BEFORE THE INDIAN CLAIMS COMMISSION

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

Decided: March 8, 1954

Appearances:
W. F. Semple, with whom
was Wesley E. Disney,
Attorneys for Petitioner

Ralph A. Barney and
Robert E. Fraley, with whom
was Mr. Assistant Attorney
General Perry W. Morton,
Attorneys for Defendant.

OPINION OF THE COMMISSION

O'Marr, Commissioner, delivered the opinion of the Commission.

At the outset may we comment on the findings of fact. We have set forth therein rather extensively the proceedings in the former case, both in the Court of Claims and the Supreme Court, including the contentions of the parties. This seems to us necessary under a plea of res judicata in view of the rule stated in Oklahoma v. Texas, 256 U. S. 80, 88; 65 L. Ed. 831, 835, which is:

> "What was involved and determined in the former suit is to be tested by an examination of the record and proceedings therein, including the pleadings, the evidence submitted, the respective contentions of the

> parties, and the findings and opinion of the court; * * *" See cases cited by the court in support of this rule.

The claim here asserted by the Choctaw is to recover from the United States the value of 6,589,000 acres of land lying west of the 100th meridian and extending between the Red and Canadian rivers to the sources of such rivers which are located in eastern New Mexico, the source of the Red River being some 225 miles west and that of the Canadian being some 260 miles west of the 100th meridian. The Choctaw base their claim upon the treaty of Doak's Stand, dated October 18, 1820, 7 Stat. 210, by which, the Choctaw contend, the defendant ceded to them the area above described.

As a first and affirmative defense to the claim the defendant by its answer pleaded in effect that the Supreme Court in the case, "United States v. Choctaw,"179 U. S. 494, determined the questions at issue here and that the decision is res judicata. The parties understood that the case referred to in the defendant's answer was the case brought in the Court of Claims entitled, "The Choctaw and Chickasaw Nations v. The United States and the Wichita and Affiliated Bands of Indians," No. 18932, 34 C. Cls. 17. In that case, on appeal, the Supreme Court decided that the Choctaw acquired no rights in the territory west of the 100th meridian, the land here involved, so the question we must decide is whether the determination by the Supreme Court as to the ownership of that land is final and conclusive on the parties to this case in so far as that court decided that the boundary of the Choctaw cession did not extend west of the 100th meridian.

The former suit was brought in the Court of Claims by the Choctaw and Chickasaw Nations v. United States and the Wichita and Affiliated Bands. These bands will hereafter be referred to as Wichita.

Prior to 1891 the Wichita had acquired rights to 743,610 acres of land in the so-called "leased district." This district had been owned by the Choctaw and Chickasaw and was located immediately east of the 100th meridian and as far as the 98th meridian. In 1891, 28 Stat. 895, the Wichita ceded their tract to defendant, reserving sufficient land for allotments for the members of the Wichita and agreeing that the unallotted part should be disposed of under the homestead and townsite laws of the United States, at $1.25 per acre, and it was also agreed that lands reserved for schools, public buildings, etc., should be paid for at the same rate per acre.

The object of the suit was to impress a trust on the Wichita tract and to require the proceeds from the sale of the unallotted lands be paid to the Choctaw and Chickasaw, and that the latter receive the value of the allotted and reserved lands. It will be seen from the above that the title to the lands west of the "leased district," that is, the Choctaw lands west of the 100th meridian, were not directly involved in the claim.

It should perhaps be here stated that the Chickasaw never had or claimed any interest in the territory west of the 100th meridian (see Treaty of June 22, 1855, 11 Stat. 611) as that country had been claimed by the Choctaw at the time of the 1855 treaty.

CHOCTAW AND CHICKASAW NATION V. UNITED STATES AND WICHITA AND AFFILIATED BANDS

Before the Court of Claims, 34 C. Cls. 17.

The Court of Claims made no findings of fact (see p. 46 of opinion) but the ownership of the lands west of the 100th meridian was pressed upon the court by the allegations of the petition (Finding 7) and the defendant's brief (Finding 8). Such ownership was also raised by the evidence offered by the Wichita by which they claimed aboriginal rights to not only all of the leased district but to a vast area extending west of the 100th meridian to the mountains in New Mexico and Colorado, including the area between the Red and Canadian rivers. The entire country claimed by the Wichita was known as the Great Prairie. (pp. 52-53 of Op.)

The Court of Claims considered all these contentions, as its opinion shows, and denied the Wichita claim of aboriginal rights but decided that by the 1820 treaty it was intended to grant the Choctaw the country west of the 100th meridian. (pp. 102, 103 of Op.)

The following summary of the proceedings before the Court of Claims will be helpful:

Pursuant to the jurisdictional act, the Choctaw and Chickasaw Nations filed a petition (Finding 7) in the Court of Claims to have determined what interest, if any, said petitioners had in a tract of land within the so-called "leased district" ceded to the United States by the Wichita and affiliated bands in 1891. The substance of petitioners' claim was that the treaty of April 28, 1866, 14 Stat. 769, did not result in an absolute cession of said leased district to the United States but rather continued a trust established by the treaty of June 22, 1855, whereby the lands

involved (which included the Wichita lands) were leased to the United States for a specific purpose, the settlement of Indians.

The petitioners' contention that the trust was continued by the 1866 treaty was based on not only an alleged ambiguity in that treaty which had to be construed as a trust, but that said treaty had to be construed taking into consideration certain other circumstances occurring prior to, at the time of, and after the execution of said treaty.

One of the circumstances which petitioners believed would shed light on the intention of the parties in executing the treaty of 1866 was the amount of consideration paid to the Choctaws and Chickasaws under the treaties of 1855 and 1866. Petitioners alleged in their petition (Finding 7) that the $800,000 paid under the provisions of the treaty of 1855 could be considered payment only for their relinquishment of a claim to lands west of the 100th meridian and that therefore they received but $300,000 for the alleged cession of the leased district by the treaty of April 28, 1866. In brief, petitioners' theory, and one of the bases for its claim that the 1866 treaty affected only a trust, was that the total consideration for the cession in 1866 of over seven million acres was only $300,000, since the $800,000 paid under the 1855 treaty could not be applied to the lands in the leased district, and, therefore, in view of the grossly low sum paid to the Choctaws and Chickasaws, especially in view of the sums paid other Indian tribes for cessions at that time, petitioners urged it could not have been the intention of the parties to divest the lands in the leased district of the trust in their favor created by the 1855 treaty.

Defendant, to controvert the pleadings in this respect, alleged in its answer (Finding 8) that the petitioners never had a claim for lands west of the 100th meridian, and contended in its brief (Finding 8), that the sum of $800,000 paid to petitioners under the 1855 treaty had to be considered as compensation for the leased district. The issue on the claim as to ownership of the lands west of the 100th meridian was thus joined.

The Court of Claims considered this dispute regarding the lands west of the 100th meridian a material fact to be determined in interpreting the 1866 treaty and in ascertaining the amount of money ultimately paid by the United States for the leased district. It weighed the evidence in the form of the treaties, letters and maps touching on the subject of the Choctaw claim to lands west of the 100th meridian and found that the Choctaws acquired land west of the 100th meridian by the treaty of October 18, 1820. (pp. 103, 104 of Op.)

Although the judgment (Finding 5) rendered by the court in decreeing that the lands within the leased district were acquired and held by the United States in trust for the petitioners does not contain any reference to the lands without the leased district and west of the 100th meridian, it is evident from a reading of the court's opinion that the issue as to the Choctaw's claim to the lands west of the 100th meridian was one of the material factors influencing the court to hold that the treaty of 1866 did not result in an absolute cession.

Before the Supreme Court, 179, U. S. 494, 45 L. Ed. 291

We have already indicated the importance the parties and the Court of Claims gave the question of Choctaw title to the lands west of the

100th meridian, and when we examine the record and contentions of the parties on appeal, we can well understand the reasons which prompted and required the Supreme Court to dispose of the issue so vigorously injected into the controversy by the parties.

As stated in the findings, each party to suit in the Court of Claims appealed. In its assignment of error in the Supreme Court the United States alleged the Court of Claims erred "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." (Finding 13). The other two assignments are of similar import.

Passing on to the briefs of the petitioners filed in the Supreme Court in the former case (Finding 14) we see that the Choctaw in its separate brief and the Choctaw and Chickasaw in a joint brief claimed that the $800,000 they received under the 1855 treaty was for the relinquishment of title to the lands west of the 100th meridian, thus contesting with the Government the ownership of that territory.

The above references are important as showing that the title to the disputed area was pressed upon the Supreme Court by all parties to the case under consideration by that court. Moreover, the contentions in this regard, made in one form or another, so impressed the Court of Claims that a large part of its lengthy and very comprehensive opinion was devoted to a discussion thereof and a determination of the extent of the Choctaw grant by the 1820 treaty. (Finding 12).

Coming now to the decision of the Supreme Court we find an equally comprehensive discussion of the same facts considered by the Court of Claims, but arriving at a different conclusion.

We shall not set forth herein more than enough of the high court's opinion to show the conclusions reached as to the Choctaw rights in the country west of the 100th meridian, leaving to the reader the examination of the opinion for any omissions considered important.

The court opened the discussion of the Choctaw claim to the lands lying west of the 100th meridian (Finding 15) with this statement:

> "The Choctaws also contend that they once owned, by transfer from the United States, a vast body of lands west of the Leased District, for which they have never received anything, and that the treaty of 1866 must be interpreted in the light of that fact. What connection such a fact, if it had any existence, could have with the construction of the treaty of 1866 is not easy to perceive. But as the proposition just stated was the subject of much consideration in the Court of Claims, and as it is earnestly pressed upon our attention, we will first inquire whether the Choctaws ever owned any lands west of the Leased District, that is, west of the 100th degree of west longitude, and then bring into view the circumstances leading up to the treaty of 1866, which, it is argued throw light on its interpretation."

Beyond doubt the court, by this language, recognized the need for setting at rest the contentions of the Choctaw respecting their claim to the lands in the west and proceeded to consider various treaties leading up to the treaty of 1866, including the treaty with the Quapaw of August 24, 1818, 7 Stat. 176, which had ceded the land included in the Choctaw grant under the 1820 treaty, the treaty with Spain of February 22, 1819, fixing the 100th meridian as the west boundary of the United States, the treaty of September 27, 1830, limiting the west boundary of the Choctaw grant at said meridian. After reviewing these transactions, the court said:

"It cannot be doubted that the purpose of article 2 of the treaty of 1830 was to provide for a special grant to the Choctaws of the lands intended to be ceded to them by article 2 of the treaty of 1820, and no others. It was as if the parties declared that the words in the treaty of 1820, 'thence up the Arkansas to the Canadian Fork, and up the same to its source, thence due south to the Red river', should be held to mean the same as the words in the treaty of 1830, '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'. The treaty of 1830 plainly imports the understanding of the parties at that time that whatever might be the wording of the treaty of 1820, the United States had not thereby intended to grant, and the Choctaws had not thereby expected to receive, any lands at or near the source of the Canadian Fork unless that point was within the limits of the United States--that both parties had in view at that time only lands within the limits of the United States.

"As the treaty of 1820 provided that the Choctaws should have lands as far west as the source of the Canadian river, it is suggested that the United States could not legally modify that provision by the subsequent ratification in 1821 of the treaty with Spain signed in 1819. But it was entirely competent for the parties, without any new or valuable consideration intervening, to rectify a mistake in the description of boundaries, and to agree as in effect they did by the treaty of 1830, that the words 'to the Canadian Fork, and up the same to its source', in the treaty of 1820, were to be interpreted as meaning 'to the source of the Canadian Fork, if in the limits of the United States, or to those limits'--thus relieving the United States from any obligation to make a special grant to the Choctaws of lands which by the treaty with Spain, ratified in 1821, had been recognized as part of Spanish territory. * * *"

The Supreme Court made significant reference to the fact that nearly thirty-four years passed before the Choctaw made any claim to the country west. This is what it said (Finding 16):

> "Proceeding in our examination of the facts supposed to throw light upon the meaning of the treaty of 1866, we find that in 1854, for the first time, the Choctaws, acting under some influence not explained by the record, insisted that their country extended west of the 100th degree of west longitude. * * *."

And, as shown by Finding 16, it concluded by saying:

> "We have made this extended reference to the correspondence between the Indians and the Officers of the United States for the purpose, not only of showing that the Choctaws had no claim, legal or equitable, to territory west of the 100th degree of west longitude, but of indicating the situation and relations of the parties when the treaty of 1855, to be presently referred to, was concluded."

Thus, we see from the foregoing, the findings of fact herein, and the opinion of the court, not specifically set out herein or in the findings, that the court definitely disposed of all contentions as to ownership of the western lands made by the Choctaw and actually decided that the Choctaw never acquired any lands west of the 100th meridian.

As to the applicable law on the principles of res judicata we may start with what has been termed the "classic statement" of the rule of res judicata, set forth in Southern Pacific v. United States, 168 U. S. 1, 48; 42 L Ed. 355, 377:

> "The general principle announced in numerous cases is that a right, question, or fact distinctly put in issued and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question, or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified. This general rule is demanded by the very object for which civil courts have been established, which is to secure the peace

> and repose of society by the settlement of matters capable of judicial determination. Its enforcement is essential to the maintenance of social order; for the aid of judicial tribunals would not be invoked for the vindication of rights of person and property, if, as between parties and their privies, conclusiveness did not attend the judgments of such tribunals in respect of all matters properly put in issue and actually determined by them."

See case cited and reviewed in the opinion in that case; also, Cromwell v. Sac County, 94 U. S. 351, 24 L. Ed. 195; United States v. Munsingwear, 340 U. S. 36, 95 L. Ed. 36. The above rule was also adopted and applied by the Court of Claims in Union Pacific v. United States, 121 C. Cls. 463.

We have shown above and by the findings of fact (No. 6) that the Choctaw was a party in the former case and that the same question, that is, the Choctaw rights in the land west of the 100th meridian which was made an issue in the former case and determined by the Supreme Court against the Choctaw, is an issue in the instant case. About this there can be no doubt, nor do the Choctaw, seemingly, question this. They rely upon the proposition that the real issue in the former case did not involve lands west of the 100th meridian, but only involved lands east of that meridian--in the "leased district"--and, of course, that is technically correct; however, as we have shown, under the pleadings and briefs the parties presented the issue of ownership of the Choctaw land west of the leased district and both courts found it necessary to determine that issue in the former case.

It is upon this difference between the subject matter of the former case and that of the present one that the Choctaw mainly rely as one of their contentions that they should not be estopped to again

asset ownership in the western lands. This contention has been approached by the Choctaw in several ways, which we shall now consider.

JURISDICTION OF COURT OF CLAIMS AND SUPREME COURT

The Choctaw would have us decide that under the jurisdictional act (Find. 6) neither the Court of Claims nor the Supreme Court had the power to make any adjudication respecting lands west of the 100th meridian which could bind the Choctaw. Manifestly, we cannot inquire into the power of either court to consider and determine the Choctaw rights to such land, for the fact that they both did so is a tacit, if not express, determination that they had the power to do so, and such determination cannot yield to a re-examination of such powers by a collateral attack, such as that made here. The general rules have been often stated, but we shall quote one, that from Stoll v. Gottlieb, 305 U. S. 165, 171:

> "A court does not have the power, but judicial fiat, to extend its jurisdiction over matters beyond the scope of the authority granted to it by its creators. There must be admitted, however, a power to interpret the language of the jurisdictional instrument and its application to an issue before the court. * * * Every court in rendering a judgment, tacitly, if not expressly, determines its jurisdiction over the parties and the subject matter, An erroneous affirmative conclusion as to the jurisdiction does not in any proper sense enlarge the jurisdiction of the court until passed upon by the court of last resort, and even then the jurisdiction becomes enlarged only from the necessity of having a judicial determination of the jurisdiction over the subject matter. When an erroneous judgment, whether from the court of first instance or form the court of final resort, is pleaded in another court or another jurisdiction, the question is whether the former judgment is res judicata. After a federal court has decided the question of the jurisdiction over the parties as a contested issue, the court in which the plea of res judicata is made has no power to inquire again into that jurisdictional fact."