Supplementary Material

Chapter 4: The Early National Era—Equality/Native Americans

Goodell v. Jackson ex dem. Smith, 20 Johns. R. 693 (NY 1823)

James Goodell and James Jackson claimed the right to occupy the same parcel of land. Jackson leased the land from Peter Smith, who bought the land in 1797 from William Sagoharese. William Sagoharese inherited the land from his father John Sagoharese, who received the land from New York as a reward for military service during the American Revolution. Both Sagohareses were Native Americans, members of the Oneida tribe. Goodell claimed that Smith/Jackson did not have good title because Native Americans were not citizens of New York. John Sagoharese, a noncitizen, did not have the right to will his land to his son. William Sagoharese, a noncitizen, did not have the right under New York law to sell land without state permission. The Supreme Court of New York, which is not the highest court in that state, ruled that Native Americans were citizens. As citizens, John Sagoharese had a right to will land to his son and William Sagoharese had a right to sell land without state permission. The crucial passages in Chief Justice Spencer's opinion asserted,

> *These Indians are born in allegiance to the government of this state, for our jurisdiction extends to every part of the state; they receive protection from us, and are subject to our laws. . . . If . . . our jurisdiction exclusively reaches them, if they have no right to punish offences, if they receive protection from our government, are subject to our legislation, being born within the state, they must owe to this government a permanent allegiance, and they cannot be aliens. It does not affect the question, or make them less citizens, that we do not tax them, or require military or other services from them. This is a mere indulgence arising from their peculiar situation. . . . In one sense only, they may be considered as having the semblance of national rights, as regards their right to retain to their own use, or to dispose, under the regulations of our government, of their lands. In every other sense, they are as completely the subjects of our laws as any other citizens; and we must conclude, that they are citizens.*[1]

Chancellor James Kent reversed this ruling. His opinion in Goodell v. Jackson *asserted that Native Americans were not citizens of New York. Kent maintained that Native Americans had a statutory right to will land to the heirs. Nevertheless, because Native Americans were not citizens, New York could forbid them from selling their lands without state permission. Jackson did not have a right to occupy the disputed property because William Sagoharese did not have state permission to sell the land to Peter Smith.*

Compare the Kent opinion with arguments that free blacks were not citizens. What are the most important similarities and differences? Do you believe important differences should have existed in the nineteenth century between the citizenship status of Native Americans and free blacks?

CHANCELLOR KENT, delivered the opinion of the Court.

. . .

The honor and good faith of the state would seem to require, that the grant should have a real and effectual operation, and be deemed to enure to the benefit of *William,* the only lawful issue of the patentee, notwithstanding he belonged to the *Oneida* tribe of *Indians,* as his father had before him.

[1] *Jackson ex dem. Smith v. Goodell*, 20 Johns 188 (NY 1822).

Whether the *Oneida Indians* are to be regarded as aliens or citizens, as a tribe, with some fragments of their ancient independence, or as completely subjugated, broken down, and merged in the great body of our people, appears to me to be quite immaterial in reference to the title of this heir. The government must have intended that the *Indian* heir should take, and the grant is not susceptible of any other reasonable construction. It was no matter, then, in what civil or political relation the *Indian* heir stood in respect to the whites; he still took *as heir,* because the government was competent to vest him with that capacity, and the intention to do it is implied in the grant itself, which was issued by authority of law. This conclusion appears to me too clear to be a mistaken one; and I would here observe, that a patent issued from the land office, in pursuance of a statute, is equivalent, in force and effect, to a legislative grant, directly to the individual. Now, it is understood to be a general rule, that when an alien is allowed specially by statute, to take and hold lands to him and *his heirs,* . . . he has of course a capacity to transmit by inheritance, to his alien offspring, and they have equally a capacity to take. When the legislature speak without restriction or qualification of the heirs of an alien, they must mean such heirs as he was then competent to have; and it would be a reproach to the good sense, or to the good faith of the legislature, to suppose they could have any other meaning. . . . There is a wide and a most material difference between the right to sell to an alien stranger, and the right to transmit by descent to the alien heir. The former is a free and voluntary act, resting on contract, and can readily be dispensed with, without inconvenience; but the latter right is a part of the law of our nature, and deeply rooted in the social affections.

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. . . [T]he question whether *William* was competent to take the lot as heir, does not depend upon the character of *William* as an alien or citizen, *for be he which he may,* the grant from the government to *John,* and his heirs, of necessity, and upon the established principles and usages of law, included the *Indian* son, who was his only lawful issue.

. . .

The *Oneidas,* and the other tribes composing the six nations of *Indians,* were, originally, free and independent nations. It is for the counsel, who contend that they have now ceased to be a distinct people, and become completely incorporated with us, and clothed with all the rights, and bound to all the duties of citizens, to point out the precise time when that event took place. I have not been able to designate the period, or to discover the requisite evidence of such an entire and total revolution. Do our laws, even at this day, allow these *Indians* to participate equally with us, in our civil and political privileges? Do they vote at our elections, or are they represented in our legislature, or have they any concern, as jurors or magistrates, in the administration of justice? Are they, on the other hand, charged with the duties and burthens of citizens? Do they pay taxes, or serve in the militia, or are they required to take a share in any of the details of our local institutions? Do we interfere with the disposition, or descent, or tenure of their property, as between themselves? Do we prove their wills, or grant letters of administration upon their intestate's estates? Do our *Sunday* laws, our school laws, our poor laws, our laws concerning infants and apprentices, or concerning idiots, lunatics, or habitual drunkards, apply to them? Are they subject to our laws, or the laws of the *United States,* against high treason; and do we treat and punish them as traitors, instead of public enemies, when they make war upon us? Are they subject to our laws of marriage and divorce, and would we sustain a criminal prosecution for bigamy, if they should change their wives or husbands, at their own pleasure, and according to their own customs, and contract new matrimonial alliances? I apprehend, that every one of these questions must be answered in the negative, and that, on all these points, they are regarded as dependent allies and alien communities. It was, therefore, with some degree of surprise, that I observed the Supreme Court laying down the doctrine in this case, that these *Indians* of the six nations were "as completely the subjects of our laws as any of our own citizens." In my view of the subject, they have never been regarded as citizens or members of our body politic, within the contemplation of the constitution. They have always been, and are still considered by our laws as dependent tribes, governed by their own usages and chiefs, but placed under our protection, and subject to our coercion, so far as the public safety required it, and no further.

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. . . Though born within our territorial limits, the *Indians* are considered as born under the dominion of their tribes. They are not our subjects, born within the purview of the law, because they are

not born in obedience to us. They belong, by birth, to their own tribes, and these tribes are placed under our protection and dependent upon us; but still we recognize them as national communities.

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My conclusion upon the whole case is,

1. That the patent to *John Sagoharase* and his heirs, was a patent to him and his *Indian* heirs, whatever their civil condition and character might be, whether aliens or natives.

2. That this patent is to be taken to have issued by due authority, and is equal to an express legislative grant of the lands to *John* and his *Indian* heirs.

3. That if the civil or political condition of the *Indian* heir was material in this case, as seems to have been held by the court below, and by some of the counsel here, then my conclusion would be, that by our law he cannot be deemed a citizen.

4. That by the constitution and statute law of this state, no white person can purchase any right or title to land from any one or more *Indians,* either individually or collectively, without the authority and consent of the legislature, and none such existed, when the land in question was purchased by *Peter Smith,* in 1797.