

*for Fuller*

## In the Court of Claims.

THE WICHITA AND AFFILIATED BANDS OF INDIANS IN OKLAHOMA, THE TOW- ACONIES, WACOS, KEECHIS, IONIES AND THE DELAWARE BAND OF THE WICHITA TRIBE, AND THE INDIVID- UAL MEMBERS OF SAID WICHITA AND AFFILIATED BANDS OF INDIANS, <i>Petitioners,</i> <i>vs.</i>	} No. E-542.
THE UNITED STATES OF AMERICA, <i>Defendant.</i>	

### PETITION.

(Filed October 21, 1925.)

*To the Honorable, the Chief Justice and Associate Justices of the Court of Claims:*

Your petitioners, the Wichita tribe and affiliated bands of Indians in Oklahoma, the Towaconies also know as the Towacarros, the Wacos, Keechis, Ionies and Delaware band of the Wichita tribe and the individual members thereof, respectfully represent to the Court:

1. That they are all members of what are known as the Wichita and affiliated bands of Indians in Oklahoma and occupying in severalty lands in what was formerly the Great Southwestern Prairie. They were formerly in treaty relations with the United States and then and now are under the control and guardianship of the United States and formerly held in common, and were



so recognized to hold in common by the governments of France and Spain and the Republics of the United States and of Texas, large tracts of land west of a great natural boundary in parts of the present states of Oklahoma and Texas, known as the Cross Timbers situated east of the 98th degree of latitude and south of the Canadian River and extending westward along said Canadian River to certain natural landmarks about 6 miles west of what are known as the Antelope Hills in Oklahoma and in the south extending westward on both sides of the Red River, and as far south as the Brazos River in Texas to what is approximately now the western boundary of the County of Greer, State of Oklahoma, the whole comprising approximately about 9,000,000 acres of land, the precise extent being unknown to petitioners but known now to the defendant, though formerly unknown to said United States.

2. Petitioners bring this suit by virtue of an Act of Congress of the United States approved June 4, 1924, entitled "An Act Authorizing the Wichita and affiliated bands of Indians in Oklahoma to submit claims to the Court of Claims." Said act reads in full as follows:

*"Be it enacted, etc.,* That all claims of whatsoever nature which the Wichita and affiliated bands of Indians in Oklahoma may have against the United States may be submitted to the Court of Claims for determination of the amount, if any, due said tribes or bands of Indians from the United States under any treaties, agreements, or laws of Congress, or for the misappropriation of any of the funds of said tribes or bands, or for the failure of the United States to pay said tribes or bands any moneys or other property due; and jurisdiction is hereby conferred on the Court of Claims, with the right of either party to appeal to the Supreme Court of the United States, to hear and determine as right and

justice may require and upon a full and fair arbitration all legal and equitable claims, if any, of said tribes or bands against the United States, and to enter judgment thereon.

Sec. 2. That if any claim or claims be submitted to said court, it shall settle the rights therein, both legal and equitable, of each and all the parties thereto, notwithstanding lapse of time or statutes of limitation, and any payment which may have been made upon any claim so submitted shall not be pleaded as an estoppel, but may be pleaded as an offset in such suits or actions, and the United States shall be allowed credit for all sums including gratuities heretofore paid or expended for the benefit of said tribes or any band thereof.

The claim or claims of the Wichita and affiliated bands may be presented separately or jointly by petition, subject, however, to amendment, suit to be filed within five years after the date of the passage of this Act; and such action shall make the petitioner or petitioners party plaintiff or plaintiffs and the United States party defendant, and any band or bands of the said Wichita and affiliated bands or any other tribe or bands of Indians the court may deem necessary to a final determination of such suit or suits may be joined therein as the court may order. Such petition or petitions shall be verified by the attorney or attorneys employed by the Wichita and affiliated bands or any tribe or band thereof under contract approved in accordance with existing law and no other verification shall be necessary. Official letters, papers, documents; and public 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 said tribes or bands thereof to such treaties, papers, correspondence, or records as may be needed by the attorney or attorneys for said tribes of Indians.

Sec. 3. That upon the final determination of such suit or cause of action, the Court of Claims shall



decree such fees as it shall find reasonable to be paid to the attorney or attorneys employed therein by said tribes under contracts negotiated and approved as provided by existing law, but in no case shall the fees decreed by said court amount to more than 10 per centum of the amount of the judgment recovered in such cause, and in no event shall such fee amount in the aggregate under one attorneyship for each tribe to more than \$25,000, and shall be paid out of any judgment that may be recovered; and the balance of such judgment shall be placed in the United States Treasury to the credit of the Indians entitled thereto, where it shall draw interest at the rate of 4 per centum per annum."

The Delaware band of Indians was formally affiliated with the Wichita tribe of Indians in 1837 and is a band of the famous Delaware tribe that many years ago migrated to southwestern Oklahoma and northern Texas and the other bands named sometimes said to be affiliated with the Wichita tribe are really bands or component parts of said tribe and so recognized by said tribe. Under said act of Congress petitioners executed a contract in accordance therewith with Charles H. Merillat and Charles J. Kappler, attorneys, to represent them and said contract has been duly approved as provided by existing law.

3. Petitioners from time immemorial and prior to the time the first white explorers visited the northern part of Texas and the present State of Oklahoma, with the assent and acknowledgment of all other Indians having any knowledge of them and their country, had as their habitat and range and claimed and used as their own for their fields, grazing, ranging and hunting grounds and without dispute by others the region of country in the present State of Oklahoma situated west

of the Cross Timbers a great natural rugged boundary east of the present 98th meridian of longitude that served as a landmark and barrier against enemies and extending westward as far as certain places where they had at times had villages about 6 miles west of the Antelope Hills on the Canadian River in the northwest and approximately the western boundary of Oklahoma on the southwest and between the Canadian River on the north and the Red River on the south. Petitioners roamed as did other Indians in pursuit of buffalo or game at times north of the Canadian River but at least for more than a hundred years past had not claimed, occupied or used same as their habitat or range, recognizing it as the territory in earlier days of other tribes of Indians and later of the whites. Petitioners also and especially certain of the bands affiliated with the Wichita tribe had as their habitat and range and without dispute occupied with their villages and cultivated the fields, grazed their animals on and hunted over lands south of Red River and stretching along same approximately from the Cross Timbers in northern Texas to opposite the present county of Greer, Oklahoma, and extending south as far as the Brazos River. Petitioners at no time abandoned, forfeited or relinquished the tract aforesaid in the State of Oklahoma or their claim or right thereto and at all times from their first knowledge of any trespass on or against their claim or right thereto protested against same and yielded said habitat and range or parts thereof only in consequence of grievances against them by the defendant hereto and appropriation by defendant to its own uses and purposes of petitioner's lands over their right, claim and protest. Petitioners at no time abandoned their claims or rights south of the Red River and ceased habitat or range therein only by reason of unlawful acts



against them and in violation of its treaties with them on the part of the State of Texas and the inhabitants thereof, and at the earnest request and insistence of the Government of the United States which had annexed the State of Texas under agreement to give said state all public lands and cooperated with said State of Texas in bringing about the removal of the affiliated bands of the Wichita tribe south of the Red River under promises, never fulfilled, of protection of petitioners in their lands north of Red River and reimbursement to them of their losses.

4. Petitioners state that prior to the year 1818 the United States, which then was ignorant of the country herein described as the habitat and range of petitioners and of petitioners and their rights and whose knowledge of the interior of the southwestern country beyond the Mississippi River was exceedingly limited, vague and indefinite regarded same as a region uninhabited save by roving Indians without habitat or range and only fit for and to be used by hunters and roving Indians, framed as a part of its national policy a plan for the extinguishment of Indian title to lands east of the Mississippi River and removal of the Indian occupants thereof and particularly of the southern tribes now known as the Cherokees, Creeks, Seminoles, Choctaws and Chickasaws, to lands west of the Mississippi River, which territory the United States in 1803 had acquired from France by what was styled the Louisiana Purchase, though coupled with the condition that such sale was subject to the rights of the Indian occupants of the territory sold—rights consistently recognized as part of the national polity of both France and Spain. This condition the United States had given effect to by Sec. 15 of the act of March 26, 1804 (2 Stat. 289), providing

for maintenance of peace and tranquility with the Indian tribes residing within the limits of Louisiana and as a means to that end providing for the purchase of claims or titles to lands held by Indians within the Louisiana territory only by the United States. At this time the tribe of Indians known as the Quapaws had as their habitat and range certain lands beyond the Mississippi River in the northwestern part of the State of Louisiana and also laid claim to certain rights in lands, particularly hunting rights in lands on both sides of the Mississippi River including the eastern half of the present State of Arkansas. Further west along the Red River both north and south of said river and between said Red River and the Sabine River in western Louisiana and eastern Texas the Caddo tribe of Indians had their habitat and range and certain claims to lands they occasionally roamed or hunted over. Neither of said tribes as tribes or bands or as individuals made any claim to or had any rights in lands in any part of what subsequently was known as Indian Territory and the habitat and range of petitioners as herein described and the country west of the Cross Timbers had never been occupied or used by them as habitat or range and formed no part of their villages, fields, grazing or hunting grounds or lands over which they were accustomed to roam. The Great and Little Osage tribes of Indians at this time had their habitat or range in southwestern Missouri and claimed certain habitat, range and hunting rights in the State of Kansas and also in what is now the State of Arkansas including as far south as the Red River to a region to which the Quapaws with whom they were at enmity laid claim, but said Osage tribes at no time laid claim to or had any rights of any sort whatsoever, including herein rights of dwelling, cultivation, grazing, hunting or roaming, as a tribe or by bands there-



of or individuals in any of the lands herein described as the habitat and range of petitioners, the Osage tribes making no claim to any land in the Indian Territory south of the Arkansas and Cimarrone rivers or west of the Cross Timbers.

For the purpose of extinguishment under the then existing act of Congress of all claim of the Quapaw tribe of Indians to lands east of the Mississippi River and of all except a restricted area of their landed rights in Louisiana or Arkansas the United States made a treaty with the Quapaw tribe of Indians August 24, 1818, (7 Stats. 176, 2 Kappler 160) whereby the Quapaws ceded to the United States their landed rights or claims east of the Mississippi River and also from the Mississippi River between the Red River and the Arkansas or Canadian River to the head waters of each stream. Said Quapaw tribe at this time numbered less than one thousand souls and the lands undertaken to be ceded though the extent was not then known to the United States and both signatory powers had never set foot on the western half or three quarters thereof comprised more than 43,000,000 acres of land, including territory that was in acknowledged ownership of another power, the Kingdom of Spain. Said Quapaw treaty in part read as follows:

Art. 2. The undersigned chiefs and warriors, for themselves and their said tribe or nation, do hereby, for and in consideration of the promises and stipulations hereinafter named, cede and relinquish to the United States forever, all the lands within the following boundaries, viz: Beginning at the mouth of the Arkansas River; then extending up the Arkansas, to the Canadian fork and up the Canadian fork to its source; thence south to Big Red River and down the middle of that river to the Big Raft; thence a direct line, so as to

strike the Mississippi River thirty leagues in a straight line below the mouth of the Arkansas; together with all their claims to land east of the Mississippi and north of the Arkansas River included within the colored lines 1, 2 and 3 of the above map, with the exception and reservation following, that is to say, the tract of country bounded as follows: Beginning at a point on the Arkansas River opposite the post of Arkansas and running thence a due southwest course to the Washita River; thence up that river to the Saline Fork; and up the Saline Fork to a point from whence a due north course would strike the Arkansas River at the Little Rock; and thence down the right bank of the Arkansas to the place of beginning, which said tract of land last above designated and reserved shall be surveyed and marked off at the expense of the United States, as soon as the same can be done with convenience, and shall not be sold or disposed of by the said Quapaw tribe or nation to any individual whatever, nor to any state or nation, without the approbation of the United States first had and obtained.

\* \* \* \* \*

Art. 5. In consideration of the cession and stipulations aforesaid, the United States do hereby promise and bind themselves to pay and deliver to the said Quapaw tribe or nation, immediately upon the execution of this treaty, goods and merchandise to the value of four thousand dollars, and to deliver or cause to be delivered to them yearly and every year, goods and merchandise to the value of one thousand dollars, to be estimated in the city or place in the United States where the same are procured or purchased.

The Quapaws by this treaty reserved for themselves a comparatively small tract of land in the State of Arkansas and on November 15, 1824 (7 Stats. 232, 2 Kappler 210) by treaty ceded said reserved tract to the



United States, completely surrendering all claim as a separate tribe to any territory in the United States. Article IV of said treaty provided:

"The Quapaw Tribe of Indians will hereafter be concentrated and confined to the district of country inhabited by the Caddo Indians, and form a part of said Tribe."

The Caddo district aforesaid, as petitioners are informed and believe and therefore aver, was an area in the State of Arkansas near Bayou Treache, west of the former habitat of the Quapaws, but over 200 miles from the habitat and range of petitioners. Thereafter the Quapaw tribe becoming dissatisfied with the unhealthy swampy district assigned them by the Caddos and having no other home were given by the United States in consideration of relinquishment of rights with the Caddoes a reserve of 150 sections of land in the northeastern corner of the present State of Oklahoma and constituting the only lawful right, claim or demand the Quapaws ever had in any land in either Oklahoma or Texas or occupancy of any kind or land therein.

The Caddo tribe, which was at the time living in Louisiana and Arkansas, on its part by treaty with the United States of July 1, 1835 (7 Stats. 470, 2 Kappler 432) in consideration of the sum of \$80,000 ceded to the United States all its claim to territory within the limits of the United States, to wit,

"bounded on the west by the north and south line which separates the United States from the Republic of Mexico, (later Republic and State of Texas) between the Sabine and Red rivers wheresoever the same shall be defined and acknowledged to be by the two governments. On the north and east by the Red river from the point where the said north and

south boundary line shall intersect the Red River whether it be in the territory of Arkansas or the State of Louisiana."

Said Caddo tribe further agreed, having ceded all their lands or claims to land, to remove outside the limits of the United States within one year and never return to live, settle and establish themselves as a nation or tribe within the same. The Caddo tribe complied with their treaty agreement and moved to Mexico, in what is now the State of Texas, which adjoined them and had become independent of Spain. Subsequently through Texas annexation to the United States the Caddoes again became inhabitants of the United States.

5. Petitioners state that the United States at the time of the Quapaw treaty being without knowledge of the country it was acquiring from the Quapaws and that the habitat of other Indians and especially petitioners was within the territory the Quapaws were purporting to cede and that the only claim of the Quapaws thereto was that they lived on the lower reaches of rivers that further westward were the streams that marked the habitat of petitioners, undertook to and did assert claim and dominion to all the lands covered by the Quapaw cession without extinguishment of the rights of the lawful occupants of the soil, your petitioners and other tribes of Indians. Petitioner states that so far as petitioners are concerned said Quapaw cession was ineffectual for the purpose and conveyed no right or title under the laws of the United States and of either France or Spain for the reason that said Quapaw tribe had no shadow even, of right or claim thereto.

Petitioners state that for more than two hundred years prior to the Quapaw cession aforesaid and ever



since said cession except as deprived by the grievances herein complained of, petitioners had and have had their habitat and range in and were in the actual continuous possession and occupancy of the territory for which recovery is herein sought and also of what is herein referred to as Leased District 5 and had villages, fields and hunting grounds and lands wherever they were accustomed lawfully to roam in all sections or parts thereof which they never had and have not abandoned, forfeited, disposed of or relinquished.

Petitioners state that the earliest Spanish and French explorers traversing the region of the Red River and the Canadian River west of the Cross Timbers in longitude east of the present 98th meridian and as far west as beyond the Antelope Hills on the Canadian River on the north and present Greer County on the south found petitioners occupying said region with their villages, fields and hunting grounds and that no other Indian tribes laid claim thereto. The habitat and range of the Comanches, Kiowas and Apaches was further west and southwest and that of the Arapahoes and Cheyennes to the north and west.

In 1719 the French expedition of de la Harpe found many villages of petitioner Indians on the Canadian near the Antelope Hills. In 1759 petitioners met and repulsed a hostile Spanish expedition within the region here described. In 1788 the Spanish government sent a peace mission to induce petitioners to move nearer the Spanish settlement and to return a brass cannon captured by petitioners in 1758 and this expedition passing westward beyond the Cross Timbers located good-sized Wichita villages just south and north of the Red River and obtained the cannon, but petitioners refused to leave their homes and retained their recognized habitat. In 1788 the Frago Spanish expedition found the

Wichitas settled in villages and traveling and hunting in the region west of the Cross Timbers. In 1805 and 1807 American and French explorers found petitioners living in the same region.

It was not until 1834 that the United States made a real effort to ascertain with definiteness the location of Indian tribes within the territory in the far southwest which it had acquired from France and Spain and the extent of the rivers traversing the country. Said expedition known as the Leavenworth-Dodge expedition found petitioners occupying the herein described habitat and range, and that they had done so for generations. The knowledge then conveyed constituted the first real official information the United States had of petitioners and their country. In 1852 the Marcy expedition also located petitioners' villages, homes, fields and hunting grounds in the same region and except for a temporary absence in Kansas during the Civil War at the request of the United States petitioners so continued to live.

6. In 1821 the United States entered into a treaty with Spain (8 Stats. 252) by Article 3 whereof the boundary line between the two nations was agreed upon as follows:

"The boundary line between the two countries west of the Mississippi, shall begin on the Gulf of Mexico, at the mouth of the river Sabine, in the sea, continuing north along the western bank of that river to the thirty second degree of latitude; thence by a line due north to the degree of latitude where it strikes the Rio Roxo of Natchitoches or Red River; then following the course of the Rio Roxo westward to the degree of longitude 100 west from London and 23 from Washington; then crossing the said Red River, and running thence by a line due north to the River Arkansas."



Petitioner states that subsequently in a suit between the State of Texas and the United States, in which suit the defendant in part grounded its claim to dominion on the habitat and range of petitioners who were Indians of the United States within the same, it was decided by the Supreme Court of the United States that the described course of the Red River did not follow the Prairie Dog Town fork of the river but the southern stream and that Greer County was in the State of Oklahoma and had formed part of the United States.

Petitioners state however that both under the laws of Spain and of the United States and also the laws of France, Indian rights to lands forming their habitat and range were recognized so that the matter is only material in so far as concerns any claim of a forfeiture of petitioners' rights in the lands of Greer County by the Government of Mexico or the Republic of Texas.

7. Petitioners state that the United States being uninformed of petitioners' landed rights as hereinbefore set forth and accepting and acting upon the Quapaw so called cession of 1818 as conferring on it the lawful right so to do, in pursuance of its national policy to remove all Indians living east of the Mississippi River to west of said river, undertook to make an exchange and purchase treaty and agreement with the Choctaw tribe of Indians whereby said Choctaw tribe should relinquish all title to lands east of the Mississippi and accept in lieu thereof lands west of the river which the United States though not having ownership of or occupancy rights therein agreed to and did deed by defeasible fee simple to the Choctaw tribe. Said agreement was put into writing by treaty of October 18, 1920 (7 Stats. 217, 2 Kappler, 191) the second article whereof reads as follows:

"For and in consideration of the foregoing cession (the lands east of the Mississippi) on the part of the Choctaw Nation, and in part satisfaction for the same, the commissioners of the United States, on behalf of said states, do hereby cede to said nation the tract of country west of the Mississippi River, situate between the Arkansas and Red rivers, and bounded as follows: Beginning on the Arkansas River where the lower boundary line of the Cherokees strikes the same; thence up the Arkansas to the Canadian Fork and up the same to its source; thence due south to the Red River; thence down Red River, three miles below the mouth of Little River, which empties itself into Red River on the north side; thence a direct line to the beginning."

Petitioners state that the area described though unknown at the time to the contracting parties ran to the 103d degree of longitude and that in 1821 the United States by treaty with Spain (8 Stat. 252) solemnly agreed that its territory did not extend beyond the 100th degree of longitude and that its western boundary was a line running along said 100th meridian from the Red River due north to the Arkansas River, thus terminating all the rights it had the year before undertaken in absence of knowledge to transfer to the Choctaws.

By treaty between the United States and the Choctaw nation of September 27, 1830 (7 Stats. 333; 2 Kappler 310), the treaty of 1820 was modified to read in part as follows:

"Art. 2. The United States under grants specially to be made by the President of the United States shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it, beginning near Fort Smith, where the Arkansas boundary crosses the Arkansas River,



running thence to the source of the Canadian Fork, if in the limits of the United States, or to those limits."

Petitioners state that though still then unknown to the United States this treaty was in violation of the lawful right of petitioners to the soil and its occupancy under the laws of the United States comprising as it did in part the habitat and range of petitioners and to such extent at least was in conflict with and in violation of a recently enacted law of Congress declaratory of the established Indian policy of the United States.

By act approved May 28, 1830 (4 Stats. 411), Congress had authorized the

"President of the United States to cause so much of any Territory belonging to the United States, west of the Mississippi, not included in any State or territory, *and to which the Indian title has been extinguished*, as he may judge necessary, to be divided into districts for the reception of tribes,"

the purpose being while safeguarding the rights of any Indians already entitled to land in the Indian Territory to create an exclusive habitat and area for persons of the Indian race.

8. In 1834 the United States equipped an expedition known as the Leavenworth-Dodge expedition for the purpose of traversing the then practically unknown southwestern country and reporting thereon to the Secretary of War, particularly with reference to the Indian tribes inhabiting the Great Prairie west of the Cross Timbers or as sometimes called the Great Southwestern Prairie and with a view to fulfillment of the guarantee of the United States of protection to the emigrating Indians from east of the Mississippi. The

expedition under Colonel Dodge, General Leavenworth not continuing owing to illness, foregathered with petitioners at a large village they then had near Mount Webster within the present limits of Greer County on the north fork of the Red River and were surprised to find that petitioners lived in houses of their own special construction, had extensive fenced fields, cultivated corn, melons, pumpkins, squash, beans and other vegetables, lived only partly by the chase and traded with the Comanches, who lived further west and with whom the petitioners, then much fewer by reason of wars and disease, than in 1759 when 6,000 strong they defeated General Parilla, had been long on terms of friendship. Petitioners at the time had other villages, fields and hunting grounds at places in their habitat in Oklahoma and Texas, and affiliated bands were living separate from the main tribe but as part of one tribal organization. Report was made to the Secretary of War and attention of the United States thereby called to the fact that both Wichitas and Comanches had landed rights which the national policy of defendants recognized but no treaty existing. The Choctaws were occupying no part of the habitat of petitioners. Petitioners by army officers were called Pawnee Picts from having tattoo marks similar to the Pawnees but were a wholly different tribe.

The United States at this time desired to establish peaceful communication with Mexico and to this end to make the roads safe and to establish peace between all Indian tribes as conducive to commerce and trade and fulfillment of treaty obligations of protection to the Five Civilized Tribes. Treaty commissioners were sent and at Camp Holmes, a Wichita Indian village situated near the present town of Purcell, Oklahoma, not far west of the Cross Timbers, the first treaty on



the part of petitioners and the Comanches with the United States was executed. At the time the buffalo in their migrations to an extent traveled across the habitat of petitioners and at times brought into conflict the petitioners and the Comanches with other Indian tribes. The treaty recognized the habitat of petitioners and their settlement and hunting grounds and that the Comanches' habitat was, as in fact it did exist, further westward in the Panhandle of Texas and the high lands of New Mexico and Colorado, these two tribes of Wichitas and Comanches being friendly and the latter recognizing petitioners' claims and right to their habitat and range as herein set forth.

Said treaty of Camp Holmes dated August 24, 1835 (7 Stats. 474; 2 Kappler 435), and which was signed by the United States and by petitioners and the Comanches and representatives who were present from the Choctaw, Cherokees, Muskogees or Creeks, Osages, Senecas and Quapaws reads as follows:

"ARTICLE 1. There shall be perpetual peace and friendship between all the citizens of the United States of America, and all the individuals composing the Comanche and Wichita nations and their associated bands and tribes of Indians, and between these nations or tribes and the Cherokee, Muscogee, Choctaw, Osage, Seneca and Quapaw nations or tribes of Indians.

"ARTICLE 2. Every injury or act of hostility by one or either of the contracting parties on the other, shall be mutually forgiven and forever forgot.

"ARTICLE 3. There shall be a free and friendly intercourse between all the contracting parties hereto, and it is distinctly understood and agreed by the Comanche and Wichitaw nations and their associated bands or tribes of Indians, that the citizens of the United States are freely permitted

to pass and repass through their settlements or hunting grounds without molestation or injury on their way to any of the provinces of the Republic of Mexico, or returning therefrom, and that each of the nations or tribes named in this article, further agree to pay the full value for any injury their people may do to the goods or property of the citizens of the United States taken or destroyed, when peaceably passing through the country they inhabit, or hunt in, or elsewhere. And the United States hereby guarantee to any Indian or Indians of either the Comanche or Wichitaw nations, and their associated bands or tribes, a full indemnification for any horses or other property which may have been stolen from them; Provided, that the property so stolen can not be recovered, and that sufficient proof is produced that it was actually stolen by a citizen of the United States, and within the limits thereof.

"ARTICLE 4. It is understood and agreed by all the nations or tribes of Indians, parties to this treaty, that each and all of the said nations or tribes have free permission to hunt and trap in the GREAT PRAIRIE WEST OF THE CROSS TIMBERS, TO THE WESTERN LIMITS OF THE UNITED STATES.

"ARTICLE 5. The Comanche and Wichitaw nations and their associated bands or tribes of Indians, severally agree and bind themselves to pay full value for any injury their people may do to the goods or other property of such traders as the President of the United States may place near to their settlements or hunting ground for the purpose of trading with them.

"ARTICLE 6. The Comanche and Wichita nations and their associated bands or tribes of Indians, agree, that, in the event any of the red people belonging to the nations or tribes residing south of the Missouri River and west of the state of Missouri, not parties to this treaty, should visit their own towns or to be found on their hunting



grounds, that they will treat them with kindness and friendship and do no injury to them in any way whatever.

"ARTICLE 7. Should any difficulty hereafter unfortunately arise between any of the nations or tribes of Indians, parties hereunto, in consequence of murder, the stealing of horses, cattle, or other cause, it is agreed that the other tribes shall interpose their good offices to remove such difficulties, and also that the Government of the United States may take such measures as they may deem proper to effect the same object, and see that full justice is done to injured party.

"ARTICLE 8. It is agreed by the Commissioners of the United States, that in consequence of the Comanche and Wichitaw nations and their associated bands or tribes of Indians having freely and willingly entered into this treaty, and IT BEING THE FIRST THAT THEY HAVE MADE WITH THE UNITED STATES OR ANY OF THE CONTRACTING PARTIES, that they shall receive presents immediately after signing, as a donation from the United States; nothing being asked from these nations or tribes in return, except to remain at peace with the parties thereto, which their own good and that of their posterity require.

"ARTICLE 9. The Comanche and Wichitaw nations and their associated bands or tribes of Indians, agree, that their entering into this treaty shall in no respect interrupt their friendly relations with the Republic of Mexico, WHERE THEY ALL FREQUENTLY HUNT AND THE COMANCHE NATION PRINCIPALLY INHABIT; and it is distinctly understood that the Government of the United States desire that perfect peace shall exist between the nations or tribes named in this article, the said republic.

"ARTICLE 10. This treaty shall be obligatory on the nations or tribes, parties hereto, from and after the date hereof, and on the United States from

and after its ratification by the Government thereof."

Petitioners faithfully observed the aforesaid treaty. At no time did they go upon the warpath and to their peaceful conduct petitioners state in part at least was due the scant observance of them and their rights thereafter. They were wholly unable to understand English and had for many years neither money nor friends to advise them and to present their case to the United States, while the Choctaws maintained a lobby in Washington.

The petitioners at this time were a tribe generally designated as the Toyash or Toayas peoples or Wichitas and the Comanches were often referred to as Hietans. The region in which they lived stretched southwest, west and northwest into great plains. The Camp Holmes treaty commissioners reported to the United States as follows:

"As some confusion has existed, both here and elsewhere, with respect to the names and locations of the nations of the Great Western Plains, we deem it proper to inform you that there are but three distinct nations of these Indians, with the exception of one or two small tribes who reside far south of Red River, in the Province of Texas. These three nations are the Comanches, who are the most numerous, but who have no fixed or permanent homes, follow the herds of buffalo with their movable lodges, and are sometimes north and at other times south of Red River. The Wichitas consist of several tribes and bands, some residing north and some south of Red River. Those residing north of Red River are the Toyash and Wacos. They have fixed villages and homes, raise some corn and vegetables. The Kiowas have no homes or fixed villages, but wander as do the Comanches."



In 1837 a similar treaty was made with the Kiowas the Towacarros, an affiliated band of petitioners, then living in the northwestern part of petitioners' habitat and range being joined therein as a party thereto.

9. Petitioners subsequent to said treaty of 1835 continued in possession of their habitat and range as formerly without notice of any claim adverse thereto and it was not until 1854-55 that they learned when an extension of settlement of the Choctaws and Chickasaws to the westward occurred that the United States claimed ownership of their habitat and range by virtue of a cession from the Quapaws many years prior thereto and that the United States had sold same to the Choctaws. Petitioners promptly sought advice and formally protested against what had been done and from time to time thereafter renewed and reiterated their protest and in 1891 having failed otherwise of justice refused to take lands in severalty and treat with the Jerome Commission unless provision was made in the agreement for determination of their claims against the United States.

10. The Comanches and Kiowas, aided by certain Apaches who had confederated with them, and were raiding the territory where they principally ranged north of the Arkansas River and in the Panhandle to the west by treaty of peace and friendship were given an annuity of \$18,000 a year for 15 years, said treaty recognizing that their habitat and range was not any part of the lands herein claimed by petitioners.

By treaty of February 18, 1861 (12 Stats. 1163; 2 Kappler, 807), the Cheyennes and Arapahoes were induced to accept a defined reservation, and same being to an extent south of their customary range along the

Platte River, which was feeling the influx of settlers, was defined, entirely outside the habitat of petitioners, as follows:

"ART. 1. The said chiefs and delegates of said Arapahoe and Cheyenne tribes of Indians do hereby cede and relinquish to the United States all lands now owned, possessed or claimed by them, wherever situated, except a tract to be reserved for the use of said tribe located within the following described boundaries, to-wit: Beginning at the mouth of the Sandy Fork of the Arkansas River and extending westwardly along the said river to the mouth of Purgatory River; thence along up the west bank of the Purgatory River to the northern boundary of the territory of New Mexico; thence west along said boundary to a point where a line drawn due south from a point on the Arkansas River five miles east of the mouth of the Huerfano River would intersect said northern boundary of New Mexico; thence due north from that point on said boundary of the Sandy Fork to the place of beginning."

11. The United States, which without lawful right and under the invalid cession of the Quapaws had undertaken to grant petitioners' habitat and range to the Choctaws and meanwhile had acquired knowledge of petitioners' occupation of said lands and continued occupation and use of same long subsequent to said supposed cession undertook, without however petitioners being parties thereto and without compensation to petitioners, to make a new treaty with the Choctaws and Chickasaws (the latter having purchased an interest therein from the Choctaws) and said treaty was entered into on June 22, 1855 (11 Stats. 611; 2 Kappler, 706), whereby the Choctaws sold and relinquished all their claim to lands west of the 100th meridian,



the United States meanwhile having acquired same from Spain and Mexico, and the Choctaws and Chickasaws leased to the United States all lands west of the 98th degree of longitude to the 100th degree of longitude, being practically nearly all the lands still owned in lawful occupant right by petitioners, to the United States "for the permanent settlement of the Wichitas and such other tribes or bands of Indians as the Government may desire to locate therein; excluding, however, all the Indians of New Mexico and also those whose usual ranges at present are north of the Arkansas River and whose permanent localities are north of the Canadian River"—the effect of the treaty as drawn and executed by the quite civilized parties signatory being to exclude the Comanches, Kiowas, Apaches, Cheyennes and Arapahoes, who never had and did not then have any habitat or range, or villages, fields, usual hunting grounds within the area leased, though at times pursuing buffalo or game or raiding therein.

Petitioners protested against said treaty as soon as they heard of it and never have consented to or acquiesced in the taking of their habitat and range by the United States without compensation.

12. While the proceedings aforesaid were occurring as to the lands of petitioners north of Red River and in the present State of Oklahoma certain of the affiliated bands of the Wichita tribe were living in and occupying as part of their habitat and range and hunting grounds, as some of them had done for at least more than a century, lands west of the Cross Timbers, south of the Red River adjacent to petitioners' northern habitat and extending south as far as the Brazos River in Texas. Their rights in said land as aboriginal occupants of the soil had been recognized by Spain

and later by the Republic of Texas which sought their aid and amity when in conflict with Mexico and afterward.

In the winter of 1842-43 certain of the affiliated bands of the Wichita tribe with the Caddo tribe (who had moved to what was Mexico at the time of their removal) and a few remnants of former tribes negotiated a treaty of peace, friendship and land agreement with peace commissioners of the Republic of Texas delegated for the purpose by President Houston. On September 29, 1843, said negotiations resulted in a duly approved treaty between the Republic of Texas and the Tehuacanos (Towaconies), Keechis, Wacos, Ionies, Caddos, Anadarkos, Buluxies, Delawares and some thirty isolated Cherokees, who had wandered from their tribal domain. By said treaty a line of demarcation was agreed upon and provision made for establishment of trading posts along the agreed upon line, no settlements of Indians to be made within a few miles of said line nor white settlements beyond it. Three trading posts were promptly established to indicate the line of demarcation, one at the junction of the West and Clear Forks of the Trinity River, one at the Comanche Peak and one at the San Saba Mission. The Wichita tribe proper then had their principal village near the present site of Fort Sill, Oklahoma, and though solicited to join in the treaty did not do so, but the Wichita tribe as did its affiliated bands faithfully observed said treaty. The Comanches' habitat was further west in the Llano Estacado or Staked Plains and being hostile to the Republic and later State of Texas, did not join in said treaty. A true copy of said treaty is attached hereto marked Petitioners' Exhibit "A" and is prayed to be read as a part hereof as though incorporated herein.



Subsequently the Republic of Texas was duly annexed to the United States and under the agreement of annexation the State of Texas became entitled to its public lands, but both parties thereto were under obligation and duty to protect petitioners and their rights. The Comanches and people of the State indulged in hostilities. The people of Texas who desired petitioners' lands with the acquiescence and cooperation of the then State authorities, different from the treaty negotiating government, seized every opportunity and pretext to secure petitioners' removal from the State and eventually murdered a number of petitioners. The United States and the State caused petitioners to be removed from the State in 1857, and the State of Texas on the grounds the lands were public lands appropriated the same to its own use without compensation to petitioners by either the State or the United States.

In the removal from Texas to the habitat of petitioners in Oklahoma petitioners lost houses, cultivated fields, horses, cattle and other personal property to an estimated value of \$80,000. Reimbursement prior to removal was promised petitioners by the agent of the United States and an agreement to that effect was drafted but said agent was murdered by the people of the State of Texas and the agreement on his person never transmitted to Washington. Petitioners' claim of the United States the sum of \$80,000 for loss of houses, fences and personal property and 1,250,000 acres of land at the fair and reasonable value of one dollar and a quarter an acre.

13. Petitioners at the request of the United States in 1859 endeavored to have the Comanches cease their warfare, make peace and under treaty agreement with

the United States settle down. Petitioners invited the Comanches to assemble with them. The Comanches came to one of petitioners' villages in the habitat of petitioners in Oklahoma and while all were assembled in friendly gathering the United States, which was under the duty to protect petitioners and had specially promised so to do as to petitioners' affiliated bands who had crossed from Texas into Oklahoma and were assembled with the Wichita tribe proper, by an unfortunate misunderstanding of its orders to its army officers, fired upon the peacefully assembled gathering of Comanches and petitioners, killing about fifty Comanches and two Wichitas. The long-time friendship of the Comanches was turned for years to hate of petitioners whom they suspected guilty, though petitioners were wholly innocent, and the Comanches vowed vengeance. The United States quartered its troops in petitioners' fields, appropriated its property to the United States, to the loss of petitioners in the sum of \$30,000.

14. The Civil War breaking out between the United States and the Confederacy, most of the southwestern tribes, including the Choctaws, Chickasaws and Comanches, sided with the Confederacy and hostilities occurred. The petitioners refused to join in fighting the United States. At the request of the United States and under promise to restore them their lands when the war ended, petitioners removed to Indian camps established in Kansas and Colorado, where despite much suffering they remained loyal to the Union cause and some of their number joined the Union army and actively aided the Federal forces. Subsequent to the close of the Civil War they returned to their former habitat in Oklahoma and continued therein claiming the land as theirs and the same never having been



forfeited. Promises of recognition of their neutrality were made them by the United States.

The Choctaws and Chickasaws expected punishment for joining the Confederacy, and being accustomed to white ways, employed at large expense lobbies to aid them. Petitioners were unused to white ways and being poor had no one to represent them. The Comanches continued on the warpath and were joined in such warfare by the Kiowas, Kiowa Apaches, Arapahoes and Cheyennes.

On October 18, 1865 (14 Stats. 717: 2 Kappler, 892), the United States for the purpose of bringing about a cessation of hostilities with the powerful Comanches and Kiowas, the Kiowa Apaches refusing to acquiesce and the previous day joining the warring Arapahoes and Cheyennes, entered into a treaty with the Comanches and Kiowas of peace and friendship whereby the lands of petitioners and certain other lands were ceded to said Comanches and Kiowas, the lands ceded embracing petitioners' habitat that formerly it was claimed had been acquired by the United States from the Quapaws and sold to the Choctaws.

Said treaty provided in part as follows:

"ARTICLE 2. The United States hereby agree that the district of country embraced within the following limits, or such portion of the same as may hereafter from time to time be designated by the President of the United States for that purpose, viz: Commencing at the northeast corner of New Mexico, thence south to the southeast corner of the same; thence northeasterly to a point on main Red River opposite the mouth of the North Fork of said river; thence down said river to the 98th degree of west longitude; thence due north on said meridian to the Cimarrone River; thence up said river to a point where the same

crosses the southern boundary of the State of Kansas; thence along said southern boundary of Kansas to the southwest corner of said State; thence west to the place of beginning, shall be and is hereby set apart for the absolute and undisturbed use and occupation of the tribes who are parties to this treaty, *and of such other friendly tribes as have heretofore resided within said limits, or as they may from time to time agree to admit among them.*

\* \* \* The Indians parties hereto on their part expressly agree to remove to and accept as their permanent home the country embraced within said limits, whenever directed so to do by the President of the United States in accordance with the provisions of this treaty, and that they will not go from said country for hunting purposes without the consent in writing of their agent \* \* \* and that henceforth they will and hereby do relinquish all claims or rights in or to any portion of the United States or territories, except such as is embraced within the limits aforesaid, and more especially their claims and rights in and to the country north of the Cimarrone River and west of the eastern boundary of New Mexico.

"ARTICLE 3. It is further agreed that until the Indians parties hereto have removed to the reservation provided for by the preceding article, in pursuance of the stipulations thereof, said Indians shall be and they are hereby expressly permitted to reside upon and range at pleasure throughout the unsettled portions of that part of the country they claim as originally theirs, which lies south of the Arkansas River as well as the country embraced within the limits of the reservation provided for by the preceding article, and that they shall and will not go elsewhere except upon the terms and conditions prescribed by the preceding article."

Petitioners at this time were residing on the lands comprising their habitat and range from time imme-



morial and the Comanches were given by the President's designation 2,968,893 acres of petitioners' lands.

At the same time the United States to quiet the Cheyennes and Arapahoes on October 14, 1865 (14 Stats. 703; 2 Kappler, 887), entered into a peace treaty with them whereby it was again recognized that the Cheyennes and Arapahoes had no claim to or rights in any part of the habitat of petitioners. By said treaty it was provided the reservation of the Indian tribes aforesaid should be as follows:

"The United States hereby agree that the district of country embraced within the following limits, or such portions of the same as may hereafter be designated by the President of the United States for that purpose, viz: Commencing at the mouth of the Red Creek or Red Fork of the Arkansas River; thence up said creek or fork to its source; thence westwardly to a point of the Cimarone River, opposite the mouth of Buffalo Creek; thence due north to the Arkansas River; thence down the same to the beginning, shall, be and is hereby set apart for the absolute and undisturbed use and occupation of the tribes who are parties to this treaty and of such other friendly tribes as they may from time to time agree to admit among them. \* \* \* Provided, however, that said Indians shall not be required to settle upon said reservation until such time as the United States shall have extinguished all claims of title thereto on the part of other Indians, so that the Indian parties hereto may live thereon at peace with all other tribes. Provided, however, that as soon as practicable with the assent of said tribe, the President of the United States shall designate for said tribes a reservation, no part of which shall be within the State of Kansas, and cause them as soon as practicable to remove to and settle thereon, but no such reservation shall be designated upon any reserve belonging to any

other Indian tribe or tribes without their consent.

\* \* \* \* \*

"And that henceforth they will and do hereby relinquish all claims or rights in or to any portion of the United States or territories except such as is embraced within the limits aforesaid and more especially their claims and rights in and to the country bounded as follows: Beginning at the junction of the north and south forks of the Platte River, thence up the north fork to the top of the principal range of the Rocky Mountains or to the Red Buttes, thence southwardly along the summit of the Rocky Mountains to the headwaters of the Arkansas River, then down the Arkansas River to the Cimarone River crossing of the same, thence to the place of beginning, which country they claim to have originally owned and never to have relinquished the title thereto."

15. The Comanche, Kiowa, Arapahoe and Cheyenne tribes, however, continued warfare due to one cause or another. The Choctaws and Chickasaws seized hold of the situation and by treaty ratified June 28, 1866 (14 Stats. 769; 2 Kappler, 918), sold all their rights in the leased district to which they had no right, title or claim, and which belonged to petitioners who had always continued to hold occupant title thereto and to remain therein (the Quapaw cession being invalid as a sale by one having nothing to sell or cede) to the United States for a consideration of \$300,000.

On October 21, 1867 (15 Stats. 581-589; 2 Kappler, 977-82), a new treaty was entered into between the hostile Kiowa and Comanche tribe and the United States with a view to terminating hostilities whereby a large part of petitioners' habitat was ceded to said Indians, said treaty being so far as material hereto as follows:



"ARTICLE 2. The United States agrees that the following district of country, to-wit: commencing at a point where the Washita River crosses the 98th Meridian west from Greenwich: thence up the Washita River in the middle of the main channel thereof, to a point thirty miles by river west of Fort Cobb as now established; thence due west to the north fork of Red River, provided said line strikes said river east of the 100th meridian of west longitude; if not, then only to said meridian line, and thence south on said meridian line to the said north fork of Red River; thence down said north fork, in the middle of the main channel thereof, from the point where it may be first intersected by the lines above described, to the main Red River; thence down said river to the middle of the main channel thereof to its intersection with the 98th meridian of longitude west from Greenwich; thence north on said meridian line to the place of beginning, shall be and the same hereby is set apart for the absolute and undisturbed use and occupation of the tribes herein named, and for such other friendly tribes or individual Indians as from time to time they may be willing (with the consent of the United States) to admit among them. \* \* \*

"ARTICLE 3. If it should appear from actual survey or other satisfactory examination of said tract of land, that it contains less than 160 acres of tillable land for each person who at the time may be authorized to reside on it under the provisions of this treaty and a very considerable number of such persons shall be disposed to commence cultivating the soil as farmers, the United States agrees to set apart for the use of said Indians, as herein provided, such additional quantity of arable land adjoining said reservation or as near the same as can be obtained as may be required to provide the necessary amount. \* \* \*

Article 11 relinquishes all right to occupy permanently the territory outside of their reservation as

herein defined, but reserved the right to hunt on any lands south of the Arkansas River.

At the same time the United States entered into a treaty with the warring Cheyennes, Arapahoes and Kiowa Apaches whereby a reservation in Oklahoma but still outside the habitat and range of petitioners was given said Indian tribes, said treaty being dated October 28, 1867 (15 Stats. 593; 2 Kappler, 984), and so far as here material being as follows:

"ARTICLE 2. The United States agrees that the following district of country, to-wit: commencing at the point where the Arkansas River crosses the 37th parallel of north latitude, thence west on said parallel—the said line being the southern boundary of the State of Kansas—to the Cimarrone River (sometimes called the Red Fork of the Arkansas River), thence down said Cimarrone River in the middle of the main channel thereof, to the Arkansas River; thence up the Arkansas River, in the middle of the main channel thereof, to the place of beginning, shall be and the same hereby is set apart for the absolute and undisturbed use and occupation of the Indians herein named and for such other friendly tribes or individual Indians as from time to time they may be willing with the consent of the United States to admit among them. \* \* \*

"ARTICLE 11. In consideration of the advantages and benefits conferred by this treaty and the many pledges of friendship by the United States, the tribes who are parties to this agreement hereby stipulate that they will relinquish all right to occupy permanently the territory outside of their reservation as herein defined, but they yet reserve the right to hunt on any lands south of the Arkansas so long as the buffalo may range thereon in such numbers as to justify the chase, and no white settlement shall be permitted on any part of the lands contained in the old reservation as de-



fined by the treaty made between the United States and the Cheyenne, Arapahoe and Apache tribes of Indians at the mouth of the Little Arkansas under date of Oct. 14, 1865, within three years from this date," etc.

\* \* \* \* \*

"ARTICLE 15. The tribes herein named agree that when the agency house and other buildings shall be constructed on the reservation named, they will regard and make said reservation their permanent home, and they will make no permanent settlement elsewhere, but they shall have the right, subject to the conditions and modifications of this treaty, to hunt on the lands south of the Arkansas River formerly called theirs in the same manner as agreed on by the treaty of the 'Little Arkansas,' concluded the 14th day of October, 1865."

Petitioners state that the Indian warfare continuing and the State of Kansas rapidly advancing in white settlements which suffered from incursions of certain of the hostile tribes named, the United States without treaty and without lawful warrant appropriated to its own use part of petitioners' lands so as to remove the Cheyennes and Arapahoes further from the State of Kansas and by Executive Order dated August 10, 1869 (1 Kappler, 841), the Cheyennes and Arapahoes were given a reservation to the south of the Canadian River and including the habitat and range to which petitioners had occupant rights from time immemorial of 2,489,160 acres, some part of same but the exact amount thereof being unknown to petitioners but known to defendant, however, not being within the territory claimed by petitioners.

16. Petitioners state that they protested and always have continued to protest against the taking by the

United States to its own use of the lands of petitioners in the present State of Oklahoma and at no time has their claim been relinquished, forfeited, sold or conveyed. Petitioners state that subsequently out of petitioners' own habitat and range as aforesaid and without petitioners relinquishing claims to lands outside the district created the United States set aside District No. 5 within what was wrongly styled the Choctaw "Leased District" and placed petitioners thereon as their, the Wichitas' reservation, assigning the Caddo tribe, however, part of same.

Petitioners state that said District No. 5 or Wichita Reservation is described as follows:

"Commencing at a point in the middle of the main channel of the Washita River, where the 98th meridian of west longitude crosses the same, thence up the middle of the main channel of said river to the line of 98 degrees 40 minutes west longitude, thence on said line of 98 degrees 40 minutes due north to the middle of the main channel of the Canadian River, thence down the middle of said main Canadian River, to where it crosses the 98th meridian, thence due south to the place of beginning," said District No. 5 comprising in all 743,610 acres.

Petitioners state that in 1872 the United States endeavored to have a delegation of members of petitioners' tribe and bands, who were in Washington and without authority from the tribe and affiliated bands to act in the matter for it, enter into an agreement with the United States whereby petitioners on certain considerations would relinquish all claims of whatsoever nature, including the land claims hereinbefore set forth, against the United States. After said delegation had repeatedly refused and stated it



had no authority to act for the tribe and bands, said delegation under protest and with the understanding the matter would have to be referred back to the tribe, executed papers prepared by the United States authorities requiring the assent of the Congress and President of the United States. Said purported agreement, however, failed of recognition by either Congress or the Wichita tribe and affiliated bands and became and is of no binding force or effect on either party to this cause.

Petitioners state that under an act passed by the Congress of the United States at the instance of the Choctaw and Chickasaw nations they were compelled at an expense of approximately \$75,000 to defend their lawful right to the lands within what had become known as District No. 5 or the Wichita reservation against a claim of the Choctaw and Chickasaw nations thereto. The Supreme Court rendered an opinion in said case, *Wichita Tribe vs. The Choctaw Nation*, 179 U. S. 495, upholding in full the right of petitioners to said lands. An endeavor was made to have adjudicated in said cause all the landed rights and claims of petitioners to the so-called Choctaw Leased District but the Supreme Court refused so to do on the ground that under the jurisdictional act it had no jurisdiction to consider anything so far as petitioners were concerned save District No. 5 or the Wichita reservation. Petitioners claim of the United States the sum of \$75,000 expended by them in defense of their right to District No. 5.

17. Petitioners continued at all times to protest against the injustice done them and their lawful claims against the United States as hereinbefore set forth. In 1891 the United States sought an agreement known

as the Jerome Commission agreement for the division of their lands in District No. 5 aforesaid in severalty among petitioners and the Caddo tribe. Petitioners, however, refused to enter into an agreement unless provision was made whereby their present claims against the United States might be preserved and an opportunity ultimately given them to obtain a determination of their grievances against the United States as herein set forth under the jurisdictional act. Finally on June 4, 1891, an agreement was executed for the division in severalty of petitioners' lands and sale of surplus lands and was duly ratified by Congress March 2, 1895 (28 Stats. 764; 1 Kappler, 559). Article 6 of said agreement provides:

"It is further agreed that there shall be reserved to said Indians the right to prefer against the United States any and every claim that they may believe they have the right to prefer, save any claim to the tract of country described in the first article of this agreement."

(District No. 5 which was in litigation already, the treaty commissioners well understanding the principal claim reserved was the present land claim). Petitioners thereafter repeatedly protested against delay in permitting them to file suit.

18. Petitioners state that said Jerome Commission also negotiated other severalty agreements with the other tribes given lands belonging to petitioners. The fair and reasonable value of all lands of petitioners as herein described was at least \$1.25 per acre. The quantity of lands to which petitioners were entitled and which were taken for the use and benefit of the United States is as follows:

Lands in Oklahoma:



Comanche-Kiowa-Apache reservation, 2,968,893 acres.

Cheyenne-Arapahoe reservation, 2,489,160 acres.

Greer County, 1,511,575 acres.

Between Cross Timbers about 97 degrees 30 minutes and 98th degree, or beginning of so-called Choctaw leased district, about 1,000,000 acres.

Total 7,969,628 acres at \$1.25 per acre or \$9,952,039 plus 1,000,000 acres of lands in Texas at \$1.25 per acre or with other claims hereinbefore mentioned, \$11,202,039, which amount petitioners claim of defendant with interest from such date as upon a just and true accounting may be found just and right.

Wherefore, and by reason of the premises aforesaid, the Wichita tribe and affiliated bands of Indians in Oklahoma sue the United States for an accounting and claim of the United States the sum of \$11,287,039 with interest, and pray this court to render judgment in favor of petitioners against the defendant in such sums as upon a full and final accounting shall be found due, and for such further and other relief as may be proper both at law and in equity; and that the court decree the fee or fees to be paid the attorneys representing petitioners as provided in the jurisdictional act.

THE WICHITA TRIBE AND AFFILIATED BANDS OF INDIANS IN OKLAHOMA, THE TOWACONIES, WACOS, KEECHIS, IONIES AND THE DELAWARE BAND OF THE WICHITA TRIBE,  
*Petitioners.*

By their Attorney of Record,

CHAS. H. MERILLAT.

CHARLES J. KAPPLER,  
*Of Counsel.*

DISTRICT OF COLUMBIA, ss:

Charles H. Merillat, being first duly sworn on oath, deposes and says: That he is the attorney of Record for the Wichita tribe and affiliated bands of Indians in Oklahoma, being employed under contract between said Indians and Charles H. Merillat and Charles J. Kappler, which contract has been duly approved by the Commissioner of Indian Affairs and the Secretary of the Interior as provided by law; that affiant has read the foregoing petition herein subscribed and that affiant verily believes the facts stated in the foregoing petition to be true to the best of his knowledge, information and belief.

CHARLES H. MERILLAT.

Subscribed and sworn to before me, a notary public in and for the District of Columbia, this 21st day of October, 1925.

GRACE SHROPSHIRE,  
*Notary Public.*

[SEAL]

My commission expires  
October 9, 1927.



## EXHIBIT A

A Treaty of Peace and Friendship, between the Republic of Texas and the Delaware, Chickasaw, Waco, Tiwocano, Keachi, Caddo, Anadkah, Ionie, Biloxi and Cherokee tribes of Indians, concluded and signed at Bird's Fort, on the Trinity River, the 29th day of September, 1843.

Whereas for some time past, hostilities have existed and war been carried on between the white and red men of Texas to the great injury of both parties; and whereas, a longer continuance of the same would lead to no beneficial result, but increase the evils which have so long unhappily rested upon both races; and whereas the parties are now willing to open the path of lasting peace and friendship and are desirous to establish certain solemn rules for the regulation of their mutual intercourse:

Therefore, the Commissioners of the Republic of Texas and the Chiefs and headmen of the before mentioned tribes of Indians, being met in Council at Bird's Fort, on the Trinity River, the 29th day of September, 1843, have concluded, accepted, agreed to and signed the following articles of treaty:

## ARTICLE I.

Both parties agree and declare, that they will forever live in peace, and always meet as friends and brothers. Also, that the war which may have heretofore existed between them shall cease and never be renewed.

## ARTICLE II.

They further agree and declare, that it is the duty of warriors to protect women and children, and that they will never make war upon them, or upon unarmed persons, but only upon warriors.

## ARTICLE III

They further agree and declare, that the Indians will never unite with the enemies of Texas, nor make

any treaty with them, which shall require of the Indians to take part against Texas; and that if any such proposals should ever be made to them that they will immediately communicate the same to an agent or to the President.

## ARTICLE IV

They further agree and declare, that when they learn that Texas is at war with any people, a chief will come to an agent and ask to be conducted to the President that they may commune with him.

## ARTICLE V

They further agree and declare, that agents shall be appointed by the Government of Texas and be stationed at such places as may be deemed proper, for the purpose of hearing the complaints of the Indians and seeing that justice is done between them and the whites; and also to communicate the orders and wishes of the President to the various bands and tribes.

## ARTICLE VI

They further agree and declare, that no person shall go among the Indians to trade, except by the express authority of the Government of Texas.

## ARTICLE VII

They further agree and declare, that no white man or other person within the control of the laws of Texas shall introduce among any tribe or nation of Indians, or sell to any Indian or Indians ardent spirits or intoxicating liquors of any kind.

## ARTICLE VIII

They further agree and declare, that no white man or other person, else than a regularly licensed trader shall purchase any property of an Indian or Indians without the consent of an agent of the Government of Texas.



## ARTICLE IX

They further agree and declare, that when any property is found among the whites, belonging to the Indians, it shall be the duty of the agent to see that the same is restored; and on the other hand, whenever property belonging to the whites is found among the Indians, the same shall be restored in like manner by the Chiefs on application of the owner or owners thereof through the agent.

## ARTICLE X

They further agree and declare, that no trader shall furnish any warlike stores to the Indians, but by the express permission of the President.

## ARTICLE XI

They further agree and declare, that no person or persons shall pass the line of trading houses without the special permission of the President, and then only for friendly purposes; nor shall any person or persons reside or remain within the territory assigned to the Indians unless by express direction of the President.

## ARTICLE XII

They further agree and declare, that any person or persons who shall molest or attempt to molest the persons or property of the Indians while they remain peaceable under this treaty, shall be held guilty of felony and punished accordingly by the Government of Texas.

## ARTICLE XIII

They further agree and declare, that any killing or outrage whatsoever committed by a white man, or other person within the control of the laws of Texas, upon an Indian in time of peace shall be punished by the Government of Texas in the same manner as though the Indian were a white man, and that the person so offending shall be liable to indictment and punishment in any county in the Republic.

## ARTICLE XIV

They further agree and declare, that if any Indian or Indians shall kill any white person, he or they shall suffer death; and that if any Indian or Indians shall steal any property of the whites, he or they shall be punished by the tribe in presence of an agent with whipping or other punishment according to the offence.

## ARTICLE XV

They further agree and declare, that the Chiefs and Captains will not permit the Indians to cross the line for any purpose whatsoever without authority and a passport from an agent; nor sell any property to a white man unless authorized so to do by some agent.

## ARTICLE XVI

They further agree and declare, that if any person or persons shall come among the Indians, without authority from the President or agent, they will immediately seize and deliver him or them to some one of the agents.

## ARTICLE XVII

They further agree and declare, that they will mutually surrender and deliver up all prisoners which they have of the other party for their own prisoners; and that they will not be friendly with any people or nation, or enter into treaty with them who will take prisoners from Texas, or do its citizens any injury.

## ARTICLE XVIII

They further agree and declare, that the President may send among the Indians such blacksmiths and other mechanics, as he may think proper for their benefit; and also that he may send schoolmasters and families for the purpose of instructing them in a knowledge of the English language and Christian religion.



## ARTICLE XIX

They further agree and declare, that when the President shall send persons among the Indians, they will extend to them kind treatment and protect them from harm.

## ARTICLE XX

They further agree and declare, that the Chiefs and headmen of the Indians will cause their young men and warriors to behave themselves agreeably to the words of this treaty, or that they will punish them with death or in such other way as will compel them to keep peace and walk in the path made straight between the white and red brothers.

## ARTICLE XXI

They further agree and declare, that should any difficulty or cause for war arise between the Government of Texas and the Indians, they will send their complaints to the President, and hear his answer, before they commence hostilities and the Government of Texas will do the same.

## ARTICLE XXII

They further agree and declare, that the Government of Texas reserves to itself the right of working all mines, which have been, or may hereafter be discovered in the territory assigned to the Indians.

## ARTICLE XXIII

They further agree and declare, that so soon as the Indians shall have shown that they will keep this treaty and no more make war upon the whites, nor steal horses from them, the President will authorize the traders of Texas to sell to them powder, lead, guns, spears and other arms, such as they need for the purpose of killing game, and also make to them every year such presents as the Government of Texas may provide.

## ARTICLE XXIV

They further agree and declare, that the President shall make such arrangements and regulations with the several tribes of Indians, as he may think best for their peace and happiness.

## ARTICLE XXV

The foregoing articles having been read, interpreted and fully understood by them, they hereby agree to and confirm the same by sealing and signing their several names in presence of

RO. J. GILCHRIST	G. W. TERRELL	[SEAL]
L. WILLIAMS	E. H. TARRANT	[SEAL]
B. BOOTH	<i>Commissioners on the part of</i>	
SAM B. MARSHALL	<i>Texas.</i>	
ROB S. HULME		

<i>Delaware Chiefs</i>	{ ROASTING YEAR	X	[SEAL]
	{ McCALLAH	X	[SEAL]
	{ JAMES ST. LOUIS	X	[SEAL]

<i>Chickasaw Chief</i>	ISH TE U-KA-TUBBY	X	[SEAL]
<i>Waco Chief</i>	ACAH-QUASH	X	[SEAL]
<i>Waco Chief</i>	CHA TUCH KAHA	X	[SEAL]
<i>Tiwacona Chief</i>	KI CHI KA-ROQUA	X	[SEAL]
<i>Kechi Chief</i>	KA-TA-AH-TICK	X	[SEAL]

<i>Caddo Chiefs</i>	{ RED BEAR	X	[SEAL]
	{ BINCHAH	X	[SEAL]
	{ HAD-DE-BAH	X	[SEAL]

<i>Anadkah Chief</i>	JOSE MARIA	X	[SEAL]
<i>Ionie Chief</i>	TOW-A-ASH	X	[SEAL]
<i>Biloxi Chief</i>	HOYO TUBBY	X	[SEAL]
<i>Cherokee Captain</i>	CHICKEN TROTTER	X	[SEAL]

<i>Interpreters</i>	{ JAMES SHAW	X
	{ LEVIS SANCHES	X
	{ CHOW A NIH	X
	{ PIERCE SOBBY	X
	{ CHOCTAW TOM	X