

1918

# Indian Land Titles in Minnesota

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## Recommended Citation

Cain, Gordon, "Indian Land Titles in Minnesota" (1918). *Minnesota Law Review*. 1395.  
<https://scholarship.law.umn.edu/mlr/1395>

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## INDIAN LAND TITLES IN MINNESOTA

To the lawyer there are perhaps no more vexatious questions affecting real estate titles than those incident to Indian dominion, control and relinquishment. These questions are peculiar, and while they often determine titles of lands acquired or attempted to be acquired of both state and national sovereignties, as well as titles passing between individuals, they are referable to none of the established rules of real estate law; neither are they discussed nor analyzed in the standard text books upon public and private land titles.

Strangely enough, although practically every foot of our territory has at some time been burdened with Indian rights and titles, and although back of every fee patent, antedating it in time and superior to it in validity, there is an Indian treaty or compact; writers upon Indian subjects have usually limited themselves either to a discussion of the Red-man's personal life and habits, or to his political status, dismissing the more important but less easily understood question of how we acquired our Indian lands with certain self-righteous and ethical comments upon the supposedly shabby treatment accorded the natives in the acquisition of their dominions. Interesting as these questions of domestic and political economy may be to the student of politics and races, they have now become almost purely academic in their nature and of but little practical importance, either to the individual or to the nation, because the numerical inferiority of the Indian has become so pronounced that he no longer appreciably affects our political life and he has so closely affiliated himself with our domestic life as to be considered one of us as well as with us. For the most part he dwells among us as a citizen of the United States and of the State in which he lives; he votes and holds property, and by the same right as his white brother; he has changed his tepee for the house, and generally regulates his home life by the same rules as govern the home life of the white man.

While such questions have passed into the realm of the interesting but relatively unimportant, there still remains the vastly important one of how the Indians' previous methods of life and political status have affected land titles acquired from them.

The Minnesota investor in rural real estate, particularly in the newer and less populous sections of the state, and the lawyer who passes upon the titles are actively interested in these Indian land problems; probably from no other state in the Union, except Oklahoma, do so many and various legal questions of this nature reach the federal and state tribunals nisi prius and appellate. It will doubtless be a source of surprise to such lawyers as will read this article to learn that there have been on the dockets of our Minnesota federal and state courts, within the last five years, approximately fifteen hundred actions having their origin in these Indian questions, the variety and complexity of which have been such as to create a specialty.

The history of land titles in the United States and Canada is substantially the same. The first visitors to American shores found the land in the occupancy of native tribes who wandered over its extent unhindered, save by their own inclination, and the active opposition of other similar nomadic tribes. Their tenure was by occupancy only; the Indian seems never to have developed the white man's conception of a fee title or of any form of ownership whatever severable from possession. The yearly return of a certain tribe to a particular locality, with a claim of right thereto, likened by some writers to our titles, discloses itself on further investigation to have been nothing more abstract than a re-assertion of a right of occupancy,—the land in the interim being without a definable status. The claim was unrecognized by other tribes, save as a matter of expediency,—a sort of comity existing between those nations having a degree of friendliness toward each other.

The European discoverer, with his notion of a fee severable from possession, seized the opportunity thus presented, and planting a cross or a standard in the new land, claimed the fee thereof for his sovereign, salving his conscience the while with the thought that the Indian not knowing that he ever had a fee, would not realize that he lost one. Theoretically and juridically we have here, then, the basic principle of Indian land titles—a right of occupancy in the Indian with the fee elsewhere. Eventually this became a recognized principle of international and national law, governing the conduct of the European nations among themselves in their absorption of the North American continent and establishing the rule of law which has governed legal tribunals from the day of discovery to the present time. Whether the question

be presented to the ancient courts of Virginia or the newer ones of Minnesota, it is *stare decisis*.

This created a strange situation, for clearly land has no value apart from occupancy and user; and a naked fee to the entire stretch from the Atlantic to the Pacific, with an outstanding eternal and exclusive right of possession thereto elsewhere would not produce sufficient funds to pay a notary for acknowledging its conveyance. So there became of necessity attached to this fee certain incidents of real value, among which were the exclusive right of the fee owner to acquire of the Indians their right of occupancy, and the further doctrine that such right once abandoned attaches itself automatically to the fee. Abreast these two principles, like gallant soldiers, took up their westward journey, the red-man giving ground before them until now there remain to him but a few scattered reservations of all his vast domain—eloquent testimony to the power of a fee (with incidents).

The principles set forth above have been enunciated by our courts in innumerable cases, the leading one of which is *Johnson, et al., v. McIntosh*,<sup>1</sup> in which the opinion was written by Chief Justice Marshall. It is to this opinion that courts and attorneys generally resort for the purpose of ascertaining the fundamental theory of Indian political status and the underlying principles governing Indian land titles. Another well considered and well known case states the rule of law as follows: Indians, while maintaining their tribal relations are domestic dependent nations that occupy a territory to which we assert a title independent of their will which must take effect in point of possession when their right of possession ceases.<sup>2</sup> Other cases elaborating upon this principle will be found in the foot-note.<sup>3</sup>

It was under this rule that the United States at one time held title to all of the territory now comprised within the limits of the state of Minnesota—the ultimate fee in the United States with the right of occupancy, user and possession in the Indians. This right of occupancy and user is no valueless transitory right, but

<sup>1</sup> *Johnson v. McIntosh*, (1823) 8 Wheat. (U. S.) 543, 5 L. Ed. 681.

<sup>2</sup> *Cherokee Nation v. Georgia*, (1831) 5 Pet. (U. S.) 1, 8 L. Ed. 25.

<sup>3</sup> *Holden v. Joy*, (1872) 17 Wall. (U. S.) 211, 21 L. Ed. 523; *United States v. Cook*, (1873) 19 Wall. (U. S.) 591, 22 L. Ed. 210; *Beecher v. Wetherby*, (1877) 95 U. S. 517, 24 L. Ed. 440; *Buttz v. N. P. Ry. Co.*, (1886) 119 U. S. 55 (67), 30 L. Ed. 33, 7 S. C. R. 100; *Jones v. Meehan*, (1899) 175 U. S. 1, 44 L. Ed. 49, 20 S. C. R. 1; *Worcester v. Georgia*, (1832) 6 Pet. (U. S.) 515, 8 L. Ed. 483; *United States v. Shanks*, (1870) 15 Minn. 369 (302).

has always been accorded in the courts of our country a dignity and inviolability equal to that of the fee itself; consequently in determining the validity of a title in Minnesota, challenged at its source, one must first ascertain when and by what means the Indians' right to the same was relinquished. A failure to make this search may, and often has resulted in an opinion that the title to the land in question was in a certain party in fee, only to have it appear later that this fee was burdened with an exclusive right of occupancy either in an Indian tribe or individual.

Relinquishments of these Indian rights are to be found in the numerous treaties with the tribes formerly occupying this territory—chiefly with the Sioux or Dakota and the Chippewa or Ojibway tribes.

The boundary between these two nations having been fixed by the treaty of August 19, 1825,<sup>4</sup> thereafter the United States proceeded to acquire the Indian title through the medium of various treaties and compacts.<sup>5</sup>

About the year 1862 the federal government had obtained relinquishments to all of the Sioux lands within the boundaries of the state of Minnesota, except a few reservation tracts, and these were confiscated as a penalty for the Sioux up-rising, which occurred in that year. The Chippewa lands were acquired in the same way by treaty, but not so completely, and in the year 1889 steps were taken to obtain all of their remaining reservations in this state, except two. Congress, having declared in the year 1871 that thereafter no more treaties should be made with Indian tribes, but that they should be governed by the federal laws enacted independently of treaty agreements, passed in 1889 what is commonly known and referred to by lawyers and courts as the Nelson Act,<sup>6</sup> providing for the cession by the Chippewa Indians of all of their reserved lands in Minnesota, except the White Earth and Red Lake Reservations, so that in the entire state there now remain only these two reservations. Agencies are maintained

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<sup>4</sup> 7 Stat. at L. 272.

<sup>5</sup> Sioux Treaties, Sept. 29, 1837, 7 Stat. at L. 538; July 23, 1851, 10 Stat. at L. 949; Aug. 5, 1851, 10 Stat. at L. 954; Chippewa Treaties, July 29, 1837, 7 Stat. at L. 536; Oct. 4, 1842, 7 Stat. at L. 591; Aug. 2, 1847, 9 Stat. at L. 904; Aug. 21, 1847, 9 Stat. at L. 908; Sept. 30, 1854, 10 Stat. at L. 1109; Feb. 22, 1855, 10 Stat. at L. 1165; Mar. 11, 1863, 12 Stat. at L. 1249; Oct. 2, 1863, 13 Stat. at L. 667; Mar. 7, 1864, 13 Stat. at L. 693; Mar. 19, 1867, 16 Stat. at L. 719.

<sup>6</sup> 25 Stat. at L. 642.

at other points, but these are the only two reservations in the true sense now existent within Minnesota.

In searching out land titles in this state, then, the lawyer may start with the assumption that the fee was in the United States by virtue of the principles set forth in *Johnson v. McIntosh*<sup>7</sup> and that at some time this fee was burdened with an exclusive right of occupancy in some Indian tribe.

Other Indian tribes than the Sioux and Chippewas have for short periods had a right of occupancy to limited portions of Minnesota territory, but the bulk of this state was held by the Sioux and Chippewa tribes and a resort must be had to the treaties and laws hereinbefore mentioned, to ascertain how, and under what conditions the right to occupancy passed from the Indian to the national government. It is in this manner and by this means that the right of the Indian has been extinguished to Minnesota and to substantially all the rest of the United States.

Occasionally there finds its way into our courts a suit wherein the plaintiff claims title to immensely valuable tracts of land, generally located in some large city (Chicago being favored in this regard), by virtue of an ancient compact or agreement with some historic Indian chief or sachem. The leading case of *Johnson v. McIntosh* arose out of an attempt on the part of individuals claiming through Indian grantors to dispossess others claiming through the United States, and decided once for all the invalidity of such grants.

While this is the rule of law which has been applied by the courts generally when the transaction is between individual Indians or tribes and other individuals, a different rule obtains when the grant to an individual is incorporated in a treaty to which the United States itself is a party; in such a case the grant is valid.<sup>9</sup> If the treaty reservation is to an Indian member of the tribe, party to the treaty, he takes the reserved property in fee, and unless a restrictive clause is incorporated in the grant, may alienate the same.<sup>10</sup> However, if the reservation is for the benefit of the tribe itself and not for an individual member thereof

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<sup>7</sup> (1823) 8 Wheat. (U. S.) 543, 5 L. Ed. 681.

<sup>8</sup> Ibid.

<sup>9</sup> *Mitchell v. United States*, (1835) 9 Pet. (U. S.) 711; *Crews v. Bur-*  
*cham*, (1861) 1 Black (U. S.) 352, 17 L. Ed. 91.

<sup>10</sup> *Jones v. Meehan*, (1899) 175 U. S. 1, 44 L. Ed. 49, 20 S. C. R. 1.

no fee passes, but the United States holds title in trust for the use and benefit of the tribe.<sup>11</sup>

It may be stated as a general rule that lands ceded by Indian tribes to the federal government, unless the treaty of cession stipulates otherwise, become public lands within the strict meaning of that term, as used in Congressional statutes dealing with the disposition of public lands and are subject to the usual homestead laws relative thereto.<sup>12</sup> Inasmuch as the general principles of public land law are incorporated in innumerable court decisions throughout this country, and in textbooks, nothing need be said in this article with respect to such lands as have reached the national government through proper cession; no special difficulty attaches to such titles. The great majority of suits have their origin in attempts by individual Indians to dispose of their lands, however obtained, to individual purchasers.

Until comparatively recent years, generally throughout the United States and its territories, the Indian tribes held their lands by tenure of common occupancy with the power of cession in the chiefs and head-men; neither their domestic or political economy demanded private property in land and it was only the federal policy toward them that wrought a change in this respect.

In the year 1887 Congress being of the opinion that the progress of the redmen towards civilization could best be accelerated by breaking up the large tracts held in common into individual and separate parcels, enacted what is called the General Allotment Act<sup>13</sup> providing for the allotment in severalty of the remaining reservations throughout the United States in the discretion of the President. This Act provided, in substance (so far as the same is material to this discussion), that there should be allotted to each individual Indian entitled thereto, eighty acres of land, such allotment to be evidenced by patents (so-called):

“which patents shall be of the legal effect and declare that the United States does and will hold the land thus allotted for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or in case of his decease, of his heirs, according to the laws of the state or territory where such land is located, and that at the expiration of such period, the United States will convey the same

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<sup>11</sup> *Johnson v. Gearlds*, (1914) 234 U. S. 422, 58 L. Ed. 1383, 34 S. C. R. 794.

<sup>12</sup> *Selkirk v. Stephens*, (1898) 72 Minn. 335, 75 N. W. 386, 40 L. R. A. 759.

<sup>13</sup> 24 Stat. at L. 388.

by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or encumbrance whatsoever: *Provided*, That the President of the United States may in any case in his discretion extend the period, and if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void: *Provided*, That the law of descent and partition in force in the state or territory where such lands are situate shall apply thereto after patents therefor have been executed and delivered.”

By this same Act those Indians who took allotments under it were made citizens of the United States and subject to the laws, both civil and criminal, of the state or territory in which they resided. By later Act<sup>14</sup> this citizenship and subjection to state laws was withheld until the issuance of fee patents.

Under the General Allotment Acts or acts predicated thereon, large areas in Minnesota and elsewhere were segregated from common ownership and allotted in severalty to individual Indians. What sort of title do such Indians take? They take an equitable inheritable interest, inalienable, non-taxable and not subject to judicial sale, lien or attachment in any form.<sup>15</sup> The legal title to the allotted lands remains in the United States which holds the same in trust for the allottee or his heirs throughout the statutory period of twenty-five years.

Much of the lands thus allotted is of great value—some as oil properties, as in the case of the Oklahoma lands; others for agricultural and timber products, such as the Minnesota lands; and innumerable attempts have been made to secure them through purchase either directly from allottees or by judicial procedure. Such attempts have been invariably frustrated by prompt action on the part of the United States bringing suit in its own name to set aside such liens and conveyances as violative of the restrictions imposed by the federal laws. It matters not whether these restrictions are those imposed by the General Allotment Act or by the terms of patents issued pursuant to some other restrictive law.<sup>16</sup>

So long then as lands are held by original Indian allottees under the General Allotment Act, or similar acts, they are inalien-

<sup>14</sup> May 8, 1906, 34 Stat. at L. 182.

<sup>15</sup> *Beam v. United States*, (1908) 162 Fed. 260.

<sup>16</sup> *Heckman v. United States*, (1912) 224 U. S. 413, 56 L. Ed. 820, 32 S. C. R. 424.

able; upon the death of the allottee the heirs may sell, but the conveyance does not become effective for any purpose until approved by the secretary of the interior, whereupon the title passes to the purchaser as though a fee simple patent had issued to the allottee.<sup>17</sup>

An inspection of the General Allotment Act and an acquaintance with the manner in which these provisions have been executed readily discloses the grounds for the multiplicity of suits which have arisen under it. In the main, the method by which an Indian obtains an allotment on a Minnesota reservation is for him to make an application for a certain described tract; this application along with others will then be held in the office of the Indian Agent until a sufficient number are on file to warrant the making of a schedule thereof, to be forwarded to the secretary of the interior for his approval. A long period of time (in some instances ten years), may intervene before the application and the approval by the secretary. What are the rights of the applicant during this time, and if he dies what are the rights of his heirs? Are his rights fixed and descendable as in the case of a homestead entryman, or does he have a mere personal expectancy—a float which perishes with him? In other words, when does an allotment become effective? Is it upon application or upon the approval thereof by the secretary or not until the trust patent has issued? Important as this question is it seems never to have been presented to the Supreme Court of the United States, nor so far as the writer knows, to a United States circuit court of appeals. Two federal trial courts have been called upon to answer this question upon demurrer, and they appear to have reached directly opposite conclusions. It was held in one case<sup>18</sup> that one who had gone no further than to apply for an allotment had a personal expectancy only and that upon his death his heirs took nothing. In a later case<sup>19</sup> the court was of the opinion that if selection had been made, an inheritable right was created entitling the heirs of the applicant to the allotment selected. Under the circumstances, the question is an open one so far as the courts are concerned, and a lawyer in giving his opinion must be governed by his own judgment and the appeal which the reasoning of the two cases makes to him. It is the opinion of the writer

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<sup>17</sup> Act May 27, 1902, 32 Stat. at L. 245.

<sup>18</sup> *Sloan v. United States*, (1902) 118 Fed. 283.

<sup>19</sup> *Smith v. Bonifer*, (1904) 132 Fed. 889.

that if a selection has been made an inheritable interest vests and that the heirs of the applicant will take the same right to have the allotment completed that the applicant would have had if he had lived. This does not mean that the right to the allotment becomes absolute upon selection; it only means that whatever right or advantage the original selector gained will descend, and then if the selection is later approved and a trust patent issued the allotment becomes complete in the heirs. This is in line with the case of *Smith v. Bonifer*.<sup>20</sup> In a very recent case *United States v. Chase*<sup>21</sup> decided by the United States Supreme Court on November 5, 1917, it was held that a patent issued in the name of an Indian applicant after his death, inures to the benefit of his heirs under the United States Revised Statutes, Section 2448, and that if the selection had not at the time of the death of the applicant advanced to a point where the patent could properly issue, only the United States or the tribe could complain of its improper issuance. This disposes of the matter under discussion so far as individual contenders are concerned, but leaves undecided the point at which it may be said that the patent was properly issued.

Assuming that such an estate has been created as to be descendable a new difficulty presents itself. What tribunal shall determine the heirs of the deceased allottee? The General Allotment Act provides that the United States shall hold the allotted lands in trust for the allottee or his heirs, *according to the laws of the state in which the land is situate*. At first blush this would seem to indicate that the state probate courts have jurisdiction, but a more careful perusal and a consideration of the decided cases lead to a different conclusion. It will be observed that the Act does not say that the heirs are to be determined by the courts of the state, it merely provides that the United States will hold the land in trust for the heirs, according to the laws of the state. This means that those persons who are the heirs under the state law will become cestuis qui trustent upon the death of the allottee and that the United States will hold the lands in trust for them in the proportions provided by the state laws governing the descent of real property, but it does not mean that the jurisdiction to ascertain those persons has been surrendered by federal agencies to state probate courts.

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<sup>20</sup> Note 19 *supra*.

<sup>21</sup> (1917) 38 S. C. R. 24, U. S. Adv. Ops. 1917, p. 30.

Succinctly, it may be stated that prior to August 15, 1894, such jurisdiction was in the secretary of the interior; that by the Act of August 15, 1894,<sup>22</sup> this jurisdiction was transferred to the district courts of the United States<sup>23</sup> where it remained until the Act of June 25, 1910,<sup>24</sup> when it was restored to the secretary of the interior.<sup>25</sup>

In this latter case it was held that although the jurisdiction of a tribunal had attached for the purpose of determining heirs under Indian Allotment Acts, such jurisdiction ceased immediately upon the passage of a law vesting the same in another tribunal. Thus, although the jurisdiction of the district court to determine heirship had already been properly invoked, if during the pendency, either in the district court or in the circuit court of appeals, Congress should enact a law vesting jurisdiction elsewhere, the suit would be subject to dismissal on the grounds of lost jurisdiction. For a Minnesota case denying state probate jurisdiction over the estate of an allottee who died while his land was held in trust by the United States, see *Holmes v. Praun*.<sup>26</sup> In an earlier Minnesota case<sup>27</sup> it was held that over the estate of a tribal Indian not a citizen, even though he held title to his lands in fee simple, the probate court of the state had no authority.

On the White Earth Reservation in Minnesota, where for the last decade the greatest activity has prevailed, the situation has been complicated by an Act of Congress, passed June 21, 1906,<sup>28</sup> providing as follows:

"That all restrictions as to sale, encumbrance or taxation for allotments within the White Earth Reservation in the State of Minnesota, now or hereafter held by adult mixed-blood Indians are hereby removed and the trust deeds heretofore or hereafter executed by the Department for such allotments are hereby declared to pass the title in fee simple, or such mixed-bloods upon application shall be entitled to receive a patent in fee simple for such allotments; and as to full-bloods, said restrictions shall be removed when the Secretary of the Interior is satisfied that such adult full-blood Indians are competent to handle their own affairs, and in such case the Secretary of the Interior shall issue

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<sup>22</sup> 28 Stat. at L. 286.

<sup>23</sup> *McKay v. Kalyton*, (1907) 204 U. S. 458, 51 L. Ed. 566, 27 S. C. R. 346.

<sup>24</sup> 36 Stat. at L. 855.

<sup>25</sup> *Hallowell v. Commons*, (1916) 239 U. S. 506, 36 S. C. R. 202.

<sup>26</sup> *Holmes v. Praun*, (1915) 130 Minn. 487, 153 N. W. 951.

<sup>27</sup> *United States v. Shanks*, (1870) 15 Minn. 369.

<sup>28</sup> 34 Stat. at L. 325.

to such Indian allottee a patent in fee simple upon application."

This innocent-looking and apparently clear statute has concealed within it a litigation germ of marvelous strength and activity, and the machinery of our federal courts has been almost clogged with the results following its enactment. Congress in its wisdom had provided that adult mixed-blood Indians might sell their allotments, but neglected to provide for any roll showing who were of that class, and also failed to define the term "mixed-blood." It might seem that no definition of such a term should be necessary, but a number of years after the passage of the Act, and after approximately one-half of the Reservation had passed into the hands of purchasers who had placed their own interpretation on the term, officials of the United States Department of Justice appeared and instituted suits in equity, praying the cancellation of all instruments, affecting about one thousand allotments, on the grounds that the same were violative of the restrictive clauses in the trust patents, and stoutly maintaining that when Congress enacted the law permitting mixed-bloods to sell, it meant by the term "mixed-blood" only such Indians as had such a quantum of white blood in their veins as would tend to make them competent to handle their own affairs. This position was maintained with such show of reason and authority, that on two occasions it was held by the federal district court that unless it could be shown that the allottee had at least one-eighth white blood, he should not be classed as a mixed-blood, and that his lands should remain under restraint. On appeal the circuit court of appeals reversed the trial court, holding that any Indian having an identifiable quantum of other than Indian blood, no matter how little, is a mixed-blood under the Act; which holding was confirmed by the Supreme Court of the United States.<sup>29</sup> It is of interest to know that in its argument before the Supreme Court, the United States shifted its ground somewhat and maintained that for the Indian to come under the classification "mixed-blood" he must have at least one-half white-blood, and that all those having less than one-half white blood are full-bloods.

This difficulty having been removed by the Supreme Court, the White Earth title question resolved itself into the problem of how to prove the facts required—how to show to a court that

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<sup>29</sup> *United States v. 1st Nat. Bk. of Detroit, Minn.*, (1914) 234 U. S. 245, 58 L. Ed. 1298, 34 S. C. R. 846.

an Indian allottee had some white blood. In those instances where the allottee was a quarter or a half or more white no serious difficulty would be encountered; it is in the upper registers, so to speak, in those cases where the presence of white blood in very small proportions, such as a one-eighth, a one-sixty-fourth, or a one-one hundred twenty-eighth is sought to be proven that trouble arises. What sort of testimony is admissible on such an issue? If the Indian whose blood status is in dispute has but a one-one hundred twenty-eighth of white blood, then its presence is not discernible to the eye and this white blood must have had its origin in some remote white ancestor concerning whom no living witness can speak, except from hearsay. A living witness might say that he had heard his grandfather say that his father or grandfather was a white man, and if this sort of testimony falls within any exception to the hearsay rule, proof of white blood in such instances might possibly be made out, if such testimony may be considered to have any probative value. No recent cases along this line are available, but it was early held by the Supreme Court of the United States in two cases arising on petitions for freedom by slaves, that race and status may not be proven by hearsay.<sup>30</sup> While it is probable that a modern court would relax somewhat the strict rule forbidding hearsay testimony so as to admit proof of reputation in the family, it is by no means certain that it would do so, and if this line of evidence is to be eliminated there remains only the appearance of the Indian and direct testimony as to his blood status, and of these the former in close cases is utterly unreliable.

Direct testimony will be either by experts or non-experts, and experience has shown that it is practically impossible so to qualify a non-expert as to make him competent. As a final expedient in disposing of the many cases involving this question, resort was had to the science of anthropology, and experts therein have been called upon to make personal examinations of the Indians and express opinions as to the blood status. There the matter rests.

The Act of Congress of June 30, 1913,<sup>31</sup> provides for the appointment of a commission with exclusive and conclusive powers to determine the age and blood status of White Earth allottees,

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<sup>30</sup> *Mima Queen v. Hepburn*, (1813) 7 Cranch (U. S.) 290, 3 L. Ed. 348; *Davis v. Wood*, (1816) 1 Wheat. (U. S.) 6, 4 L. Ed. 22.

<sup>31</sup> 39 Stat. at L. 77.

and when its report has been properly approved, these vexatious questions will be eliminated.

Numerous isolated problems have arisen from the chaos of Indian laws and treaties, such as the extent of federal control of Indians' persons and property at the various steps of emancipation; the right of the state to tax Indian lands and the jurisdiction of state courts generally with respect thereto.

By an uninterrupted line of authorities it has been established that Indians holding allotments under the General Allotment Act or Acts equivalent thereto are dependent wards of the nation in whose behalf the federal government may in its own name institute and maintain legal and equitable actions almost *ad libitum*. Recently an attempt was made to continue this guardianship in the case of those Indians whose land had been freed of restrictions by the Act of June 21, 1906,<sup>32</sup> but the attempt was a failure.<sup>33</sup>

The same Act purported to make Indian lands belonging to certain classes taxable, and the state authorities acting thereunder proceeded to list and assess them, a process which was halted by an injunction from the federal district court, sustained by the circuit court of appeals.<sup>34</sup> The court held that the exemption from taxation created by the Nelson Act was a property right of which the Indians could not be divested by Act of Congress.

Among the questions unrelated to the foregoing is that of the validity of those titles originating in so-called half-breed scrip. Immense tracts of valuable timber land in the northern section of our state were located under authority of those scrip certificates, and some of the largest and proudest fortunes of the present day, will, upon investigation, disclose an origin due to adeptness of their founders in collecting this same lowly scrip. As originally issued these certificates were intended by Congress to start the mixed-blood Indians on the way to industry and civilization by providing them with agricultural homes within the limits of the lands ceded to the United States by treaties; but this purpose was soon lost sight of and the Indians, with the acquiescence of the government officials, soon began to treat their certificates as assignable and those issued under the treaty of

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<sup>32</sup> Note 28 *supra*.

<sup>33</sup> *United States v. Waller*, (1917) 243 U. S. 452, 61 L. Ed. 843, 37 S. C. R. 430.

<sup>34</sup> *United States v. Morrow*, (1917) 243 Fed. 854.

February 22, 1855, have been so held by our Supreme Court.<sup>35</sup> Certificates issued under the treaty of 1854 were held by the court to be not assignable,<sup>36</sup> but in practice, assignments were taken and the land located in the name of the Indian. An inspection of the records shows that these scrip certificates were located throughout the public land states of the nation; many valuable mineral lands in California and Colorado having been acquired in this way. Titles based upon them are generally good.

Despite the extent to which these Indian questions have been litigated, there remain innumerable sources of dispute. As an instance of the uncertainty which prevails, the following is a good illustration:

A certain White Earth Indian having an allotment applied to the secretary of the interior for a fee simple patent under the Act of June 21, 1906, which, as stated above, provided for the issuance of such patents to adult mixed-bloods. The secretary passed upon the application, decided that the applicant was an adult mixed-blood and issued a fee patent to him. The Indian then sold the land, the purchaser relying upon the fee patent. Later the same Indian sold to another party this same land, and the second purchaser brought suit against the first vendee in the state district court in an action to determine adverse claims, contending that when the first deed was given the Indian was a minor. The defendant answered, setting up the fee patent as determinative of the fact that the Indian was an adult, because fee patents could be issued only to adults. The case went to the Supreme Court of the United States, where it was held that so far as the United States was concerned, the Indian was an adult and the fee patent conclusive, but as between individuals contesting rights under the patent, the question of age was an open one permitting proof of the Indian's minority. Thus, we have a case of a person being conclusively an adult for the purpose of taking title, but a minor when he attempts to dispose of the same.<sup>37</sup>

No ambitious attempt has been made in this article comprehensively to state the law governing the many and varying Indian titles in Minnesota; a volume of respectable size would be required to do that. The basic principles have been touched upon

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<sup>35</sup> *Kipp v. Love*, (1915) 128 Minn. 498, 151 N. W. 201.

<sup>36</sup> *Dole v. Wilson*. (1874) 20 Minn. 356.

<sup>37</sup> *Dickson v. Luck Land Co.*, (1917) 242 U. S. 371, 61 L. Ed. 371, 37 S. C. R. 167.

and enough of the various features discussed to suggest to any one interested, the pitfalls which may be encountered. Any attempt to make a short review of this character a guide could only result in a disservice, for it is the experience of those having to do with these matters in large volume that in no other field of the law are decisions and interpretations in one case of so little value in another.

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