

The defendant contends that the location of said 44th parallel was established and monumented in 1890 with the highest degree of care, skill and exactitude which the instruments of that date and the technology of the times would permit, and that the boundary as monumented was accepted and acted upon by the parties for 44 years and such monumented boundary therefore has become conclusive upon the parties.

Defendant also contends that error was made in the original survey of the northern boundary of the reservation as set aside to plaintiffs by the 1889 Act of Congress aforesaid whereby there was included in the reservation for said plaintiffs 35,484 acres more than the plaintiffs were entitled to receive; that the acreage erroneously included was greater than the area (34,664 acres) claimed to have been erroneously excluded along the southern boundary.

By reason of our conclusion, as hereinafter set out, that the southern boundary of the reservation as located in 1890 is the correct boundary, it is unnecessary for us to consider whether or not the northern boundary was correctly located.

The Southern Boundary

Meridians and parallels are imaginary lines. Their location on the ground is unknown until ascertained and monumented by a surveyor. In relation to topographic features they have no true or correct position, but only a theoretical location which can be translated geographically with more or less accuracy, depending upon the time

at which the translation is effected, the degree of refinement of the instruments of the day, and the state of development of the technology of the times.

Recognition of the uncertain location of meridians and parallels and their constantly changing position in relation to topography due to progressive improvements in the instruments and the art have prompted courts to declare that where a meridian or parallel has been surveyed and monumented on the ground and has been recognized and acted upon by the parties for a substantial period of time, the monumented boundary is conclusive.

A situation almost identical with that here involved was presented by the boundary controversy between the States of Virginia and Tennessee. See Virginia v. Tennessee, 148 U. S. 503. See also New Mexico v. Colorado, 267 U. S. 30. In both decisions a monumented line which had been recognized and acquiesced in for years was declared by the Court as the correct boundary line between the two states having such line in controversy.

In the instant case both the Lower Brules and the United States accepted, recognized and acted upon the monumented line (which the plaintiff asks us to disregard) as the 44th parallel and the southern boundary of the reservation from 1890 to 1934 (44 years) when mention of the so-called "error" was first made in plaintiffs' amended petition in the case of Sioux Tribe v. United States, 105 C. Cls. _____.

In this connection attention is called to the case of Oklahoma v. Texas, 272 U. S. 21, not because it involved the location of an imaginary

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line which had been mommented on the ground and acted upon by the parties for a long period of time, but because it manifests the elusive and mercurial character of meridian and parallel lines when those imaginary lines are sought to be located upon the ground.

It is patently impracticable in determining a specific geographical location in the United States to start each survey from Greenwich and the equator. The Brule Survey, in 1890, starting as it did from the First Standard Parallel about 12 miles away, and determining the location of the 44th parallel by reference to it, employing the latest engineering methods and instruments in use at the time, was the best that it was humanly possible to do or be expected in ascertaining the geographic position of that parallel. Even a subsequent determination of its location by reference to new and adjusted triangulation points and with improved instruments and techniques would have, under the decisions quoted, no effect upon the line previously determined, mommented, officially approved and mutually recognized as the boundary by both parties for a period of 44 years.

We are of the opinion that the mommented boundary as recognized by the parties should be decreed the correct boundary, and for that reason plaintiffs are not entitled to recover.

In keeping with the foregoing, plaintiffs' petition is dismissed.

Commissioners O'Marr and Holt concur in the above opinion.

May 29, 1952