ORIGINAL

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 85-546

TITLE UNITED STATES, Petitioner V. FLORENCE BLACKETTER MOTTAZ, ETC.

PLACE Washington, D. C.

DATE April 22, 1986

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ALDERSON REPORTING
(202) 628-9300

IN THE SUPREME COURT OF THE UNITED STATES

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UNITED STATES, :

Petitioner :

v. : No. 85-546

FLORENCE BLACKETTER MOTTAZ, ETC. :

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Washington, D.C.

Tuesday, April 22, 1986

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:10 o'clock a.m.

APPEARANCES:

EDWIN S. KNEEDLER, ESQ., Assistant to the Solicitor General; on behalf of Petitioner.

DERCK AMERMAN, ESQ., Minneapolis, Minn.; on behalf of Respondent.

C O N T E N T S

P R O C E E D I N G S

CHIEF JUSTICE BURGER: Mr. Kneedler, I think you may proceed whenever you're ready.

ORAL ARGUMENT OF EDWIN S. KNEEDLER, ESQ.

ON BEHALF OF PETITIONER

MR. KNEEDLER: Thank you, Mr. Chief Justice, and may it please the Court.

This case concerns the application of statutes of limitations to suits brought by Indians against the United States. Although there are a number of sub-issues in the case, the central question before this Court is whether there is an implied exception that renders inapplicable to some or all suits brought by Indians the statutes of limitations that govern suits against the United States as a general matter.

Two such provisions are involved in this case. The first is the 12-year statute of limitations for suits brought under the Quiet Title Act. The second is the six-year statute of limitations is Section 2401 of Title 28, which applies to other civil actions --

QUESTION: Mr. Kneedler, before you get into that, this is a suit to recover money damages, isn't it?

MR. KNEEDLER: It's a suit to recover money damages in terms of the relief that's requested, but the

Respondent and the Court of Appeals have treated the request for money damages as the equivalent of a request for the return of the land itself, on the premise that the land is now situated within the Chippewa National Forest and that Respondent should, in the Court of Appeals' words, should, "as a matter of policy, should be able to force the United States to pay money rather than to return the land."

QUESTION: Well, to the extent it is a suit for money damages, isn't it a Tucker Act suit?

MR. KNEEDLER: If viewed as a suit for money damages, it would be, although the theory of a Tucker Act suit is somewhat different than the one --

QUESTION: Well, may I ask, if it is a Tucker Act suit, doesn't the Tucker Act require this appeal to go to the Federal Circuit rather than the Eighth Circuit?

MR. KNEEDLER: Yes, to the extent it --

QUESTION: Then why shouldn't we just vacate and send it back with instructions to send it to the Federal Circuit?

MR. KNEEDLER: To the extent it would be a Tucker Act suit, that would be appropriate. But Respondent has insisted that the underlying theory of the suit is a contesting of the title of the United

States to the land, and she has sought money only as an election of remedies.

And she hasn't -- the way the case has been structured, it hasn't been damages as a remedy for something that occurred in 1954. She's seeking -- in which event the money judgment would be calculated on the basis of the value of the land or her injury in '54.

She has sought money in the amount of the current fair market value of the land?

QUESTION: And how much is that? How much is sought? I couldn't find in the record the dollars claimed, the amount in controversy.

MR. KNEEDLER: There is not a specification of that. I would assume that it would be --

QUESTION: Well, doesn't that -- isn't that important to know for purposes of knowing whether the district court jurisdiction or Claims Court jurisdiction was appropriate?

MR. KNEEDLER: For those purposes, it would be. We have not suggested that the value of Respondent's interest in the land exceeds $10,000. Her own interest is a one-fifth interest in one allotment and a one-thirtieth interest in two other allotments.

QUESTION: So is the amount at issue less than

$10,000?

MR. KNEEDLER: The case has been litigated on that assumption, that it is, and we have not to my knowledge suggested otherwise.

QUESTION: Well, if you've been in the depths of the Chippewa National Forest, I think that's a pretty good assumption.

MR. KNEEDLER: Yes, I think it is.

QUESTION: And that means district court jurisdiction?

MR. KNEEDLER: That would mean district court jurisdiction, yes.

QUESTION: But not Court of Appeals?

MR. KNEEDLER: District court jurisdiction and Court of Appeals jurisdiction for the Quiet Title Acts. And it's our submission that this case does arise under the Quiet Title Act. This is because, as I said, Respondent insists that she has not given up her claim of title in this case, and a suit contesting the United States' title to land arises in our view only under the Quiet Title Act, which grants Congress' consent to adjudicate a disputed title to real property in which the United States claims an interest other than a security interest or water rights.

And that's precisely the nature of

Respondent's claim in this suit. The United States holds the land in its own right --

QUESTION: But that's not the theory of the district court's decision, is it?

MR. KNEEDLER: The theory of the district court, the district court's theory is somewhat unclear.

QUESTION: He applied the six year statute.

MR. KNEEDLER: He applied the six year statute of limitations, but it's unclear whether the district court viewed the suit as a Tucker Act suit or whether it viewed it as arising under the allotment statute, Section 345 of Title 25, and the jurisdictional counterpart in Section 1353 of Title 28.

It's our submission that the six year statute of limitations would apply under either view of the suit. Of course, a suit under the allotment statute would go to the Eighth Circuit, unlike a Tucker Act appeal.

Now, it's our submission that, even if viewed as in the nature of a Quiet Title Act suit under Section 345, that Section 345 was never intended, for reasons we have set forth at some length in our brief, to be a basis for a Quiet Title Act suit against the United States arising from the disposition of land after it was once allotted; that Section 345, the allotment statute,

applies only to disputes arising in the initial process of allotment.

So it's our view that there was no jurisdiction at all for this sort of suit and that, even if there was, that the Quiet Title Act passed in 1972 has become the exclusive means for adjudication of disputes concerning the United States' title to property, as this Court held just several terms terms ago in Block versus North Dakota in a suit brought by a state.

And lastly, as I mentioned, that even if this suit does arise under the allotment statute, there is no basis for exempting suits such as that from the six year statute of limitations in Section 2401 that the district court applied, and that in fact the Court of Appeals assumed was applicable, but announced a special rule under which it said that the statute of limitations did not actually run in this case.

With respect to the approach that the Court of Appeals did take, its particular disposition of the statute of limitations issue was seriously flawed in our view. The court relied on this Court's 1922 decision in Ewert versus Bluejacket, and in that case the Court held that a state statute of limitations does not apply of its own force to a suit, to an Indian land title claim.

And the Court did not suggest in Ewert versus Bluejacket that if the state statute of limitations had applied that the period under that statute wouldn't even have commenced because the cause of action hadn't yet accrued.

And therefore Ewert furnishes no basis for the special accrual rule that the Court of Appeals announced in this case, under which an explicit federal statute of limitations would be rendered inapplicable to a suit brought by an Indian whenever the suit is based on a transaction that is allegedly void.

And a fortiori, we submit that Ewert doesn't support any such exception to a statute of limitations in a suit against the United States, which is a condition on the waiver of sovereign immunity and therefore goes to the jurisdiction of the court even to entertain the suit.

And in fact, if Respondent were correct that the cause of action hasn't even accrued under such a rule, then she presumably has no right to even bring the action and the suit is premature. But of course, that's not her submission in this case.

And I should also note that the Court of Appeals approach to the statute of limitations issue seriously undermines the nature of a statute of

limitations. First, it would require, effectively require resolution of the merits of the dispute, in other words whether the underlying transaction was void, in order to dispose of what should be the threshold question of whether the suit is barred by the statute of limitations.

And beyond that, it has no connection to the purpose of a statute of limitations, which is to foster repose, irrespective of the merits of the underlying dispute, and to save the courts and the defendants from having to deal with cases in which the evidence might not be available because of loss of memory or loss of documents.

In fact, the Court of Appeals acknowledged, but didn't give weight in this case to, the Government's submission that it would be difficult to piece together the records of transactions such as occurred here in the 1950's, many years after the fact.

But aside from the particular defect of the Court of Appeals' decision, we think that it was also wrong, as I have said, in not viewing this case as arising under the Quiet Title Act, because, as this Court said several terms ago, the Quiet Title Act is the exclusive means for challenging the United States' title to property.

The Quiet Title Act contains its own statute of limitations, which provides that any civil action under that Act must be brought within 12 years from the date on which the cause of action accrued. And the Quiet Title Act specifies when a cause of action shall be deemed to have accrued, and that is within 12 years from the date on which the plaintiff either knew or should have known of the claim of the United States to the land.

In this case, the district court found, on the basis of Respondent's deposition, that she clearly knew of the sale of her land in 1954, and that the cause of action accrued, albeit for Section 2401 purposes, as of that date because she was put on notice of the United States' interest.

Moreover, in this case Respondent expressed a desire to BIA in 1957 to sell all of her interests in allotments that she then held, and BIA furnished her with a list of those interests, but did not include any indication that she still owned an interest in the three allotments at issue in this case.

And so therefore, when Respondent filed this suit in 1981 it was 27 years after the sales, of which the district court said she had knowledge, and 14 years after BIA had confirmed that she no longer held an

interest in the three parcels that are at issue in this case.

So for Quiet Title Act purposes, this suit is clearly barred by the statute of limitations in that Act. Furthermore, as this Court held in Block versus North Dakota, the statute of limitations applies to all claimants who seek to take advantage of the waiver of sovereign immunity under that statute. In Block, the Court applied that principle to bar suits brought by states, and the principles the Court applied we think apply equally here.

First of all, the language of the statute of limitations refers to "any civil action" under the Quiet Title Act. There's no exception expressed for suits by Indians, just as there was not for suits by states.

Beyond that, there's no suggestion in the legislative history of an implied exception that doesn't appear on the face of the Act for suits brought by Indians, just as there was not for suits brought by states.

And in fact, as we have set out in our reply brief, there is acknowledgment of the possibility that suits would be brought by Indians against the United States under the Act, and yet Congress did not fashion a special statute of limitations for Indians.

And finally, the purpose of the statute of limitations articulated by the Court in Block versus North Dakota was to serve the overriding national purpose of preventing the national government against stale claims and claims based on evidence that might be difficult to assemble. And that policy was perceived by the Court to be one that requires uniform application in order to be effective, and we think that that applies equally to claims brought by Indians as to others.

Now, Respondent has suggested in this case that the Quiet Title Act does not apply to this suit because of the provision in the second sentence of subsection (a) of the Quiet Title Act which states that it does not apply to trusts or restricted Indian lands. Respondent claims that these are trust or retricted Indian lands and therefore it falls outside the Act.

But of course, that assertion begs the very question that would have to be decided on the merits if the case was not barred by the statute of limitations. And if Respondent were correct, that would mean that the waiver of sovereign immunity that Congress has afforded to all other claimants would not apply to Indians who want to bring claims against the United States claiming that land that the United States claims title to in fact should be deemed to be held in the interest of the

Indians.

And Respondent hasn't suggested any reason why Congress would have wanted to exclude Indians from the benefit of that waiver of sovereign immunity that was afforded to all other claimants. And in fact, the text and legislative history of the Act demonstrates that Congress did not intend that.

Whether the exception under the Quiet Title Act applies for trust and restricted lands depends on the nature of the interest the United States claims in the land, not the interest that the plaintiff thinks the United States should claim. And in this case it's clear that the United States holds the land for the Forest Service, not in a capacity as trustee for the Indians.

And this view of the application of the exception is confirmed by the general consent to suit in the Quiet Title Act itself, which grants consent to resolve disputed title questions to land in which the United States claims an interest. It's not dependent upon what it's interest actually is.

Beyond that, if the United States disclaims an interest the Quiet Title Act does not even apply. And the legislative history, beyond that, indicates to the same effect, that the exception for Indian lands was intended to apply to situations where land is "held in

trust for Indians," and in this case the United States is not purporting to hold the land in trust for Indians.

The purpose was to prevent Indian lands from being subject to suit and challenge by third parties where the United States and the Indians are in agreement about the Indians' interest in the lands. It wasn't to prevent resolution of disputes between the Indians and the United States.

And finally, as we pointed out in our reply brief, a provision of the Quiet Title Act in an early draft of it was deleted that would have excluded suits involving lands to which Indians or Native Americans claimed an interest based on aboriginal title. And one of the objections that the Justice Department raised to that was that it might preclude suits brought by Indians against the United States where there was an interest claimed.

And the provision was deleted from the bill, and we believe that confirms that suits brought by Indians are not intended to be excluded.

Now, with respect to the Tucker Act, if this suit does arise under the Tucker Act there is, of course, the jurisdictional question mentioned, but it would be barred by the statute of limitations under

2401(a) in any event.

That statute of limitations applies to every civil action commenced against the United States. There's only one exception to that, and that's for a person who is under a legal disability; and the existence of that one exception indicates that Congress has foreclosed other sorts of exceptions.

This same principle applies when one considers the application of Section 2401(a) to a suit under the allotment statute, Section 345, if in fact that statute were thought to apply here. Congress has made the statute applicable to all civil actions, has created one exception for persons under a legal disability, but has not included any exception for suits brought by Indians.

Now, it has been suggested that there is a limitation to the statute of limitations for situations in which property is held in an express trust. Now, precisely what Respondent means by that isn't clear, and it's not clear that any such concept was intended to be incorporated into the statute of limitations is Section 2401.

However, the Court of Claims, in construing the parallel statute of limitations under Section 2501 of Title 28, has recognized that in a situation where

the United States actually holds money in a treasury account and doesn't dispute that it belongs to a particular party, a particular Indian, let's say, in a trust account, and that the money is already existing, no statute of limitations applies to require the claimant to request that money or sue for it within a particular period of time.

But that's because the United States in those situations is not disputing that the land -- that the money belongs to the Indian and that it's available whenever he requests it. However, if the claimant requested the money and the United States denied that it belonged to the Indian in this case, then that would be a situation where there was a repudiation of an express trust.

And even under the rule that the Respondent has advanced in this case, the statute of limitations would begin to run. That rule is reflected in the cases upon which Respondent relies and the other cases that we set forth in our reply brief discussing this express trust concept.

So in this case, even if what this Court referred to as the bare trust under Section 5 of the allotment act is the equivalent of an express trust for purposes of application of the rule that Respondent

relies upon, in 1954 when the land was sold out of its trust status by the United States there couldn't have been a clearer repudiation of any trust relationship between the United States and Respondent with respect to that land.

And even under the rule Respondent suggests, that would trigger the running of the statute of limitations at that time. And whether the statute of limitations is six years or 12 years, that period would have long since expired by the time this suit was filed in 1981.

QUESTION: Mr. Kneedler, can I just ask you one question about that, going back to Justice Brennan's inquiry at the beginning. If we agree with the Government that this is a quiet title action, then the 12 year statute would bar that claim as to that and the jurisdiction would be proper.

And if, on the alternative, we had to deal with the problem of whether it was in effect a suit for damages measured by what happened back in '54 or whenever the conveyance was, then would it be proper in your view to reject that claim on the basis of the six year statute on the ground that we have no jurisdiction to hear it?

MR. KNEEDLER: If you view it as -- to the

extent you view it as a Tucker Act suit, then to that extent I think the proper disposition would be to vacate the judgment below and --

QUESTION: In other words, all we would have jurisdiction to decide would be the quiet title question?

MR. KNEEDLER: And the whether 345 question.

QUESTION: Yes, I understand that.

MR. KNEEDLER: But to the extent it would be a Tucker Act suit, I believe that's correct. And then a question would arise whether the district court's judgment would be final or whether, to the extent it's a Tucker Act suit, the appeal could be transferred to the Federal Circuit.

QUESTION: But if we hold for you on the quiet tile phase, the case is over, isn't it?

MR. KNEEDLER: That's correct.

QUESTION: We never get to the Tucker Act.

MR. KNEEDLER: That's correct, because we believe that it's necessary to look at the central claim of Respondent and, although Respondent claims damages in this case, as I said, that's just substituting money for land. And as we point out in our brief --

QUESTION: But if you win the quiet title suit on the statute of limitations grounds, that terminates

the case.

MR. KNEEDLER: That's true. I'm just responding to the availability of monetary relief even under the Quiet Title Act. The Quiet Title Act does not give the plaintiff in a Quiet Title Act suit the option of electing between money or the land itself. That sort of rule would permit a private party effectively to require the United States to purchase land, whether or not it wanted to, once the United States --

QUESTION: Before he can get anything, he has to have some right to the land.

MR. KNEEDLER: Well, that's --

QUESTION: And the right must not be barred.

MR. KNEEDLER: And the right must not be barred. But to the extent that the availability of the money judgment is at issue in this case, it's not a money judgment that the Quiet Title Act affords the plaintiff a right to.

That's an option that this Court recognized in Block versus North Dakota that is available only to the United States, to enable the United States to remain in possession of land that it needs for operation of governmental programs even if it loses the Quiet Title Act suit. And the presence of that option for the United States implies the absence of an option for the

plaintiff.

QUESTION: That's right, but it's a pretty realistic option on the facts of this case, I assume.

MR. KNEEDLER: That the United States would want to keep it?

QUESTION: Would want to keep the land.

MR. KNEEDLER: That may be, although --

QUESTION: It doesn't really affect the ultimate question.

MR. KNEEDLER: Yes, it wouldn't affect the statute of limitations or the jurisdiction. But I should point out that in a case involving an allotment and heirship status such as this, where here Respondent owns a one-fifth interest in one allotment and a one-thirtieth interest in another, it's not typically the case where the individual owner of a fractional interest actually occupies the land or even necessarily requires access to it.

The principal benefit is the income generated by the allotment. So it would be possible for the United States to retain the allotment as part of the land it has included within the Chippewa National Forest and give to Respondent her share of the income.

If there are no further questions at this point, I'd like to reserve the balance of my time.

CHIEF JUSTICE BURGER: Very well.

Mr. Amerman.

ORAL ARGUMENT OF

DERCK AMERMAN, ESQ.,

ON BEHALF OF RESPONDENTS

MR. AMERMAN: Mr. Chief Justice and may it please the Court:

Approximately 30 years ago, things seemed to get out of hand a little bit in the Bureau of Indian Affairs. What they did is they decided to sell some Indian land, and they sent out consent forms to thousands of Indians around Leech Lake, Minnesota. There were 6,111 fractional heirs at that time.

They sent out the consent forms and then, when they didn't get them back, they transferred the land anyway. And the thousands of people involved in this yet uncertified class action are those people that have fractional shares of 80 acre parcels where all the consents were not obtained.

They must have known that they needed the consent or they wouldn't have sent the forms out. I don't think -- I've talked to lawyers about this. Usually the response is it's outrageous, you can't take property away from people unless you either get their consent or go through a court hearing, you can't take my

house unless you do that.

In this case the Government was a trustee. In the stipulated facts they admit there was a trust. They admit that they did not get all of the express consent of these people.

To a lesser extent, the layman sometimes feels the same. But perhaps more importantly of all is that the Department of the Interior also feels it's an outrageous procedure, although that specific word isn't used. Referring to the --

QUESTION: Mr. Amerman, would you mind telling us what you think the basis of the suit is? Is it a quiet title action, in effect?

MR. AMERMAN: This case is a 345 case. It has to rise and fall as a 345 case. It's not a Tucker Act case and it's not a quiet title action case. Jurisdiction, sovereign immunity waiver, and consent to suit is all under 345, although there is another sovereign immunity waiver under the general allotment act of 1887.

All these things are confusing, at least to me. But we have definitely decided --

QUESTION: It's not an action to establish title to the land?

MR. AMERMAN: It's an action that says you

never took title away from us, there is still an ongoing trust; you attempted to do it, you attempted to take title, but you didn't do it the right way; it wasn't legal.

So there are some pieces of paper up in the county recorder's office is Cass County, Minnesota, that transfer that land. But those are simply pieces of paper.

QUESTION: Well, to win you have to establish that title is in the name of your client?

MR. AMERMAN: I'm sorry?

QUESTION: In order to win the suit, it would have to be established that your client has title of her share of the allotted land.

MR. AMERMAN: That's correct.

QUESTION: That sounds a lot like a quiet title action to me, somehow.

MR. AMERMAN: Well, there are I think some important distinctions. The Quiet Title Act only applies to people that rely on that for a waiver of sovereign immunity. We're not relying on the waiver of sovereign immunity in the Quiet Title Act. We're relying on the waiver of sovereign immunity in the general allotment act and under Section 345.

And as counsel mentioned in his presentation,

the Quiet Title Act has a specific exception that says, this section does not apply to trusts or restricted Indian lands. And it's admitted that these are trust allotment Indian lands. So we don't think that applies.

We also don't think there was any Congressional intent to deprive thousands of people all over the country that had Indian land in trust of any rights by passing the Quiet Title Act. They passed it to perhaps grant some rights, but not to restrict the Indian rights.

QUESTION: What part do damages play?

MR. AMERMAN: Well, damages in our opinion is the only workable solution to this yet uncertified class action. It's the only way that it can work. The ALTA, American Land Title Association, filed a brief in this case.

QUESTION: You don't want the land; you want the damages?

MR. AMERMAN: Right. In other words, it's --

QUESTION: Well, how do you get out of the Tucker Act?

MR. AMERMAN: Pardon me?

QUESTION: How do you escape the Tucker Act?

MR. AMERMAN: Because it's a -- 345 grants

specific rights to Indians under allotment land. Section 345 says that those who claim to have been unlawfully denied or excluded from any allotment or any parcel of land to which they claim to be lawfully entitled.

These are just, those are only Indians under that, and they're only talking about Indian land. They also go on to say that "commence and prosecute or defend any action."

So we think the plain meaning of 345 grants everything that the Tucker Act does, with none of the disadvantages, which are severe in our case. So we are not asking the Court to treat this as a Tucker Act case.

The memo that I --

QUESTION: We can't can we?

MR. AMERMAN: I'm sorry. Pardon me?

QUESTION: We can't treat it as a Tucker Act case.

MR. AMERMAN: I don't think it's proper to do that.

QUESTION: It didn't come here that way.

MR. AMERMAN: That's right.

QUESTION: You can't change it here.

MR. AMERMAN: Yes. We'll take anything we can

get, but I don't think --

QUESTION: That's what I thought.

MR. AMERMAN: I don't think it's a Tucker Act case.

QUESTION: Well, if it were a Tucker Act case, it should have gone to the Federal Circuit, should it not?

QUESTION: That's right.

MR. AMERMAN: I don't know the answer to that question. But we have never treated it as, at least not at the appellate level, as a Tucker Act case.

The memo states: "The problem is that between 1948 and 1958 BIA officials approved numerous conveyances of inherited allotments without the requisite consents of all the Indian landowners. This was done notwithstanding the June 24, 1955, memorandum from the Associate Solicitor for Indian Affairs to the Commissioner of Indian Affairs advising that the interests of a non-consenting owner may not be sold by the Secretary."

"As a result, it appears that numerous transactions were entered into without the requisite authority and therefore are void," Citing Ewert versus Bluejacket. They talk about BIA misfeasance, and internally in the Department they apparently know that

this was a mistake.

So it's our position that there isn't any serious question here that there was a wrong. The only serious question is whether there's a remedy or not. We're asking you not to close the door on these people that had their land taken without their consent and without a court hearing.

The Government historically has not -- has had a paternal attitude toward the Indian and their land. Recently that's changed, but prior to the Loring case, which is kind of a strange case in my opinion, but prior to the Loring case in 1979 there was no case that held that there was a statute of limitations on Section 345. It wasn't even raised.

The predecessor statute of 2401, which is the sex year statute of limitations, was 28 U.S.C. 41(20), and under that statute there was never a statute of limitations defense raised for any Indian cases.

Since Loring in 1979, there have been many cases where the Government has not raised the statute of limitations issue. We don't know exactly why. Perhaps, given the paternal attitude toward Indians, it became an insidious kind of defense and went against the historical treatment to try to apply those kind of loopholes.

QUESTION: Are you suggesting, Mr. Amerman, that the Government ought not to raise a defense that it might arguably say Congress had given it in an action?

MR. AMERMAN: Well, I don't think they --

QUESTION: That would be a rather strange interpretation of the Government's responsibility to litigate for the United States.

MR. AMERMAN: Historically, they never used it in 345 cases. I understand your point. My personal answer is that they should try to take care of the Indian problem and not raise the statute of limitations, which would slam the door on thousands of people. They did this in other areas of the country also, so it was a fairly big application.

The Eighth Circuit used the accrual theory under 2401 in Ewart versus Bluejacket, the prior case of Waskey versus Hammer, which says that no cause of action accrued, to avoid what we feel would be a massive injustice if the statute of limitations were applied to these people. They said that the underlying sale of land was void and that therefore no cause of action accrues.

An equally good approach to avoid that result is under Section 345, because we think that historical analysis and the attitude of the United States is not --

the statute of limitations of either the Quiet Title Act of '72, 2409, or 2401 should not apply to that.

I just want to say a word on the predecessor here, 4120. That statute that 2401 was taken from was not a strict statute of limitations statute. It was not a general statute of limitations. It was a jurisdictional statute that contained within it a statute of limitations.

And in 4120 it says that the statute of limitations only applies to "under this paragraph." When that was changed in 1948, they moved 24 -- excuse me. They moved 4120 to 2401(a), and they moved the jurisdictional provision to 1346(a). In other words, all that they did is they combined the statute of limitations for contracts and for torts under one provision.

And the revisor, Barron, in his article "The Judicial Code" makes express the following statement. He states that: "Because of the necessity of consolidating, simplifying, and clarifying numerous component statutory enactments, no changes of law or policy will be presumed from changes of language in revision unless an intent to make such change is clearly expressed."

And there was no express intent in the

revisor's notes, and there is no intent to change that in the legislative history.

To go back to the question, again, I think that's why the U.S. never applied it. Strictly going by the words, the defense can be raised, but the intent and the purpose I think might change that.

There has been some suggestion here that Section 345 only applies to the issuance of original allotments. The Eighth, Ninth, and Tenth Circuit have all held to the contrary on that, and the language of the statute that I just read talks about exclusion of commencing and prosecuting or defending any action. We think that it's pretty clear that that statute covers ongoing allotments, not just the original issuance 80 years ago.

We feel that the Quiet Title Act did not repeal Section 345. What the Quiet Title Act -- the position of the Government is saying that in effect Section 345 was repealed by the Quiet Title Act. There's nothing to show that that was intended. There's nothing to show that it was, and there is some authority to show repeals by implication are not favored.

There is also some language in 28 U.S.C. 2415, which really doesn't resolve these problems because it refers to actions brought by the United States. But

here was a lot of work that went into that Act, and we think you can infer Congressional intent there that they did not mean to bar Indian claims without referring to it.

QUESTION: The uncertified class action that we have in this case we think is a good remedy, because it doesn't involve bona fide purchasers for value. It doesn't involve the innocent people that may have purchased the land. In the Mottaz case, the Government sold the land to themselves, and we do not get into that question if it's a matter of compensation.

The Chippewa National Forest, with these acres in the middle of it, doesn't really lend itself to anything except monetary compensation, and that's pretty much what the Eighth Circuit said about it.

So we're proceeding under the election of remedies law that I think is nationwide, although I don't know. It certainly is in the state of Minnesota. It says in rescission cases you can either take the land back as a remedy or go after money damages if the land back isn't appropriate. And here it seems to be the only workable solution.

In the Mottaz case, individually she did not receive payment and the Government has nothing to indicate to the contrary.

We do disagree with the Eighth Circuit in one point, and that is that payment itself should not be able to transform non-consent into consent. It takes something more than an Indian getting a check in the mail on the reservation, who would probably cash it without asking any questions, to turn that into consent of his land.

If the statute of limitations closes the door here, we feel it would be a wrong without a remedy for literally thousands of people, and we ask the Court not to close the door on these people. They're innocent, they didn't do anything wrong, and they don't deserve that.

CHIEF JUSTICE BURGER: Do you have anything further, Mr. Kneedler?

REBUTTAL ARGUMENT OF

EDWIN S. KNEEDLER, ESQ.,

ON BEHALF OF PETITIONER

MR. KNEEDLER: Yes, Mr. Chief Justice.

I'd like to respond to the argument that this suit is in fact a suit for an allotment. Respondent concedes that in order to win this case she has to establish that she has title, equitable title to the land, and in our view that's just one species of a Quiet Title Act suit.

It doesn't matter that Respondent happens to be basing the claim of title on an allotment, just as it doesn't matter what form any other claimant bases a claim of title on. So in our view this clearly does arise under the Quiet Title Act.

Now, as we've explained in some detail on our opening brief, Section 345 and its jurisdictional counterpart in Section 1353 of Title 28 was intended to apply only to what Felix Cohen described in a 1942 treatise as a suit for an original allotment, and the language of the Act is not to the contrary.

Respondent refers to the language pertaining to prosecuting or defending a suit, and a suit for an allotment or a suit concerning being excluded from an allotment. And as we explain in our reply brief, that language embraces suits where there is a dispute between two Indians claiming the entitlement to the same allotment in the initial allotment process. One Indian might already be occupying it and the other one is then excluded from the parcel that he had selected and is claiming should be allotted to him.

And in that same situation, the Indian who was occupying the land would be entitled to defend the suit under 345 by the competing claimant for the original allotment. So even these phrases don't suggest a

broader reading, and in fact other portions of the language suggest to the contrary.

The jurisdictional grant in Section 345, after the description of the sorts of suits that can be brought, grants the District Courts jurisdiction only over suits involving -- "involving the right of any person to any allotment."

It is clear that it's limited to suits seeking an allotment in that fashion, and 1353 is worded in the same way. And then finally, particularly telling is the nature of the effect of the judgment that is prescribed in Section 345 itself, which says that a judgment in favor of the plaintiff shall have the same effect as if an allotment had been allowed and made by the Secretary of the Interior in the first instance, which obviously refers to the issuance of a patent or other allowance of the allotment in the first instance.

The origins of Section 345 are to the same effect, that it arose in an allotment and an appropriation act dealing with the initial allotment process. And as we outline in our briefs, there were four statutes that Congress passed during the 17 years after Section 345 was enacted in 1894, all of which confirm that it's limited to situations involving initial allotments.

In fact, Congress excluded the Osage and the Five Civilized Tribes from the operation of 345 because disputes over original allotments were otherwise provided for.

And this Court's decisions in First Moon versus White Tail and most recently in Affiliated Ute also describe Section 345 in similar terms. In First Moon versus White Tail, the Court says that the jurisdictional counterpart has reference to suits for original allotments and it does not involve disputes concerning valid and unquestioned allotments. And here no one's questioning the validity of the initial allotment to Respondent's ancestors.

So all of these points, to which Respondent really doesn't answer at all, indicate that 345 in its origins was intended to apply to original allotments. The first contrary Court of Appeals decision was an isolated one from the Ninth Circuit almost 50 years later, and the other decisions which Respondent refers to were all in the 1970's, 75 years after the statute was passed, giving it a scope far beyond what was intended.

Even putting all of that to one side, we come back to the Quiet Title Act. This Court said in Block versus North Dakota, in that situation whether an

officer suit could have been brought before 1972 was problematic, but that the Quiet Title Act made that remedy exclusive.

Here, even assuming that a suit against -- a Quiet Title Act suit against the United States was problematic under 345 prior to '72, the Quiet Title Act makes that remedy exclusive. In fact, the second sentence of the Quiet Title Act explicitly preserves certain other remedies -- Tucker Act suits, suits involving lands, and the McCarran amendment.

But it does not preserve Section 345 suits or Section 1353 suits as a means of challenging the United States' title to land. So Congress knew how to preserve other remedies when it enacted the Quiet Title Act and didn't do so for these allotment statutes.

QUESTION: Well, it did refer to Indian trust lands, of course.

MR. KNEEDLER: It referred to Indian trust lands in terms of exempting them where the United States was essentially the defendant on behalf of Indians. And the fact that it referred to Indian lands I think suggests that Congress would have created an exception for other sorts of remedies against the United States by Indians if it had wanted to do so.

But it did not, and the reason, it's

understandable, because only six months earlier in Affiliated Ute the Court had given the narrow construction to 345 that we urge.

Section 345 also does not provide a damage remedy against the United States. As we explain, the Tucker Act is the exclusive remedy for that.

And then finally, even if Section 345 does apply, the statute of limitations in whether 2401 bars this suit. By its terms, Section 2401 applies to every civil action against the United States. There's no exception for suits by Indians.

And prior to 1948, the six year statute of limitations was in the Tucker Act grant of jurisdiction and said suits under this paragraph are barred if not brought within six years. In '48, Congress lifted the statute of limitations out and put it is a separate chapter of Title 28 applicable to suits against the United States generally, which would encompass suits under 1353 and 345, and said not -- and did not limit it by language, such as suits under this paragraph or suits under the Tucker Act. It said every civil action against the United States.

And I would point out that every Court of Appeals that has considered the question of the scope of Section 2401 has rejected the argument that it is

limited to suits under the Tucker Act, as its predecessor was, and the Ninth Circuit has applied it to suits under 345.

And even the Eighth Circuit in this case did not suggest that Section 2401 is inapplicable to suits under Section 345.

If there are no further questions.

CHIEF JUSTICE BURGER: Thank you, gentlemen. The case is submitted.

(Whereupon, at 11:56 a.m., oral argument in the above-entitled case was submitted.)

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BY Paul A. Richardson

(REPORTER)