

RECEIVED
OCT 14 1932

OKLAHOMA TAX COMMISSION

No. 333

In the Supreme Court of the United States

OCTOBER TERM, 1932

THE CHICKASAW NATION, PETITIONER

v.

THE UNITED STATES

*ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT
OF CLAIMS*

BRIEF FOR THE UNITED STATES IN OPPOSITION

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 333

THE CHICKASAW NATION, PETITIONER

v.

THE UNITED STATES

The Solicitor General
Department of Justice
Washington, D. C.

Service of three copies of brief for the
United States in opposition is acknowledged this
_____ day of _____, 1932.

Counsel for Petitioner.

INDEX

	Page
Opinion below.....	1
Jurisdiction.....	1
Question presented.....	1
Statute involved.....	2
Statement.....	2
Argument.....	3
Conclusion.....	7
Appendix.....	8-10

CITATIONS

Case:	
<i>United States v. State of Texas</i> , 162 U. S. 1.....	3, 4, 6
Treaties:	
Treaty of February 22, 1819, 8 Stat. 252.....	2
Indian Treaties—	
September 5, 1820, 7 Stat. 210.....	2, 4
September 27, 1830, 7 Stat. 333.....	2, 4
January 17, 1837, 11 Stat. 611.....	4
June 22, 1855, 11 Stat. 611.....	2, 3, 4, 6
April 28, 1866, 14 Stat. 769.....	3, 6
Statute:	
Act of June 7, 1924, c. 300, 43 Stat. 537.....	8-10

In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 333

THE CHICKASAW NATION, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT
OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (R. 19) is not yet reported.

JURISDICTION

The judgment of the court below was entered June 6, 1932. (R. 28.) The petition for a writ of certiorari was filed August 31, 1932. (R. 28.) The jurisdiction of this Court is invoked under the special Act of June 7, 1924, c. 300, 43 Stat. 537, and under Section 3 (b) of the Act of February 13, 1925.

QUESTION PRESENTED

Whether "Greer County," a tract of land lying between the North and South Forks of the Red

River and east of the one hundredth meridian, was ceded to the respondent by the petitioner under the Treaty of 1866 between the Choctaw and Chickasaw Nations and the United States.

STATUTE INVOLVED

The statute conferring jurisdiction to determine this controversy on the Court of Claims is contained in the Appendix, *infra*, pp. 8-10.

STATEMENT

The Court of Claims sustained a demurrer (R. 28) to a petition (R. 1-17) alleging the following facts:

By the Treaty of February 22, 1819, Spain ceded to the United States certain lands including a tract of 1,511,968 acres lying between the North and South Forks of the Red River and east of the one hundredth meridian, which has since been known as "Greer County." This land was ceded by the United States to the Choctaw and Chickasaw Nations under the treaties of 1820 (7 Stat. 210) and 1830 (7 Stat. 333). (R. 2.)

By Article 9 of the Treaty of June 22, 1855 (11 Stat. 611) between the United States and the Choctaw and Chickasaw Nations, the latter leased 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 In-

dians as the government may desire to locate therein * * *." (R. 2.)

By Article III of the Treaty of April 28, 1866 (14 Stat. 769), between the United States and the Choctaw and Chickasaw Nations the latter, in consideration of the sum of three hundred thousand dollars, "* * * hereby cede to the United States the territory west of the ninety-eighth degree of west longitude, known as the leased district * * *." (R. 2.)

When these treaties of 1855 and 1866 were entered into the possession and ownership of "Greer County" was claimed by the State of Texas as well as by the United States. (R. 3.) In 1896 it was decided that "Greer County" belonged to the United States rather than to Texas. *United States v. State of Texas*, 162 U. S. 1. (R. 15.) The Choctaw and Chickasaw Nations were not parties to the suit resulting in this decision. (R. 15-16.) After this decision the land was disposed of as public land of the United States. (R. 16.) The petition sought judgment for one-fourth of the amount for which the land was sold by the United States if sold for a price equal to or in excess of \$1.25 per acre or for one-fourth of \$1.25 per acre if sold for less than that price.

ARGUMENT

The petitioner contends that its cession by the Treaty of 1866 of "the leased district" to the United States did not include "Greer County," the

land in dispute in the instant suit. We believe that the court below correctly considered that determination of the question of title depended solely on the proper construction of the treaties involved and that its construction thereof is so plainly right that review by this Court is unnecessary.

“Greer County” is the same tract of land once claimed by Texas, and, by this Court’s decision in *United States v. State of Texas*, 162 U. S. 1, held to have been the property of the United States under the cession from Spain in 1819. By treaties of October 18, 1820 (7 Stat. 210), and September 27, 1830 (7 Stat. 333), certain land bounded on the south by the Red River and including “Greer County” was conveyed to the Choctaw Nation. In 1837 the Choctaws accorded the Chickasaw Nation certain rights in this land by a treaty to which the United States was not a party, although it was subsequently approved by the Senate and the President. (11 Stat. 573.)

On June 22, 1855, a treaty (11 Stat. 611), superseding all former treaties, was concluded between the United States and the Choctaw and Chickasaw Nations by which all their territory west of the ninety-eighth degree of west longitude was leased to the United States. Although the petition in the court below alleged that the lands in “Greer County” were not within this territory (R. 3) and petitioner still takes that position (Pet. 7-8; Br. 16-26), the Court of Claims, construing the Treaty

of 1855, held that “Greer County” was clearly within such territory (R. 25-27). The reasons for this construction are set forth at length in the opinion of the court below (R. 25-27), and the conclusion reached by that court seems to us to be inescapable. Thus it seems clear that “Greer County” was leased to the United States by the Treaty of 1855 for the purposes set forth therein.

In support of its contention that the lands in “Greer County” were not included in the territory affected by the Treaty of 1855, and were, therefore, not leased to the United States by that treaty, petitioner refers to the fact alleged in the petition in the court below (R. 4) that no Indian tribe actually settled in “Greer County” after the Treaty of 1855, and argues from this that the parties to the treaty could not have intended that “Greer County” was within the territory affected. Petitioner also contends that since the State of Texas was laying claim to “Greer County,” it could not have been included within the territory dealt with in the treaty.

The court below correctly held, as to the first contention, that whether any tribes actually settled in “Greer County” was immaterial since the lands therein were contained in the territory leased. It also attached no importance to the fact that Texas was making claim to these lands. It appears that the United States did not acquiesce in the claims of Texas, but consistently asserted its title to “Greer

County." *United States v. State of Texas, supra*, 162 U. S. 1, at pp. 60-64. This Court's decision in that case established, as far as Texas was concerned, that title to "Greer County" had been in the United States since the cession by Spain in 1819. Furthermore, since the United States had always asserted its title, it was entirely consistent for the United States to treat the lands in "Greer County" as subject to settlement at its direction in and after the Treaty of 1855.

The correctness of the construction placed by the court below upon the Treaty of April 28, 1866, is equally clear. By that treaty the Choctaw and Chickasaw Nations ceded to the United States "* * * the territory west of the ninety-eighth degree of west longitude, known as the leased district * * *." (R. 2.) Since "Greer County" was included among the lands leased by the Treaty of 1855, it is clear that it was within the "leased district" which was ceded outright to the United States by the Treaty of 1866.

With respect to the construction of the Treaty of 1866, petitioner again contends that possession by Texas and that State's claim to title in "Greer County" indicates that "Greer County" was not ceded by the Treaty of 1866. But possession by Texas, which was never recognized by the United States as involving a valid claim to title, could not have affected the right of the Choctaw and Chickasaw Nations to cede these lands to the United States.

CONCLUSION

The decision of the court below is so clearly correct that we believe that no questions worthy of review by this Court are presented. The petition should, therefore, be denied.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.

CHARLES B. RUGG,
Assistant Attorney General.

WHITNEY NORTH SEYMOUR,
Special Assistant to the Attorney General.

GEORGE T. STORMONT,

CHARLES H. SMALL,

BRADLEY B. GILMAN,

Attorneys.

OCTOBER, 1932.

APPENDIX

The Act of June 7, 1924, c. 300, 43 Stat. 537, provides as follows:

* * * That jurisdiction be, and is hereby, conferred upon the Court of Claims, notwithstanding the lapse of time or statutes of limitation, to hear, examine, and adjudicate and render judgment in any and all legal and equitable claims arising under or growing out of any treaty or agreement between the United States and the Choctaw and Chickasaw Indian Nations or Tribes, or either of them, or arising under or growing out of any Act of Congress in relation to Indian affairs which said Choctaw and Chickasaw Nations or Tribes may have against the United States, which claims have not heretofore been determined and adjudicated on their merits by the Court of Claims or the Supreme Court of the United States.

SEC. 2. Any and all claims against the United States within the purview of this Act shall be forever barred unless suit be instituted or petition filed as herein provided in the Court of Claims within five years from the date of approval of this Act. The claim or claims of each of said Indian nations shall be presented separately or jointly by petition in the Court of Claims, and such action shall make the petitioner party plaintiff or plaintiffs and the United States party defendant. The petition shall be verified by the attorney or attorneys employed to prosecute such claim or claims under contract approved by the Commissioner of Indian Af-

fairs and the Secretary of the Interior, and said contract with such Indian tribe shall be executed in behalf of the tribe by the governor or principal chief thereof, or, if there be no governor or principal chief, by a committee chosen by the tribe under the direction and approval of the Commissioner of Indian Affairs and the Secretary of the Interior: *Provided, however,* That the attorney or attorneys employed as herein provided may be assisted by the regular tribal attorney or attorneys employed under existing law under direction of the Secretary of the Interior, with such additional reasonable and necessary expenses for said tribal attorneys to be approved and paid from the funds of the respective tribes under the direction of the Secretary of the Interior, as may be required for the proper conduct of such litigation. Official letters, papers, documents, and records, or certified copies thereof, may be used in evidence, and the departments of the Government shall give access to the attorney or attorneys of the abovenamed Indian nations to such treaties, papers, correspondence, or records as may be needed by the attorney or attorneys of said Indian nations.

SEC. 3. In said suit the court shall also hear, examine, consider, and adjudicate any claims which the United States may have against said Indian nations, but any payment which may have been made by the United States upon any claim against the United States shall not operate as an estoppel, but may be pleaded as an offset in such suit.

SEC. 4. That from the decision of the Court of Claims in any suit prosecuted under the authority of this Act, an appeal may

be taken by either party as in other cases to the Supreme Court of the United States.

SEC. 5. That upon the final determination of any suit instituted under this Act, the Court of Claims shall decree such amount or amounts as it may find reasonable to be paid any attorney or attorneys, other than the regular tribal attorney or attorneys employed under existing law, employed by said Indian nations for the services and expenses of said attorneys rendered or incurred subsequent to the date of approval of such contract: *Provided*, That in no case shall the aggregate amounts decreed by said Court of Claims for services and expenses be in excess of the amount or amounts stipulated in the contract of employment, or in excess of a sum equal to 10 per centum of the amount of recovery against the United States.

SEC. 6. The Court of Claims shall have full authority by proper orders and process to bring in and make parties to such suit any or all persons deemed by it necessary or proper to the final determination of the matters in controversy.

SEC. 7. A copy of the petition shall, in such case, be served upon the Attorney General of the United States, and he, or some attorney from the Department of Justice to be designated by him, is hereby directed to appear and defend the interests of the United States in such case.