

The Burger Court Opinion Writing Database

United States v. Dann

470 U.S. 39 (1985)

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

X
CHAMBERS OF
THE CHIEF JUSTICE

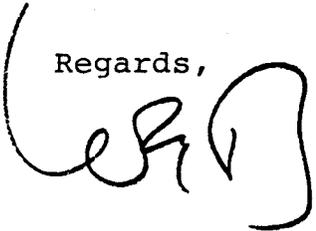
February 14, 1985

Re: No. 83-1476 - United States v. Mary Dann and
Carrie Dann

Dear Bill,

My January 26 memo to join you got "filed" in the
wrong place!

I join, again.

Regards,


Justice Brennan

Copies to the Conference

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Brennan

Circulated: JAN 23 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1476

UNITED STATES, PETITIONER *v.* MARY DANN AND
CARRIE DANN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[January —, 1985]

JUSTICE BRENNAN delivered the opinion of the Court.

The question presented in this case is whether the appropriation of funds into a treasury account pursuant to 31 U. S. C. § 724a (Supp. V 1981)¹ constitutes "payment" under § 22(a) of the Indian Claims Commission Act, 25 U. S. C. § 70u (1976).²

I

This case is an episode in a longstanding conflict between the United States and the Shoshone Tribe over title to lands

¹The statute provided:

There are appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for the payment, not otherwise provided for, as certified by the Comptroller General, of final judgments, awards, and compromise settlements, which are payable in accordance with the terms of . . . awards rendered by the Indian Claims Commission. . . .

²The statute provided:

When the report of the Commission determining any claimant to be entitled to recover has been filed with Congress, such report shall have the effect of a final judgment of the Court of Claims, and there is authorized to be appropriated such sums as are necessary to pay the final determination of the Commission.

The payment of any claim, after its determination in accordance with this [Act], shall be a full discharge of the United States of all claims and demands touching any of the matters involved in the controversy.

To: The Chief Justice
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Brennan

Circulated: _____

Recirculated: JAN 28 1985

WB
Please join me
JM

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1476

UNITED STATES, PETITIONER *v.* MARY DANN AND
CARRIE DANN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
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[January —, 1985]

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²The statute provided:

When the report of the Commission determining any claimant to be entitled to recover has been filed with Congress, such report shall have the effect of a final judgment of the Court of Claims, and there is authorized to be appropriated such sums as are necessary to pay the final determination of the Commission.

The payment of any claim, after its determination in accordance with this [Act], shall be a full discharge of the United States of all claims and demands touching any of the matters involved in the controversy.

Join

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N

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 24, 1985

83-1476 - United States v. Dann

Dear Bill,

Please join me.

Sincerely yours,

Byron

Justice Brennan

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 30, 1985

Re: No. 83-1476-U.S. v. Dann

Dear Bill:

Please join me.

Sincerely,

Jm.

T.M.

Justice Brennan

cc: The Conference

4

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 30, 1985

Re: No. 83-1476, United States v. Dann

Dear Bill:

I shall go along.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 14, 1985

83-1476 United States v. Dann

Dear Bill:

Although I had doubts about this case, and favored a DIG, you have persuaded me.

Please join me.

Sincerely,

Lewis

Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 23, 1985

Re: 83-1476 - United States v. Dann

Dear Bill:

I agree with all of the text of your opinion in this case, and with all of the footnotes except footnote 3. I agree with you that there is dicta in Johnson v. McIntosh and Cherokee Nation v. Georgia that supports the general statement that the footnote makes about aboriginal title. But the holding in Johnson was that a deed based on Indian title could not be recognized in the courts of the United States, and Cherokee Nation went off on a jurisdictional ground. In both cases whatever the court said was addressed to title in an Indian tribe; in this case the Danns are not claiming under the rights of the Shoshone Tribe, but as individual Indians. I think that your footnote resolves several undecided questions if it concludes that the Danns have "a right of exclusive occupancy ... valid against all parties until extinguished by the United States." You are the author of the opinion, and if you want to have a footnote about aboriginal title you are certainly entitled to it; I will be happy to join the opinion if you could make your observations about this difficult subject somewhat more vague and general, or somewhat more precise.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 14, 1985

Re: 83-1476 - United States v. Dann

Dear Bill:

Please join me.

Sincerely,

wm

Justice Brennan

cc: The Conference

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CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

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

January 23, 1985

Re: 83-1476 - United States v. Dann

Dear Bill:

Please join me.

Respectfully,

Justice Brennan

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 28, 1985

No. 83-1476 U.S. v. Dann and Dann

Dear Bill,

Please join me.

Sincerely,

Sandra

Justice Brennan

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