

297-300

No. K-334

---

---

*In the Court of Claims of the United States*

---

THE CHICKASAW NATION, PLAINTIFF

*v.*

THE UNITED STATES OF AMERICA AND THE CHOCTAW  
NATION, DEFENDANTS

---

DEFENDANT UNITED STATES' MOTION FOR NEW TRIAL

---

NORMAN M. LITTELL,  
*Assistant Attorney General.*

RAYMOND T. NAGLE,  
CHARLES H. SMALL,  
*Attorneys.*

---

---

**In the Court of Claims of the United States**

No. K-334

(Decided May 5, 1941)

---

THE CHICKASAW NATION

*v.*

THE UNITED STATES OF AMERICA AND THE CHOCTAW  
NATION

---

**MOTION FOR NEW TRIAL**

---

Now comes the defendant, the United States, and moves the Court to vacate the judgment for plaintiff entered herein May 5, 1941, and to grant a new trial, for the following reasons:

1. The Court erred in holding as a matter of law that the lands in question were not legally taken until after the Treaty of 1855 and that the lands were definitely and legally taken by the defendant by the Act of 1875 (Op. pp. 13-17; brief, R. 306-333).

2. The Court erred in holding as a matter of law that the rule that a visible boundary, long acquiesced in, becomes the true boundary and that any loss thus occasioned gives rise to no claim for compensation, does not apply to the facts in the case at bar (Op. pp. 17-20; brief, R. 334-339).

3. The Court erred in refusing to find as a fact that the lands in question were physically taken by the erroneous survey following the Treaty of 1825 and prior to the time when the Chickasaw Nation acquired an interest in the Choctaw lands (Defendant's requested finding 3, R. 242; opinion herein, p. 13).

4. The Court erred in finding as a fact that by the Treaty of January 17, 1837 (11 Stat. 573), the Choctaws agreed for a consideration of \$530,000.00 to sell the Chickasaws an interest in their lands insofar as such interest is intended to mean an undivided  $\frac{1}{4}$  or any other estate in common in the Choctaw land and particularly in the disputed strip (Special Finding 7, page 3; brief, R. 323-331).

5. The Court erred in refusing to find as a fact that on March 23, 1842, a formal patent was executed which recited the promise made to the Choctaws in the Treaty of 1830 that a patent would be issued to the lands west of the boundary; that this patent describes the same eastern boundary as that described in the Treaty of 1825; that the patentee was the "Choctaw Nation", and that the patent did not mention the Chickasaw Nation (Defendant's requested finding 6, R. 245; brief, R. 325).

6. The Court erred in finding as a fact that by the Treaty of 1855, 11 Stat. 611, "the Choctaws and Chickasaws released rights in certain lands \* \* \*" (Special Finding 8, page 4; brief, R. 327).

7. The Court erred in refusing to find as a fact that there is no evidence that the Chickasaw Nation considered the United States liable to it until just prior to the filing of its original petition herein on August 5, 1929 (Defendant's requested finding 17, R. 256), and that there is no evidence that the Chickasaws showed any concern upon learning of the error in the survey (Defendant's requested finding 12, R. 252).

8. The Court erred in holding as a matter of law that the plaintiff was the owner of an undivided interest in the land in question (Op. p. 10).

9. The Court erred in entering judgment for the plaintiff.

10. The Court erred, having held in favor of the plaintiff, in entering judgment without reserving the determination of the amount of offsets, if any, for further proceedings, as provided in Rule 39 (a) (Op. p. 7).

And the defendant further moves:

(a) That the findings of fact be amended by adding an additional finding in the terms set forth in defendant's requested finding 3 (R. 242) or in such other terms as the Court may deem proper to formally find the fact stated by the Court in its opinion, as follows: "It is true that the lands were physically taken by the erroneous survey following the Treaty of 1825 \* \* \*" (Op. p. 13), and to show that the physical possession and dominion of the land by the United States was

complete prior to 1837 and that over a period of many years both the Chickasaws and Choctaws acquiesced in the erroneous boundary.

(b) That the findings of fact be amended by adding an additional finding in the language of defendant's requested finding 6 (R. 245-246) or in other suitable language to show the issuance of the patent to the Choctaws alone in 1842.

(c) That the findings of fact be amended by adding an additional finding that there is no evidence that the Chickasaw Nation considered the United States liable to it until just prior to the filing of its original petition herein on August 5, 1929, and that there is no evidence that the Chickasaws showed any concern upon learning of the error in the Conway survey.

(d) That, in the event the Court declines to vacate the judgment in favor of plaintiff, there be inserted in the judgment appropriate language to comply with the provisions of Rule 39 (a) relating to further proceedings for determination of offsets, if any.

Respectfully,

NORMAN M. LITTELL,  
*Assistant Attorney General.*

RAYMOND T. NAGLE,  
CHARLES H. SMALL,  
*Attorneys.*

JULY 1941.