

*Eastern Boundary  
Not from 1875*

*43,523.75 —  
117,612.10  
161,175.75*

**No. K-334.**

*No report  
Oct 16, 1923*

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**IN THE  
UNITED STATES COURT OF CLAIMS**

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THE CHICKASAW NATION, COMPLAINANT,  
VS.  
THE UNITED STATES OF AMERICA,  
DEFENDANT.

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**PETITION.**

(Filed August 5, 1929.)

Comes now the Chickasaw Nation, the complainant herein, and for its cause of action against the United States of America, respectfully represents to the court:

**I.**

The Chickasaw Nation, the complainant herein, is the Chickasaw Indian Nation or Tribe mentioned in the Act of Congress approved June 7, 1924 (43 Stat. 537), the first paragraph of which act is as follows:

“That jurisdiction be, and is hereby, conferred upon the Court of Claims, notwithstanding the lapse of time or the 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";

and by the Act of Congress approved February 19, 1929 (Public Resolution 88, 70th Congress) the time for the filing of such suits was extended to June 30, 1930.

## II.

The lands which constitute the subject matter of this suit comprise 136,204.02 acres, more or less, and lie west of the true north and south boundary line between the State of Arkansas and the lands of the Choctaw and Chickasaw Nations; and the Chickasaw Nation, the complainant herein, is the owner of a one-fourth interest in and to such lands, under treaties or agreements between the United States and the Choctaw and Chickasaw Nations which will be hereinafter referred to.

## III.

The title and ownership in and to such lands were acquired by the Choctaw and Chickasaw

Nations (with other lands) under treaties or agreements between the United States and the Choctaw and Chickasaw Nations as follows:

Treaty of 1820 (7 Stat., 210).  
Treaty of 1830 (7 Stat., 333).  
Treaty of 1837 (11 Stat., 573).  
Treaty of 1855 (11 Stat., 611).  
Treaty of 1866 (14 Stat., 769).

## IV.

Under Articles I and III of the said treaty of 1837 (11 Stat., 573) the Chickasaw Nation, for a valuable consideration, purchased a common interest in the lands of the Choctaw Nation.

## V.

Under Article I of the said treaty of 1855, the title to, and ownership of, the Choctaw and Chickasaw Nations, in and to such lands, was guaranteed and defined as follows:

"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 \* \* \*."

## VI.

All moneys resulting from the sale of tribal lands and properties of the Choctaw and Chickasaw



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."

#### VIII.

After the said treaty of 1825, between the United States and the Choctaw Nation, was entered into, the Secretary of War directed that the eastern boundary line of the Indian country be surveyed and marked, as therein provided. The line so surveyed and marked was supposed to be a due north and south line, and the true line, as fixed by the said treaty of 1825; but it was, later, found to be not a true north and south line and, therefore, erroneous.

In 1854, and while negotiations for the said treaty of 1855, between the United States and the Choctaw and Chickasaw Nations, were pending, the Choctaw and Chickasaws requested that the true north and south boundary line, between the State of Arkansas and the Indian country, be surveyed and marked, and, accordingly, a provision to that effect was agreed upon and inserted in the said treaty of 1855, as follows:

(ARTICLE XIX, TREATY OF 1855, 11 STAT., 611.)

"The United States shall, as soon as practicable, cause the eastern and western boundary lines of the tract of country described in the 1st article of this convention, and the western boundary of the Chickasaw district, as herein defined, to be run and permanently marked."

#### IX.

In November, 1857, the Commissioner of Indian Affairs employed surveyors to establish said boundary line between the State of Arkansas and the Indian country, in accordance with the said treaty of 1855. Such surveyors began their work at the northern end of the line and soon thereafter, reported that the old line which had been run by the first surveyors diverged westward from what was found to be the true north and south line. The Commissioner of Indian Affairs, thereupon, directed such surveyors to confine their labors to the work of retracing and remarking the old and erroneous line, which was done.

#### X.

The true north and south boundary line (which constituted the "Eastern Boundary" of the Indian country) was never surveyed and marked, in accordance with the treaties or agreements, between the United States and the Choctaw and Chickasaw Nations, and above referred to.



The Act of Congress approved March 3, 1875 (18 Stat., 476) is as follows:

“An act to establish the boundary line between the State of Arkansas and the Indian Country.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the boundary line between the State of Arkansas and the Indian country, as originally surveyed and marked, and upon which the lines of the surveys of the public lands in the State of Arkansas were closed, be, and the same is hereby, declared to be the permanent boundary line between the said State of Arkansas and the Indian country.

That the Secretary of the Interior shall, as soon as practicable, cause the boundary line, as fixed in the foregoing section, to be retraced and marked in a distinct and permanent manner; and if the original line, when retraced, shall be found to differ in any respect from what the boundary line would be if run in accordance with the provisions of the treaties establishing the eastern boundary line of the Choctaw and Cherokee Nations, then the surveyors shall note such variations and compute the area of the land, which in that case would be taken from the State of Arkansas or the Indian country, as the case may be; and the Secretary of the Interior shall also cause any monuments set up in any former survey indicating any line at variance with the survey provided for in this act to be obliterated.”

#### XI.

In the year 1877, under the authority of the said Act of Congress of March 3, 1875, the Secre-

tary of the Interior employed surveyors to retrace and remark the boundary line between the State of Arkansas and the Indian country, as originally surveyed and marked. They found such line to run westward from what the true boundary line would be, if run due south to Red River from a point one hundred paces east of old Fort Smith, where the western boundary line of the State of Arkansas crosses the Arkansas River, as fixed by the treaties of 1825, 1830 and 1855, between the United States and the Choctaw and Chickasaw Nations and above referred to. Such surveyors, acting in accordance with directions given them under the said Act of Congress of March 3, 1875, noted the variations from the true north and south line and made their return to the Secretary of the Interior. It was thus found, upon computation, that 136,204.02 acres had been taken from the Indian country by the erroneous surveys and markings of the original line.

#### XII.

The whole question of what constituted the true boundary line between the State of Arkansas and the Indian country, as fixed in the treaties between the United States and the Choctaw and Chickasaw Nations, and above referred to, was submitted to, and decided by, the United States Court of Claims in the suit of “*Choctaw Nation v. United States*” on January 5, 1886 (21 C. Cls., 12472



71) and the Supreme Court of the United States on November 15, 1886 (119 U. S. 1). It was held that the erroneous boundary line between the State of Arkansas and the Indian country, finally surveyed and marked by the said Act of Congress of March 3, 1875, took 136,204.02 acres of the lands of the Indians and appropriated the same as public lands of the United States.

The final decision of the Supreme Court of the United States, relating to the lands now in controversy is as follows:

"There is, however, another controversy arising under the treaty of 1855. The first article of that treaty fixed definitely the boundary of the territory ceded to the Choctaw Nation by the treaty of 1820. It is found as a fact by the Court of Claims, that, in the location of the line which was surveyed under the authority of the United States, and fixed as the permanent boundary between the State of Arkansas and the Indian country by the Act of Congress of March 3, 1875, 18 Stat. 476, the government made a mistake, whereby they embraced in the territory appropriated by the United States as part of the public lands, 136,204.02 acres of Indian lands \* \* \*"

#### XIII.

The Chickasaw Nation was not a party to the said suit of "*Choctaw Nation v. United States.*" It was the owner (in common with the Choctaw Nation) of a one-fourth interest in and to the lands now in controversy, and to which the said

decisions of the United States Court of Claims and the Supreme Court of the United States referred. It is now the owner of a one-fourth interest in and to such lands; and there has never been a judicial determination of its ownership therein or of its right to compensation therefor.

#### XIV.

The jurisdictional act of June 7, 1924 (set out in paragraph I of this petition) affords the Chickasaw Nation an opportunity, for the first time, to have a judicial determination of its rights in and to such lands; and it is for that purpose that this petition is filed.

#### XV.

Wherefore, the Chickasaw Nation, the complainant herein, prays that it may have judgment against the United States of America declaring it to be the owner of a one-fourth interest in and to the lands now in controversy, to-wit: 136,204.02 acres of lands lying west of the true eastern boundary line of the Choctaw and Chickasaw Indian country and appropriated as public lands of the United States by the said Act of Congress of March 3, 1875; and that, as compensation for its one-fourth interest in and to such lands so wrongfully appropriated, that it may have judgment against the United States of America for the sum of \$43,563.75 (which is one-fourth of the total sum of \$170,255.02, the total value of the



136,204.02 acres of land now in controversy, computed upon the basis of \$1.25 per acre), together with interest at the rate of five per centum per annum from March 3, 1875; and for all other and further relief to which the court may find it entitled.

WILLIAM H. FULLER,  
MELVEN CORNISH,

*Special Attorneys for the  
Chickasaw Nation.*

G. G. McVAY,  
*National Attorney for the  
Chickasaw Nation.*

*State of Oklahoma, County of Pittsburg, ss.*

William H. Fuller, being duly sworn on oath states that he is the William H. Fuller employed by Douglas H. Johnston, Governor of the Chickasaw Nation as attorney, under contract executed pursuant to the provisions of the Act of Congress approved June 7, 1924 (Public Document No. 222, 68th Congress) and which said contract was there-after duly approved by the Commissioner of Indian Affairs on January 5, 1926, and by the Assistant Secretary of the Interior on January 12, 1926, and is authorized to and does make this verification.

That he has read the foregoing petition and knows the contents thereof, and that the statements therein contained are based upon the treaties and

statutes referred to in said petition and upon information obtained from the records in the office of the Secretary of the Interior and his subordinate officers and are true and correct as affiant verily believes.

William H. Fuller.

Subscribed and sworn to before me on this 1st day of August, 1929.

(Seal)

Sarah Miller,

Notary Public.

My commission expires Jan. 5, 1932.

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