

1907, striking him from the rolls ought not to be interfered with for the reason that the writ of mandamus, upon well-settled principles, ought not to issue to require the Secretary to do that which it now appears he never had any lawful authority to do. But we are of opinion that the facts now adduced are insufficient to require us to say that Goldsby could not establish a right to enrollment. The Government contends, and we have held, that it does not appear in this case whether Goldsby's name was on the original or other tribal rolls, a fact essential to be known in order to determine whether his contention be sound that such an enrollment gave him the right to participate in the division of the funds and lands of the nation irrespective of the action of the Dawes Commission, the court of the Indian Territory, or the citizenship court. The question here involved concerns the right and authority of the Secretary of the Interior to take the action of March 4, 1907, in summarily striking the relator's name from the rolls. That is the question involved in this case.

For the reasons given we think this action was unwarranted, and that the relator is entitled to be restored to the status he occupied before that order was made.

The judgment of the Court of Appeals of the District of Columbia is affirmed.

GARFIELD, SECRETARY OF THE INTERIOR, v.
UNITED STATES *ex rel.* ALLISON.

ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

Nos. 249, 250. Argued October 15, 18, 1908.—Decided November 30, 1908.

Decided on the authority of *Garfield v. Goldsby*, *ante*, p. 249.

THE facts are practically the same as those stated in the opinion of the preceding case.

211 U. S.

Syllabus.

The Attorney General and Mr. Assistant Attorney General Fowler, with whom Mr. William R. Harr was on the brief, for plaintiff in error.

Mr. Charles H. Merillat, with whom Mr. Charles J. Kappler and Mr. James K. Jones were on the brief, for defendant in error.

MR. JUSTICE DAY delivered the opinion of the court.

These cases were argued and submitted with the *Goldsby Case*, No. 248, just decided. In the case of George A. Allison, a patent had been issued for his lands and duly recorded. In the case of Ida Allison, an allotment certificate had been issued.

The relators are Cherokees, but the legislation herein involved is not different from that governing allotments to members of the Chickasaw Nation.

The Allisons made application to the commission for admission to citizenship under the act of June 10, 1896. Their applications were denied and no appeal taken. Afterwards a decision by the commission, granting the application of the Allisons for enrollment as citizens by blood, was affirmed by the Department of the Interior as of April 16, 1904. Their names were summarily stricken from the rolls by the department's order of March 4, 1907. The cases are controlled by the decision in *Goldsby's Case*.

Judgments affirmed.

HOME TELEPHONE AND TELEGRAPH COMPANY v. CITY OF LOS ANGELES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF CALIFORNIA.

No. 173. Argued October 21, 1908.—Decided November 30, 1908.

Only the legislature of a State, or a municipality specifically authorized thereto by the legislature, can surrender by contract a governmental power such as fixing rates.

To grant a corporation the right to charge a specified rate for a specified