

No. F. 369.

IN THE UNITED STATES COURT OF CLAIMS

THE CREEK NATION, PLAINTIFF,
VS.
THE UNITED STATES, DEFENDANT.

PETITION.

(Filed November 29th, 1926.)

To the Honorable the Court of Claims:

The petitioner, the Creek Nation, respectfully represents:

I.

That by a certain Act of Congress, approved May 24th, 1924 (43 Stat. 139, as modified by Joint Resolution, 44 Stat. 568, giving permission to file separate petitions), petitioner was authorized and empowered to bring this action.

II.

That at all times mentioned herein, and for many years prior thereto, the Creek Nation was the owner in fee, of certain lands now within the boundaries of the State of Oklahoma, which said

lands constituted its national domain. That thereafter, and by a treaty made on the 14th day of June, 1866, between the United States and said Creek Nation, said Creek Nation ceded to the United States the west half of said national domain; and that Article V of said treaty further provided as follows:

“The Creek Nation hereby grants a right of way through their lands, to the Choctaw and Chickasaw Country, to any company which shall be duly authorized by Congress, and shall, with the express consent and approbation of the Secretary of the Interior, undertake to construct a railroad from any point north to any point in or south of the Creek Country, and likewise from any point on their eastern to their western or southern boundary.”

III.

That under said Article V the Missouri, Kansas and Texas Railway Company was authorized to construct a line of railroad from the north line of the Creek National Domain to the south line thereof. That in constructing said line of railroad it took and appropriated as a right-of-way therefor, a strip of land 200 feet wide, extending from the said north line of the Creek National Domain to the south line thereof a distance of 72.5 miles.

IV.

That under said Article V the Atlantic and Pacific Railroad Company was authorized to construct a line of railroad from the east line of the Creek

National Domain to the west line thereof. That all rights of said Atlantic and Pacific Railroad Company were assigned to the St. Louis and San Francisco Railroad, and that said last named company constructed said line of railroad. That in constructing said line of railroad it took and appropriated as a right-of-way therefor, a strip of land 200 feet wide, extending from said east line of the Creek National Domain to the west line thereof, a distance of 51.25 miles.

V.

That in addition to said 200 feet of right-of-way, each of the railway companies took, fenced up and appropriated what is known as “station reservations” along said rights-of-way. That said reservations were made and laid out by taking in addition to said rights-of-way, an additional strip on each side of said rights-of-way, more particularly described in certain maps now on file in the Indian Office at Washington, D. C., reference to which is hereby made.

VI.

That said Missouri, Kansas & Texas Railway Company took and appropriated as aforesaid the following described reservations:

“12th, Reservation. Description of Reserve for Leliaetta Station, Missouri, Kansas and Texas Railway situated about 5.87 miles

south of the 11th reservation Creek Nation, Indian Territory, bounded and described as follows, viz: Commencing at a stake on center line of said railway marked 2790 and known as Station 2790 of 3d series. Thence at right angles with said railway line west $1^{\circ}35'$ north to a stake set in mound and marked R. N. W. Thence S. $1^{\circ}35'$ west 2000 feet to a stake set in mound and marked R. S. N. Thence east $1^{\circ}35'$ south crossing railway line at Station 2810, 400 feet to a stake set in mound marked R. S. E. Thence north $1^{\circ}35'$ east 2000 feet to a stake set in mound marked R. N. E. Thence west $1^{\circ}35'$ north 200 feet to point of beginning containing 18.36 acres." Map 2057, Tube 983.

"13th Reservation. Description of Reserve for Rosedale Station, Missouri, Kansas and Texas Railway situated about 5.80 miles south of the 12th Reservation Creek Nation, Indian Territory, bounded and described as follows, viz: Commencing at a stake in center of said railway marked 3100 and known as station 3100 of 3d series. Thence at right angles with said railway line west $16^{\circ}05'$ south 200 feet to a stake set in mound and marked R. N. W., thence south $16^{\circ}05'$ east 2000 feet to a stake set in mound and marked R. S. W., thence east $16^{\circ}05'$ north crossing railway line at Station 3120, 400 feet to a stake set in mound marked R. S. E. thence north $16^{\circ}05'$ west 2000 feet to a stake set in mound marked R. N. E. thence west $16^{\circ}05'$ south 200 feet to point of beginning, containing 18.36 acres." Map 2063, Tube 983.

"14th Reservation. Description of Reserve Gibson Station, Missouri, Kansas & Texas Railway situated about 4.54 miles south of the 13th Reservation, Creek Nation Indian Territory. Bounded and described as follows,

viz: Commencing at a stake on center line of said railway marked 3340 and known as Station 3340 of 3d series. Thence at right angles with said railway line west $14^{\circ}55'$ north, 200 feet to a stake set in mound and marked R. N. W. Thence south $14^{\circ}55'$ west 2000 feet to a stake set in mound and marked R. S. W. Thence east $14^{\circ}55'$ south crossing the railway line at station 3360, 400 feet to a stake set in mound marked R. S. E. Thence north $14^{\circ}55'$ east 2000 feet to a stake set in mound and marked R. N. E., thence west $14^{\circ}55'$ north 2000 feet to point of beginning containing 1836 acres." Map 2056, Tube 983.

"15th Reservation. Description of Reserve for Muskogee Station Missouri, Kansas and Texas Railway Company situated about 9.37 miles south of the 14th Reservation Creek Nation Indian Territory. Bounded and described as follows, viz: Commencing from a stake on center line of said railway known as station 3835 of 3d series a strip of ground 400 feet wide and 2000 feet long extending to station 3855 being 200 feet wide on the east side of the center line of said railway and 200 feet wide on the west side and running parallel to said railway containing 18.36 acres" (Map 2060 T. 983).

"16th Reservation. Description of Reserve for Summit Station, Missouri, Kansas & Texas Railway Company situated about 6.83 miles south of a station called Muskogee. Creek Nation Indian Territory, bounded and described as follows viz: Commencing from a stake on center line of said railway marked 4195 and known as Station 4195 of 3rd series, thence at right angles with said railway line west 20° north 250 feet to a stake set in mound and marked R. N. W. Thence south 20° west

to a stake set in mound and marked R. S. W. Thence east 20° south crossing railway line at station 4215, 500 feet to a stake set in mound marked R. S. E. Thence north 20° east 2000 feet to a stake set in mound marked R. N. E. Thence west 20° north 250 feet to the point of beginning containing 22.95 acres" (Map 2052 Tube 983).

"17th Reservation. Description of Reserve for Oaktaha Station, Missouri, Kansas & Texas Railway situated about 13.7 miles south of 15th Reservation Creek Nation, Indian Territory. Bounded and described as follows viz: Commencing from a stake in center line of said railway marked 4550 and known as station 4550 of 3d series. Thence at right angles with said railway line west $10^{\circ}35'$ north 250 feet to a stake set in mound and marked R. N. W. Thence south $10^{\circ}55'$ west 2000 feet to a stake set in mound and marked R. S. W. Thence east $10^{\circ}55'$ south crossing railway line at station 4570, 500 feet to a stake set in mound and marked R. S. E. Thence north $10^{\circ}55'$ east 2000 feet to a stake set in mound and marked R. N. E. Thence west $10^{\circ}55'$ north 250 feet to point of beginning containing 22.96 acres" (Map, 2062, Tube 983).

"18th Reservation. Description of Reserve for Checotah Station, Missouri, Kansas & Texas Railway situated about 5.49 miles south of the 17th Reservation, Creek Nation Indian Territory, bounded and described as follows, viz: Commencing from a stake in center line of said railway known as station 4840 of 3rd series a strip of ground 500 feet wide and 2000 feet long extending to station 4860 of 3rd series being 250 feet wide on the east side of the center line of said railway and 250 feet on the west side and running parallel

to said railway, containing 22.95 acres" (Map 2053, Tube 983).

"19th Reservation. Description of Reserve for Bond Station Missouri, Kansas and Texas Railway situated about 5 miles south of the 18th Reservation, Creek Nation Indian Territory, bounded and described as follows, viz: Commencing from a stake on center line of said railway marked 5105 and known as station 5105 of 3rd series—thence at right angles with said railway line west $16^{\circ}25'$ north 250 feet to a stake set in mound and marked R. N. W. thence south $16^{\circ}25'$ west 2000 feet to a stake set in mound and marked R. S. W. thence east $16^{\circ}25'$ south crossing railway line at station 5125, 500 feet to stake set in mound and marked R. S. E. thence north $16^{\circ}25'$ east 2000 feet to a stake set in mound and marked R. N. E.—thence west $16^{\circ}25'$ north 250 feet to the point of beginning containing 22.95 acres" (Map 2059, Tube 983).

"20th Reservation. Description of reserve for Eufaula Station Missouri, Kansas and Texas Railway Company situated about 7.55 miles south of 19th Reservation Creek Nation Indian Territory, bounded and described as follows viz: Commencing from a stake on center line of said railway marked 366 of 4th series and known as station 366. Thence at right angles with said railway line west $6^{\circ}20'$ south 250 feet to a stake set in mound and marked R. N. W. Thence south $6^{\circ}20'$ east 2000 feet to a stake set in mound and marked R. S. W. Thence east $6^{\circ}20'$ north crossing line at station 386 500 feet to a stake set in mound and marked R. S. E. Thence north $6^{\circ}20'$ west 2000 feet to a stake set in mound and marked R. N. E. Thence west $6^{\circ}20'$ south 250 feet to the point of beginning. Containing 22.95 acres" (Map 2054, Tube 983).

VII.

That the said St. Louis and San Francisco Railway Company took and appropriated as aforesaid the following described reservations:

"1st. Reservation. Tulsa Station, situated in sections 1 and 2 township 19 north, range 12 east containing 13.8 acres being more particularly delineated and described on a certain map No. 2085 Tube 960 in the Office of the Commissioner of Indian Affairs in Washington, D. C."

"2nd. Reservation. Red Fork Station Sections 22 and 27 township 19 north, of range 12 east, containing 18.36 acres, being more particularly delineated and described on a certain map No. 2090 in Tube 960, in the Office of the Commissioner of Indian Affairs in Washington, D. C."

"3rd. Reservation. Stock yards $1\frac{1}{2}$ miles west of Red Fork, Sections 28 and 33 township 19 north of range 11 east containing 18.36 acres, being more particularly delineated and described on a certain map No. 2079, Tube 960, in the Office of the Commissioner of Indian Affairs in Washington, D. C."

"4th Reservation. Taneha Station, Section 1, township 18 north, of range 11 east, containing 13.8 acres, being more particularly delineated and described on a certain map No. 2091, Tube 960, in the Office of the Commissioner of Indian Affairs of Washington, D. C."

"5th Reservation. Sapulpa Station Section 35 township 18 north of range 11 east containing 18.36 acres, being more particularly delineated and described on a certain map No. 2082, Tube 960 in the Office of the Commissioner of Indian Affairs in Washington, D. C."

VIII.

That said additional land so taken, as above described, was not necessary to the rights-of-way of said railway companies or to the operation of their said railroads; that said land was not granted or ceded by said Creek Nation under said Article V of said Treaty of 1866 and that the taking of said additional land above described by said railway companies was an unauthorized intrusion by said railway companies, upon the lands of the said Creek Nation.

IX.

That said railway companies have never used, and are not now using said land for the purpose of operating their said railways, but are renting the same for meadows, farm land, and, where said "reservations" are in cities and towns, have leased the same for business purposes unconnected with the operation of the said railway companies, and have caused to be erected thereon, stores, warehouses, lumber yards, and other mercantile houses entirely unconnected with the operation of said railway companies, renting the same to tenants and deriving a profit therefrom.

X.

That at all times mentioned herein the said defendant, the said United States, has acted as the guardian of plaintiff and has assumed supervision over all of the affairs and acts of plaintiff and have

at all times mentioned herein, had and has entire control of the affairs of the plaintiff, administering them as its own, and that therefore plaintiff has no redress or means to recover said land thus intruded upon by said railway companies except through the action of the United States. That defendant has for many years permitted said railway companies to occupy said lands and use them for non-railroad purposes.

XI.

That although said situation was well known to the officers and agents of the United States, who had taken charge of plaintiff's affairs, said defendant has neglected and refused to recover said lands for plaintiff, and that plaintiff has been, and is now deprived of the possession of the same.

XII.

Your petitioner further avers that it has not in any way aided, abetted or given encouragement to rebellion against the United States; that the facts set forth herein are true; that it has never assigned the said claim nor any part thereof; and that it is justly entitled to recover of, and from the United States the amounts above set out.

Wherefore, defendant having failed to voluntarily bring an action of ejectment against said railway companies, to put plaintiff in possession of said lands, so unlawfully withheld, plaintiff prays

for judgment against defendant for the present full value thereof.

The Creek Nation.

By E. J. VAN COURT,

Its Attorney of Record.

Counsel:

CHESTER I. LONG,
GEO. E. CHAMBERLAIN,
PETER Q. NYCE,
J. D. HOUSTON,
AUSTIN M. COWAN,
CLAUDE I. DEPEW,
W. E. STANLEY,
SAMUEL W. MCINTOSH,
District of Columbia.

Personally appeared before me F. C. Kleinschmidt, assistant clerk of the court of claims; E. J. Van Court, who being by me first duly sworn deposes and says: that he is one of the attorneys for petitioners; that his authority to so represent petitioner is filed with case No. F. 168, in this court; that he is authorized under an act of Congress approved May 24th, 1924, to make verification of the above and foregoing petition; that he has read the said petition and knows the contents thereof; and that the matters and things therein alleged are true to the best of his knowledge, information and belief.

E. J. VAN COURT.

Subscribed and sworn to before me this 29th day of November 1926.

(Seal)

F. C. Kleinschmidt,

Assistant Clerk Court of
Claims.