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SUPREME COURT, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NO. 79 ORIGINAL

STATE OF OKLAHOMA ..... *Plaintiff*

VS.

STATE OF ARKANSAS ..... *Defendant*

OPPOSITION

MOTION AND MEMORANDUM IN SUPPORT OF MOTION TO DENY LEAVE TO FILE BILL OF COMPLAINT

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MOTION TO DENY LEAVE TO FILE BILL OF COMPLAINT

The State of Arkansas, by Bill Clinton, Attorney General of Arkansas, for the reasons set out in its Memorandum in Support of Motion To Deny Leave to File Complaint, requests that this Court decline to entertain the Complaint of the State of Oklahoma.

WHEREFORE, the State of Arkansas respectfully prays that this Court decline to exercise jurisdiction over this matter and deny the State of Oklahoma's motion for leave to file complaint.

Respectfully submitted,
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MEMORANDUM IN SUPPORT OF MOTION TO DENY LEAVE TO FILE BILL OF COMPLAINT

I.

The Motion for Leave to File Bill of Complaint, the Statement in Support of Motion, and the proposed Complaint filed by Oklahoma in this case demonstrate that Oklahoma does not have a meritorious claim. Thus, we submit that this case is ripe for summary disposition by this Court. As the Court stated in *Ohio* v. *Kentucky,* 410 U.S. 641 (1973):

> This * * * is not an ordinary case. It is one within the original and exclusive jurisdiction of the Court. * * * Procedures governing the exercise of our original jurisdiction are not invariably governed by common-law precedent or by current rules of civil procedure. * * * Under our rules, the requirement of a motion for leave to file a com-

> plaint, and the requirement of a brief in opposition, permit and enable us to dispose of matters at a preliminary stage. * * * Our object in original cases is to have the parties, as promptly as possible, reach and argue the merits of the controversy presented. To this end, where feasible, we dispose of issues that would only serve to delay adjudication on the merits and needlessly add to the expense that the litigants must bear.
>
> This case is peculiarly susceptible to treatment of that kind. * * *

410 U.S. at 644-645 (citations omitted).

Accordingly, this memorandum will address all foreseeable issues raised by the entire body of Oklahoma's pleadings with a view to terminating the dispute as soon as possible.

On February 10, 1905, Congress passed "An Act To extend the western boundary line of the State of Arkansas," 33 Stat. 714, which gave the consent of the United States for Arkansas to extend her western boundary line to incorporate that strip of land (then a part of Indian Territory) over which Oklahoma now claims the right of sovereign control. The report of the House Judiciary Committee on this legislation was as follows:

> The Committee on the Judiciary has had under consideration the bill (H. R. 18280) to extend the western boundary line of the State of Arkansas, and return the same to the House with the recommendation that it do pass.

> The purpose of the bill is to authorize the State of Arkansas to change and extend her western boundary line adjacent to the city of Fort Smith, so as to include within the State a small and irregular tract of land situated between the present boundary line of the State and the Arkansas and Poteau rivers, so as to make the center of the channel of the Poteau River the boundary line of the State adjacent to said city.
>
> The change, if the bill becomes a law, will authorize the State to annex to itself three small irregular pieces of land, in the aggregate only about 15 acres.
>
> This property is now largely the rendevous for criminals. It has no city government; no sewerage, light, or water system; no churches or schools, and is a menace to the health, peace, and morals of the city.
>
> The boundary line, as authorized in the bill, conforms to the natural boundary by conforming at this point to the meandering of said Poteau and Arkansas rivers. In the opinion of your committee no valid or meritorious objections can be urged against the passage of the bill.

H.R. Rep. No. 4141, 58th Cong., 2d Sess. (1905). The Senate Committee on Territories, to whom the bill was subsequently referred, adopted and made a part of its report House Report 4141. S. Rep. No. 3687, 58th Cong., 3d Sess. (1905).

On February 16, 1905, Arkansas extended her western boundary line pursuant to the February 10, 1905, Act of Congress. Ark. Stat. Ann. § 5-101 (Repl. 1976). Apparently determined to comply with the terms of the proviso of the 1905

congressional action, Arkansas did not thereby presume to affect the property rights of the Indians with respect to the annexed land. See *City of Ft. Smith* v. *Mikel,* 232 Ark. 143, 146, 335 S.W. 2d 307, 309 (1960) ("[t]he Act of Congress and the Act of Arkansas transferred the said territory to Arkansas, but did not affect the title of the Indians or others owning any of the ceded territory").

It should be noted here that paragraph V of Oklahoma's complaint asserts that the 1905 congressional action served merely to extend the "police powers" of Arkansas over the tract in question. Because this had been done seven years earlier, this averment, on which a good deal of Oklahoma's argument hangs, is without merit. See "An Act For the protection of the people of the Indian Territory, and for other purposes," § 9, 30 Stat. 495, 497 (June 28, 1898).

There is no question that Congress has the power to fix state boundaries. *Texas* v. *Louisiana,* 410 U.S. 702 (1973), *rehearing denied,* 411 U.S. 988 (1973); *United States* v. *Louisiana, et al,* 363 U.S. 1 (1960). And Congress had the power to authorize a change in the western boundary line of Arkansas after Arkansas had become a state, since this change did not affect the boundary line of another existing state. *Pope* v. *Blanton,* 10 F. Supp. 18 (N.D. Fla. 1935), *modified on other grounds,* 299 U.S. 521 (1937). After the boundary line of Arkansas had lawfully been changed to include the disputed strip of land, Congress could not thereafter authorize its inclusion in the subsequently created State of Oklahoma, even if Congress had so intended. See *Louisiana* v. *Mississippi,* 202 U.S. 1 (1906), where the Court stated:

> The act admitting Mississippi was passed five years

> after the Louisiana act, yet Mississippi claims thereunder the disputed territory * * * . If it were true that this repugnancy between the two acts existed, it is enough to say that Congress, after the admission of Louisiana, could not take away any portion of that State and give it to the State of Mississippi. The rule, *Qui prior est tempore, potior in jure,* applied, and section three of article IV of the Constitution does not permit the claims of any particular State to be prejudiced by the exercise of the power of Congress therein conferred.

202 U.S. at 40-41. See also *New Mexico* v. *Colorado,* 267 U.S. 30 (1925).

There is no indication in this case, however, that Congress had any intention of including in Oklahoma that strip of land which is the subject of this action. The land which Arkansas was authorized to incorporate within its boundaries in 1905 was a specified portion of Indian Territory, as described in the Treaty of Dancing Rabbit Creek, 7 Stat. 333 (September 27, 1830). After the General Assembly of Arkansas had acted to incorporate that land into the State of Arkansas, it lost its identity as a part of the Indian Territory. Thus, the Act of Congress of June 16, 1906, providing "[t]hat the inhabitants of all that part 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," 34 Stat. 267 (emphasis added), did not and, indeed, could not under *Louisiana* v. *Mississippi, supra,* refer to that part of Arkansas over which Oklahoma now claims the right of sovereign control.

It is true that the Treaty of Dancing Rabbit Creek provided that "no part of the land granted [the Choctaw Nation] shall

ever be embraced in any Territory or State," 7 Stat. 334, and that the Act of Congress of February 10, 1905, authorizing a portion of that land to be embraced in the State of Arkansas was in apparent conflict with the quoted provision. Under the Constitution, however, a treaty has the same status as an Act of Congress, and Congress may, by the enactment of a subsequent law, unilaterally abrogate or modify a prior treaty. *Lone Wolf* v. *Hitchcock,* 187 U.S. 553 (1903); *The Head Money Cases,* 112 U.S. 580 (1884). See also *Rosebud Sioux Tribe* v. *Kneip,* 430 U.S. 584 (1977). The intention to abrogate or modify a treaty is not to be lightly imputed to Congress, *Menominee Tribe* v. *United States,* 391 U.S. 404 (1968); the intention may not be ignored, however, when it is apparent from both the subject matter and wording of the subsequent statute. *Thomas* v. *Gay,* 169 U.S. 264 (1898); *The Cherokee Tobacco,* 78 U.S. (11 Wall.) 616 (1871). Thus, just as this Court in *Thomas* v. *Gay, supra,* held that the Act of May 2, 1890, 26 Stat. 81, creating the Territory of Oklahoma, which included certain Indian lands, must prevail against the provisions of the treaty exempting such lands from inclusion within any territory or state, the Court should hold in this case that the Act of Congress of February 10, 1905, must prevail against any conflicting provisions of the Treaty of Dancing Rabbit Creek.

It should also be noted that modification of Indian treaties impeding inclusion of Indian Territory lands in any state was begun years prior to the Act of February 10, 1905. By § 16 of the Act of March 3, 1893, 27 Stat. 645, the Dawes Commission was created to negotiate with the tribes of Indian Territory on the allotment of land to their individual members in preparation for dissolution of the tribes. Thereafter, the Indians agreed to the allotment of their lands and the termination of tribal affairs. Act of June 28, 1898, 30 Stat. 495; Act of July 1, 1902, 32 Stat. 716. See *Choctaw Nation* v. *Oklahoma,* 397 U.S. 620 (1970), *rehearing*

denied, 398 U.S. 945 (1970); *Choate* v. *Trapp,* 224 U.S. 665 (1912). Oklahoma does not question the validity of these Acts, and her argument that they paved the way for the inclusion of lands of the Indian Territory in the State of Oklahoma but not in the State of Arkansas is unpersuasive. The Act of Congress of February 10, 1905, and the subsequent Enabling Act for the State of Oklahoma were each a proper exercise of the plenary power of Congress over territories of the United States in general, U.S. Const. art. IV, § 3, and, specifically, its power over the Indians and their lands, which continued even after the Indians of Indian Territory had become citizens. *Simmons* v. *Eagle Seelatsee,* 244 F. Supp. 808 (E.D. Wash. 1965), *aff'd,* 384 U.S. 209 (1966); *Brader* v. *James,* 246 U.S. 88 (1918).

Therefore, as can readily be seen, the circumstances of this cause as alleged by Oklahoma resolve themselves in favor of Arkansas upon application of firmly established principles enumerated and reiterated by this Court for a century.

II.

The existence of the treaties relied on by Oklahoma is undisputed. The Treaty of Hopewell, 7 Stat. 21 (January 3, 1786), provides in pertinent part:

ARTICLE III.

> The boundary of the lands hereby allotted to the Choctaw nation to live and hunt on, within the limits of the United States of America, is and shall be the following, viz. Beginning at a point on the thirty-first degree of north latitude, where the Eastern boundary of the Natchez district shall touch the same; thence east along the said thirty-

first degree of north latitude, being the southern boundary of the United States of America, until it shall strike the eastern boundary of the lands on which the Indians of the said nation did live and hunt on the twenty-ninth of November, one thousand seven hundred and eighty-two, while they were under the protection of the King of Great-Britain; thence northerly along the said eastern boundary, untill it shall meet the northern boundary of the said lands; thence westerly along the said northern boundary, untill it shall meet the western boundary thereof; thence southerly along the same to the beginning * * *

Thirty-four years later, the Treaty of Doak's Stand, 7 Stat. 210 (October 18, 1820), stated:

ART. 2. For and in consideration of the foregoing cession, on the part of the Choctaw nation, and in part satisfaction for the same, the Commissioners of the United States, in behalf of said States, do hereby cede to said nation, a tract of country west of the Mississippi River, situate between the Arkansas and Red River, 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.

The Doak's Stand Treaty was followed ten years later by the Treaty of Dancing Rabbit Creek, 7 Stat. 333 (September 27, 1830), which provided, *inter alia*:

ARTICLE II. The United States under a grant specially made by the President of the U.S. 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; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning. The boundary of the same to be agreeably to the Treaty made and concluded at Washington City in the year 1825. The grant to be executed as soon as the present Treaty shall be ratified.

* * *

ARTICLE IV. The Government and people of the United States are hereby obliged to secure to the said Choctaw Nation of Red People the jurisdiction and government of all the persons and property that may be within their limits west, so that no 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; but the U.S. shall forever secure said Choctaw Nation from, and against all laws except such as from time to time may be enacted in their own National Councils, not inconsistent with the Constitution, Treaties, and Laws of the United States; and except such as may, and which have been enacted by Congress, to

> the extent that Congress under the Constitution are required to exercise a legislation over Indian Affairs. * * *

Pursuant to the Act of March 3, 1893, 27 Stat. 612, 645, the "Dawes Commission" was established and negotiated the Atoka agreement of April 23, 1897, which was subsequently incorporated into the Curtis Act, 30 Stat. 495 (June 28, 1898), later modified by the Act of July 1, 1902, 32 Stat. 716. As psinted out above, § 9 of the Curtis Act extended the jurisdiction of the City of Fort Smith for police purposes over the area in question here.

Finally, on February 10, 1905, Congress took the final step of enacting legislation entitled "An Act To extend the western boundary line of the State of Arkansas," 33 Stat. 714. On February 16, 1905, the Arkansas General Assembly passed legislation pursuant to this Congressional authorization. The language of the Arkansas act tracked that of the federal act, except for the proviso, and is codified at Ark. Stat. Ann. § 5-101 (Repl. 1976). Oklahoma became a state in 1907.

Accordingly, for almost three quarters of a century, pursuant to acts of Congress and the Arkansas General Assembly, Oklahoma has been on notice that the geographical area in question is claimed by Arkansas.

> That rights of the character here claimed may be acquired on the one hand and lost on the other by open, long-continued, and uninterrupted possession of territory, is a doctrine not confined to individuals but applicable to sovereign nations as well, * * * and, *a fortiori* to the quasi sovereign states of the Union. The rule, long settled and never doubted by this court, is that long acquiescence by

> one state in the possession of territory by another and in the exercise of sovereignty and dominion over it *is conclusive* of the latter's title and rightful authority.

Michigan v. *Wisconsin*, 270 U.S. 295, 308 (1926) (citations omitted (emphasis added). In other words, as was the case in *Michigan* v. *Wisconsin, supra,* in the present case, since 1905,

> towns were built, [streets] constructed, public buildings erected, elections held, [Arkansas] law enforced, and other customary acts of dominion and jurisdiction exercised by that state within the disputed area.
>
> * * *
>
> [F]or a period of more than sixty years [Oklahoma] stood by without objection with full knowledge of the possession, acts of dominion, and claim and exercise of jurisdiction on the part of the State of [Arkansas] over the area in question.

Id. at 306-307.

The only litigation involving competing interests of Arkansas and Oklahoma over the land in question was instituted in 1909 by a number of Arkansas plaintiffs against John H. Hinton as Treasurer of LeFlore County, Oklahoma. In that unreported case, *Cohn, et al* v. *Hinton, Treasurer of LeFlore County, Oklahoma* (District Court of LeFlore County, Oklahoma [Court No. 291] [January 19, 1912]) (Exhibit B), the Oklahoma state court permanently enjoined the defendant Hinton from selling or attempting to sell the property at issue for unpaid taxes previously levied by LeFlore County. No appeal was taken, and

Oklahoma has never since undertaken to levy taxes on any of the property here in dispute. Oklahoma cannot claim ignorance of a decision of its own court recognizing the validity of Arkansas's claim to the property at issue. Moreover, on four occasions the Arkansas Supreme Court has rendered reported decisions declining to question Arkansas's sovereignty over the parcel here in question: *Ex Parte Thompson,* 86 Ark. 69, 109 S.W. 1171 (1908); *State* v. *Bowman,* 89 Ark. 428, 116 S.W. 896 (1909); *Bowman* v. *State,* 93 Ark. 168, 129 S.W. 80 (1909); *City of Ft. Smith* v. *Mikel, supra.* The Oklahoma and Arkansas cases make the claims of Arkansas "a matter of public notoriety." *Arkansas* v. *Tennessee,* 310 U.S. 563, 568 (1940) (Court quoting from Master's report). *Cf., Ohio* v. *Kentucky, supra.*

.This being the case, the language of this Court's opinion in *Indiana* v. *Kentucky,* 136 U.S. 479 (1890), is particularly apposite (with "Oklahoma" and "Arkansas" substituted for "Indiana" and "Kentucky"):

> It was over seventy years after [Oklahoma] became a State before this suit was commenced, and during all this period she never asserted any claim by legal proceedings to the tract in question. She states in her bill that all the time since her admission [Arkansas] has claimed the [land in dispute] to be within her limits and has asserted and exercised jurisdiction over it, and thus excluded [Oklahoma] therefrom, in defiance of her authority and contrary to her rights. Why then did she delay to assert by proper proceedings her claim to the premises? On the day she became a State her right to [the land in dispute], if she ever had any, was as perfect and complete as it ever could be. On that day, according to the allegations of her bill of complaint, [Arkansas] was claiming and exercising, and has

done so ever since, the rights of sovereignty both as to soil and jurisdiction over the land. On that day, and for many years afterwards, as justly and forcibly observed by counsel, there were perhaps scores of living witnesses whose testimony would have settled, to the exclusion of a reasonable doubt, the pivotal fact upon which the rights of the two States now hinge, and yet she waited for over seventy years before asserting any claim whatever to the [land], and during all those years she never exercised or attempted to exercise a single right of sovereignty or ownership over its soil. It is not shown, as he adds, that an officer of hers executed any process, civil or criminal, within it, or that a citizen residing upon it was a voter at her polls, or a juror in her courts, or that a deed to any of its lands is to be found on her records, or that any taxes were collected from residents upon it for her revenues.

This long acquiesence in the exercise by [Arkansas] of dominion and jurisdiction over the [land in dispute] is more potential than the recollections of all the witnesses produced on either side. Such acquiescence in the assertion of authority by the State of [Arkansas], such omission to take any steps to assert her present claim by the State of [Oklahoma], can only be regarded as a recognition of the right of [Arkansas] too plain to be overcome, except by the clearest and most unquestioned proof. It is a principle of public law universally recognized, that *long acquiescence in the possession of territory and in the exercise of dominion and sovereignty over it,* is *conclusive* of the nation's title and rightful authority.

Id. at 509-510 (emphasis added).

In this connection, it should be pointed out that evidence in the form of conveyances to Arkansas citizens by the Principal Chief of the Choctaw Nation and the Governor of the Chickasaw Nation of certain lots purportedly located in "West Fort Smith, Oklahoma," was introduced at trial and considered on appeal in *City of Ft. Smith* v. *Mikel, supra,* a title dispute between the city and a resident property owner. Both the trial court and the Arkansas Supreme Court ignored the recitals as to "West Fort Smith, Oklahoma," explicitly finding that the property in dispute, which is the same as that claimed by Oklahoma in this case, was located in Arkansas, even though the deeds were recorded in LeFlore County, Oklahoma.

Ohio v. *Kentucky,* 410 U.S. 641 (1973), is also instructive as to the applicable law here. Initially, that case recognizes that the special rule governing proceedings of this type "enable [the Court] to dispose of matters at a preliminary stage." *Id.* at 644. Such a disposition has never been more appropriate than in the case at bar. As in *Ohio* v. *Kentucky,* in the present case an Oklahoma state court — although not the Oklahoma Supreme Court — has recognized Arkansas's claim to the land at issue, apparently with sufficient persuasiveness to preclude for sixty years any further attempt by Oklahoma to exercise sovereignty over West Fort Smith. Further, *Ohio* v. *Kentucky* goes on to state that "proceedings under this Court's original jurisdiction are basically equitable in nature, * * * and a claim not technically precluded nonetheless may be foreclosed by acquiescence." *Id.* at 648 (citing *Indiana* v. *Kentucky, supra*). Last, the Court in *Ohio* v. *Kentucky* declined to consider the merits of the State of Ohio's historical analysis because "the State's long acquiescence in the location of its * * * border * * * and its persistent failure to assert a claim * * * convince us that it may not raise the * * *issue at this very late date." *Id.* at 649.

To the extent that *Ohio* v. *Kentucky* stands for the proposition that acquiescence is a cognizable ground upon which to deny a motion to amend a complaint in this Court, by the same token an unrebutted showing of acquiescence on the part of Oklahoma should be sufficient grounds upon which to base an order denying leave to file a bill of complaint.

In *Oklahoma* v. *Texas,* 272 U.S. 21 (1926), this Court observed:

> It is well settled that governments, as well as private persons, are bound by the practical line that has been recognized and adopted as their boundary, * * * and that a boundary line between two governments which has been run out, located, and marked upon the earth, and afterwards recognized and acquiesced in by them for a long course of years, is *conclusive, even if it be ascertained that it varies somewhat from the correct course;* the line so established taking effect, in such case, as a definition of the true and ancient boundary * * *

Id. at 44 (citations omitted) (emphasis added).

Arkansas v. *Tennessee, supra,* is notable both in light of factual similarities—see the Master's Report at 567-568—and for this Court's reliance on well established principles of law:

> In *Rhode Island* v. *Massachusetts,* 4 How. 591, 639, the Court said: "No human transactions are unaffected by time. Its influence is seen on all things subject to change. And this is peculiarly the case in regard to matters which rest in memory and which consequently fade with the lapse of time, and fall with the lives of individuals. For the security

> of rights, whether of states or individuals, long possession under a claim of title is protected. *And there is no controversy in which this great principle may be involved with greater justice and propriety than in a case of disputed boundary.*"

Id. at 569 (emphasis added).

To summarize, as this Court declared in *Ohio* v. *Kentucky*, *supra:*

> [I]n the light of the long standing and unequivocal claims of [Arkansas] * * * and [Oklahoma's] failure to oppose those claims, * * * [Oklahoma may not] credibly suggest that it has not acquiesced.

Id. at 651.

Respondent suggests that Oklahoma's interpretation of the pertinent acts and treaties is strained and singularly unpersuasive when measured against over two hundred years of unambiguous precedent of this Court in regard to acquiescence and equally unequivocal decisions as to congressional authority to modify or abrogate treaties. Accordingly, we respectfully request that the Court spare itself and the parties the time consuming, costly, and ultimately futile process of proceeding further in this cause.

Respectfully submitted,

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Deputy Attorney General
JACKSON JONES
Assistant Attorney General
Attorneys for Defendant

APPENDIX

EXHIBIT A

January 3, 1786. Treaty of Hopewell (7 Stat. 21): Choctaws acknowledge the protection of the United States; boundaries of lands allotted to them to live and hunt on were established.

October 18, 1820. Treaty of Doak's Stand (7 Stat. 210): Choctaws ceded certain lands to the United States in exchange for a tract of country west of the Mississippi River.

January 20, 1825. Articles of a Convention (7 Stat. 234): Boundary between the Choctaws and the United States was established as a line beginning on the Arkansas River, one hundred paces east of Fort Smith, and running thence, due south, to the Red River.

September 27, 1830. Treaty of Dancing Rabbit Creek (7 Stat. 333): Provided for conveyance to the Choctaws in fee simple certain lands west of the boundary line established by the January 20, 1825, Articles of Convention; all prior inconsistent treaties were declared null and void.

March 3, 1893 (27 Stat. 612): An Act of Congress was passed creating a commission (Dawes Commission) to negotiate with the tribes of Indian Territory (including the Choctaws) on the allotment of land to their individual members in preparation for dissolution of the tribes.

June 28, 1898 (30 Stat. 495): An Act of Congress was passed which incorporated an agreement (the Atoka Agreement)

between the Indian tribes and the Dawes Commission with respect to allotment of the Indian lands in Indian Territory and the termination of tribal affairs.

March 3, 1901 (31 Stat. 1447): An Act of Congress was passed making all Indians in the Indian Territory citizens of the United States.

February 10, 1905 (33 Stat. 714): Extension of the western boundary line of Arkansas was authorized by Congress.

February 16, 1905 [Ark. Stat. Ann. §5-101 (Repl. 1976)]: Western boundary line of Arkansas was extended by an act of the State Legislature.

April 26, 1906 (34 Stat. 148): An Act of Congress was passed to provide for the final disposition of the affairs of the Indians in Indian Territory.

June 16, 1906 (34 Stat. 267): Enabling Act for the State of Oklahoma was passed by Congress.

November 16, 1907. Oklahoma was declared a state.

EXHIBIT B

(UNREPORTED JUDGMENT OF THE DISTRICT COURT OF LEFLORE COUNTY, STATE OF OKLAHOMA, AS IT APPEARS IN BOOK 2, PAGE 216, OF THE RECORDS OF LEFORE COUNTY.)

M. S. Cohn, et al, Plaintiffs,

vs.

John H. Hinton, as Treasurer of Leflore County, Oklahoma, Defendant.

On this 19th day of January, 1912, comes the defendant and files his answer to the amended petition of plaintiffs filed herein on January 18, 1912, and thereupon come the plaintiffs and file demurrer to said answer and come the parties hereto by their respective attorneys, Geo. F. Youmans for the plaintiffs and J. L. Spangler, Deputy County Attorney of LeFlore County, and Tom Neal for the defendant, and said demurrer being presented, the Court, having heard the argument of counsel on said demurrer, doth sustain the same. To the action and judgment of the Court sustaining said demurrer the defendant at the time excepted and asked that his exceptions be noted of record, which is done.

And thereupon the defendant elected to stand upon his answer and refused to plead further and the plaintiffs moved the Court for judgment upon the pleadings. And this cause being submitted to the Court upon the amended petition of the plaintiffs, the Court doth find that plaintiffs are entitled to the relief prayed for therein. It is, therefore, by the Court considered, ordered, adjudged, and decreed that the temporary injunction

issued in the cause on the ____ day of _____, 1909, be, and the same is hereby declared to be permanent and that the defendant be, and he is hereby, perpetually injoined [sic] and restrained from selling or attempting to sell the property mentioned and described in said amended petition for taxes levied thereon by the officers of LeFlore County, Oklahoma. And it is further ordered by the Court that plaintiffs have and recover of and from said defendant all their costs in this behalf laid out and expended. To the finding and judgment [of] the Court in favor of the plaintiffs the defendant at the time excepted and asked that his exceptions be noted of record, which is done.

(Unsigned)

THE FOLLOWING IS THE AMENDED PETITION TO WHICH THE FOREGOING JUDGMENT REFERS AS IT APPEARS IN THE RECORDS OF LEFLORE COUNTY:

IN THE DISTRICT COURT OF
LEFLORE COUNTY, OKLAHOMA

M. S. Cohn, James Bowers, Ida L. Foucar, W. J. Johnston, A. N. Sicard, W. J. Echols, W. C. Wallace, George Harper, C. P. Wilson, and the Ketchen Iron Company, Plaintiffs,

vs.

John H. Hinton, as Treasurer of LeFlore County, Oklahoma, Defendant.

AMENDED PETITION.

Come the plaintiffs above named and file this their amended petition herein and, for their cause of action against the above named defendant, state:

1. That said plaintiffs are the owners of the real estate heretofore platted as West Fort Smith and formerly included within the boundaries of the Choctaw Nation of the Indian Territory.

2. That said plaintiffs own separate and distinct portions of said real estate and all join in this action because each is entitled to the same relief and in order to avoid a multiplicity of suits.

3. That the territory designated as "West Fort Smith" lies between the former boundary line of the State of Arkansas and the Arkansas and Poteau Rivers and Mill Creek.

4. That said real estate is platted into thirteen blocks numbered from 1 to 13 inclusive, each block containing one or more lots.

5. That, prior to the admission of the State of Oklahoma, which now includes all of what was formerly known as the Choctaw Nation except the real estate above mentioned, the Congress of the United States passed an act which was approved on the 11th day of February, 1905, by which the consent of the United States was given to the State of Arkansas to extend its western boundary line so as to include that strip of land in the Indian Territory (being the real estate above mentioned) lying and being situated between the Arkansas State line, adjacent to the City of Fort Smith, Arkansas, and the Arkansas and Poteau Rivers described as follows, to-wit: Beginning at a point on the south bank of the Arkansas River, one hundred 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 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.

6. That thereafter the General Assembly of the State of Arkansas passed an act, which was approved on the 16th day of February, 1905, extending the western boundary line of the State of Arkansas so as to include the territory described in said act of Congress, which territory is identical with that now platted as West Fort Smith and which belongs to said plaintiffs, which act of the General Assembly of the State of Arkansas is in words and figures as follows:

"An Act extending the Western boundary line of the State of Arkansas over a strip of the Choctaw Nation between Arkansas State line and the Poteau River adjacent to Fort Smith.

"1. Extends western boundary of Arkansas to include certain territory hitherto attached to the Indian Territory, and defines the boundaries thereof.

"2. Act to be in effect when the United States Senate assents thereto.

"Whereas, By an Act of Congress entitled "An Act to extend the western boundary line of the State of Arkansas," approved the 11th day of February, 1905, the consent of the United States was given to the State of Arkansas to extend its western boundary line so as to include that strip of land in the Indian Territory lying and being situated 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 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 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. Therefore,

"Be it enacted by the General Assembly of the State of Arkansas:

"Section 1. That the western boundary line of the State of Arkansas be and the same is hereby extended as follows, so as to include all that strip of land in the Indian Territory lying and being situated 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 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 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.

"Section 2. This Act shall take effect and be in force

upon the United States assenting thereto."

7. That thereafter the General Assembly of the State of Arkansas passed an act which was approved March 14, 1905, extending the western boundary line of Sebastian County in said State to include said strip of land and making the same a part of the Fort Smith District of said Sebastian County, which act of the General Assembly of the State of Arkansas is in words and figures as follows:

"An Act to extend the [western] boundary line of Sebastian County, Arkansas, and for other purposes.

"Section

"1. Extends western boundary line of Sebastian County.

"2. Lands embraced in territory made a part of the Fort Smith District of Sebastian County.

"3. Act in force from passage.

"Be it enacted by the General Assembly of the State of Arkansas:

"Section 1. That the western boundary line of Sebastian County, Arkansas, be, and the same is hereby extended so as to embrace all that tract of land ceded to the State of Arkansas by Act of the National Congress and approved by the President of the United States on February 11, 1905, and more particularly described in said Act as follows, namely:

"That strip of land in the Indian Territory lying and being

situated 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 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 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.

"Section 2. That all the lands embraced and described in section 1 of this Act are hereby declared to be and are made a part of the Fort Smith District of Sebastian County, Arkansas, to all intents and purposes whatsoever.

"Section 3. This Act shall be in force and effect from and after its passage."

8. That, by virtue of said act of Congress and said acts of the General Assembly of the State of Arkansas, said territory is now incorporation [sic] within the boundaries of said State of Arkansas and within the boundaries of the Fort Smith District of Sebastian County in said State and subject to the jurisdiction of said State and County for all purposes.

9. That the proper officers of said Sebastian County and

of the city of Fort Smith in said State have caused taxes to be levied on said real estate and have exercised, and are now exercising, jurisdiction over the same.

10. That the officers of LeFlore County in the State of Oklahoma have undertaken to exercise jurisdiction over said territory and to levy taxes thereon.

11. That said defendant, John H. Hinton, as Treasurer of LeFlore County, Oklahoma, has advertised all of said real estate for sale for taxes for the year 1908.

12. That said officers of LeFlore County, Oklahoma, have no power or authority to levy taxes upon said real estate nor has said defendant, John H. Hinton, as Treasurer aforesaid, power or authority to sell said real estate for taxes.

13. That, if said defendant, John H. Hinton, sells the said real estate for taxes, a cloud will be cast upon the title of the plaintiffs herein to said real estate and great and irreparable injury will be done them, for which they have no adequate remedy except by injunction.

14. That said real estate is not subject to taxation under the laws of Oklahoma; that the same is not situated within the State of Oklahoma; that the warrant issued to said defendant to sell said real estate for taxes was improvidently and illegally issued and said defendant has no legal right or authority to sell said real estate for taxes as he is now threatening to do.

Wherefore, plaintiffs pray:

That a temporary restraining order be issued, directed to

said defendant, enjoining and restraining him from selling or attempting to sell any of said real estate for taxes, and that, upon the final hearing, such restraining order be made permanent, and that plaintiffs have such other and further relief as they may be entitled to.

[SIGNED] GEO. F. YOUMANS
Attorney for Plaintiffs

(VERIFICATION)