

4th. If the plaintiffs will not voluntarily dismiss the suit as to the Indians, I think that a pleading in the nature of a plea in abatement -- what was at common law a plea to the jurisdiction -- should be filed in these suits on behalf of the Indians, they making a special appearance for that purpose. It seems to me that such a pleading would be necessary, as the point could not be raised by a demurrer, as it is not apparent on the face of the complaint that these defendants are Indians under the guardianship of the United States, and so, <sup>that</sup> the Court is without jurisdiction.

5th. If this method of disposing of the cases is not effective, it may be well to consider if the Government cannot, by bill in the Federal Court in the nature of a Bill of Peace, enjoin these plaintiffs from prosecuting these or any suits against these Indians <sup>or</sup> in connection with these lands of the Government.

6th. If Mr. Hettman, United States Attorney, Mr. Elberg, Superintendent of Irrigation, and Mr. Spalsbury, Superintendent of the Bishop Indian School, should agree with me in these views, either Mr. Hettman or myself would go over the matter with the attorneys for the plaintiffs, with a view to getting them to dismiss as to the Indians.

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For cases in point, see the following:

There can be no divided authority over the property of the Indian. As long as Congress holds Indians as wards, their

property cannot be taxed or interfered with by the State.

Matter of Heff, 197 U. S. 488, 506.

This Heff case decided that the Act of 1887 made Indians citizens, and that a subsequent act prohibiting the selling of liquor to them was unconstitutional.

Liquor was introduced upon allotments made under Act of 1887.

U. S. vs. Sutton, 165 Fed. 253; District Court.

As to right of United States to sue to protect rights of Indians, even if it has no pecuniary interest, and as to lack of necessity of making Indians parties, and as to multiplicity, see Heckman vs. U. S., 224 U. S. 413.

Note Government Brief.

Good case throwing light on private property of Indians in Choate vs. Trapp, 224 U. S. 665.

Status of Trust Patents to Indians, W. \_\_\_\_\_ vs. Carter, 63 Pac. 106 (Idaho).

Laches not imputed to tribal Indian,

Langton vs. Headean, 76 Fed. 789.

Government of Indians vested in the United States.

Brower in Hoff vs. Burney, 168 U. S. 218.

U. S. May sue on behalf of Indians.

U. S. vs. Boyd, 68 Fed. 577;

U. S. vs. Livestock Co., 69 Fed. 886; 71 Fed. 576, and

U. S. vs. Wynans, 73 Fed. 72.

Date of protection of riparian rights may be from the

first settlement, and not from filing, when settlement precedes filing.

Wiel, Water Rights in the Western States, 284.

Apportionment of water rights among riparian owners not conclusive,

Wiel, 284.

No apportionment in absence of evidence in all surrounding circumstances,

Wiel, 283.

See, as to protection of allottees, U. S. Revised Statutes, Par. 2119, and U. S. vs. Mullen, 71 Fed. 682.

As to jurisdiction of Courts, see Stacey vs. Labella, 99 Wis. 520.

Power of Government plenary over Indians. U. S. vs. Tobacco Factory, 28 Fed. Cases, No. 16,528.

As to citizenship of allottees, see Elk vs. Wilkins, 112 U. S. 105.

See also, 19 Op. Attorney-General, 161.

Reservation not revoked by allotment. State vs. Columbia George, 39 Or. 127; Hale vs. Ross, 64 Fed. 419, citing S Wallace, 737.

Concerning interest retained by United States in allotted land, see U. S. vs. Rickert, 188 U. S. 432; 20 Op. 442.

The purpose is to protect Indians from greed and superior intelligence of white man, and the law will <sup>be</sup> so construed.

Beck vs. Flournoy Livestock Co. 65 Fed. 30.

19 Op. 232.

As to suits, see 3 Fed. Statutes, Annotated, 497.

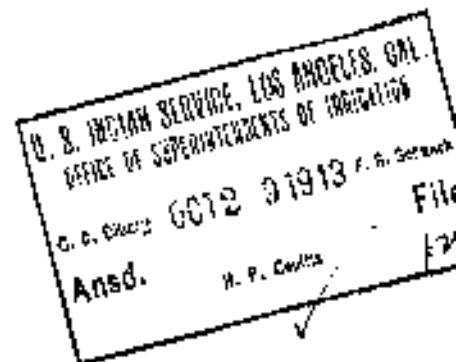
As to Indians going to recover allotment, see 3 Fed.  
Statutes, Annotated, 604.

*Oct 18, 1913*

*John F. Truesdell*

Bishop, California.

Monte Water Case.



October 27th, 1913.

Mr. John H. Brundell  
732 Equitable Building,  
Denver, Colorado.

My dear Mr. Brundell;

I have your letter of the 18th instant with its enclosures and after going over the matter carefully I am of the same opinion as yourself in the main. In those matters in which we may not be in accord you will probably be right in view of your superior knowledge of the law.

If it be correct, as you state in your memorandum that no harm can possibly come to the Indians through not having their rights adjudicated at this time and in connection with this general case I would suggest that you carry out your scheme of getting a dismissal of the case so far as the Indians are concerned and if this dismissal cannot be secured through the attorneys for the plaintiff it would seem to me to be proper to get an order from the proper United States Court compelling such dismissal. My only interest in the matter is to see that the Indians' rights are fully protected in every particular, and I am anxious to have all steps taken to this end, being careful not to "overlook any

bat" in the matter.

One matter in which my understanding is at variance with yours is that expressed in that paragraph of your ~~former~~ memorandum beginning on the bottom of page four and touching the matter of the jurisdiction of State Courts over the persons and property of Indians who hold allotments, or homesteads under Trust patents. As I understand this matter these courts have no jurisdiction over property that the Indians receive through the United States, both real or personal as well as the increase from that property. I got this idea from the decision in the famous case of U. S. vs. McInt, 708 U.S. 420. See also Hobbay vs. Halpton, 204 U. S. 460; also the Smith Case, 204 U. S. 408. I think that the Department also decided the same way in the Logan Colony Case, some years ago.

In the last mentioned case, I understand that they hold that all other property, i.e., all property that they acquired through their personal efforts was subject to taxation and the local courts. As regards criminal actions IN RE WOLF, 27 Fed. Rep., 606, holds that Indians are liable in the state courts for all crimes committed outside of Indian country, and are also entitled to the protection of the state courts.

As to the matter of whether there would be any advantage in "having the mere riparian rights in connection with these lands determined at this time," you are probably

better able to decide whether such action be necessary and desirable or not. I agree with you that efforts should be made to get the Indians to use the water more extensively on their lands.

One thought that has occurred to me in this connection is in regard to the 200 or more Indians of that vicinity that have no lands. It would appear to me that we ought to be able in connection with these suits, perhaps, to bring sufficient pressure on the Power interests and the McPherson interests to secure water and lands under their irrigation scheme to provide them all with homes of about twenty acres each. I have not gone into this matter sufficiently to enable me to submit a plan to secure this desirable end but I would suggest that this phase of the situation be given consideration by the government attorneys and yourself in whatever action you may decide to take.

With the kindest personal regards, I remain,

Very respectfully,

Superintendent.

Carbons to U.S. Attorney  
San Francisco, Calif. and  
Chas. R. Olberg,  
Los Angeles, California.

Enc. copy  
letter to  
Truesdell  
rel. Monso  
Lake-aguize, etc.

17  
Oct. 29, 1913.

Mr. Ross L. Spalsbury,  
Supt. Bishop Indian School,  
Bishop, Calif.

Dear Mr. Spalsbury:-

I am in receipt of a copy of your letter to Mr. Truesdell, and I enclose herewith a copy of my letter to him, which I should have forwarded to you previously.

Of course my opinion with respect to legal matters has very little value, but in my estimation Mr. Truesdell is pursuing the proper course.

A few days ago I gave Mr. J. C. Cowles, an artist who is now engaged in painting some views near old Fort Independence, a letter of introduction to yourself. Inadvertently the letter was addressed to Mr. Coggeshall. I did not notice this discrepancy until after Mr. Cowles had gone, and in case the letter reaches you, I write this to make sure you will understand the situation.

I have not heard from Mr. Bauer for some few days, and if you see him I wish you would ask him to let me know how his work is progressing.

Very respectfully yours,

CRO/AR Enc.

L. R. Olney,  
Supt. of Irrigation.



*Superior Court*

2-16-14

FILED	1914
APR 1 3 1914	FILED
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Denver, February 12, 1914.

Patrick S. Parker, Esq.,

Bridgeport, California.

My dear Mr. Parker:

In the matter of the suits you have brought concerning the water rights in certain streams in the Mono Basin in which numerous Indians have been made defendants, I beg to say that the Attorney General wrote me on December 1st approving of the plan concerning these suits, suggested by the United States Attorney and myself, and authorizing us to carry it out. That letter never reached me, but I now have a copy of it.

As I intimated to you when I saw you in San Francisco, the Government does not wish to submit its rights or the rights of the Indian defendants for determination in these suits. It therefore desires the suits dismissed as to the Indians.

As I understand these suits, these particular Indians were only named as defendants because they are allottees of Government lands, which they hold under trust patents. If I understand the law, these lands being the property of the Government, cannot be affected by these

Mr. Parker 2.

suits, and if that is so, it follows that the water rights that are a part of the lands are in the same situation; and as I understand also, any waters that have been appropriated by the Indians for use upon these lands are beyond the reach of these suits.

I take it that your object is only to affect the rights that the Indians may have in connection with these lands, either riparian or by appropriation, and so that if you agree with me as to the law concerning the water rights used on or intended to be used on these lands, you will agree that the Indians ought <sup>not to</sup> be held as parties, even if you think that the Indians could be sued as to water rights that they had taken up and that were in no way connected with Government property.


Feeling as we do about the matter, we, of course, prefer to have you dismiss the cases as to the Indians. Will you kindly tell me whether you will do this. If you should decide not to, I think that we can promise that the United States Attorney and myself will prepare proper pleadings promptly and try to meet your convenience in having heard any demurrer or other attack upon them that you may think it your duty to make.

I expect to leave for Washington on the 15th, with the hope of being back here in a short time, and then proceeding to Nevada and San Francisco. It is impossible for

Mr. Parker 3.

me to say just when I shall reach San Francisco, but when I know, I will advise you, in the hope that you also may be going there about the same time and that we can then take these matters up.

Yours very truly,

A handwritten signature in cursive script, reading "John F. Russell". The signature is written in dark ink and is positioned above the typed name and title.

Special Assistant to the  
Attorney General.

DEPARTMENT OF THE INTERIOR

UNITED STATES INDIAN SERVICE ✓

Bishop, California.

12/9/14  
18  
October 8th, 1914.

Mr. Chas E. Olberg,  
Supt/ of Irrigation,  
526 Federal Building,  
Los Angeles, California.

Dear Mr. Olberg.

You may recall visiting the allotment of Joe McLaughlin, just below Grant Lake when we were in the Mono Lake region with Mr. Truesdale. Mr. Nelson has indicated his desire to purchase this allotment and I would appreciate it if you would give me your idea of its value.

With highest regards.

Yours sincerely,

*Roscoe H. Galt*  
superintendent.

Mr. Martin called on me last evening. Nice chap.