STORY OF THE OKLAHOMA BOUNDARIES

By M. E. Melvin, D. D.

As a state Oklahoma is a child among older states, being only thirty-seven years old in November, 1944. But as a geographical area of great historical significance its story antedates that of many older states. Its history can largely be written around the story of its boundaries. For 100 years prior to statehood events of profound significance were taking shape, north, south, east and west of Oklahoma, each of which affected the final shape the state would take.

In less than one hundred years after the Louisiana Purchase of 1803 every foot of land of this great real estate transfer had been allocated and formed into sovereign states of the union, except what is now the state of Oklahoma. With Arkansas on the east, Texas on the south and west, Colorado and Kansas on the north, the possible boundary lines of Oklahoma had already been pre-determined. There were no possible adjustments to make by negotiation. There were later history making disputes over interpretations of defined lines, but when Oklahoma was admitted as a state it was largely a matter of "take it or leave it". In this respect as in some others Oklahoma is unique.

Oklahoma represents then the "left-overs" after the garment of the public domain had been cut to fit the pattern of other states by the congressional "tailors". But there was abundant compensation in this: that when the "seams" of the boundary lines were permanently closed, Oklahoma had woven into its cultural fabric some of the warp and woof of four differing cultures surrounding it. And in this again Oklahoma is unique.

THE EASTERN BOUNDARY—SOME FORGOTTEN HISTORY

Arkansas Territory was set up by Congress on March 2, 1819. Its western boundary was fixed as the 100th degree of longitude.

1 An article on the boundaries of Oklahoma by the writer appeared in The Daily Oklahoman for April 23, 1944, Section C, p. 10. The editors of The Chronicles of Oklahoma asked that the article be enlarged and rewritten, with adequate documentation, for preservation in the volumes of this publication.

Acknowledgment is hereby made of the courtesy of The Daily Oklahoman in permitting the reprint of portions of the article, and especially the use of the drawing, illustrating the contents.

Any attempt to add anything to what has already been written on the boundaries of Oklahoma would certainly include grateful acknowledgement to the following: M. L. Wardell, "Southwest's History Written in Oklahoma's Boundary Story," Chronicles of Oklahoma, V (September, 1927), No. 3, pp. 287-96; Roy Gittinger, Ph.D., The Formation of State of Oklahoma (Berkeley: University of California Press, 1917); J. Stanley Clark, "The Northern Boundary of Oklahoma," The Chronicles of Oklahoma, XV (September, 1937), No. 3, pp. 271-90.
Just eight days before this, on February 22, 1819 Spain and the United States signed a treaty defining the boundary line of the Louisiana Purchase west as up the Red River to the 100th Meridian and thence north to the Arkansas river, etc. Therefore all of what is now Oklahoma, except the "Panhandle", was a part of Arkansas Territory.³

The series of "experiments" in Indian policy was just beginning. The Government undertook to settle the civilized Indian tribes, living east of the Mississippi river, on ceded lands west of the river. Large tracts in what is now western Arkansas and Eastern Oklahoma were ceded to the Choctaws and Cherokees. Conflicting interests between white settlers and Indians were inevitable. The whites in the ceded areas were ordered to move east. Many refused. In 1823 congress voted an appropriation to negotiate a new treaty with the Choctaws. The stipulation was that the dividing line should begin at the southwest corner of Missouri and run due south to Red river. Nothing was done.

The people of Arkansas became aroused over the proposal for the dividing line, and sent a memorial to congress, which Senator Benton of Missouri sponsored. The Senate soon thereafter passed a bill with little opposition to fix the western boundary of the Territory at a point 40 miles west of the southwest corner of Missouri, and thence due south to Red river. This was on March 23, 1924. On May 26th the lower house of congress passed the same bill. This act of congress definitely established the western boundary line.³

Thereupon the Choctaws dissented that this line would throw their cession open to white settlers. It must be remembered that the Indians were interested in pushing the whites farther east, and the whites were ever trying to push the Indians farther west.

On January 20th, 1825, less than eight months after congress had fixed this line, John C. Calhoun, the then Secretary of War, directed by President Monroe, concluded a treaty with the Choctaws by which the boundary line was to begin 100 paces east of Fort Smith, and thence due south to Red river⁴ "it being understood that this line shall constitute and remain the permanent boundary line between the United States and the Choctaws."⁵ Conway, the delegate to congress from Arkansas territory protested in vain.

The Cherokee lands lay north of Arkansas river. The white settlers of this area were becoming dissatisfied with the growing pressure of the Cherokees and began to ask for their removal. What became known as the Lovely Purchase lay within the Cherokee lands.

⁴ Ibid., p. 221.
⁵ Ibid., p. 223.
Many whites had settled in this area (a part of which is now Washington County, Arkansas). And the Cherokees were restless over the encroachment of the whites. The problem was no easy one to solve.

On May 6, 1828, (John Quincy Adams was then President, and Calhoun Vice President) a treaty was signed with the Cherokees which named the boundary line starting at the point of the Choctaw line (100 paces east of Fort Smith), and thence by direct line to southwest corner of Missouri.6

These two Indian treaties, 1825 and 1828, nullified a specific act of congress, took a strip 40 miles wide from Arkansas across its entire western boundary, equal to about 12,000 square miles. If this line had stood it would pass through Wilburton, Oklahoma. Senator Benton challenged these treaties in the Senate without success. "To congress it belonged to dispose of territory; and to her it belonged to repeal her own laws."7 "The fact that the Secretary of War concluded the Choctaw treaty within eight months after an act of congress fixed the boundary 40 miles west, and that the same act appropriated the money for negotiating a treaty with the Choctaws in conformance with the act, made the action of the Executive a bold, if not a high handed one. The question was never carried to the courts. Arkansas submitted too tamely; she should have exhausted every legal means of overturning the treaties."8

So the eastern boundary of Oklahoma was pre-determined for her by the Indian policy of the Government, which was too much of a hit and miss policy. Looking back now in the perspective of more than 100 years it is perhaps safe to say that the Government through executive order did the right thing but in the wrong way. The writer does not recall another instance where an act of congress has been nullified by the Executive.

THE NORTHERN BOUNDARY—MORE FORGOTTEN HISTORY

A strange combination of problems mingled in the final fixing of the 37th degree of latitude, rather than the 36-30 degree as the southern boundary of Kansas.9 10 The slavery issue, the problem of the Indians, and the growing demand for a trans-continental railroad, each played its part.

The logic of the situation on the organization of the Kansas-Nebraska Territory, and later on the admission of Kansas to the

6 Ibid., p. 206.
7 U. S. Senator Thomas H. Benton, Thirty Years View, I, 107 ff.
8 Reynolda, op. cit., p. 227.
9 For a fuller discussion of the Northern Boundary, see Gittinger, op. cit., chapters 1-3.
union, called for an extension of the historic 36th degree and 30 minute parallel of latitude. This line had played an important part since the days of earliest history. As far back as 1663 it was named by the Crown of England as the northern boundary of North Carolina. As time passed it became the dividing line between Kentucky and Tennessee, and west of the Mississippi, the line between Missouri and Arkansas. It was named as the famous "Missouri Compromise" line, above which slavery could not be permitted. Across Oklahoma it disappears to become the northern boundary of Texas. Why this strange break?

In the original bill in congress known as the Kansas-Nebraska bill the 36-30 line was named. Southerners in congress were opposed. Two objections were advanced: it would again disturb the Indians who had been assured of permanency; it would open to white settlers a large part of the unallocated Louisiana Purchase, and the Southerners were not interested in increasing the population north of the "Missouri Compromise" line of 36-30. The agitation for a transcontinental railroad to follow the old Santa-Fe or Oregon trails pleased the Southerners less. They would protect the Indian, keep whites out, and have the railroad farther south.

Senator Douglass, with whom the railroad issue was an obsession, came forward with a compromise in the pending Kansas-Nebraska bill. He proposed to repeal the "Missouri Compromise", always humiliating to the South, leaving the question of slavery to each Territory or state, the erection of two territories, Kansas and Nebraska, and a change for the southern boundary from 36-30 to the 37th parallel. With the aid of Senator Dixon of Kentucky enough southern votes were secured to pass the bill. It became law, May 30, 1854.

But the slavery issue was intensified. Kansas began to fill rapidly. Abolitionists of the North moved in. It became the "battle ground" over the slavery question. In 1856 there were many clashes bordering on civil war. Then in 1857 came the Dred Scott decision of the Supreme Court permitting a slave owner to take his slaves where he would. Kansas was clamoring for statehood. The South could prevent it. Then one cold day in January 1861, after a number of southern senators had left their seats enough votes were mustered to admit Kansas as a state—with the 37th parallel as the southern boundary.

One is tempted to speculate thus far: under less tension and with more normal conditions the northern boundary of Oklahoma would have been a projection of the 36-30 historic parallel. And George Rainey, in his book, "The Cherokee Strip", is perhaps correct in the guess that if Calhoun, Clay and Webster, all three of whom died between 1850 and '52, had been living the Kansas-Nebraska bill would have been different.
THE PANHANDLE ODDITY—NO MAN’S LAND

Comparatively few know the history of the “Panhandle”, and every one puzzles over the why of this oddity. For this reason it is well to tell the story briefly again.11

It represents the last scrap on the “tailor’s” bench. States and territories had been cut to pattern. There remained not a foot of land in the United States not allocated to some state or territory—none but this strip 167 miles long and 34 miles wide.

Being outside the limits of the Louisiana Purchase it was claimed by Spain until Mexico revolted in 1821. In 1824 Mexico annexed Texas to its state of Coahuila. In 1834 Texas declared her independence, thus taking with her this area west of the 100th meridian. In 1845 Texas came into the union. Being a “slave state”, Texas had no wish to have her boundaries extend beyond the 36-30 parallel. In 1850 Texas sold to the United States for $10,000,000.00 a large area which included all of the “Panhandle.” When the territory of New Mexico was set up in 1850 its eastern boundary on the 103d meridian became the western boundary of the “Panhandle”. Then the Kansas-Nebraska bill of 1854 defining the southern boundary of Kansas-Colorado on the 37th parallel completed the isolation of the “Panhandle”.

This area belonged to no state or territory. It had no courts of law. “It was the only spot on the American continent where civil government had no power, law no existence, and courts no dominion.” Cattlemen enforced their own laws. The two recognized crimes were murder and cattle stealing. The latter was the worse of the two. Death the penalty for both.

There is a rich abundance of stories of those lawless days. This one is typical: A homesteader was taken for cattle rustling and hanged. After the cow boys had finished their job they met the real rustler putting cows in the dead man’s pen. They promptly strung him and went back to tell the widow of the first man that she had the laugh on them!

In July 1888 a sheriff of Kansas and four of his posse were killed in the “hay meadow massacre”. The time was overdue for the Government to act. Through the influence of Wm. H. Taft, then Secretary of War, the whole of this forgotten strip was attached to Oklahoma Territory on March 1, 1889. “Old Beaver County” (the Panhandle) represents the history of the United States.

... being tossed here and there at the will of kings, consuls, presidents and private individuals. It is what was left after the great land adjustments in North America. It was truly the remnant of empires, and being not far from the geographical center of the United States it was the last territory to be given final claims and ownership."

**THE WESTERN BOUNDARY—AND THE LONG CONTROVERSY**

The western boundary was also pre-determined almost 100 years before Oklahoma became a state. It figured in the treaty with Spain in 1819, naming the line as follows: ... “at a point on Red river where the 100th meridian crosses that stream, and thence north ... according to Melish’s map.” The definition of the line was unmistakable. The location of the point on Red river where the 100th meridian crossed it was anything but clear. The treaty makers

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12 Ibid.
of that day knew less about that part of the west than we know of the boundaries of Admiral Byrd’s antarctic claims.

Experts tried from 1853 to 1930 to locate the 100th meridian with scientific accuracy. The Melish map, published in 1818 placed it east of Fort Sill! Captain George B. McClelland in 1853, acting under government orders, with imperfect instruments, and one of them broken, located the meridian about six miles east of the junction of two main forks of Red river. In the meantime Texas had been admitted to the union, and properly claimed everything west of the 100th meridian. Obviously the McClelland line suited Texas. But it was not satisfactory to the United States. Another survey was made in 1859 and located the meridian about 4,000 feet west of the present and final line. And this did not please Texas. (See accompanying map of Greer County, showing the several surveys.)

Here a second factor enters. Which of the two forks of Red river was the Red river of the treaty with Spain? If the North fork, as Texas claimed, then the whole of the disputed area of more than a million and half acres, would go to Texas. But if the South fork, known as Prairie Dog creek, as claimed by the U. S. was the Red river intended in the treaty, then Texas would lose this area.

Texas had assumed jurisdiction over this area, and courts were functioning. Many Texans had moved into this area known as Greer county, thinking they were in Texas. After taking volumes of testimony, examining old records, consulting Indians, tradition, legend, the Supreme Court ruled on March 16, 1896 that the South fork was the real river of the treaty.\(^\text{14}\)

This decision of the Court was flashed to Vernon, Texas by wire, and taken by mail rider to Mangum, late in the afternoon of March 16th. Pandemonium reigned. This decision swept away every court, and voided every title to property. The writer has talked with many who were living in Mangum at the time. Today we can hardly realize the severity of this blow to those Greer County Texans.

But the location of the 100th meridian was not yet settled. One can see a river, but a meridian is an imaginary line, involving higher mathematics and fixed stars. Another survey was made with satisfaction to none in 1892. Another survey in 1902 moved the meridian back east by 3,600 feet. The settlers who lived within the controverted strip, about a mile wide and 134 miles long were in a very unhappy situation. The writer visited Mrs. I. F. C. Moss in recent years who lives on a half section seven miles southwest of Hollis. During the 45 or more years she has lived there her home has not

\(^{14}\) Bulletin No. 817 of the U. S. Geological Survey, by Edward M. Douglas, contains valuable information on all state boundaries.
moved a foot, yet she has lived in one territory, two states and three counties.

Finally the Supreme Court appointed Gannet, an astronomical and geodetic engineer to run the 100th Meridian once for all. He worked from 1927 through 1929 largely at night to avoid the aberration of heat waves. He placed concrete markers every .66 of a mile. In 1930, one hundred and eleven years after the meridian was designated as a boundary, the Supreme Court ruled that the Gannet line was the true meridian. It is said to be the most scientifically accurate boundary line in the U. S.

THE SOUTH BOUNDARY—THE HISTORIC AND ERRATIC RED RIVER

As boundary lines between states, rivers are not as simple as they look. The Supreme Court has had to pass on a number of highly technical questions involving state boundaries and arising out of shifts in river beds due to sudden changes of course. But never in the history of our country has such a complicated and technical issue over a river boundary reached the Supreme Court as was involved in the dispute between Texas and Oklahoma in the Red river case 1920-1927. And never has the Supreme Court had to deal with such a river as the Red. “It was the most complicated boundary dispute on record anywhere. The settlement involved research in history, physiography, plant ecology, surveying, engineering and hydrology as well as law.”

For 100 years people thought little and cared less as to the actual bed of the sandy and erratic Red, or how often and when it shifted its course—not until about 1918, when the simple incident of discovering oil on the south side of the Red near Burkburnett, Texas, made every inch of the river bed a mine of “black gold”.

The Supreme Court had previously ruled in the Greer County case that the south bank of the river was the boundary between Texas and Oklahoma. But where was the south bank of the Spanish treaty of 1819? The definition of a “bank” of a shifting river such as the Red presented complications. And what constituted the “bed” of the river?

“Oklahoma claimed the entire river bed from one bank to the other. Texas claimed title to the south half. The United States disputed both claims and asserted proprietorship in the south half as trustee for the Indians.” The contest became at once a three-cornered one: two states and the United States.

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15 U. S. Supreme Court Reports, Vol. 272, p. 21, a detailed history of the various surveys of the 100th meridian.
18 Grant Foreman, “Red River and the Spanish Boundary in the United States Supreme Court,” Chronicles of Oklahoma, II (September, 1924), No. 3, pp. 298-310.
On January 15, 1923 the Supreme Court rendered its decision covering 5,500 pages of testimony in 9 printed volumes. The decision of a few thousand words, less than the content of a pamphlet, is not only a tribute to our Supreme Court, but it settled for all time some difficult problems arising out of the process of avulsion in water courses, named as boundaries. The simple effect of the decision was to define a "bank" as the "cut bank"—cut by the normal flow of water, where vegetation stops; to confine Texas to the south as far as the south bank; to give Oklahoma the north half of the bed and political control over the entire bed; to give to the United States as trustee for Indians the south half. After an ordered survey and the report of the commissioners the whole matter was accepted and confirmed by the Supreme Court April 25, 1927. And thus ends the last chapter of the story of the Louisiana Purchase of 1803.\(^\text{19}\)

In the long process that led eventually to the shape that Oklahoma was to assume, it profited from the beginning on all four sides. There are the 12,000 square miles on the east that might have remained a part of Arkansas; a strip across the north 34 miles wide that came as an outside compromise over the slavery issue; all of the southwest corner through the decision of the Supreme Court of 1896; all of the forgotten "No Man's Land"; and last one half of the bed of the sandy and sluggish Red river.

But acres and miles of territory constitute the least that Oklahoma gained. By virtue of its location, surrounded by four differing cultures, it received a substantial strength from each. And this makes Oklahoma unique among her sister states. And this helps to explain the versatility and dynamic vitality of the citizenship today.

\(^{19}\text{U. S. Supreme Court Reports, Vol. 274, p. 714.}\)