

The Burger Court Opinion Writing Database

United States v. Mitchell
445 U.S. 535 (1980)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 10, 1980

MEMORANDUM TO THE CONFERENCE

RE: 78-1756 - U.S. v. Mitchell

This will confirm my previously tentative "recusal" in this case.

I should be shown as "taking no part in the decision of this case."

Regards,

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 10, 1980

RE: No. 78-1756 United States v. Mitchell, et al.

Dear Byron:

Please join me.

Sincerely,

Brice

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

April 1, 1980

Re: No. 78-1756, United States v. Mitchell

Dear Thurgood,

I am glad to join your opinion for
the Court.

Sincerely yours,

C.S.
i

Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 7, 1980

Re: 78-1756 - United States v. Mitchell

Dear Thurgood,

My dissent in this case is at the
printer.

Sincerely yours,



Mr. Justice Marshall
Copies to the Conference
cmc

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 ✓Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: Mr. Justice White
 Circulated: 9 APR 1980

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1756

United States, Petitioner, | On Writ of Certiorari to the United
 v. | States Court of Claims.
 Helen Mitchell et al.

[April —, 1980]

MR. JUSTICE WHITE, dissenting.

In *United States v. Testan*, 424 U. S. 392 (1966), we held that a statute creates a substantive right enforceable against the United States in money damages only if it "can fairly be interpreted as mandating compensation by the Federal Government for the damages sustained." *Id.*, at 400, quoting, *Eastport S. S. Corp. v. United States*, 178 Ct. Cl. 599, 607, 372 F. 2d 1002, 1009 (1967). The Court today holds that *Testan* bars a damages suit against the Government by Indian allottees, their tribe and their association for breach of fiduciary duties in the management of timber lands allotted under the General Allotment Act of 1887 (hereafter Act), 24 Stat. 388, 25 U. S. C. § 331 *et seq.* Because I believe that the Act can fairly be interpreted as mandating compensation, I dissent.

The Act could hardly be more explicit as to the status of allotted lands. They are to be held by the United States "in trust for the sole use and benefit of the Indian," § 5 of the Act, 24 Stat. 389, as amended, 25 U. S. C. § 348 (emphasis added). The United States has here unmistakably assumed the obligation to act as trustee of these lands with the Indian allottees as beneficiaries. The Court holds, however, that the "trust" established by § 5 is not a trust as that term is commonly understood, and that Congress had no intention of imposing full fiduciary obligations on the United States. Congress' purposes, it is said, were narrower: to impose a

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 ✓Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rohnquist
 Mr. Justice Stevens

STYLISTIC CHANGES THROUGHOUT.
 SEE PAGES: 1

From: Mr. Justice White

Circulated:

Recirculated: 11 APR 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1756

United States, Petitioner,
 v.
 Helen Mitchell et al. | On Writ of Certiorari to the United
 States Court of Claims.

[April —, 1980]

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN
 and MR. JUSTICE STEVENS join, dissenting.

In *United States v. Testan*, 424 U. S. 392 (1976), we held that a statute creates a substantive right enforceable against the United States in money damages only if it "can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained." *Id.*, at 400, quoting, *Eastport S. S. Corp. v. United States*, 178 Ct. Cl. 599, 607, 372 F. 2d 1002, 1009 (1967). The Court today holds that *Testan* bars a damages suit against the Government by Indian allottees, their Tribe and their association for breach of fiduciary duties in the management of timber lands allotted under the General Allotment Act of 1887 (Act), 24 Stat. 388, 25 U. S. C. § 331 *et seq.* Because I believe that the Act can fairly be interpreted as mandating compensation, I dissent.

The Act could hardly be more explicit as to the status of allotted lands. They are to be held by the United States "in trust for the sole use and benefit of the Indian," § 5 of the Act, 24 Stat. 389, as amended, 25 U. S. C. § 348 (emphasis added). The United States has here unmistakably assumed the obligation to act as trustee of these lands with the Indian allottees as beneficiaries. The Court holds, however, that the "trust" established by § 5 is not a trust as that term is commonly understood, and that Congress had no intention of imposing full fiduciary obligations on the United States. Congress' purposes, it is said, were narrower: to impose a

31 MAR 1980

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1756

United States, Petitioner, *v.* Helen Mitchell et al. On Writ of Certiorari to the United States Court of Claims.

[April —, 1980]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case presents the question whether the General Allotment Act of 1887 authorizes the award of money damages against the United States for alleged mismanagement of forests located on lands allotted to Indians under that Act.

II

In 1873, a reservation was established by Executive order in the State of Washington for the Quinault Tribe. 1 Kappler 923. Much of the land within the reservation was forested. By 1935, acting under the authority of the General Allotment Act of 1887, 24 Stat. 388, 25 U. S. C. §§ 331-358, the Government had allotted all of the reservation's land in trust to individual Indians. Other enactments of Congress require the Secretary of the Interior to manage these forests, sell the timber, and pay the proceeds of such sales, less administrative expenses, to the allottees.¹

¹ Current statutes relevant to the Secretary's responsibilities with respect to Indian timber resources include 25 U. S. C. § 162a (investment of funds of tribe and individual allottee); 25 U. S. C. §§ 318a, 323-325 (roads and rights of way); 25 U. S. C. §§ 349, 372 (issuance of fee patents to allottees or heirs found to be capable of managing their affairs); 25 U. S. C. §§ 406-407 (sale of timber); 25 U. S. C. § 413 (collection of administrative expenses incurred on behalf of Indians); 25 U. S. C. § 466 (sustained-yield management of forests).

5, 9, 11

11 APR 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1756

United States, Petitioner, | On Writ of Certiorari to the United
v. | States Court of Claims.
Helen Mitchell et al.

[April —, 1980]

Mr. JUSTICE MARSHALL delivered the opinion of the Court. This case presents the question whether the General Allotment Act of 1887 authorizes the award of money damages against the United States for alleged mismanagement of forests located on lands allotted to Indians under that Act.

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~~Citation~~
Corrections throughout

14 APR 1980

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1756

United States, Petitioner, | On Writ of Certiorari to the United
v. | States Court of Claims.
Helen Mitchell et al.

[April —, 1980]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case presents the question whether the General Allotment Act of 1887 authorizes the award of money damages against the United States for alleged mismanagement of forests located on lands allotted to Indians under that Act.

I

In 1873, a reservation was established by Executive order in the State of Washington for the Quinault Tribe. I C. Kappler, Indian Affairs, 923 (2d ed. 1904). Much of the land within the reservation was forested. By 1935, acting under the authority of the General Allotment Act of 1887, ch. 119, 24 Stat. 388, 25 U. S. C. §§ 331-358, the Government had allotted all of the reservation's land in trust to individual Indians. Other enactments of Congress require the Secretary of the Interior to manage these forests, sell the timber, and pay the proceeds of such sales, less administrative expenses, to the allottees.¹

¹ Current statutes relevant to the Secretary's responsibilities with respect to Indian timber resources include 25 U. S. C. § 162a (investment of funds of tribe and individual allottee); 25 U. S. C. §§ 318a, 323-325 (roads and rights of way); 25 U. S. C. §§ 349, 372 (issuance of fee patents to allottees or heirs found to be capable of managing their affairs); 25 U. S. C. §§ 406-407 (sale of timber); 25 U. S. C. § 413 (collection of administrative expenses incurred on behalf of Indians); 25 U. S. C. § 466 (sustained-yield management of forests).

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 15, 1980

MEMORANDUM TO THE CONFERENCE

RE: CASE BEING HELD FOR NO. 78-1756,
UNITED STATES v. MITCHELL

No. 79-326, United States v. Duncan. In 1909, the United States purchased certain land in California. The deed of transfer to the United States did not mention the purpose of acquisition or subject the lands to a trust. On part of this land, the Secretary of the Interior established the "Robinson Rancheria," a small Indian reservation community for the East Lake Band of Pomos. In 1958 Congress passed the Rancheria Act, Pub. L. No. 85-671, 72 Stat. 619. This Act provided for the termination of the reservation status of rancherias and of the Indian status of their residents. The lands were to be distributed in unrestricted fee to the Indians residing thereon. Before these distributions were to take place, the Secretary was required "to install or rehabilitate such irrigation or domestic water systems as he and the Indians affected agree, within a reasonable time, should be completed by the United States." Section 3(c) of the Act, 72 Stat. 620. The distribution plan agreed to by the Secretary and the distributees provided: "The Indians of Robinson Rancheria request that the Bureau of Indian Affairs undertake the following actions: . . . (2) Provide water for any residence under construction that is as much as fifty percent completed within a ninety-day period after acceptance of this plan by a majority of the adult Indian distributees."

Supreme Court of the United States
Washington, D. C. 20543

(4)

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 2, 1980

Re: No. 78-1756 - United States v. Mitchell

Dear Thurgood:

Please join me.

Sincerely,

HL

—

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

5

April 1, 1980

78-1756 United States v. Mitchell

Dear Thurgood:

Please join me.

Sincerely,

Lewis

Mr. Justice Marshall

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 7, 1980

Re: No. 78-1756 - United States v. Mitchell

Dear Thurgood:

Please join me.

Sincerely,

Mr. Justice Marshall

Copies to the Conference.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 7, 1980

Re: No. 78-1756 - United States v. Mitchell

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

P.S. (To T.M. only) Do you think it might be wise to mention and distinguish in a footnote Squire v. Capoeman, 351 U.S. 1 (1956), which has some overtones of trust obligation in connection with forestry management with respect to allottees? I leave the matter entirely in your hands, and my join is unconditional.

WHR

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 1, 1980

Re: 78-1756 - United States v. Helen Mitchell

Dear Thurgood:

Please join me.

Respectfully,



Mr. Justice Marshall

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

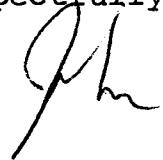
April 9, 1980

Re: 78-1756 - United States v. Mitchell

Dear Thurgood:

With some embarrassment I have just realized that although I had intended to write you a note stating that I would wait for Byron's dissent, I actually sent you a join letter. In view of that error, and the fact that you do have a Court, I would like to withdraw my join and sign up with Byron who has written in accordance with the vote I cast at conference. I apologize for my goof.

Respectfully,



Mr. Justice Marshall

Copies to the Conference