *Klamath Indians*, 304 U. S. 119 (1938); Act of June 3. 1920, 41 stat. 738 (Sioux) amended by Act of June 24, 1926. 44 Stat. 764: Act of February 6, 1921, 41 Stat. 1097 (Osage Nation); Act of March 13, 1924, 43 Stat. 21 (Indians in Montana, Idaho, and Washington). amended by Act of February 3. 1931, 46 Stat. 1060: Act of May 20. 1924, 43 Stat. 133 (Seminole), amended by Joint Resolution of May 19, 1926, 44 Stat. 568. Joint Resolution of February 19. 1929. 45 Stat. 1229, and Act of August 16, 1937, 50 Stat. 650; Act of May 24, 1924, 43 Stat. 139 (Creek), amended by Joint Resolution of May 19. 1926. 44 Stat. 568. Joint Resolution of February 19, 1929, 45 Stat. 1229, and Act of August 16. 1937. 50 Stat. 650. See United *States* v. *Creek* Nation. 295 U. S. 103 (1935); Act of June 7, 1924. 43 Stat. 537 (Choctaw and Chickasaw); amended by Joint Resolution of May 19. 1926, 44 Stat. 568, Joint Resolution of February 19, 1929, 45 Stat. 1229 and Act of August 16, 1937,

in most, the right is granted to both parties to appeal to the Supreme Court.[132]

In many instances the jurisdiction of the court is limited to matters in which the claim has not heretofore been determined by the Court of Claims or the Supreme Court.[134]

In some instances Congress has authorized submission to the Court of Claims of Indian claims theretofore settled and adjusted.[135]

So far as claims of individuals against Indian tribes or members thereof are concerned, it is unquestionable that Congress may refer such claims to the Court of Claims or any other tribunal and vest in that court such general or limited jurisdiction as it shall see fit, and may authorize the United States to be made a party defendant to the proceedings.[136] Jurisdictional statutes of this nature are not infrequent,[137] and the jurisdiction conferred by such statutes upon the Court of Claims is usually expressed

50 Stat. 650; Act of June 7. 1924, 43 Stat 644 (Stockbridge); Act of February 7, 1925, 43 Stat. 812 (Delaware Indians); Act of February 12. 1925, 43 Stat. 886 (Indians in State of Washington); Act of March 8. 1925, 43 Stat. 1133 (Kansas or Kaw) amended by Act of February 23. 1929, 45 Stat. 1258; Act of May 14. 1926, 44 Stat. 555 (Chippewa), amended by Act of April 11, 1928, 45 Stat. 428. Act of May 18, 1928, 45 Stat. 601. Act of June 18, 1934, 48 Stat. 979, Act of May 15, 1936, 49 Stat. 1272, and Joint Resolution of Juno 22, 1936, 49 Stat. 1826; Act of July 2, 1926, 44 Stat. 861 (Pottawatomie); Act of July 8, 1926, 44 Stat. 807 (Crow), amended by Joint Resolution of August 15, 1935, 49 Stat. 655; Act of March a 1927, 44 stat. 1263 (Assiniboine), amended by Joint Resolution of Jane 9, 1930, 46 Stat. 531; Act of March a 1927, 44 Stat. 1349 (Shoshone Tribe of Wind River Reservation). See *Shoshone Tribe* v. *United States*, 299 U. S. 476 (1937); Act of February 20, 1929, 45 Stat. 1249 (Nw Perce); *Act* of February 28. 1929, 45 Stat. 1407 (Shoshone); Act of December 23.. 1930. 46 Stat. 1033 (Middle Oregon or Warm Springs); Act of April 25, 1932, 47 Stat. 137 (Cherokee), amended by *Act* of June 16. 1034. 48 Stat. 972.

[132] Act Of March 3, 1881. 21 Stat. 504 (Choctaw). See *Choctaw Nation* v. *United States*, 119 U. S. 1 (1886); Act of March 19, 1890, 26 Stat. 24 (Pottawatomie); *Act* of October 1, 1890, 26 Stat. 636 (Shawnee, Delaware, and freedmen of Cherokee Nation), amended by Act of July 6, 1892, 27 Stat. 86. See *Blackfeather* v. *United States*, 190 U. S. 368 (1903); Act Of March 3. 1891. 26 Stat. 989. 1021 (Pottawatomie); Act of March 2, 1895, 28 Stat. 876, 898 (Choctaw and Chickasaw). See *United States* v. *Choctaw and Chickasaw Nation*, 179 U. 8. 494 (1900); Act of June 6, 1900, 31 Stat. 672, 680 (Fort Hall Indian Reservation); Act of March 3, 1903. 32 Stat. 982, 1010. 1011. See *United States* v. *Cherokee* Nation, 202 U. S. 101 (1906); Act of March 1, 1907, 34 Stat. 1055 (Sac and Fox); Act of February 15. 1909. 35 Stat; 619. See *United States* v. *Mille Lac Chippewas*, 229 U. S. 498 (1913); Act of June 22, 1910, 36 Stat 580 (Omaha tribe). See United *States* v. *Omaha Tribe of Indians*, 253 U. S. 275 (1920) : Act of June 25. 1910. 36 Stat. 829 (Chippewa); Act of April 11. 1916, 39 Stat. 47 (Sisseton and Wahpeton Sioux). See *Sioux Indians* v. *United States* 58 C. Cls. 302 (1923). cert. den. 275 U. S. 528 and *Sioux Indians* v. United *States*, 277 U. S. 424 (1928); Act of March 3. 1919. 40 Stat. 1316 (Cherokee Nation); Act of February 11, 1920. 41 Stat. 404 (Fort Berthold Indians); Act Of April 28. 1920. 41 Stat. 585 (Iowa tribe). amended by Act of January 11, 1929, 45 stat. 1073; Act of May 26, 1920. 41 Stat. 623 (Klamath. etc.), amended by Act of May 15, 1036. 49 Stat. 1276. See *Klamath Indians* v. *United States*, 296 U. S. 244 (1935) and *United States* v *Klamath Indians*, 304 U. S. 119 (1938) : Act *of* June 3. 1920. 41 Stat 738 (Sioux), amended by Act of June 24. 1926. 44 Stat. 764: Act of February 6, 1921. 41 Stat. 1097 (Osage Nation); Act of March 19. 1924. 43 Stat 27 (Cherokee). amended by Joint Resolution of May 19. 1926. 44 Stat 568. Joint Resolution of February 19. 1929. 45 Stat. 1229. Act of June 16, 1934, 48 Stat. 972, and Act of August 16. 1937. 50 Stat. 650; *Act* of May 20. 1924. 43 Stat. 133 (Seminole). amended by Joint Resolution of May 19, 1926. 44 Stat. 568. Joint Resolution of February 19. 1929, 45 Stat 1229, and Act of August 16. 1931. 50 Stat. 650; Act of May 24. 1924, 43 Stat. 139 (Creek). amended by Joint Resolution of May 19, 1926, 44 Stat. 568. Joint Resolution of February 19, 1929, 45 Stat. 1229, and Act of August 16, 1937, 50 Stat. 650. See *United States* v. *Creek Nation*, 295 U. S. 103 (1935); Act of June 7. 1924. 43 Stat. 537 (Choctaw and Chickasaw), amended by Joint Resolution of May 19, 1926, 44 Stat. 668. Joint Resolution of February 19. 1929. 45 Stat. 1229, and Act of August 16. 1937. 50 Stat. 650: Act of June 7. 1924. 43 Stat 644 (Stockbridge); Act of January 9. 1925. 43 Stat. 729 (Ponca); Act of February 7, 1925. 43 Stat. 812 (Delaware Indians); Act of March 3. 1925, 43 Stat. 1133 (Kansas or Kaw), amended by Act of February 23 1929, 45 Stat. 1258; Act of May 14. 1926. 44 Stat. 555 (Chippewa) amended by Act of April 11, 1928. 45 Stat. 423. *Act* of May 18. 1928 45 Stat. 601, Act of June 18. 1934. 48 Stat. 979. Act of May 15. 1936 49 Stat. 1272, and Joint Resolution of June 22. 1936. 49 Stat. 1826; Act of July 2, 1926, 44 Stat. 801 (Pottawatomie); Act of July 3. 1926. 44 Stat. 807 (Crow), amended by Joint Resolution of August 15. 1935, 49 Stat. 655; Act of March 2, 1927. 44 Stat. 1263 (Assiniboine). amended by Joint Resolution of June 9. 1930. 46 Stat. 531; Act Of March 3. 1927. 44 Stat. 1349 (Shoshone tribe of Wind River Reservation). See *Shoshone Tribe* v. *United States*, 299 U. S. 476 (1937); Act of May 18. 1928. 45 Stat. 602 (Indians of California); Act of December 17. 1928. 45 Stat. 1027 (Winnebago); Act of February 20. 1929. 45 Stat. 1249 (Nez Perce); Act of December 23. 1930. 46 Stat. 1033 (Middle Oregon or Warm Springs tribe); Act of March 3. 1931. 46 Stat. 1487 (Pillager Bands of Chippewa); Act of August 26. 1935. 49 Stat. 801 (Indians In State of Oregon); Act of August 30. 1935, 49 Stat. 1049 (Chippewa); Act of June 28, 1938, 62 Stat. 1212 (Chippewa).

[134] Act of February 11, 1920, 41 Stat. 404 (Fort Berthold Indians); Act of May 26, 1920, 41 Stat. 623 (Klamath, etc.), amended by Act of May 15, 1936, 49 Stat. 1276. See *Klamath Indians* v. *United States*, 296 U. S. 244 (1935) and *United States* v. *Klamath Indians*, 304 U. S. 119 (1938); Act of June 3, 1920, 41 Stat. 738 (Sioux) amended by Act of June 24, 1926, 44. Stat. 764: Act of March 19, 1924, 43 Stat. 27 (Cherokee), amended by Joint Resolution of May 19, 1926, 44 Stat. 568, Joint Resolution of February 19, 1929, 45 Stat. 1229, Act of June 16, 1934, 48 Stat. 972, and Act of August 16, 1937, 50 Stat. 650; Act of May 20, 1924, 43 Stat. 133 (Seminole), amended by Joint Resolution of May 19, 1926, 44 Stat. 568, Joint Resolution of February 19, 1929, 45 Stat. 1229, and Act of August 16, 1937, 50 Stat. 650; Act of May 24, 1924, 43 Stat. 139 (Creek), amended by Joint Resolution of May 19, 1926, 44 Stat. 568, Joint Resolution of February 19, 1929, 45 Stat. 1229, and Act of August 16, 1937, 50 Stat. 650. See *United States* v. *Creek Nation*, 295 U. S. 103 (1935); Act of June 7. 1924. 43 Stat. 537 (Choctaw and Chickasaw), amended by Joint Resolution of May 19, 1926, 44 Stat. 668. Joint Resolution of February 19. 1929. 45 Stat. 1229, and Act of August 16. 1937. 50 Stat. 650: Act of June 7. 1924. 43 Stat 644 (Stockbridge); Act of May 14. 1926; 44 Stat. 555 (Chippewa) amended by Act of April 11, 1928, 45 Stat. 423. Act of May 18. 1928, 45 Stat. 601. Act of June 18, 1934, 48 Stat. 979, Act of May 15. 1936, 49 Stat. 1272, and Joint Resolution of June 22, 1936, 49 Stat. 1826; Act of July 2, 1926, 44 Stat. 801 (Pottawatomie); Act of July 3. 1926, 44 Stat. 807 (Crow), amended by Joint Resolution of August 15, 1935, 49 Stat. 655; Act of March 2, 1927. 44 Stat. 1263 (Assiniboine), amended by Joint Resolution of June 9. 1930, 46 Stat. 531; Act Of March 3. 1927, 44 Stat. 1349 (Shoshone tribe of Wind River Reservation). See *Shoshone Tribe* v. *United States*, 299 U. S. 476 (1937); Act of December 17. 1928, 45 Stat. 1027 (Winnebago); Act of December 23. 1930. 46 Stat. 1033 (Middle Oregon or Warm Springs tribe); Act of March 3. 1931. 46 Stat. 1487 (Pillager Bands of Chippewa); Act of August 26. 1935. 49 Stat. 801 (Indians In State of Oregon); Act of August 30. 1935, 49 Stat. 1049 (Chippewa); Act of June 28, 1938, 62 Stat. 1212 (Chippewa).

[135] Act of February 7. 1925, 43 Stat. 812. as amended March 3, 1927, 44 Stat. 1358: "The said courts shall consider all such claims de novo * * * and without regard to any decision, finding, or settlement heretofore had in respect of any such claims :" construed in *Delaware Tribe* v. *United States*, 72 C. Cls. 483 (1931); *id.* 525; 74 C. Cls. 368. Act of March 3, 1881, 21 Stat. 504. Under a treaty of 1855, 11 Stat. 611, a determination had been made by the Senate and account was stated by the Secretary of the Interior. The act authorized the court "to review the entire question of differences de novo" and declared that the court "shall not be estopped by any action bad or award made by the Senate." Construed in Choctaw *Notion* v. United *States*, 19 C. Cls. 243 (1884) and 119 U. S. 1, 29 (1886).

Cf. statutes authorizing submission of claims not theretofore finally settled and released: Acts of February 11, 1920. 41 Stat 404; June 3, 1920, 41 Stat. 738; March 19, 1924, 43 Stat. 27, May 20. 1924, 43 Stat. 133; May 24, 1924, 43 Stat. 139. See *United States* v. *Creek Nation*, 295 U. S. 103 (1935); June 4, 1924, 43 Stat. 366; June 7, 1924, 43 Stat. 537; June 7, 1924, 43 Stat. 644; February 7, 1925, 43 Stat. 812; March 3, 1925, 43 Stat. 1133; May 14, 1926, 44 Stat. 555; July 2, 1926, 44 Stat. 801; July 3, 1926, 44 Stat. 807; March 2, 1927, 44 Stat. 1263; March 3, 1927, 44 Stat. 1349. See *Shoshone Tribe* v. *United States*, 299 U. S. 476 (1937).

[136] In *United States* v. *Gorham*, 165 U. S. 316 (1897), the Supreme Court held that under the Indian Depredation Act of March 3, 1891, c. 538, 26 Stat. 851, the Court of Claims could render a Judgment against the United States alone, when the tribe could not be identified, and the inability to identify the tribe was stated in the petition.

[137] See Chapter 14, sec. 1, fns. 14–20.

in such language as to "inquire into and finally adjudicate" [138] to "hear, adjudicate, and render judgment" [139] to "hear, consider, and adjudicate" [140] to "hear, determine, and render final judgment," [141] to "rehear, retry, determine, and finally adjudicate," [142] to "rehear and reconsider and determine the motion filed" therein by the claimants, [143] or to "reinstate" causes so far as the same pertain to the claim of the claimant, upon facts as previously found and returned by the court, and is authorized to enter judgment in said cause in favor of the plaintiff, [144] or a claim is referred to the court together with the record or papers in a previous cause formerly heard in said court and the court is authorized and directed "to order proof to be taken" with respect to the claim. [145]

In: Some instances the court has been authorized and directed to entertain jurisdiction in Indian depredation claims [146] or a private claimant has been authorized to prosecute an Indian's depredation claim pending in that court and to receive judgment therein, [147] or the claimant is authorized to bring suit in the Court of Claims against the United States. [148]

By section 182 of the Judicial Code, [149] in any case brought in the Court of Claims under any act of Congress, by which that court is authorized to render, a judgment or decree against the United States, or against any Indian tribe or. any Indians, or against any fund held in trust by the United States for any Indian tribe or for any Indians, the claimant. or the United States, or the tribe of Indians, or other party in interest shall have the same right of appeal as is conferred by the other sections of the code; and such a right is to be exercised only within the time and in the manner that is prescribed.

In individual claims with respect to Indian lands alleged by the claimant to have been appropriated by the United States Government without right or title thereto, and without authority either in law or in equity, the jurisdiction is conferred on the Court of Claims "to proceed, according to the principles and rules of both law and equity, to find the facts" embracing the amount that is to be paid to the claimants. [150]

While Congress may refer to the Court of Claims or any other tribunal which it may create or designate any Indian claim for adjudication, it cannot refer such claim directly to the Supreme Court for that purpose. The reason is that under the Constitution the original jurisdiction of the Supreme Court extends only to cases "affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be party," [151] and Congress can neither enlarge nor restrict that jurisdiction. [152] Thus, it having been early decided in Cherokee *Nation v. Georgia*, [153] that an Indian tribe is not a state in the sense that this word is used in the Constitution, the Supreme Court has held that Congress cannot refer directly to it, for adjudication, the claim of an Indian tribe, for that would be to invoke a jurisdiction which that Court cannot exercise under the Constitution, although the matter might be referred to the Court of Claims in the first instance, and brought to the Supreme Court by way of appeal if the necessary congressional legislation to that end was provided. [154]

Nor has Congress constitutional authority to enlarge the appellate jurisdiction of the Supreme Court by allowing appeals from judgments of the Court of Claims in cases not of a judicial nature, for conceding that Congress may confer upon the Court of Claims extra-judicial power as it has in numerous instances, yet the appellate jurisdiction of the Supreme Court under the Constitution is strictly judicial, and any attempt on the part of Congress either to enlarge or to diminish that jurisdiction would be unconstitutional and void, as an encroachment on the judicial power vested by the Constitution in that tribunal. [155]

With respect to so-called moral claims, or claims based on a supposed moral obligation of the United States toward the Indians, whatever the circumstances under which they may arise, if they exist at all, it is for Congress to consider whether they shall be recognized, and being political in nature they would seem to fall outside the jurisdiction of the courts. [156] It is believed, however, that Congress may properly refer such claims to the Court of Claims for adjudication. [157] Whether it may also allow an appeal from the decision of the Court of Claims to the Supreme Court is a question upon which the Supreme Court has not passed. But if Congress should provide by appropriate legislation a definite standard upon which the validity of the claim could be determined and proper relief afforded to the parties to the suit as a' matter' of law, there would seem to be no objection to the allowance of the appeal, for then the judicial power of the United States would be called into play in any case or controversy arising under such legislation and submitted to the Court of Claims in the first instance, and the Supreme Court on appeal for adjudication. In other words, the claim under such legislation would be justiciable in nature, and therefore cognizable by the Court. [158]

[138] Act of March 3, 1891, 26 Stat. 851, amended by Act of January 11, 1915, 38 Stat. 791. See Johnson v. *United States*, 160 U. S. 546 (1896); *Leighton* v. *United States*. 161 U. 8. 291 (1895); *Marks* v. *United States*, 161 U. S. 297 (1896); *Collier* v. *United States*, 173 U. S. 79 (1899); *Corralitos Co.* v. *United States*, 178 U. S. 280 (1900); *Montoya* v. *United States*, 180 U. S. 261 (1901); Act of February 9, 1907. 34 Stat. 2411.

[139] Act of May 29, 1908, 35 Stat. 444. 445. See *Garland's Heirs* v. *Choctaw Nation*, *256* U. S. 439 (1921); *Green* v. *Menominee* Tribe, 233 u. S. 558 (1914).

[140] Act of June 28, 1934. 48 Stat. 1467.

[141] Act of May 29, 1908, 35 Stat. 444, 445; Act of February 6. 1923. 42 Stat. 1768; Act of April 4, 1910, 36 Stat. 269, 287.

[142] Act of April 28.1916,39 Stat. 1262.

[143] Act of June 30, 1902, 32 Stat. 1492, c. 1348.

[144] Act of June 30,1902, 32 Stat. 1492. c.1349.

[145] Act of February 9, 1863, 12 Stat. 915.

[146] Act of February 9, 1907, 34 Stat. 2411. See Chapter 14, see. 1.

[147] Act of June 6, 1900, 31 Stat. 1617.

[148] Act of June 4, 1880, 21 Stat. 544.

[149] Act of March 3, 1911, 36 Stat. 1087, 1142 25 U. S. C. 288.

[150] Act of February 24, 1905, 33 Stat. 743, 808.

[151] U. S. Const., Art. III. sec. 2, cl. 2.

[152] *Muskrat* v. *United States*, 219 U. S. 346 (1911). And see sec. 2A (4), *supra*.

[153] 5 Pet. 1 (18.831)

[154] *Yankton Sioux Tribe* v. United *States*, ,272 U. S. 351, 356 (1926). By the Act of March 3. 1883. the claims of the New York Indians for the value Of certain lands in. Kansas set apart for them under the Treaty of January 15. 1838, 7 Stat. 550, were referred to the Court Of Claims with direction to report its proceedings to the Senate. The court reported the findings to the Senate on January 16. 1892. and thereupon, on January 28. 1893. Congress passed an act authorizing the Court of Claims "to hear and determine these claims and to enter up judgment as if it had original jurisdiction of this case without regard to the statute of limitations", with the right of appeal by either party to the Supreme Court. *New York* Indians v. United States, 170 U. S. 1 (1898). See also sec. 2A(2), *supra*.

[155] *Muskrat* v. *United States*, 219 U. S. 346 (1911); Gordon v. *United States*, 117 U. S. 697 (1864). See *United States* v. *Old Settlers*, 148 U. S. 427, 466 (1893); *Pin-to-Pee* v. *United States*, 187 U. S. 371, 383 (1902); sec. 2A(2), *supra*.

[156] See cases cited in fn. 155.

[157] See *Duwamish Indians* v. *United States*, 79 *C. Cls. 530* (1934). *cert.* den. 295 U. S. 755; *Blackfeet Indians* v. *United States*, 81 C. Cls. 101 (1935). These cases would *seem* to hold, in effect, that in the absence of congressional legislation the Court of Claims has no power to award a judgment based upon a moral claim by an Indian tribe or tribes against the United States.

[158] The judicial power of the United, States, vested by the Consituation in the federal courts, embraces all controversies of a justiciable nature, except so far as there are limitations expressed in that instrument on the general grant of judicial power. *Kansas* v. *Colorado*, 206 U. S. 46 (1907). A case or controversy, in order that the judicial power of the United States may be exercised thereon, implies the exist-

Ordinarily the Supreme Court will not review findings of facts of the Court of Claims,[159] and the opinion of the Court of Claims will not be referred to for the purpose of eking out, controlling, or modifying the scope of the findings.[160] The Supreme Court has repeatedly held that the findings of the Court of Claims in an action at law determine all matters of fact, like the verdict of a jury, and that where there is any evidence of a fact which they find, and no exception is taken their finding is final.[161] Nor will findings of mixed fact and law be reviewed by the Supreme Court on appeal from the Court of Claims.[162]

It may be added that after the Supreme Court has received a judgment of the Court of Claims and affirmed It, the Court of Claims, like any other court whose Judgment has been reviewed by the Supreme Court, must give effect to it and carry It into effect according to the mandate, without variation or other further relief.[163]

ence of present or possible adverse parties whose contentions are submitted to the court for adjudication. *Chisholm v. Georgia*, 2 Dall. 419, 431 (1792). A case arises under the Constitution or laws of the United States, whenever its decision depends upon the correct construction of either. *Cohens v. Virginia*, 6 Wheat. 264, 379 (1821); *Osborn v. Bank of the United States*, 9 Wheat. 738 (1824).

[159] *The Sioseton & Wahpeton Indians v. United States*, 208 U. S. 561, 566 (1908), citing *McClure v. United States*, 116 U. S. 145 (1885); *District of Columbia v. Barnes*, 197 U. S. 146, 150 (1905).

[160] *United States v. Shoshone Tribe*, 304 U. S. 111, 115 (1938), citing *Stone v. United States*, 164 U. S. 380, 383 (1896); *Luckenbach S. S. Co. v. United States*, 272 U. S. 533, 539–540 (1926). *Cf. American Propeller Co. v. United States*, 300 U. S. 475, 479–480 (1937).

[161] *Collier v. United States*, 173 U. S. 79 (1899); *United States v. New York Indians*, 173 U. S. 464 (1899); s. c. 170 U. S. 1, 170 U. S. 614; *Stone v. United States*, 164 U. S. 380 (1896); *Desmare v. United States*, 93 U. S. 605 (1876); *Talbert v. United States*, 155 U. S. 45 (1894).

[162] *United States v. Omaha Indians*, 253 U. S. 275, 281 (1920), citing *Ross v. Day*, 232 U. S. 110, 116–117 (1914).

[163] *Eastern Cherokee v. United States*, 225 U. S. 572, 582 (1912), citing, *In re Sanford Fork & Tool Co.*, 160 U. S. 247 (1895).

SECTION 4. FEDERAL ADMINISTRATIVE TRIBUNALS

While the judicial power of the Federal Government is vested by Article III of the Constitution in the Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish with respect to cases therein enumerated, yet there are many matters relating to the execution of powers delegated to Congress by other provisions of the Constitution which are susceptible of Judicial determination, and these Congress may or may not bring within the cognizance of the federal courts, as It may deem proper.[164] That Congress may refer such matters to special tribunals and clothe them with functions deemed essential or helpful in carrying into execution other powers delegated to it by other articles of the Constitution, would seem to be beyond question.

With reference to the Choctaw and Chickasaw Citizenship Court, otherwise known as the Dawes Commission. which was originally created by the Act of March 3. 1893,[165] the Supreme Court said in the case of *Ex parte Bakelite* Corp.:[166]

> • • • It was created to hear and determine controverted claims to membership in two Indian tribes. The tribes were under the guardianship of the United States, which in virtue of that relation was proceeding to distribute the lands and funds of the tribes among their members. How the membership should be determined rested in the discretion of Congress. It could commit the task to officers of the department in charge of Indian Affairs, to a commission or to a Judicial tribunal. As the controversies were difficult of solution and large properties were to be distributed. Congress chose to create a special court and to authorize it to determine the controversies. In *Wallace* v. *Adams*. 204 U. S. *415*. this was held to be a valid exertion of authority belonging to Congress by reason of its control over the Indian tribes. (P. 457.)

When a matter has been entrusted by an act of Congress to the exclusive cognizance of a special tribunal or administrative officer, and the decision of that tribunal or officer made exclusive, the federal courts have no jurisdiction to reexamine it for alleged errors of law. Thus in *Hallowell* v. Commas.[167] In which the question involved was as to the jurisdiction of the federal courts under the Acts of August 15, 1894,[168] and February 6, 1901,[169] to review a decision of the Secretary of the Interior determining the heirs of a deceased allottee under the Act of June 25, 1910,[170] the Supreme Court, in affirming the decree of the court below dismissing the bill for want of urisdiction. saidi:

> It is unnecessary to consider whether there was jurisdiction when the suit was begun. By the act of June 25, 1910, c. 431, 36 Stat. 855, it was provided that in a case like this of the death of the allottee intestate during the trust period the Secretary of the Interior should ascertain the legal heirs of the decedent and his decision should be final and conclusive; with considerable discretion as to details. This act restored to the Secretary the power that had been taken from him by acts of 1894 and February 6, 1901, c. 217, 31 Stat. 760. *McKay* v. *Kalyton*, 204 U. S. 458, 468 (1907). It made his jurisdiction exclusive in terms, it made no exception for pending litigation, but purported to be universal and so to take away the jurisdiction that for a time had been conferred upon the courts of the United States.[171]

The judgment of a special tribunal empowered to pass upon judicial questions cannot be attacked for fraud or mistake unless the fraudd alleged and proved is such as to prevent a full hearing. Thus in *United States* v. Atkins [172] the Supreme Court held that the Dawes Commission in enrolling a name as that of a Creek, Indian alive *on* April 1, 1899, when duly approved by the Secretary of the Interior as provided by the Act of June 10, 1896,[173] amounted to a judgment in an adversary proceeding, establishing the existence of the individual and his right to membership; that such judgment was not subject to attack and could not be annulled for fraud unless the fraud alleged and proved was such as *to* have prevented a full hearing within the doctrine approved in former decisions of the Court.[174]

[164] *Murray's Lessee* v. *Hoboken Land and Improvement Co.. 18* How 272 (1856).

[165] Sec. 16, 27 Stat. 612. 645. as amended by Act of June 10, 1896, 29 Stat. 321, 339. 340. And see Chapter 5. sec. 6.

[166] 279 U. S. 438 (1929).

[167] 239 U. S. 506 (1916).

[168] 28 Stat. 286.

[169] 81 Stat. 760.

[170] 36 Stat. 855. 25 U. s. c. 372. 373.

[171] *See* to the same effect *Lane* v. *United States ex. rel. Mickadiet and Tiebault*, 241 U. S. 201 (1916); *First Moon* v. *White* Tail, 270 U. S. 243 (1926); *United States* v. *Bowling*, 256 U. S. 484 (1921).

The power to determine heirs given to the Secretary of the Interior by the Act of 1910 terminates when the trust patent is terminated and a patent in fee issued. *Larkin* v. *Paugh*, 276 U. S. 481 (1928). See also Brown v. Hitchcock, 173 U. S. 473 (1899); *Lane* v. *United States ex rel. Mickadiet and Tiebault*, 241 U. S. 201. 207 *et* seq. (1916). Also see Chapter 4, sec. 11C.

[172] 260 U. S. 220 1922). See also Chapter 5, sec. 13.

[173] 29 Stat. 321, *339* amending Act of March 3. 1893. 27 Stat. 612. 645.

[174] See United States v. *Throckmorton*, 98 U. S. 61 (1878); *Vance* v. *Burbank*, 101 U. S. 514 (1879); *Hilton . . Guyot*, 159 U. S. 113 (1895).

Congress has enacted a considerable number of general statutes[175] and a much larger number of special statutes relating to particular cases or areas,[176] which confer upon administrative authorities power to determine controversies arising out of Indian relations.

[175] On control of traders, see Act of May 6, 1822, 3 Stat. 682; Act of February 13. 1862, 12 Stat. 338.

On settlement of claims for property loss see Act of March 30, 1802, 2 Stat. 139; Act of June 30, 1834, 4 Stat. 729.

On Control over agricultural entries on surplus coal lands In Indian reservations. see Act of February 27, 1917, 39 Stat. 944.

On duties and powers of "inspectors." see Act of February 14, 1873, 17 Stat. 437, 463.

On jurisdiction over inheritance cases, see Chapter 5, sec. 11C; Chapter 10, sec. 10; Chapter 11. sec. 6.

[176] Relief of persons sustaining damages from Sioux Indian depredations: Act Of February 16, 1863, 12 Stat. 652; Act of March 3, 1863, 12 stat. 803.

Assessment of damages for railroad right of way: Act of August 2, 1882, 22 Stat. 181; Act of July 4, 1884, 23 Stat. 73, construed in *Cherokee Nation* v. Kansas *Railway Co.*, 135 U. S. 641 (1890); Act of July 1. 1886, 24 Stat. 117; Act Of July 6. 1886, 24 Stat. 124; Act of February 24, 1887, 24 Stat 419; Act of March 2, 1887, 24 Stat. 446; Act of February 18, 1888, 25 Stat. 35: Act of May 14, 1888, 25 Stat. 140; Act of May 30, 1888, 25 Stat. 162; Act of June 26, 1888, 25 Stat. 205; Act of January. 16, 1889, 25 Stat. 647; Act of February 26, 1889, 25 Stat. 745; Act of May 8, 1890, 26 Stat. 102: Act of September 26, 1890, 26 Stat. 485; Act of October 1, 1890, 26 Stat. 632; Act of February 24, 1891, 26 Stat. 783; Act of March 3, 1891, 26 Stat. 844; Act of July 6, 1892, 27 Stat. 83; Act of July 30, 1892. 27 Stat. 336; Act-of February 20, 1893, 27 Stat. 465; Act of December 21, 1893, 28 Stat. 22; Act of August 4, 1894, 28 Stat. 229; Act of March 2, 1896, 29 Stat. 40; Act of March 18, 1896, 29 Stat. 69; Act of March 30, 1896. 29 Stat. 80; Act of April 6, 1896, 29 Stat. 87; Act of January 29, 1897, 29 Stat. 502; Act of February 14, 1898, 30 Stat. 241: Act of March 30, 1898, 30 Stat 347; Act of February 28, 1899, 30 Stat. 906; Act of March 2, 1899. 30 Stat. 990. In nearly all the foregoing cases assessment of damages is to be made by assessors appointed for the purpose. In the last statute cited the Secretary of the Interior is given power to assess damages to the tribe.

Awards for the relief of certain Indians: Act of March 3, 1873, 17 stat 623.

Determination of attorneys' fees and expenses in connection with prosecution of suits brought in the Court of Claims in behalf of Creek Nation: Act of May 29, 1928, 45 Stat. 944.

Individual claims of Indians baaed on depredations by citizens of the United States on Cherokee Indian lands: Act of July 13. 1332, 4 Stat. 576.

Appointment of guardians and trustees for Indian minors entitled to pensions and bounties: Joint Resolution of July 14, 1870. 16 Stat. 390.

Citizenship in Five Civilized Tribes: Act of June 10, 1896, 28 Stat. 321.

Appraisement and sale of Winnebago Indian lands: Act of February 21. 1863, 12 Stat. 658.

Settlement of disputes concerning allotments. Kansas or Kaw tribe of Indians: Act of July 1, 1902, 32 Stat 636, 638, 640.

Determination of fairness of assessment of lands of Indians subject to drainage taxations: Act of March 27, 1914, 38 Stat. 310 (Five Civilized Tribes).

Determination of membership of the Eastern Band of Cherokee Indians of North Carolina: Act of June 4, 1924, 43 Stat. 376.

Determination of contests relating to selection of allotments by members of the Eastern Band of Cherokee Indians of North Carolina: Act of June 4, 1924, 43 Stat. 376, 378.

Determination of contests over ownership of so-called private lands claims against tribal lands of the Eastern Band of Cherokee Indians of North Carolina: Act of June 4, 1924, 43 Stat. 376, 379.

Cancellation of allotments of land to members of the Eastern Band of Cherokee Indians of North Carolina: Act of June 4, 1924, 43 Stat. 376, 379.

Determination of heirs of deceased members of the Eastern Band of Cherokee Indians of North Carolina: Act of June 4, 1924, 43 Stat. 376, 380.

Determination of competency of members of the Eastern Band of Cherokees of North Carolina for the purpose of making leases of their allotted lands: Act of June 4, 1924, 43 Stat. 376, 380.

Settlement of all questions relating to enrollment and other matters involving dispositions of land and moneys of the Eastern Band of Cherokees of North Carolina: Act of June 4, 1924, 43 Stat. 376, 381.

Determination of lands granted or confirmed to Pueblo Indians of New Mexico, title to which had not been extinguished excluding claims of non-Indians- occupying those lands by adverse possession: Act of June 7, 1924, 43 Stat. 636.

Townsites: Act of May 29, 1908, 35 Stat. 444, 446 (Choctaw and Chickasaw)

Distribution of funds: Acts of May 29. 1908, 35 Stat. 444. 446, 447 (Cherokee).

Sale of unallotted lands for school purposes: Act of May 29, 1908, 35 Stat. 444, 447 (Five Civilized Tribes).

Appraisal and sale of tribal lands: Act of May 29, 1908, 35 Stat. 444, 447, 448 (Oklahoma).

Cancellation Of patents upon determinations of nonexistence of allottee: Act of May 29. 1908, 35 Stat 444, 451 (Yankton Sioux allottee).

Determination of land allotment to heirs of deceased Sioux Indians: Act of May 29, 1908, 35 Stat. 444, 451. 462.

Return of forfeited money in cases of error under previous acts: Act of May 29, 1908, 35 Stat. 444, 458 (Kiowa-Comanche and Apache).

Private claims against Chickasaw tribe of Indians: Act of August 15, 1894, 28 Stat. 286, 312.

Determination of wastefulness and squandering of income by Osage Indians: Act of February 27, 1925, 43 Stat. 1008, 1009.

Sale of lands and disposal of funds by Osage Indians: Act of February 27, 1925. 43 Stat. 1008, 1009–1010.

Cancellation of certificates of competency of Osage Indians: Act of February 27, 1925, 43 Stat. 1008, 1010.

SECTION 5. STATE COURTS

In matters, not affecting either the Federal Government or the tribal relations, an Indian has the same status to sue and be sued in state courts as any other citizen.[177]

It may be stated however, as a general proposition, that the state courts have no jurisdiction in civil matters affecting the restricted property or tribal relations of the Indians, unless otherwise provided, by Congress,[178] so long at least as the United States retains governmental control over them. This is particularly so with respect to allotted lands and the transfer of any

[177] *See Felix* v. *Patrick*, 145 U. S. 317, 332 (1892). *Ke-tuc-e-Munguah* v. *McClure*, 122 Ind. 541, 23 N. E. 1080 (1890) (suit against Indian on promissory note); *Stacy* v. *La Belle*, 99 Wk. 520. 75 N. W. 60 (1898) -(suit against Indian on contract); *Missouri Pac. Ry. Co.* v. *Cullers*, 81 Tex. 382, 17 S. W. 19 (1891) (cause of action against railroad assigned by Indian) commented on in note. 13 L. R. A. 542; and see cases therein cited: With respect to the jurisdiction of state courts over Indians, a leading student of the subject declares: "* * * Indians are not extraterritorial but only subject to a special rule of substantive law." (P. 93.) The same writer comments:

> In civil matters the lacunae of federal legislation are so enormous that the general law, though theoretically inapplicable, practically fills the gaps, subject to proof of a positive Indian custom that varies the law. Thus federal legislation and, in default thereof, Indian custom rule: but state law practically covers much of the ground. (W. G. Rice, The Position of the American Indian in the Law of the United States (1934) 16 J. Comp. Deg. 78, 92.)

And see see. 2A(5), *supra*; Chapter 8, sec. 6.

[178] Some special statutes containing provisions conferring jurisdiction n state courts arrangad by subject matter are:

Partitions of lands of Five Civilized Tribes: Act of June 14. 1918. 40 Stat. 606.

Determination of heirs of Five Civilized Tribes: Act of June 14. 1918. 40 Stat. 606.

Approval of conveyances of inherited lands by full-blood Indians of the Five Civilized Tribes: Act of April 10. 1926. 44 Stat. 239.

Process for making United States party defendant in certain suits pending in the state courts of Oklahoma. and for their removal to the federal courts: Act of April 10. 1926. 44 Stat. 239, 240.

Subjecting person and property of minor allottees of Five Civilized Tribes to state courts in probate matters: Act of May 27, 1908, 35 Stat. 312.

Appointment of representative of Secretary of the Interior in probate matters: Act of May 27. 1908, 35 Stat. 312, 314.

United States right to institute suit in federal courts not affected by jurisdiction of state court in probate matters: Act of May 27, 1908, 35 Stat. 312, 314-315.

Compare the following special statutes conferring concurrent jurisdiction on state and federal courts:

Act of February 27. 1925, 43 stat. 1008, 1010 (suits against guardians of Osage Indians).

Act of February 19. 1875, 18 Stat. 330 (Recovery of rents and possession of lands—Seneca Nation).

right, title, or interest thereto whether by way of purchase or descent, including wills, partition, condemnation, or judicial decree.[179] As stated by the Supreme Court in *McKay* v. *Kalyton:*[180]

> The *Rickert case* [188 U. S. 432, 435 (1903)] settled that, as the necessary result of the legislation of Congress, the United States retained such control over allotments as was essential to cause the allotted land to enure during the period in which the land was to be held in trust "for the sole use and benefit of the allottees." As observed in the *Smith* case, 194 U. S. 408 [*Hy-yu-tse-mil-kin* v. *Smith*, 194 U. S. 401, 408 (1904)], prior to the passage of the act of 1894 [Act of August 15, 1894, 28 Stat. 286, amended by the Act of February 6, 1901, 31 Stat. 760], "the sole authority for settling disputes concerning allotments resided in the Secretary of the Interior." This being settled, it follows that prior to the act of Congress of 1894 controversies necessarily involving a determination of the title and incidentally of the right to the possession of Indian allotments while the same were held in trust by the United States were not primarily cognizable by any court, either state or Federal. (P. 468.)

As to the question of jurisdiction to determine heirs and effectuate a distribution or partition of allotted lands, a distinction must be noted as between lands held under a trust patent and lands held under a patent in fee. As to the latter it is sufficient to notice that after a fee patent has been issued all question relating to the transfer of title to the allotted lands must be determined by the laws of the state where the land is located.[181] The reason for this is simply that the allottee holds the land in his individual capacity, and as to that land he has become emancipated, and since the land is located within the limits of the state, the tribal laws, as opposed to the state laws, cannot reach that land.[182]

As to lands held by the allottee under a trust patent, it will be observed that the provisions of section 5 of the General Allotment Act are silent as to the question of jurisdiction to determine heirs or to effectuate a partition of lands. Since Congress has conferred upon the Secretary of the Interior final authority to determine heirs and to effectuate partition of such lands[183] it is clear that no court, state or federal, has jurisdiction to determine heirs with respect to allotted Indian lands while the title thereto remains in the United States.[184] Nor has any court, whether state or federal, any jurisdiction to partition or distribute such lands.[185] And the same is true as to lands allotted to Indians under fee simple patents subject to restrictions upon alienation without the approval of the Secretary of the Interior or some other federal agency selected by Congress for the purpose.[186]

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[179] "Although the federal right was first claimed in the state court in the petition for rehearing, if the question was raised, was necessarily involved, and was considered and decided adversely by the state court, this court has jurisdiction under Rev. Stat., § 709.

"The United States has retained such control over the allotments to Indians that, except as provided by acts of Congress, controversies involving the determination of title to, and right to possession of, Indian allotments while the same are held in trust by the United States are not primarily cognizable by any court, state or Federal.

"The act of August 15, 1894, 28 Stat. 286, delegating to Federal courts the power to determine questions involving the rights of Indians to allotments did not confer upon state courts authority to pass upon any questions over which they did not have jurisdiction prior to the passage of such act, either as to title to the allotment, or the mere possession thereof which is of necessity dependent upon the title." (*McKay* v. *Kalyton*, 204 U. S. 458 (1907).)

[180] 204 U. s. 458 (1907).

[181] *See Dickson* v. *Luck Land Co.*, *242 U. S. 371* (1917) : *United States* v. *Waller*, 243 U. S. 452 (1917). As to wills see *La Motte* v. *United States*, 254 U. S. 570 (1921).

[182] The judicial determination of controversies concerning lands allotted to Indians in severalty and held by the United States In trust for the allottee has been commonly committed exclusively to federal courts, and not to the state courts. Minnesota v. *United States*, 305 U. S. 382 (1939) ; *McKay* v. *Kalyton*, 204 U. S. 458 (1907). yet after the issuance of a fee patent in the name of a deceased allottee under the General Allotment Act of February 8, 1887, 24 Stat. 388, as amended by the Act of March 8. 1906, 34 Stat. 182, all questions pertaining to the title to the allotted land are subject to examination and determination by the courts—appropriately those in the state where the laud is situated. And see *United States* v. *Waller*, 243 U. S. 452, 460 (1917). wherein the doctrine of partial emancipation is clearly recognized. See also and compare *Larkin* v. *Paugh*, 276 U. S. 431 (1928).

[183] Act of June 25. 1910. 36 Stat. 855. See Chapter 5, sec. 11 and Chapter 11. sec. 6.

[184] *McKay* v. *alyton*, 204 U. S. 458 (1907) : *Little Bill* v. *Swanson*, 64 Wash. 650, 117 k. 481 (1911) ; *Gray* v. *McKnight*, 75 Okla. 268, 183 Pac. 469 (1919).

The federal courts first assumed jurisdiction in matters involving inheritance of Indian lands after the passage of the Act of August 15, 1894, 28 Stat. 286, as amended by the Act of February 6, 1901. 31 Stat. 760, 25 U. S. C. 345, providing that one who claimed to have been unlawfully denied or excluded from any allotment to which he claimed lawfully to be entitled under any treaty or act of Congress, might commence and prosecute or defend any action, suit, or proceeding in relation to his right thereto in the proper circuit court (district court) of the United States, and that the judgment or decree of any such court in favor of any claimant should have the same effect, when properly certified to the Secretary of the Interior. as if such allotment had been allowed and approved by him. This act, however. did not apply to the Five Civilized Tribes, nor to any lands within the Quapaw Indian Agency. But clearly the purpose of this act was not to confer jurisdiction upon the federal courts in matters of inheritance or descent as such ; its purpose had reference merely to the right of an Indian to sue in those courts for an original allotment. *McKay* v. *Kalyton*, 204 U. S. 458 (1907) ; and *cf. Sloan* v. *United States*, 193 U. S. 614 (1904). As to the determination of heirs the Act of 1901, with its 1901 amendments, if applicable at all, was repealed by the Act of June 25, 1910, 36 Stat. 853, conferring jurisdiction in such matters upon the Secretary of the Interior. *Bond* v. *United States*, 181 Fed. 613 (C. C. Ore. 1910) ; *Pel-Ata-Nahot* v. *United States*, 188 Fed. 387 (C. C. Idaho N. D. 1911) ; *Parr* v. [illegible], 197 Fed. 302 (C. C. A. 9, 1912). The Act of 1910 did not repeal, however, the Act of 1894, nor the amendatory act of 1901 with respect to the right of Indians to sue in the federal courts for an allotment. *United States* v. *Payne*, 264 U. S. 446 (1924) ; *First Moon* v. *White Tail*, 270 U. S. 243 (1926). Nor did the Act of 1910 make new law respecting the jurisdiction of the Secretary to determine heirs. since it was merely declaratory of the previously existing law. See *Hallowell* v. *Commons*, 239 U. S. 506 (1916). And neither the *Act* of 1894. nor the Act of 1901 affected the authority of the Secretary of the interior. but only gave to the federal courts concurrent Jurisdiction in such matters. *Daugherty* v. *McFarland*, 40 S. D. 1, 166 N. W. 143 (1918). The method and procedure adopted by the Secretary of the Interior in exercising his authority under the Act Of 1910 is thus stated in his decision in the *Grace Cox* case, 42 L. D. 493. 495-6 (1913) :

> The Secretary of the Interior is, as it were, counsel for both plaintiff and defendant as well as judge upon the bench. He does not wait for a case to be brought before him, but on the contrary, institutes the necessary proceedings through his representatives in the field, collects the necessary evidence which may be in the form of decrees of the State courts, *ex parte* or interrogatory affidavits, etc., and renders his decision on legal and equitable grounds. The act of [of June 25, 1910] defining the scope of his duties specifically provides that his decisions shall be under *"such rules and regulations as he may prescribe."* It is evident, therefore, that the Secretary is *not* "bound" by the decisions or decrees of *any court* in inheritance matters affecting Indian trust lands, and that it rests entirely in his discretion, from the evidence submitted, as to the determination of Indian heirs.

[185] *Daugherty* v. *McFarland*, 40 S. D. 1. 166 N. W. 143 (1918) ; *United States* v. *Bellm*, 182 Fed. 161 (C. C. E. D. Okla. 1910). And see *McKay* v. *Kalyton*, 204 U. S. 458 (1907). In the *Bellm* case. *supra*, it was held that the proviso in the General Allotment Act adopting the laws of descent of the state was merely for the purpose of providing a rule by which the heirs should be determined. and the partition statutes were adopted only so far as they provided for a division of the land in case the heirs could not agree to hold it in common. and there was no intention of abrogating the trust in any case, and the clause "except as herein otherwise provided" excluded the application of a provision of a state partition statute authorizing a sale of the land where it could not be advantageously divided ; and such a sale *Of* land in the Indian Territory, although under an order of Court based on the Kansas statute, was null and void.

[186] Partition of Indian lands constitute an "alienation" within tbe meaning of federal laws imposing restrictions thereon. *Coleman* v. *Battiest*, 65 Okla. 71, 162 Pac. 786 (1917) ; *Lewis* v. *Gillard*, 70 Okla. 231, 173 Pac. 1136 (1918). *In Eysenbach* v. *Naharkey*, 114 Okla. 217,

A suit for the possession of allotted Indian lands instituted under state laws is not within the jurisdiction of the state courts regardless of the merits of the controversy so long as the title to those lands is in the United States.[187] That state courts have no jurisdiction to entertain a suit for the condemnation of allotted Indian lands held by the United States in trust for the allottee unless such jurisdiction is specifically conferred by an act of Congress has been settled by the Supreme Court in *Minnesota v. United States*, decided in 1939,[188] and the same rule applies in cases involving tribal lands.[189] With respect to lands allotted in severalty to Indians while the title remains in the United States it is to be observed that under the second paragraph of section 3 of the Act of March 3, 1901,[190] such lands may be condemned for any public purpose under the laws of the state Or territory where they are located "in the same manner as land owned in fee may be condemned," and' the money awarded as damages is to be paid to the allottee. But this provision does not authorize a suit in the courts of a state to condemn such land; it merely authorizes condemnation for "any public purpose under the laws of the State or Territory where located." [191]

The fact that such a suit may have been removed to a federal court on petition of the United States and that a stipulation may have been entered into by its attorney in relation thereto is without legal significance, for where jurisdiction has not been conferred by Congress no officer of the United States has power to give to any court jurisdiction of a suit against the United States.[192]

As Congress has not given its consent to the institution of a condemnation suit of this sort in the state courts, the federal courts are therefore without jurisdiction upon its removal for the jurisdiction of the federal court upon such removal is, in a limited sense, a derivative jurisdiction and where the state court lacks jurisdiction of the subject matter or of the parties, the federal court acquires none, although in a like suit originally brought in a federal court it would have had jurisdiction.[193]

The controlling principle which prevents a court, whether state or federal, from exercising any power or jurisdiction to adjudicate any matter involving the transfer of any right, title, or interest in or to restricted allotted Indian lands is that the United States in the exercise of its plenary and exclusive power over the Indians and their property may adopt such measures as it may deem necessary and proper for their welfare and protection [194] and the state courts without legislative authority have no power or jurisdiction to interfere with or circumvent those measures.[195] Consequently the mere fact that the lands involved in a suit brought in a state court may have been allotted to an Indian is not sufficient to oust the state court jurisdiction. It must also appear that such lands are either held by the United States in trust for the allottee or his heirs, or that they are subject to restrictions against alienation under some act of Congress or treaty of the United States with the Indians. It is to be observed, also in this connection, that the mechanics of a suit in court require that the facts showing the existence or nonexistence of jurisdiction shall appear. Thus if the bill makes out a case within the jurisdiction of the court that jurisdiction is not ousted or defeated merely because the defendant may allege in its answer that the land or other property is restricted, for that only puts in issue the determination of a fact upon which the court necessarily must pass in order to determine whether it can proceed; and if the court's decision on that issue is in favor of the defendant the suit, of course, must be dismissed for want of jurisdiction; otherwise the court may proceed to judgment, and that judgment, unless appealed from and reversed by the appellate court, will be binding on the parties, whether the decision is right or wrong.[196]

The United States, however, would not be concluded by such judgment if it were not a party to the suit or did not give its consent thereto.[197]

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246 Pac. 603 (1926), modifying opinion 110 Okla. 207, 236 Pac. 619 (1925). a decree in partition, rendered by the United States Court for the Western District of the Indian Territory, of inherited land between full-blood citizens of the Creek Nation was held to be void for want of' Jurisdiction of the subject matter since section 22 of the act of Congress of April 26, 1906, 34 Stat. 137, restricted the inherited land of full-blood citizens of Creek tribe against alienation and the decree in attempting to partition the land was, in effect "an alienation of certain portions of the land away from certain heirs and vesting the title in other heirs.

[187] See *McKay* v. *Kalyton*, 204 U. S. 458 (1907). In that case the Supreme Court said:

> The suggestion made in argument that the controversy here presented involved the mere possession and not the title to the allotted land is without merit, since the right of possession asserted of necessity is dependent upon the existence of an equitable title in the claimant under the legislation of Congress to the ownership of the allotted lands. Indeed, that such was the case plainly appears from the excerpt which we have made from the concluding portion of the opinion of the Supreme Court of Oregon.
>
> Because from the considerations previously stated we are constrained from the conclusion that the court below was without jurisdiction to entertain the controversy, we must not be considered as intimating an opinion that we deem that the principles applied by the court In disposing of the merit of the ease were erroneous. (P. 469.)

[188] 305 U. S. 382.

[189] See *United States v. Colvard*, 89 F. 2d 312 (C. C. A. 4, 1937).

[190] 31 stat. 1058, 1083-1084.

[191] *Minnesota v. United States, 305 U. S. 382, 389* (1939).

[192] Minnesota v. *United States*, 305 U. S. 382, 389 (1939), citing *"Case* v. *Terrell*, 11 Wall. 199, 202: *Carr* v. *United States*, 98 U. S. 433. 435–439; *Finn* v. *United States*, 123 U. S. 227, 232-233; *Stanley* v. *Schwalby*, 162 U. S. 255, 270: *United States* v. *Garbutt Oil Co.*, 302 U. S. 528. 533–535." (P. 389.)

[193] *Minnesota* v. *United States*, 305 U. S. 382, 380 (1939), citing; *"Lambert Run Coal Co.* v. *Baltimore & Ohio R. Co., 258* U. S. 377, 383; *General Investment Co. v. Lake Shore & M. S. Rg. Co., 260* U. S. 261, 288." (P. 389.)

[194] See *United States* v. *Rickert*, 188 U. S. 432 (1903); *Heckman v. United States*, 224 U. S. 413 (1912).

[195] *Tidal Oil Co.* v. *Flanagan*, 87 Okla. 231, 209 Pac. 729 (1922), writ of error dismissed, 263 U. S. 444 (1924); *Cotton v. McClendon*, 128 Okla. 48, 261 Pac. 150 (1927); *Bilby* v. *Malone*, *130* Okla. 217, 266 Pac. 760 (1928); *Brink* v. *Canfield*, 78 Okla. 189. 187 Pac. 223 (1919). cert. den. 253 U. S. 493 (1920); *Miller v. Tidal Oil Co.*, 106 Okla. 212, 233 Pac. 696 (1925); *Southwestern Surety Ins. Co. v. Farriss*, 118 Okla. 188, 247 Pac. 392 (1926).

[196] Jurisdiction, after all, is a matter of power and covers right and wrong decisions. *Fauntleroy* v. *Lum*, 210 U. S. 230. 234–235 (1908); *Burnet* v. *Desmornes Y. Alvarez*, 226 U. S. 145. 147 (1912). Even in cases where the jurisdiction of the court depends upon the subject matter it has repeatedly been held by the Supreme Court that if the allegations of the bill or declaration make a claim that if well founded is within the jurisdiction of the court, it is within that jurisdiction whether well founded or not. *Hart v. Keith Vaudeville Exchange, 262* U. S. 271, 273 (1923); *Louisville & Nashville R. R. Co.* v. *Rice*, 247 U. S. 201, 203 (1918); *Geneva Furniture Manufacturing Co.* v. *S. Karpen & Bros.*, 238 U. S. 254, 258 (1915); *The Fair* v. *Kohler Die & Specialty Co.*, 228 U. S. 22, 25 (1913). In *Geneva* Furniture *Manufacturing Co.* v. *S. Karpen & Bros., supra*, the Supreme Court said that jurisdiction is

> * * * the power to consider and decide one way or the other as the law may require, and is not to be declined merely because it is not foreseen with certainty that the outcome will help the plaintiff. (P. 259.)

And in *Hart* v. *KJth Vaudeville Exchange, supra*, the Supreme Court said:

> The jurisdiction of the District Court is the only matter to be considered on this appeal. That is determined by the allegations of the bill, and usually if the bill or declaration makes a claim that if well founded is within the jurisdiction of the Court it is within that jurisdiction whether well founded or not. (P. 273.)

[197] *Bowling* v. *United States*, 233 U. S. 528 (1914); *Privett* v. *United States*, 256 U. S. 201 (1921); *Sunderland* v. *United States. 266* U. S. *226* (1924). See and *cf. United States v. Logan*, 105 Fed. 240 (C. C. Ore. 1900); *United States* v. *Candelaria*, 271 U. S. 432 (1926); *United States v. Ma shunkashey*, 72 F. 2d 847 (C. c. A. 10. 1934), rehear'g. den. 73 F. 2d 487 (C. C. A. 10, 1934). cert. den. 294 U. S. 724 (1935).

Of course, if it appears from the record that the court had no jurisdiction, the judgment must be regarded as absolutely void.[198] and may be attacked either directly or collaterally.[199]

Where Indian territory within the physical boundaries of a state has been excluded from the state by treaty and statute, the state courts have no jurisdiction even over non-Indians thereon.[200]

[198] *Elliott* v. *Piersol*, 1 Pet. *328* (1828); *Williamson* v. *Berry*, *49* U. S. 495 (1850); *In re Sawyer*, 124 U. S. 200 (1888); *Roth* v. *Union* Nat. *Bank*, 58 Okla. 604, 160 Pac. 505 (1916); *Morgan V. Karcher*, 81 Okla. 210, 197 Pac. 433 (1921); *Winona Oil Co. v. Barnes*, *83* Okla. *248*, 200 Pac. 981 (1921); *Carlile* v. *Nat. Oil & Development Co.*, 83 Okla. *217*, *201* Pac. 377 (1921).

[199] *United States* v. *Bellm*, 182 Fed. 161 (C. C. E. D. Okla., 1910); *Lewis* v. *Gillard*, *70* Okla. 231, *173* Pac. 1136 (1918); *Winona Oil* Co.. v. *Barnes*, 83 Okla. *248*, 200 Pac. 981 (1921); *Eysenbach* v. *Naharkey*, *114* Okla. 127, 246 Pac. 603 (1926).

A court having jurisdiction over the subject matter and the parties, is competent to decide questions arising as to its own jurisdiction, and its decisions on such questions are not open to collateral attack. *Ex parte Harding*, 219 U. S. 363, 367, 369 (1911). citing *Dowell v. Applegate*, 152 U. S. 327, 337 (1894), and *Hine* v. *Morse*, 218 U. S. 493 (1910).

[200] *Harkness* v. *Hyde*, 98 U. S. 476 (1878), qualified in *Langford* v. *Monteith*, 102 U. S. 145 (1880).

SECTION 6. TRIBAL COURTS

That an Indian tribe has power to confer upon its own courts jurisdiction over controversies involving Indians is a proposition supported by authorities which have been already analyzed.[201] That "full faith and credit" are due to decisions rendered by tribal courts in cases properly within their jurisdiction, is a second basic principle in the field of civil jurisdiction which is supported by authorities elsewhere analyzed.[202] There remains the question how far the power to confer upon tribal courts such jurisdiction has been actually exercised.

This is a matter on which there are few federal statutes, the question having been left primarily to the action of the tribes themselves. One of the few federal statutes which refer to tribal jurisdiction over civil cases is section 229 of title 25 of the United States Code.[203] This statute provides that where injuries to property are committed by an Indian, application for redress shall be made by the appropriate federal authorities "to the nation or tribe to which such Indian shall belong, for satisfaction." It has been noted by the Solicitor for the Interior Department [204] that this provision assumes that the Indian tribe has the means of compelling return of stolen property or other forms of satisfaction where its members have violated the rights of non-Indians.

Apart from this general statute, special provision has been made by federal law with respect to the tribal courts in the Indian Territory. The jurisdiction of these courts, both in civil and in criminal matters, over Indians belonging to the same tribe, was specifically recognized by the Act of May 2, 1890,[205] which provided for a temporary government for the Territory of Oklahoma and enlarged the jurisdiction of the United States court in the Indian Territory.

Under sections 30 and 31 of this act, the exclusive jurisdiction preserved to the judicial tribunals of the Indian nations in all civil and criminal cases is limited to those cases in which "members of said Nations" are the sole parties, which creates an ambiguity as to the meaning of the words "only parties" or "sole parties." This ambiguity, however, was dispelled by the Supreme Court in the case of *Alberty* v. *United States*.[206] In this connection the court said:

> The real question as respects the jurisdiction in this case is as to the meaning of the words "sole" or only "parties." These words are obviously susceptible of two interpretations. They may mean a class of actions as to which there is but one party; but as these actions, if they exist at all, are very rare, it can hardly be supposed that Congress intended to legislate with respect to them to the exclusion of the much more numerous actions to which there are two parties. They may mean actions to which members of the Nations are the sole or only parties, to the exclusion of white men, or persons other than, members of the Nation; and as respects civil cases at least, this seems the more probable construction. (P. 503.)

Under section 6 of the Act of March 1, 1889,[207] creating the United States court in the Indian Territory, that court had jurisdiction of a suit brought by a citizen of the United States who had become a member and citizen of the Chickasaw Nation against another citizen of that nation.[208]

The termination of the authority of the tribal courts of the Five Civilized Tribes is elsewhere discussed.[209]

A typical provision of a contemporary Indian code relating to civil jurisdiction is the following provision *from* the tribal code of the Rosebud tribe:[210]

> The Superior Courts of the Rosebud Sioux Tribe shall have jurisdiction of all suits wherein the defendant is a member of the tribe or tribes within their jurisdiction, and of all other suits between members and non-members which are brought before the Courts by stipulation of both parties. * * *

In general, tribes which have not adopted ordinances of their own on the subject and which have Courts of Indian Offenses, are governed by the following regulation of the Department of the Interior:[211]

> The Courts of Indian Offenses shall have jurisdiction of all suits wherein the defendant is a member of the tribe or tribes within their jurisdiction, and of all other suits between members and nonmembers which are brought before the Courts by stipulation of both parties. * * *

Judgments in civil cases rendered by Courts of Indian Offenses may be satisfied out of restricted Indian moneys at the order of the Secretary of the Interior, and such judgments are considered lawful debts in probate proceedings held by the Interior Department or by Courts of Indian Offenses.[212]

[201] See Chapter 7. sec. 9.

[202] See Chapter 7. sec. 9; Chapter 14. sec. 3.

[203] R. S. § 2156, derived from Act of June 30. 1834. sec. 17, 4 Stat. 729, 731. amended Act of February 28. 1859. sec. 8, 11 Stat. 338, 401.

[204] 55 I. D. 14. 63 (1934).

[205] 26 Stat. 81. The relevant provisions, secs. 30 and 31, are quoted in Chapter 18. sec. 4.

[206] 162 U. S. *499* (1896).

[207] 25 Stat. 783, 784.

[208] *Roff* v. *Burney*, 168 U. S. 218 (1897).

[209] See Chapter 23, sec. 6.

[210] Ordinance No. 4, adopted April 8, 1937, approved by superintendent April 13, 1937, approved by Secretary of the Interior, July 7, 1937. Rosebud Tribal Court and Code of Offenses, Chapter 2, sec. 1.

[211] 25 C. F. R. 161.22.

[212] 25 C. F. R. 161.26.