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**IN THE COURT OF CLAIMS OF THE
UNITED STATES**

No. F-369.

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

SECOND AMENDED PETITION.

(Original Petition filed November 29th, 1926.)

(Amended Petition filed April 16th, 1930.)

(Second Amended Petition filed
February 14th, 1933.)

TO THE HONORABLE THE COURT OF CLAIMS:

The plaintiff, the Creek Nation, respectfully
represents:

That for its first cause of action the plaintiff
states:

I.

That by a certain Act of Congress, approved
May 24th, 1924 (43 Stat. 139, as modified by Joint

Resolution approved May 19, 1926, 44 Stat. 568, giving permission to file separate petitions, and Joint Resolution of February 19, 1929, 45 Stat. 1229, extending the time for filing suits until June 30, 1930), plaintiff 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 (14 Stat. 785), between the United States and said Creek Nation, the said Creek Nation ceded to the United States the west half of its said National Domain, reserving the east half of same which, by said treaty, was solemnly guaranteed by the United States to said Creek Nation.

III.

That Article V of said Treaty of 1866 granted a right-of-way from east to west and from north to south through the diminished Creek National Domain. Said Article V provides in part 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.”

That thereunder it became the duty of defendant to supervise the grants of said rights-of-way to two railroad companies duly authorized by Congress to construct roads through the Creek National Domain, to execute properly the provisions of said Article V; and to protect plaintiff in the quiet possession of the lands of its National Domain not so granted, as provided by Article I of said Treaty of 1866.

IV.

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 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.

V.

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 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.

VI.

That defendant, in violation of its duties under said Article V and of the rights of the plaintiff to lands of its National Domain so guaranteed under said Treaty of 1866, permitted each of said railway companies to stake out what are known as "station reservations" along their said 200 feet of rights-of-way. That said reservations consist of an additional strip of land on each side of said rights-of-way, each of said reservations containing approximately 20 acres, which were unauthorized and unlawful intrusions upon the lands of the Creek National Domain.

VII.

That said additional lands so staked out as above described were not necessary to the rights-of-way of said railroad companies or to the operation of their said railroads; that said lands were not granted or ceded by said Creek Nation under said Article V of said Treaty of 1866; and that

the staking out of each of said "station reservations," above described, was an unauthorized intrusion by said railroad companies upon the lands of said Creek Nation, permitted by defendant.

VIII.

That said railroad companies have never used, and are not now using said lands for the purposes of operating their said railroads, but due to defendant's neglect of duty as aforesaid, have rented and are now renting the same for meadows, farm land, and, where said "station reservations" are in cities and towns, have leased the same for business purposes unconnected with the operation of said railroad 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.

IX.

That after a thorough investigation and diligent search plaintiff is unable to find records in the Department of the Interior accurately describing the number of the several "station reservations" and is informed and believes and therefore avers that the only record accurately describing the number and location of each of said reserva-

tions was a certain book formerly in the Office of the Superintendent of the Five Civilized Tribes at Muskogee, Oklahoma, which said book, plaintiff is informed and believes and therefore avers, is lost and destroyed. But that the location and number of said reservations are well known to certain officers and agents of defendant and that said reservations are well defined by marks and boundaries along said rights-of-way, and can be readily located upon the taking of proof in this case.

X.

That said intrusions by said railroad companies upon the said Creek National Domain, so permitted by defendant, were violations of the rights of plaintiff under Article V of said Treaty of 1866; that by defendant's failure to execute properly its duties thereunder the plaintiff has been deprived of the quiet possession and enjoyment of said lands provided for in Article I of said Treaty of 1866; and that defendant, well knowing the facts as above set forth, has failed, neglected and refused to put plaintiff in possession of same, and therefore is liable for the damage resulting to plaintiff from defendant's failure to perform properly its obligations under said Treaty of 1866.

Plaintiff's Second Cause of Action.

That for its second cause of action plaintiff states:

I.

That plaintiff restates and repleads Paragraphs I and II of its first cause of action.

II.

That under the general provisions of the Act of Congress, approved February 28, 1902 (32 Stat. 43), other railroad companies desiring to construct lines through the Creek National Domain were authorized to appropriate rights-of-way under the conditions prescribed therein. Thereunder it became the duty of defendant to supervise the grants of said rights-of-way to said railroad companies constructing lines of road through the Creek National Domain, and to execute properly the provisions of said act.

III.

That in addition to the railroad provided for in plaintiff's first cause of action, certain other railroad companies acquired rights-of-way of 200 feet in width through the Creek National Domain, under the terms of said Act of February 28, 1902, which said roads are particularly described as follows, to-wit:

A certain railroad, now a branch line of the St. Louis and San Francisco Railroad Company, extending from Sapulpa, Oklahoma, in and through said Creek Nation to the southwestern boundary thereof; a certain railroad now a branch of the Missouri, Kansas and Texas Railroad Company, extending from Tulsa to the eastern boundary of the Creek Nation; a certain railroad known as the Midland Valley Railroad Company, extending from Tulsa to the eastern boundary of the Creek Nation; a certain railroad now a branch of the St. Louis and San Francisco Railroad Company, extending from Okmulgee to the eastern boundary of the Creek Nation; a certain railroad now known as the Kansas, Oklahoma and Gulf Railroad Company, extending from the eastern boundary of the Creek Nation to the southern boundary thereof; a certain railroad known as the Ft. Smith and Western Railroad Company, extending from the southeastern portion of the Creek Nation to the western boundary thereof; a certain railroad now known as the Chicago, Rock Island and Pacific Railroad Company, extending from the southern boundary of the Creek Nation to the eastern boundary thereof; a certain railroad now known as the St. Louis Iron Mountain and Southern Railroad Company, extending from the northeastern boundary of the Creek Nation to the eastern boundary thereof.

IV.

That defendant, in disregard of the provisions of said Act of February 28th, 1902, and of the rights of the plaintiff, and in violation of its covenant to guarantee to the plaintiff the quiet possession of its National Domain under the provisions of the Treaty of June 14, 1866, permitted each of said railroad companies to stake out what are known as "station reservations" along said 200 feet of rights-of-way. That said reservations consist of an additional strip of land on each side of said rights-of-way, each of said reservations containing approximately 20 acres, which were unauthorized and unlawful intrusions upon the lands of the Creek National Domain.

V.

That said additional lands so intruded upon as above described, were not necessary to the rights-of-way of said railroad companies or to the operation of their said railroads; that said lands were not granted under said Act of February 28th, 1902; and that the staking out of each of said "station reservations" above described, was an unauthorized intrusion by said railroad companies upon the lands of said Creek Nation, permitted by defendant.

VI.

That plaintiff restates and repleads Paragraphs VIII and IX of its first cause of action.

VII.

That said intrusions by said railroad companies upon the said Creek National Domain, so permitted by the defendant, were violations of the rights of the plaintiff under the said Act of February 28th, 1902; that by defendant's failure to execute properly its duties thereunder, the plaintiff has been deprived of the quiet possession and enjoyment of said lands provided for in Article I of said Treaty of June 14th, 1866; and that defendant, well knowing the facts as above set forth, has failed, neglected and refused to put plaintiff in possession of same, and therefore is liable for the damage resulting to plaintiff from defendant's failure to perform properly its obligations under said Act of February 28th, 1902, and said Treaty of 1866.

Plaintiff's Third Cause of Action.

For its third cause of action, plaintiff states:

I.

That plaintiff restates and repleads Paragraphs I and II of its first cause of action, and Paragraphs II and III of its second cause of action.

II.

That Section 15 of the Act of February 28th, 1902 (32 Stat. 43), provides in part, as follows:

"Sec. 15. That before any railroad shall be constructed or any lands taken or con-

demned for any of the purposes set forth in the preceding section, full compensation for such right of way and all land taken and all damage done or to be done by the construction of the railroad, or the taking of any lands for railroad purposes, shall be made to the individual owner, occupant, or allottee of such lands, and to the tribe or nation through or in which the same is situated;"

III.

That plaintiff is informed and believes and therefore avers that no such compensation for said lands of the Creek National Domain, appropriated under the provisions of said Section 15, was ever paid by said railroad companies.

IV.

That Section 16 of said Act of February 28th, 1902, provides in part as follows:

"Sec. 16. That where a railroad is constructed under the provisions of this Act there shall be paid by the railway company to the Secretary of the Interior, for the benefit of the particular tribe or nation through whose lands any such railroad may be constructed, an annual charge of fifteen dollars per mile for each mile of road constructed, the same to be paid so long as said lands shall be owned and occupied by such nation or tribe, which payment shall be in addition to the compensation otherwise provided herein."

V.

That plaintiff is informed and believes and therefore avers that said annual charge of fifteen

dollars per mile for each mile of road constructed has never been so paid in full to date by said railroad companies to the Secretary of the Interior, for the benefit of said Creek Nation.

VI.

That the Creek Nation has owned and occupied and now so owns and occupies the lands constituting said rights-of-way; that plaintiff is informed and believes and therefore avers that defendant, in violation of its obligations under said Act of February 28, 1902, and under said Sections 15 and 16 thereof, has failed, neglected and refused to collect the compensation provided therein for the benefit of the plaintiff; that defendant has never accounted to the plaintiff in full to date for said compensation, thus depriving plaintiff of the benefits provided therein; and therefore defendant is liable to plaintiff for defendant's failure to perform properly its said obligations.

Plaintiff's Fourth Cause of Action.

That for its fourth cause of action, the plaintiff states:

I.

That plaintiff restates and repleads Paragraphs I to IX of its first cause of action and Paragraphs II to VI of its second cause of action.

II.

That Section 11 of the Act approved April 26, 1906 (34 Stat. 137), states in part, as follows:

“Sec. 11. That all revenues of whatever character accruing to the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes, . . . shall, after the approval hereof, be collected by an officer appointed by the Secretary of the Interior under rules and regulations to be prescribed by him;”

III.

That under said Section 11, it became the duty of defendant to collect the rents and profits derived from plaintiff's lands, but that in violation of its duties the defendant permitted said railroad companies to rent plaintiff's lands unlawfully intruded upon, and to collect said rents and profits and to convert same to their own uses, thus depriving plaintiff of the benefits thereof; and for said failure, neglect and refusal of defendant to perform its said duties, defendant became liable to plaintiff for the amounts of said rents and profits, and that defendant has never accounted to plaintiff for the amounts of same.

Plaintiff's Fifth Cause of Action.

That for its fifth cause of action the plaintiff states:

I.

That plaintiff restates and repleads Paragraph I of its first cause of action.

II.

That plaintiff restates and repleads all of the unlawful and unauthorized acts of said railroad companies and the wrongs perpetrated by same upon the plaintiff, known to and unlawfully permitted by the defendant, and all facts relative thereto, as set forth in plaintiff's first, second, third and fourth causes of action.

III.

That Section 18 of the Act of Congress approved April 26, 1906 (34 Stat. 137), provides in part as follows:

"Sec. 18. That the Secretary of the Interior is hereby authorized to bring suit in the name of the United States, for the use of the . . . Creek . . . tribe . . . for the collection of any moneys or recovery of any land claimed by . . . said tribe . . . and the United States courts in Indian Territory are hereby given jurisdiction to try and determine all such suits, and the Secretary of the Interior is authorized to pay from the funds of the tribe interested any costs and necessary expenses incurred in maintaining and prosecuting such suits."

IV.

That, although said facts as herein set forth were well known to defendant for many years, yet in violation of its express duties under said Section 18 of said Act of April 26, 1906, it has failed, neglected and refused to bring suits for the collec-

tion of the moneys due from said railroad companies, or for the recovery of the lands wrongfully intruded upon and claimed herein by the Creek Nation, although often requested by plaintiff so to do; that by defendant's failure, neglect and refusal to perform its said duties under said Section 18, it became liable to the plaintiff for the compensation and the value of said lands of which the plaintiff has been so unlawfully deprived.

V.

That at all times mentioned herein the plaintiff has had no redress, or now has the means or the right to recover in its own name said lands thus intruded upon, or to so collect the said compensation to be paid for the benefit of plaintiff as herein set forth, except through the action of the United States.

Wherefore, the premises considered plaintiff prays:

1. That under plaintiff's first and second causes of action defendant be required to account for the lands of said "station reservations" so unlawfully intruded upon, and that judgment be entered against the defendant for the full present value of same.

2. That under plaintiff's third cause of action defendant be required to account for the collection of said compensation for the benefit of

plaintiff as therein set forth, and that judgment be entered against defendant for the amounts found to be due plaintiff which were not so collected by defendant.

3. That under plaintiff's fourth cause of action defendant be required to account for the rents so collected by said railroad companies which defendant unlawfully permitted to be misappropriated and diverted from the funds of plaintiff, and that judgment be entered against the defendant for its failure to so collect the amounts of said rents and profits.

4. That under plaintiff's fifth cause of action defendant be required to account for the lands and moneys of which plaintiff has been so unlawfully deprived because of the failure, neglect and refusal of defendant to file and prosecute suits to recover same for the benefit of the plaintiff, and that judgment be entered against defendant for the full present value of said lands, and for the amounts of money so found to be due plaintiff.

5. That on all of said items due plaintiff interest be allowed at the rate of six per cent from the dates of said unlawful acts so complained of herein.

The Creek Nation,
By E. J. VAN COURT,
Its Attorney of Record.

Of Counsel:

PAUL M. NIEBELL.

State of Oklahoma, County of McIntosh.

Personally appeared before me, a notary public in and for said county and state, E. J. Van Court, who being by me first duly sworn, deposes and says: That he is one of the attorneys for petitioner; 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 amended petition; that he has read said amended petition, and knows the contents thereof; 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 23rd day of January, 1933.

(Seal)

W. D. Renfro,
Notary Public.

My commission expires December 18th, 1934.