

FILE COPY

Supreme Court, U. S.  
FILED

APR 19 1978

MICHAEL ROSE, JR., CLERK

*In the Supreme Court of the United States*

OCTOBER TERM, 1977

No. **79** Original

STATE OF OKLAHOMA,  
*Plaintiff,*  
VERSUS  
THE STATE OF ARKANSAS,  
*Defendant.*

**MOTION FOR LEAVE TO FILE  
BILL OF COMPLAINT  
AND  
COMPLAINT**

LARRY DERRYBERRY  
Attorney General of Oklahoma

WM. DON KISER  
Assistant Attorney General

JOSEPH J. REINKE  
Assistant Attorney General

112 State Capitol Building  
Oklahoma City, Oklahoma 73105

*Attorneys for Plaintiff*

April, 1978



In the  
Supreme Court of the United States

OCTOBER TERM, 1977

---

No. .... Original

---

STATE OF OKLAHOMA,  
*Plaintiff,*

V E R S U S

THE STATE OF ARKANSAS,  
*Defendant.*

---

**MOTION FOR LEAVE TO FILE  
BILL OF COMPLAINT**

---

The State of Oklahoma, by its Attorney General, respectfully asks leave of the Court to file the Bill of Complaint which is submitted herewith.

**PURPOSE OF MOTION**

The Motion for Leave to File a Complaint by the State of Oklahoma against the State of Arkansas is for the purpose of adjudicating the conflicting assertion of sovereignty by the two states over certain land situated immediately west of the City of Ft. Smith, Arkansas. The City of Ft. Smith is bounded on the west by the State of Oklahoma.

## **STATEMENT IN SUPPORT OF MOTION**

This is an action to establish the rights of sovereign control over a tract of land claimed by both the State of Oklahoma and the State of Arkansas. The tract involved encompasses an area of approximately 57 acres. It was located at the confluence of the Arkansas and Poteau Rivers when that area was acquired by the United States as part of the Louisiana Purchase. The tract in question was the site of the original Ft. Smith, which was subsequently abandoned in favor of a site a short distance to the east of the original site.

The State of Oklahoma asserts sovereignty over the disputed area by virtue of the Enabling Act for the State of Oklahoma, an Act of Congress dated June 16, 1906 (34 U.S. Stat. 267-278). Section 1 of the Enabling Act provides in pertinent part:

“That the inhabitants of all that part of the area of the United States now constituting the Territory of Oklahoma and the Indian Territory, as at present described, may adopt a Constitution and become the State of Oklahoma. . . .”

The State of Oklahoma asserts that the disputed area was a part of the Indian Territory on the effective date of the Enabling Act by virtue of certain treaties theretofore entered into by and between the United States and the Choctaw Nation of Indians.

The State of Arkansas asserts that the disputed area was not a part of Indian Territory on the effective date of the Enabling Act. Rather, Arkansas contends the disputed

land was made a part of the State of Arkansas by virtue of Act of Congress dated February 10, 1905.

Much of the land acquired through the Louisiana Purchase was used by the United States for the relocation of tribes of Indians previously occupying those portions of the United States into which white settlers were moving. The influx of the white man to Indian lands often resulted in hostilities. In order to avoid or curb these hostilities, the United States undertook a policy of negotiating treaties with the Indian tribes, under which the disputed lands were ceded by the Indians to the United States. In return for these cessions, the Indian tribes were ceded lands further west and guaranteed by the solemn promise of the United States that the lands ceded to the Indian tribes would not thereafter be encroached upon by white settlers.

The dealings between the United States and the Choctaw Nation of Indians followed closely this historical perspective. The Choctaws lived on their ancestral lands in what is now the State of Mississippi. In the 1780's, a conflict developed between the Choctaws and white settlers who were settling within their territory. In order to halt the impending conflict, a treaty was entered into between the United States and the Choctaw Nation under the terms of which the Indians acknowledged themselves to be under the protection of the United States. Treaty of Hopewell, January 3, 1786, 7 Stat. 21.

The migration of settlers into Choctaw land continued, however, and the United States persuaded the Choctaws to accept certain lands west of the Mississippi River in exchange for those lands they were then occupying. By way

of a treaty entered into at Doak's Stand on October 18, 1820, the Choctaw Nation abandoned a portion of their Mississippi lands and were in turn ceded by the United States other lands, including the tract in issue in this action.

Subsequent treaties served to diminish Choctaw land but the disputed tract remained undisturbed by any of those treaties. The boundaries of the Choctaw Nation, including the disputed tract, were reaffirmed in the Treaty of Dancing Rabbit Creek, September 7, 1830, 7 Stat. 333, the final treaty between the United States and the Choctaw Nation prior to the formation of the State of Oklahoma.

In 1842, the patent conveying the land in fee simple to the Choctaw Nation was issued by President Tyler. The patent merely recited the language of the Treaty of Dancing Rabbit Creek in describing the boundaries of the Choctaw Nation.

Although the Treaty of Dancing Rabbit Creek guaranteed to the Choctaw Nation the right to govern themselves, stating that:

“... [N]o Territory or State shall ever have a right to pass laws for the government of the Choctaw Nation of Red People and their descendants; and that no part of the land granted them shall ever be embraced in any Territory or State. . . .” Treaty of Dancing Rabbit Creek, Art. IV, 7 Stat. 333.

the Choctaw Nation was nonetheless dependent upon the United States. The National Councils of the Choctaw Nation were to make laws governing their territory consistent with the Constitution, laws and treaties of the United States.

The Choctaw Nation subsequently established a democratic form of government similar to that of the United States and the individual states. They formed a Constitution providing for a Senate and House of Representatives made up of elected officials, a judicial system, and an executive department with the principal chief being an elected official.

The Choctaw Nation lived within its boundaries in harmony with the United States. Disputes between the Indians and the United States were settled by negotiations as opposed to hostilities. Although the territory had not been recognized as a state, it developed to a point that the characteristics of the territory and its government were substantially the same as a state.

Later in the 19th century, the United States began considering the establishment of a state, part of which would include Indian Territory. In 1893, by Act of Congress, 27 Stat. 612, a commission, The Dawes Commission, was formed to accomplish the extinguishment of national or tribal title to the land within Indian Territory, a necessity prior to the creation of the proposed state.

While action was proceeding in anticipation of the formation of a state to include all of Indian Territory, negotiations had begun between the United States and the tribes inhabiting Indian Territory. An agreement, the Atoka Agreement, was reached between the United States and the various tribes of Indians providing a method for the extinguishment of Indian title to the land comprising Indian Territory. The "Curtis Act" was passed by the Congress of the United States approving the Agreement. That Act, en-

titled "An Act for the Protection of the People of Indian Territory, and for Other Purposes," 30 Stat. 495, provided for the allotment of lands in Indian Territory in severalty to individual members of the Choctaw and Chickasaw Nations. The Act further provided that there was reserved from allotment, lands described as:

"... [T]he strip of land lying between the City of Ft. Smith, Arkansas, and the Arkansas and Poteau River, extending up said River to the mouth of Mill Creek." 30 Stat. at 506.

This action was apparently taken at the insistence of the City of Ft. Smith. It appears that during this period of time the strip of land in issue was adjacent to the City of Ft. Smith and separated from the rest of Indian Territory by the Arkansas and Poteau Rivers and became known as the "Choctaw Strip." The original Ft. Smith had by this time been abandoned and, being inaccessible to the Indians except by boat, the strip became a place occupied by squatters who made shelters out of every available kind of material. It became known as "Coke Hill" for the reason that, as legend has it, cocaine was sold by a woman named "Annie" who lived there. The strip developed into a slum area, a refuge and hiding place for criminals, and a breeding ground for pestilence and disease. Faced with this situation, obviously detrimental to the City of Ft. Smith, the city undertook to remedy the problem.<sup>1</sup>

The Congress of the United States, in recognition of the problem the area presented to the City of Ft. Smith,

---

<sup>1</sup> Vol. 11, pp. 1084, 1102, 70 Chronicles of Oklahoma; "The Eastern Boundary of Oklahoma." Joseph S. Clark.



took action to correct the problem. On February 10, 1905, Congress passed an act entitled "An Act to Extend the Western Boundary Line of the State of Arkansas," 33 Stat. 714. It is important to note that the plan to extinguish Indian title and establish the State of Oklahoma was well on its way by this time. Four years earlier, in 1901, by Act of Congress, all Indians inhabiting Indian Territory had been made citizens of the United States. The Act of Congress which the State of Arkansas considered to be an extension of her western boundaries was an *ex parte* action on the part of the United States, taken without consideration of and approval by the recognized governing body of Indian Territory. That Act, in its entirety, provided:

*"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the consent of the United States is hereby given for the State of Arkansas to extend her western boundary line so as to include all that strip of land in the Indian Territory lying and being situate between the Arkansas state line and adjacent to the City of Fort Smith, Arkansas, and the Arkansas and Poteau Rivers, described as follows, namely: Beginning at a point on the south bank of the Arkansas River 100 paces east of old Fort Smith where the western boundary line of the State of Arkansas crosses the said river, and running southwesterly along the south bank of the Arkansas River to the mouth of the Poteau, thence at right angles with the Poteau River to the center of the current of said river; thence southerly up the middle of the current of the Poteau River (except where the Arkansas state line intersects the Poteau River) to a point in the middle of the current of the Poteau River opposite the mouth of Mill Creek, and where it is intersected by the middle of the cur-*

rent of Mill Creek; thence up the middle of Mill Creek to the Arkansas state line; thence northerly along the Arkansas state line to the point of beginning: *Provided that nothing in this act shall be construed to impair any right now pertaining to any Indian tribe or tribes in said part of said Indian territory under the laws, agreements, or treaties of the United States or to affect the authority of the government of the United States to make any regulations or to make any law respecting said Indians or their lands which it would have been competent to make or enact if this act had not been passed.* Approved February 10, 1905." (Emphasis added)

Acting upon the above Act of Congress, the Legislature of the State of Arkansas, on February 16, 1905, passed the following Act:

"Extension of the Western Boundary Line.—The western boundary line of the State of Arkansas is extended as follows, so as to include all that strip of land in the Indian Territory lying and being situate between the Arkansas state line adjacent to the City of Fort Smith, Arkansas, and the Arkansas and Poteau Rivers, described as follows, namely:

"Beginning at a point on the south bank of the Arkansas River one hundred (100) paces east [west] of old Fort Smith, where the westerly boundary line of the State of Arkansas crosses the said river, and running southwesterly along south bank of the Arkansas River to the mouth of the Poteau; thence right angles with the Poteau River to the center of the current of said river; thence southerly up the middle of the current of the Poteau River (except where the Arkansas state line intersects with the Poteau River) to a point in the middle of the current of the Poteau River opposite the mouth of Mill Creek and where it is intersected

by the middle of the current of Mill Creek; thence up the middle of Mill Creek to the Arkansas state line; thence northerly along the Arkansas state line to the point of beginning." Ark. Stat., Title V, Sec. 101.

On June 16, 1906, Congress of the United States passed the Enabling Act, 34 Stat. 267, authorizing the formation of the State of Oklahoma. Under that Act, the inhabitants of what was then the Territory of Oklahoma and the Indian Territory, were authorized to adopt a constitution and become the State of Oklahoma. It is under the authority of the Enabling Act and the subsequent admission of the State of Oklahoma to the United States that this action is brought by the State of Oklahoma to contest the action of the Legislature of the State of Arkansas in its Act of February 16, 1905, purporting to extend her western boundary line into what was Indian Territory.

WHEREFORE, the State of Oklahoma respectfully requests that its Motion for Leave to File Complaint be granted.

Respectfully submitted,

LARRY DERRYBERRY  
Attorney General of Oklahoma

WM. DON KISER  
Assistant Attorney General

JOSEPH J. REINKE  
Assistant Attorney General

*Attorneys for Plaintiff*

April, 1978



In the  
Supreme Court of the United States

OCTOBER TERM, 1977

---

No. \_\_\_\_\_

---

STATE OF OKLAHOMA,  
*Plaintiff,*

V E R S U S

THE STATE OF ARKANSAS,  
*Defendant.*

---

**COMPLAINT**

---

The State of Oklahoma, by its Attorney General, brings this action against the defendant, The State of Arkansas, and for its cause of action, states:

I

This Court has jurisdiction as an original action under Article III, § 2 of the Constitution of the United States, and 28 U.S.C. § 1251(a)(1).

II

Pursuant to an Act of Congress dated June 16, 1906, providing enabling legislation for the creation of the State of Oklahoma, the inhabitants of that part of the United States then constituting the Territory of Oklahoma and the Indian Territory, did adopt a Constitution and upon the issuance of the Proclamation of Statehood dated November 16, 1907, did become the State of Oklahoma.

### III

That the Constitution of the State of Arkansas adopted September 7, 1874, recognizes, at Article I thereof, acts of Congress and treaties existing January 1, 1837, establishing Indian Territories and defines the western border of Arkansas in such manner as to coincide with the eastern boundary of Indian Territory.

### IV

That the State of Arkansas erroneously asserts sovereignty over a particular tract of land originally a portion of Indian Territory and, by virtue of the incorporation of all of Indian Territory into the State of Oklahoma upon its entry into the Union, now lying entirely within the borders of the State of Oklahoma.

### V

That Arkansas' assertion of sovereignty is apparently based upon an Act of Congress of February 10, 1905. That said Act, in fact, served only to extend the police powers of Arkansas over the tract in question until the admission of the State of Oklahoma into the Union at which time it was anticipated that those duties and obligations would be assumed by the newly formed state. That those temporary powers accorded the State of Arkansas by the referenced Congressional Act were automatically terminated upon the admission of the State of Oklahoma into the Union. That Arkansas wrongfully continues to assert sovereignty and control over said area.

WHEREFORE, plaintiff prays for declaratory judgment under the provisions of 28 U.S.C. §§ 2201 and 2202 declaring the disputed tract to be within the boundaries of the State of Oklahoma and further directing the termination of any asserted rights of sovereignty over said area by the State of Arkansas.

Respectfully submitted,

LARRY DERRYBERRY  
Attorney General of Oklahoma

WM. DON KISER  
Assistant Attorney General

JOSEPH J. REINKE  
Assistant Attorney General

*Attorneys for Plaintiff*

April, 1978

### **CERTIFICATE OF MAILING**

This is to certify that three (3) true and correct copies of the foregoing instrument to which this certificate is attached, were served upon the following, this ..... day of April, 1978.

Governor of the State of Arkansas  
Justice Building  
Little Rock, Arkansas 72201

Attorney General of the State of Arkansas  
Justice Building  
Little Rock, Arkansas 72201

-----  
Wm. Don Kiser









