

BEFORE THE INDIAN CLAIMS COMMISSION

THE CHOCTAW NATION, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 UNITED STATES OF AMERICA. )  
 )  
 Defendant. )

Docket No. 16

THE CHICKASAW NATION, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 Defendant. )

Docket No. 23

JUL 14 1950

STATEMENT

On motion of the defendant in the above-entitled actions, to which the petitioners in said actions consented, the said cases were consolidated for the purposes of trial, and the evidence offered at the hearing before the Commission was submitted by and on behalf of both petitioners; likewise, the evidence offered by the defendant was made applicable to both cases. While the order permitting the consolidation also permitted separate briefs and separate requests for findings of fact, the petitioners filed a joint request for findings of fact but filed separate briefs. Therefore, the Commission's findings of fact hereinafter set forth will apply to both cases.

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FINDINGS OF FACT

The Commission makes the following findings of fact in Docket No. 16, wherein the Choctaw Nation is petitioner, and No. 23, in which the Chickasaw Nation is petitioner, and in both of which the United States of America is defendant:

1. On the 18th day of October, 1820 (7 Stat. 210), the Choctaw Nation of Indians and the United States concluded a treaty at "Doak's Stand," by which the United States ceded to said Choctaw Nation of Indians a tract of land lying west of the Mississippi River in what is now the States of Arkansas and Oklahoma, and westward, within the following boundaries:

"Beginning on the Arkansas River, where the lower boundary line of the Cherokee strikes the same; thence up the Arkansas to the Canadian Fork, and up the same to its source; thence due South to the Red River; thence down Red River, three miles below the mouth of Little River, which empties itself into Red River on the north side; thence a direct line to the beginning."

that said treaty became known as that of "Doak's Stand."

2. On the 20th day of January, 1825 (7 Stat. 234), a treaty was made between the United States and the Choctaw Nation for the purpose of definitely determining the eastern boundary line of the cession of 1820, and it was fixed to conform approximately to the western boundary of the Territory (now State) of Arkansas, and the Choctaw ceded to the United States all of its territory east of that line.

3. On September 27, 1830 (7 Stat. 333) the United States and the Choctaw Nation made another treaty in which it was stipulated "that this

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may be the treaty existing between the parties. All other Treaties heretofore existing and inconsistent with the provisions of this are hereby declared null and void," and Article II of said treaty provided for a special Presidential grant to the Choctaw, as follows:

"The United States under a grant specially to be made by the President of the U.S. shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it, beginning near Fort Smith where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian Fork; if in the limits of the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning. The boundary of the same to be agreeably to the Treaty made and concluded at Washington City in the year 1825. The grant to be executed so soon as the present Treaty shall be ratified."

The boundary of the territory described in said Article II differs from that in said treaty of 1820 in that it fixed the western boundary of the cession at the 100th meridian west longitude, but the land involved in this proceeding was included in the area described in said Article II and in the patent hereafter referred to.

Pursuant to the requirements of said Article II, the United States issued its patent for the lands last above described, on March 23, 1842, which patent reads as follows:

"Whereas, by the second article of the treaty begun and held at Dancing Rabbit creek on the fifteenth day of September, in the year of our Lord one thousand eight hundred and thirty (as ratified by the Senate of the United States on the 24th day of February, 1831), by the commissioners on the part of the United States, and the mingoes, chiefs, captains, and warriors of the Choctaw nation, on the part of said nation, it is provided that 'the United States, under a grant

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specially to be made by the President of the United States, shall cause to be conveyed to the Choctaw nation' a tract of country west of the Mississippi river, in fee simple, to them and their descendants, to inure to them while they shall exist as a nation, and live on it, beginning near Fort Smith, where the Arkansas Boundary crosses the Arkansas river, running thence to the source of the Canadian fork, if in the limits of the United States, or to those limits; thence due south to Red river, and down Red river to the west boundary of the territory of Arkansas; thence north along that line to the beginning, the boundary of the same to be agreeably to the treaty made and concluded at Washington city in the year 1825:

"Now, know ye that the United States of America, in consideration of the premises, and in execution of the agreement and stipulation in the aforesaid treaty, have given and granted, and by these presents do give and grant, unto the said Choctaw nation the aforesaid 'tract of country west of the Mississippi;' to have and to hold the same, with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereto belonging, as intended 'to be conveyed' by the aforesaid article, 'in fee simple to them and their descendants, to inure to them, while they shall exist as a nation and live on it,' liable to no transfer or alienation, except to the United States, or with their consent.

"In testimony whereof, I, John Tyler, president of the United States of America, have caused these letters to be made patent, and seal of the general land office to be hereunto affixed. Given under my hand, at the city of Washington, the twenty-third day of March, in the year of our Lord one thousand eight hundred and forty-two, and of the independence of the United States the sixty-sixth."

4. In 1837, by an agreement dated January 17, 1837 (11 Stat. 573) the Choctaw and Chickasaw united, and for a consideration of \$530,000 the Choctaw granted the Chickasaw the privilege of occupying and holding in common with the Choctaw the area of the Choctaw country lying east of the hundredth meridian west longitude. The boundaries of the Chickasaw district, created by said Treaty, were changed by an agreement between said Indians, dated November 4, 1854 (10 Stat. 1116), but

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it was not until the agreement between the United States and the Choctaw and Chickasaw Nations of Indians, dated June 22, 1855 (11 Stat. 611), that the respective rights of the two Indian nations in the territory they jointly owned were definitely settled, and it was therein stipulated as follows:

"Article 1. The following shall constitute and remain the boundaries of the Choctaw and Chickasaw country, viz: Beginning at a point on the Arkansas River, one hundred paces east of old Fort Smith, where the western boundary-line of the State of Arkansas crosses the said river, and running thence due south to Red River; thence up Red River to the point where the meridian of one hundred degrees west longitude crosses the same; thence north along said meridian to the main Canadian River; thence down said river to its junction with the Arkansas River; thence down said river to the place of beginning.

"And pursuant to an act of Congress approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within the said limits, to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common; so that each and every member of either tribe shall have an equal, undivided interest in the whole: Provided, however, No part thereof shall ever be sold without the consent of both tribes, and that said land shall revert to the United States if said Indians and their heirs become extinct or abandon the same.

"Article 2. A district for the Chickasaw is hereby established, bounded as follows, to wit: Beginning on the north bank of Red River, at the mouth of Island Bayou, where it empties into Red River, about twenty-six miles in a straight line, below the mouth of False Wachitta; thence running a northwesterly course, along the main channel of said bayou, to the junction of the three prongs of said bayou, nearest the dividing ridge between Wachitta and Low Blue Rivers, as laid down on Capt. R. L. Hunter's map; thence northerly along the eastern prong of Island Bayou to its source; thence due north to the Canadian River; thence west along the main Canadian to the ninety-eighth degree of west longitude; thence south to Red River; and thence down Red River to the beginning: Provided, however, If the line running due north,

from the eastern source of Island Bayou, to the main Canadian shall not include Allen's or Wa-pa-nacka Academy, within the Chickasaw District, then, an offset shall be made from said line so as to leave said academy two miles within the Chickasaw district, north, west and south from the lines of boundary.

"Article 3. The remainder of the country held in common by the Choctaws and Chickasaws, shall constitute the Choctaw district, and their officers and people shall at all times have the right of safe conduct and free passage through the Chickasaw district."

5. And by said agreement of June 22, 1855 (11 Stat. 611) referred to in Finding No. 4, the parties thereto further stipulated as follows:

"Article 9. The Choctaw Indians do hereby absolutely and forever quit-claim and relinquish to the United States all their right, title and interest in, and to any and all lands, west of the one hundredth degree of west longitude; and the Choctaws and Chickasaws do hereby lease to the United States all that portion of their common territory west of the ninety-eighth degree of west longitude, for the permanent settlement of the Wichita and such other tribes or bands of Indians as the Government may desire to locate therein; excluding, however, all the Indians of New Mexico, and also those whose usual ranges at present are north of the Arkansas River, and whose permanent locations are north of the Canadian River, but including those bands whose permanent ranges are south of the Canadian, or between it and the Arkansas; which Indians shall be subject to the exclusive control of the United States, under such rules and regulations, not inconsistent with the rights and interests of the Choctaws and Chickasaws, as may from time to time be prescribed by the President for their government: Provided, however, The territory so leased shall remain open to settlement by Choctaws and Chickasaws as heretofore.

"Article 10. In consideration of the foregoing relinquishment and lease, and as soon as practicable after the ratification of this convention, the United States will pay to the Choctaws the sum of six hundred thousand dollars, and to the Chickasaws the sum of two hundred thousand dollars, in such manner as their general councils shall respectively direct.

"Article 21. This convention shall supersede and take the place of all former treaties between the United States and the Choctaws, and also, of all treaty stipulations between the United States and the Chickasaws, and between the Choctaws and Chickasaws, inconsistent with this agreement, and shall take effect and be obligatory upon the contracting parties, from the date hereof, whenever the same shall be ratified by the respective councils of the Choctaw and Chickasaw tribes, and by the President and Senate of the United States."

Said treaty was duly ratified, and, pursuant to the terms thereof, the United States paid the Choctaws \$600,000 and the Chickasaws \$200,000 and acquired a perpetual lease on the lands of the two nations lying between the 98th and 100th meridians. Reduced to a price per acre, the tribes were paid 10.3717 cents per acre.

The territory of the Choctaw and Chickasaw lying between the 98th and 100th meridians, west longitude, was owned in common by the two tribes and became known as the "Leased District." It comprised about 7,713,620 acres, based on the aggregate acreage of the four reserves in the Leased District, and not the figure 7,713,239 acres commonly used. The Choctaw Nation was the owner of a three-fourths interest and the Chickasaw Nation was the owner of a one-fourth interest of said Leased District.

6. On the 28th day of April, 1866 (14 Stat. 769), the United States and the Choctaw and Chickasaw Nations concluded a treaty (which was ratified by the United States Senate and proclaimed by the President in 1866), containing the following provisions:

"Article 2. The Choctaws and Chickasaws hereby covenant and agree that henceforth neither slavery nor involuntary servitude, otherwise than in punishment of crime whereof the parties shall have been duly convicted, in accordance with laws applicable to all members of the particular nation, shall ever exist in said nations.

"Article 3. The Choctaws and Chickasaws in consideration of the sum of three hundred thousand dollars, hereby cede to the United States, the territory west of the 98° west longitude, known as the leased district, provided that the said sum shall be invested and held by the United States, at an interest not less than five per cent in trust for the said nations, until the legislatures of the Choctaw and Chickasaw Nations respectively shall have made such laws, rules, and regulations as may be necessary to give all persons of African descent, resident in the said nation at the date of the treaty of Fort Smith, and their descendants, heretofore held in slavery among said nations, all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, except in the annuities, moneys, and public domain claimed by, or belonging to, said nations respectively; and also to give to such persons who were residents as aforesaid, and their descendants, forty acres each of the land of said nations on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said land, after the Choctaws and Chickasaws and Kansas Indians have made their selections as herein provided; and immediately on the enactment of such laws, rules, and regulations, the said sum of three hundred thousand dollars shall be paid to the said Choctaw and Chickasaw Nations in the proportion of three-fourths to the former and one-fourth to the latter—less such sum, at the rate of one hundred dollars per capita, as shall be sufficient to pay such persons of African descent before referred to as within ninety days after the passage of such laws, rules, and regulations shall elect to remove and actually remove from the said nations respectively. And should the said laws, rules, and regulations not be made by the legislatures of the said nations respectively, within two years from the ratification of this treaty, then the said sum of three hundred thousand dollars shall cease to be held in trust for the said Choctaw and Chickasaw Nations, and be held for the use and benefit of such of said persons of African descent as the United States shall remove from the said Territory in such manner as the United States shall deem proper,—the United States agreeing, within ninety days from the expiration of the said two years, to remove from said nations all such persons of African descent as may be willing to remove; those remaining or returning after having been removed from said nations to have no benefit of said sum of three hundred thousand dollars, or any part thereof, but shall be upon the same footing as other citizens of the United States in the said nations.

"Article 46. Of the moneys stipulated to be paid to the Choctaws and Chickasaws under this treaty for the cession of the leased district, and the admission of the Kansas Indians

among them, the sum of one hundred and fifty thousand dollars shall be advanced and paid to the Choctaws, and fifty thousand dollars to the Chickasaws, through their respective treasurers, as soon as practicable after the ratification of this treaty, to be repaid out of said moneys or any other moneys of said nations in the hands of the United States; the residue, not affected by any provisions of this treaty, to remain in the Treasury of the United States at an annual interest of five per cent., no part of which shall be paid out as annuity, but shall be annually paid to the treasurer of said nations, respectively, to be regularly and judiciously applied, under the direction of their respective legislative councils, to the support of their government, the purposes of education, and such other objects as may be best calculated to promote and advance the welfare and happiness of said nations and their people respectively.

"Article 51. It is further agreed that all treaties and parts of treaties inconsistent herewith be, and the same are hereby, declared null and void."

As required by the provisions of said Article 46, the United States paid to the Choctaw the sum of \$150,000 and to the Chickasaw the sum of \$50,000; however, by order made by the Court of Claims in the case No. K-334, Chickasaw Nation v. United States and the Choctaw Nation (103 Ct. Cls. 57), the amount paid the Chickasaw Nation pursuant to said Article 46, was allowed as a counter-claim of the Government because the Chickasaw were not entitled to the payment when made, so no part of the consideration mentioned in said treaty enured to the benefit of the Chickasaw Nation.

7. After the conclusion of the treaty of April 28, 1866, the United States located the Cheyennes and Arapahoes on 2,489,159 acres of the Leased District, and by Section 15 of the Indian Appropriation Act of March 3, 1891 (26 Stat. 989) there was appropriated and paid to the Choctaw and Chickasaw Nations the sum of \$2,991,450 (less \$48,800 deducted

by Resolution of January 18, 1893, 27 Stat. 753) for the "right, title, interest and claim" of the Choctaw and Chickasaw Nations in 2,393,160 acres of the lands occupied by the Cheyenne and Arapahoes, the remaining portion having been allotted to individual Cheyenne and Arapahoe Indians. This area is not involved in this claim, so deducting the said acreage of 2,489,159 from the area of the Leased District, there remains the tracts which are involved in this case and which are referred to in Finding No. 8, following.

8. The Leased District remaining after deducting the Cheyenne and Arapahoe reserve, was divided as follows:

Greer County

Greer County embraced 1,511,952 acres of the Leased District, and until March 16, 1896, when the Supreme Court decided otherwise, the county was claimed as a part of the State of Texas. (162 U.S. 1). The defendant received for the lands it sold the sum of \$365,941.74, but by the Acts of January 18, 1897 (29 Stat. 490) and March 1, 1899 (30 Stat. 966), occupants of land in the county and purchasers of such land from Texas, prior to March 16, 1896, were given the right to perfect title thereto under the homestead laws by paying only the land office fees, and under said Act of January 18, 1897, four sections in every township were reserved for the Territory of Oklahoma, so the United States did not receive any consideration for a very large part of the lands in said county.

No Indians were located in Greer County.

Wichita Reserve

The Wichita and affiliated bands of Indians were located on 743,610 acres of the Leased District. Under the so-called Jerome Agreement of June 4, 1891 (28 Stat. 395), the defendant allotted to the Wichita and affiliated bands 169,600 acres of their reserve and sold the remainder, 574,010 acres, for the sum of \$458,496.63. The sales of the Wichita lands began in 1904 but all the lands were not disposed of until 1926; however, the major part thereof was sold during the first six years after the sales began.

Kiowa, Comanche and Apache Reserve

The Kiowa, Comanche and Apache Indians were located on 2,968,893 acres of the Leased District by two treaties of October 21, 1867 (15 Stat. 581; 15 Stat. 589). Of this area, 545,000 acres were allotted to the Indians and 10,310 acres were reserved for school, agency, religious and other purposes, making a total of 555,310 acres retained by, or for the benefit of, the three tribes. Of the lands not allotted to Indians, reserved for schools, agency, religious or other purposes, or granted to the State of Oklahoma, the defendant sold some 2,187,630 acres of the reserve for a total sum of \$7,123,954.55. The sales of these lands did not start until after August 6, 1901 when some 1,807,630 acres of the area were sold for approximately \$2,259,954.55, and beginning about 1906, 380,000 acres of the 430,000 (known as the Big Pasture) reserved by the Indians under the agreement of October 6, 1892, ratified June 6, 1900 (31 Stat. 676), were sold for \$4,864,417.05.

9. To summarize, the defendant obtained under the treaty of 1866 (aside from the Cheyenne and Arapahoe reserve, allotments, agency and school reserves, etc.), a total acreage in the Leased District of 4,499,551, computed as follows:

All of Greer County		1,511,958 acres
Wichita Tract -		
Total acreage	743,610	
Less allotments -	<u>169,600</u>	574,010 acres
Kiowa, Comanche and Apache Tract -		
Total acreage	2,968,893	
Less allotments	545,310	
Less reserved for schools, etc.	<u>10,310<sup>000</sup></u>	
	<u>555,310</u>	2,413,583 acres

10. The defendant obtained, by the treaty of 1866, the reversionary interests of the petitioners in the Leased District. This enabled the defendant to place Indians in the District without regard to the restrictive provisions of the lease (Art. 9, Treaty of 1855), which excluded certain Indians from permanent settlement in the Leased District, and it restored the fee title, thus giving the defendant complete control over the lands and the unrestricted right to dispose of any part or all thereof, as it did in selling the surplus land, that is, land not needed for the Indian groups located in the Leased District, and granting large tracts thereof to Oklahoma.

11. That the value of said 4,499,551 acres, obtained by the defendant under the treaty of 1866, was, at the date of said treaty, April 28, 1866, the sum of \$4,499,551, in which the Choctaw had a three-fourths

interest and the Chickasaw a one-fourth interest. On an acreage basis, the Choctaw owned 3,374,663 acres and the Chickasaw 1,124,888 acres of the total of 4,499,551. For the perpetual lease on this land (at 10.3717 cents per acre) the Choctaw received \$350,009.92 and the Chickasaw \$116,670.01 and deducting said last stated two sums from the sum of \$4,499,551, there remains the sum of \$4,032,654 which is the value of the reversionary interest of the two tribes in the land involved in this case. Therefore, deducting from \$3,374,663 (value of Choctaw Interest in the part of the Leased District here involved), the said sum \$350,009.92 and the sum of \$87,741 (proportion of \$150,000 paid the Choctaw for lands here involved) received by the Choctaw under the 1866 treaty, the Choctaw are entitled to recover the sum of \$2,936,913; and deducting from the sum of \$1,124,888 (value of Chickasaw interest in part of the Leased District here involved), said sum of \$116,670.01, the Chickasaw are entitled to recover the sum of \$1,008,218.

#### OFFSETS

12. In case, Docket No. 16, wherein the Choctaw Nation is petitioner and the United States is defendant, the parties thereto by stipulation filed in said cause on the 23rd day of June, 1950, agreed that the defendant is entitled to offsets in the aggregate sum of \$349,077.53, which sum the Commission finds to be just and proper.

13. In case, Docket No. 23, wherein the Chickasaw Nation is petitioner and the United States is defendant, the parties thereto by stipulation filed in said cause on the 23rd day of June, 1950, agreed that the defendant is entitled to offsets in the aggregate sum of \$106,209.89, which the Commission finds to be just and proper.