

BEFORE THE INDIAN CLAIMS COMMISSION

THE CHOCTAW NATION,)	
)	
Petitioner,)	
)	
v.)	Docket No. 103
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: March 8, 1954

PRELIMINARY STATEMENT

This claim, as the petition will disclose, is to recover the value of 6,589,000 acres of land lying between the Canadian and Red rivers and extending west from the 100th meridian, west longitude, to the sources of those rivers which are in the east part of the State of New Mexico, some 225 to 260 miles west of the 100th meridian. (See Royce, Texas map).

As one of its defenses to the petition the Government pleads res judicata by reason of the determination of the case, the Choctaw Nation and the Chickasaw Nation v. United States, by the Court of Claims, No. 18932. (Exs. 1-A, 1-B, 2, 1(e), and 6 herein; 34 C. Cls. 17), and the Supreme Court, Nos. 88, 89, 90 (Exs. 1, 1-C, 1-D, 5 herein; 179 U.S. 494, 45 L. Ed. 291).

By agreement of the parties, the Government's defense of res judicata was submitted to the Commission for determination first and before the other issues are presented.

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. Prior to the conclusion of the treaty hereafter referred to, the petitioner, Choctaw Nation, inhabited a large area of land in the State of Mississippi, and by the treaty of Doak's Stand, dated October 18, 1820, 7 Stat. 210, petitioner ceded to defendant a described part of their land in said state (Art. 1). In consideration for said cession, and in part satisfaction for the same, the defendant, by said treaty (Art. 2), ceded to petitioner--

"a tract of country west of the Mississippi river, situate between the Arkansas and Red river, and bounded as follows: Beginning on the Arkansas river, where the lower boundary line of the Cherokees 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."

2. At the time of the conclusion of the treaty of Doak's Stand there existed a controversy between defendant and the Monarchy of Spain as to the location of the west boundary of the United States, and by the treaty between the United States and Spain, concluded February 22, 1819, and ratified and proclaimed February 19, 1821 (8 Stat. 252), the west line of the United States (insofar as it affected the Choctaw lands here involved) was fixed as being the 100th meridian, west longitude.

The sources of the Red and Canadian rivers, referred to in the treaty boundary (Finding 1), are far west of the 100th meridian, in fact, they extend west of the 103rd meridian and into the State of New Mexico.

3. By treaty of January 20, 1825, 7 Stat. 234, the treaty of Doak's Stand, October 18, 1820, was modified in some respects and all lands lying in the territory of Arkansas were ceded by the Choctaw to defendant, but such treaty had no bearing on the west limits of the United States fixed by the 1820 treaty.

4. The next transaction concerning the Choctaw lands in Oklahoma was the treaty of September 27, 1830, 7 Stat. 333. By this treaty the Choctaw ceded all their remaining lands east of the Mississippi River and the United States agreed to grant in fee simple all their lands in Oklahoma.

"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, of 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."

This treaty was the first to delimit the west boundary of the Choctaw at the 100th meridian and thereby exclude the area claimed in this action as having been ceded by the 1820 treaty.

5. (a) After the fixing of the international boundary at the 100th meridian by the treaty of 1819, between the United States and Spain (Finding 2), the Republic of Mexico revolted and succeeded to the Spanish rights to the area lying west of that meridian, between the Canadian and Red rivers, and thereafter the Republic of Texas declared its independence of Mexico and succeeded to the rights of Mexico to such area, in so far as it extended between the 100th and 103rd meridians, a distance of about 168 miles.

(b) The 100th meridian was recognized in 1828 as a west limit of the United States by this Nation and Mexico (treaty of January 12, 1828, 8 Stat. 372, 374) and in 1838 by this country and the Republic of Texas (treaty of April 25, 1838).

(c) Until the territory of the Republic of Texas was admitted into the Union, all lands claimed by the Choctaw lying west of the 100th meridian and as far as the 103rd belonged to the Republic of Texas, and by

the Resolution of Admission of March 1, 1845, 5 Stat. 797, the State of Texas retained all lands lying within the limits of the State and that part of the lands claimed which were west of the 103rd meridian were relinquished by Mexico to the United States by the treaty of Guadalupe Hidalgo, dated February 2, 1848, 9 Stat. 922.

(d) On June 22, 1855, 11 Stat. 611, a treaty was concluded between the United States, and the Choctaw and Chickasaw Nations, which contained the following provisions:

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 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.

(e) And on April 26, 1866, 14 Stat. 769, a treaty was concluded between the United States, and the Choctaw and Chickasaw Nations, which contained the following provisions:

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^o west longitude, known as the leased district * *.

6. By the act of March 2, 1895, 28 Stat. 876, 898, the Court of Claims was granted jurisdiction to hear and determine a claim of the Choctaw and Chickasaw Nations to a tract of land lying east of the 100th meridian in an area known as the "leased district" which had been ceded to the United States by the Wichita Indians by an agreement dated June 4, 1891, and approved by said act of March 2, 1895, in which tract the Choctaw and Chickasaw claimed an interest. By the act, jurisdiction was,

"conferred upon the Court of Claims to hear and determine the said claim of the Choctaws and Chickasaws and to render judgment thereon, it being the intention of this act to allow said Court of Claims jurisdiction, so that the rights, legal and equitable, of the United States and the Choctaw and Chickasaw Nations and the Wichita and affiliated bands of Indians in the premises shall be fully considered and determined, and to try and determine all questions that may arise on behalf of either party in the hearing of said claim;

* * * * *

"The said Court of Claims shall receive and consider as evidence in the suit everything which shall be deemed by said court necessary to aid it in determining the questions presented, and tending to shed light on the claim, rights, and equities of the parties litigant, * * *."

The Choctaw Nation mentioned in the above act is the same Choctaw Nation which joined with the Chickasaw Nation in prosecuting the claim in the Court of Claims, in these findings hereafter shown, and is the same Choctaw Nation which is named as petitioner in the above-entitled cause.

7. Pursuant to the act referred to in the last preceding finding, the Choctaw and Chickasaw Nations brought suit against the United States and the Wichita and affiliated bands of Indians in the Court of Claims, No. 18932, (Ex. 1-A), claiming the "leased district," in which the Wichita lands were located, was held in trust for them the Choctaw and Chickasaw, and alleged (Ex. 1-A, p. 9):

"Other circumstances showing that it was not the intention of the parties to said treaty, in inserting the said 3rd article thereof, to divest the lands in question of said trust in favor of the claimants are found by contrasting with the consideration of \$300,000 which was stipulated to be paid for said cession made in article 3 the dealings of the Government with other Indian tribes, hereinafter stated.

"The quantity of land embraced in said cession is 7,713,239 acres. Excluding from this estimate the \$800,000 paid for the lease and cession embraced in section 9 of the treaty of June 22, 1855 (and which must be excluded because the \$800,000 there provided for was paid for the Choctaw lands extending to the western boundary of the United States from the 100th degree of west longitude, lying between the Red and Canadian rivers, and embracing a strip of country correctly estimated by the United States authorities to contain over 6,500,000 acres, and because the said \$800,000 if applied to the said purchase lying west of the 100th meridian would be less than 12 cents per acre), the \$300,000 paid for said cession /of the leased district in 1866/ is less than 4 cents an acre. * * *"

8. The defendant, the United States, by its answer (Ex. 1-B, p. 41) denied the Choctaw or Chickasaw were ceded any lands lying west of the 100th meridian by the treaty of 1820, and in answer to the contention set forth in Finding 7, the Government in its brief stated:

"The foundation upon which the claimants' whole case rests is the theory that the cession made to the Choctaws in 1820, in consideration of their cession of lands in Mississippi, included 6,589,440 acres west of the one hundredth meridian, which 6,589,440 acres were ceded to Spain by the treaty of 1819, ratified in 1821, so that the Choctaws, having been deprived thereof by the United States, had a valid claim for compensation on that account, and their relinquishment of all such claims in 1855 was a relinquishment of a substantial right. Upon this foundation the claimants build the argument that the \$800,000 paid by the United States under the treaty of 1855 was paid for that relinquishment only, so that the so-called lease was without consideration, which alleged fact, taken in connection with other alleged facts in regard to the treaty of 1866, shows, they conclude, that the cession of the so-called leased district in 1866 was in trust and not absolute. The claimants' peculiar theory as to the treaty of 1866, a theory which will be fully considered below, contributes materially to the ultimate conclusion which they reach; yet without the theory as to the extent of the cession to the Choctaws in 1820 the theory as to the treaty of 1866 would have much less color of reason to support it, and hence the former theory may properly be said to involve the fundamental error of the claimants' argument.

"The extent to which the claimants rely on this theory may be seen from their request for findings (Nos. 1 to 25, 30, 34, 36), their briefs, (Rec., 147-154, 227-229, 234-254, 320-321, 710-712), and their various memorials to Congress * * *. Clearly, therefore, it is of the utmost importance at the very outset of the investigation of this case to ascertain the truth or error of this theory, or, in other words, what country it was that the United States ceded to the Choctaws in 1820 * * *."

9. The case having been submitted to the Court of Claims, a judgment was entered on March 21, 1899 (Ex. 5), but no findings of fact were made. (See 34 C. Cls. 17, at page 46). By this judgment the Court of Claims decreed that all lands allotted to the Wichita by the 1895 agreement were to be vested in them, and that all such lands not so allotted

were owned by the Choctaw and Chickasaw who were entitled to the proceeds from the sale thereof in the event of a sale thereof by the United States. (Ex. 5-part of Mandate).

10. While the petition limited the claim to some 743,610 acres of land in the "leased district" the defendant, Wichitas, claimed the Great Prairie which included not only the "leased district" but the lands between the Red and Canadian rivers to their sources, and a vast area outside of these areas and lying west of the 95th meridian (see pp. 52-53 of opinion) and the court determined such claim, but preliminary to the discussion of the facts on such claim the court remarked (p. 52):

"The nature and necessity of the case, and the evident intent of the jurisdictional act to have the court consider all the testimony necessary to aid in the determination of the case, has left us no alternative but to carefully examine everything offered; and where doubts have arisen respecting the relevancy or competency of evidence we have not hesitated to give the parties the benefit of the doubt in the spirit suggested by the board and liberal terms of the statute."

And after describing the Great Prairie at p. 53, the court said:

"It is not within our province to determine claims beyond the immediate reservation in suit, but as this claim goes to the whole prairie, and the evidence to sustain an occupancy is the same for all and nearly inseparable, we will examine the issues as presented.

The court then reviewed the evidence and reached the conclusion (p. 75) that the--

"* * *Wichitas have not established such an occupancy of the land in suit at the time of its acquirement by the United States as would support the customary Indian title, or possession of such character that the United States can now recognize or is under obligation to protect for purposes of compensation."

And later, on page 75, the court concluded, concerning the greater Wichita claim:

"We therefore dismiss this part of their claim * * *."

As showing the scope of the court's inquiry of the question of aboriginal rights of the Wichita and of the land incidentally involved in the controversy, reference is made to the map appearing on page 48 of its opinion, which shows the Wichita lands (Tract 5) and the lands claimed by the Choctaw (Tract 3). The "leased district" referred to in these findings comprise Tracts 4, 5, 6 and 7 shown on the map.

11. After disposing of the aboriginal rights of the Wichita, the court proceeded to review the evidence relating to the Choctaw and Chickasaw rights under the 1866 treaty, and in this connection said:

"Certain subordinate matters are necessary to be examined to properly interpret the treaty claimed to be violated." (p. 87).

After reviewing the evidence the court arrived at the decision that it was intended by the 1820 treaty to grant the Choctaw the lands west of the 100th meridian. (pp. 102-3).

12. The Court of Claims expressed its reason for determining the ownership of land west of the 100th meridian. Its reasons are as follows:

"But the questions relating to the extent of the original cession to the Choctaws and the intention of our Government in ceding land to them which at the time we were trying to sell to Spain in exchange for Florida, as well as the matter of the inconsistency of the treaty of 1830 with that of 1820 and the intermediate action of the Government in actually ceding the land west of the one hundredth meridian to Spain, can only be material now in determining what amount of money was ultimately paid by the United States for the leased district. No relief is sought by the nation on account of any early claim to country which they failed to get. Whatever

interest the Choctaws had in the land ceded to Spain after its apparent cession to them was settled by the treaty of 1855. Having treated the Choctaw quitclaim to the territory west of the one hundredth meridian as the relinquishment of a substantial right, the Government is not in a position to raise that question anew and assert that the treaty of 1820 was made void by that of 1830, so as to deprive the Choctaws of the right of compensation to land ceded in 1820 but not ceded in 1830. Nor do we understand that the Government has denied the effect of its action in recognizing the claim of the Choctaws to compensation since its acceptance of the offers to relinquish the claim until this suit. The probabilities are that when this question arose the parties viewed the matter as one best kept out of the courts for their respective interests, and in the doubts which each had as to their rights compromised the difference in the manner set forth, from which resulted the agreement of 1855.

"While we have gone far enough into the question to say that by the cession of 1820 the Choctaws acquired land beyond the one hundredth meridian, we decline to enter that field of discussion respecting the alleged surrender by them, under the terms of the second grant, of what they had acquired by the guaranties of the first cession because unnecessary. The extent of our opinion is for the purpose of showing a basis for the claim preferred by the Choctaws in 1855; but whether their claim was dealt with as one of strict legal right or made to rest upon moral considerations alone, it was clearly recognized by the language of the treaty which recited a consideration for the relinquishment of a certain tract and the lease of another."

APPEAL FROM COURT OF CLAIMS TO SUPREME COURT

13. From the judgment (Ex. 5) above referred to all parties thereto appealed to the Supreme Court.

In its assignments of error submitted to the Supreme Court, the United States asserted that the Court of Claims erred in the following particulars, among others:

2. In holding that the country ceded by the Quapaws to the United States by the treaty of August 24, 1818, extended west of the one hundredth meridian.

3. In holding that the country ceded by the United

States to the Choctaws by the treaty of October 18, 1820, extended west of the one hundredth meridian.

4. In holding that the treaty of September 27, 1830, between the United States and the Choctaws, did not annul any cession of lands west of the one hundredth meridian, supposing such cession to have been made by the treaty of October 18, 1820.

14. In the brief for Choctaws (Ex. 3-A, p. 41) on appeal to the Supreme Court, the facts upon which the Choctaws' claim to the lands west of the 100th meridian was based, are set forth and argued on pages 28 through 37. From pages 37 through 41 of the same brief petitioners discuss the 1855 treaty and the consideration paid for the relinquishment of the lands west of the 100th meridian. At page 41 it is there argued:

"Here is a contract between a guardian and a ward, the ward wholly under the power of a guardian, and the guardian pays the ward \$800,000 for a relinquishment of title to 6,589,440 acres, and for a lease of 7,713,239 acres, and this in the month of June, 1855. Why, the first tract at 12½ cents per acre, a most grossly inadequate price would amount to \$323,680, and it would leave not \$1 to be applied to the payment of the lease for 7,713,239 acres, and under this lease this land has been held for nearly forty years. (* * *)

"Counsel for the Government seek to show that in reality the Choctaws had no claim to the land west of 100°. It is too late to raise this question. The United States in the preamble express a desire that the Choctaws will relinquish this claim, and in the 9th article they do actually relinquish this claim, and in the 10th article provision is made for the payment of the relinquishment. This right of the Choctaws has been thus recognized by the Government as a substantial right, and it is too late now to dispute it; but as to the real merits of the claim, we think we have heretofore clearly established it."

In a separate brief filed on appeal for the Choctaw and Chickasaw Nations, it is stated:

"The attorney for the Government devotes nearly one hundred pages of his Brief (pages 45 to 141) to an attempt

