

Oklahoma Vs. Texas

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Decided On : Apr-11-1921

Appeal No. : 256 U.S. 70

Appellant : Oklahoma

Respondent : Texas

Judgement :

Oklahoma v. Texas - 256 U.S. 70 (1921)

U.S. Supreme Court Oklahoma v. Texas, 256 U.S. 70 (1921)

Oklahoma v. Texas

No. 23, Original

Argued December 14, 15, 1920

Decided April 11, 1921

256 U.S. 70

I N EQUITY

SYLLABUS

Oklahoma brought this suit against Texas to establish the boundary between the two states where it follows the course of the Red River from the 100th degree of west longitude to the easterly boundary of Oklahoma, contending that, as fixed by the Treaty of February 22, 1819 (8 Stat. 252), the line followed the south bank of that river and that this was finally and conclusively adjudicated in the case of *United States v. Texas*, [162 U. S. 1](#) , wherein the final decree declared

"that the territory east of the 100th meridian of longitude, west and south of the river now known as the North Fork of Red River, and north of a line following westward, as prescribed by the Treaty of 1819 between the United States and Spain, the course, and along the south bank, both of Red River and of the river now known as the Prairie Dog Town Fork or South Fork of Red River until such line meets the 100th meridian of longitude -- which territory is sometimes called Greer County -- constitutes no part of the territory properly included within or rightfully belonging to Texas at the time of the admission of that state into the Union, and is not within the limits nor under the jurisdiction of that state, but is subject to the exclusive jurisdiction of the United States of America;"

the United States, intervening to protect proprietary interests claimed for itself and for Indians in the bed of the river, supported these contentions of Oklahoma, while Texas contended that the boundary was fixed by the treaty at the middle of the main channel of the river, and denied that its precise location, whether there or on the south bank. was determined by the former proceeding, asserting that the issues there respecting the river were confined to the question which of

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the two Forks was the Red River of the treaty and to the ownership of and jurisdiction over the disputed land lying between them.

HELD

(1) That, since there was jurisdiction over the subject matter and parties in the former case, and since the parties in the cases were the same or in privity (Oklahoma having succeeded in part, as to governmental jurisdiction, to the

position formerly held by the United States), the decree, in locating the boundary line with respect to the course of Red River and in construing the treaty as placing it along the south bank, was conclusive in this case if the matter so decided was within the issues then proper to be decided or was presented and actually determined in the course of deciding those issues. P. [256 U. S. 86](#) .

(2) That what was involved and determined in the former suit was to be tested by an examination of the record and proceedings therein, including the pleadings, the evidence submitted, the respective contentions of the parties and the findings and opinion of the Court, there being no occasion for resorting to extrinsic evidence. P. [256 U. S. 88](#) .

(3) That the matter of the true location of the boundary between the territory of the United States and Texas where it followed the Red River bordering upon Greer County, and the question whether the boundary followed the middle or the south bank of the River, were within the issues made by the pleadings, recognized by both parties and the Court, to be determined according to the true effect and meaning of the Treaty of 1819; that, in elucidation, the treaty, and much historical evidence of the negotiations that led up to it, were introduced, discussed by counsel in argument, and referred to in the opinion of the Court, and that the matter was directly determined and made a part of the final decree, and by every applicable test was *res judicata*. P. [256 U. S. 92](#) .

(4) That the adjudication not only concluded the parties with respect to that part of the boundary which borders upon what was called Greer County, but settled the construction of the treaty (Art. 3) as to the entire course of the Red River where it marks the boundary between the territory then of the United States and that of the State of Texas. P. [256 U. S. 93](#) .

The case is stated in the opinion, *post*, [256 U. S. 81](#) . (*See post*, [256 U. S. 602](#) .)

MR. JUSTICE PITNEY delivered the opinion of the Court.

This is a suit in equity in our original jurisdiction, brought by the State of Oklahoma against the State of Texas, to establish the true boundary line between those states where it follows the course of the Red River from the 100th degree of west longitude to the easterly boundary of Oklahoma. The bill avers that, by the third article of a treaty concluded February 22, 1819, and ratified and proclaimed February 22, 1821 (8 Stat. 252), between the United States of America and the King of Spain, who had sovereignty over the territory now known as Texas, but then a part of Mexico, the boundary line

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between the two countries where formed by the Red River was established as following the south bank of that stream; that, after Mexico had become independent, and on January 12, 1828, a treaty was concluded, and on April 5, 1832, ratified and proclaimed, between the United States of America and the United Mexican states by which the validity of the Treaty of 1819 was confirmed (8 Stat. 372); that, in the year 1837, Texas was recognized as an independent republic, no longer under the power and jurisdiction of Mexico, and on April 25, 1838, a treaty was concluded, and in the same year ratified and proclaimed, between the United States and the Republic of Texas by which the boundary as thus established was accepted by that Republic as binding (8 Stat. 511), and that, under joint resolutions of Congress dated respectively March 1 and December 29, 1845 (5 Stat. 797; 9 Stat. 108), Texas was admitted into the Union as a state, with "the territory properly included within and rightfully belonging to the Republic of Texas." That, by act of Congress approved May 2, 1890, a temporary government was provided for a part of the territory adjoining said boundary on the north, now comprised in the State of Oklahoma, under the name of the Territory of Oklahoma (c. 182, 26 Stat. 81), and that, by 29 (p. 93) the remaining part was designated as the Indian Territory; but that, by 25 (p. 92), in view of the existence of a controversy between the United States and the State of Texas as to the ownership of what was known as Greer County, described as

"the tract of land lying between the North and South Forks of the Red River where the Indian Territory and the State of Texas adjoin, east of the one hundredth degree of longitude,"

it was provided that the act should not apply to that county until the title thereto had been adjudicated and determined to be in the United States, and, in order to provide for a speedy and final judicial determination of the controversy, the Attorney General

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was authorized and directed to commence in the name and behalf of the United States and prosecute to a final determination a suit in equity in this Court against the State of Texas; that, accordingly, at the October term, 1895 (1890), the Attorney General of the United States filed in this Court an original bill against the State of Texas to determine whether the territory embraced within the then County of Greer was in the State of Texas or within the territory and exclusive jurisdiction of the United States; that, after a full hearing of said cause, this Court found, decided, and decreed that the territory east of the 100th meridian of longitude, west and south of the river now known as the North Fork of Red River and north of a line following westward, as prescribed by the Treaty of 1819, the course, and along the south bank, both of Red River and of the river now known as the Prairie Dog Town Fork or South Fork of Red River until such line meets the 100th meridian of longitude, constitutes no part of the territory properly included within or rightfully belonging to Texas at the time of the admission of that state into the Union, and was not within the limits nor under the jurisdiction of that state, but was subject to the exclusive jurisdiction of the United States of America ([162 U. S. 162](#) U.S. 1, [162 U. S. 90](#) -91), and that afterwards, under act of Congress approved June 16, 1906 (c. 3335, 34 Stat. 267), the inhabitants of the area constituting the Territory of Oklahoma (including said Greer County) and the Indian Territory were admitted into the Union as the State of Oklahoma.

The State of Texas appeared in the present suit and filed an answer denying that the Treaty of 1819 fixed the boundary at the South bank of the Red River;

asserting, on the contrary, that the treaty, by its legal meaning and effect, fixed it in the middle of the main channel of that river; denying that the effect of the decree in the case of *United States v. Texas* was to determine that the south

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bank of Red River, or of the Prairie Dog Town Fork or South Fork of that river constituted the boundary between the United States and Texas at any point, and setting up a counterclaim and other matters not necessary to be here repeated.

The United States, by leave of the Court, intervened, and, by its petition of intervention, set up an interest as trustee of Indian allottees with respect to certain portions of the bed of the Red River, and as owner in its own right of a large part of the bed and of numerous islands therein, and supported the contentions of the State of Oklahoma as to the location of the boundary line by the true construction of the Treaty of 1819 and as to the effect of the final decree in *United States v. Texas*.

At the same time, it was brought to the attention of the Court that, because of the recent discovery and development of oil and gas deposits in the bed of the river adjacent to Wichita County, Texas, serious conflicts had arisen between parties claiming title from the State of Texas and others claiming title from the State of Oklahoma or under the mineral laws of the United States, and that there was danger of the exhaustion of the deposits of oil and gas pending the determination of the questions at issue between the parties to the cause, and danger of armed conflict between rival claimants under them, and thereupon, on motion of the United States, concurred in by the State of Oklahoma and consented to by the State of Texas, as to lands claimed in its proprietary capacity, we appointed a receiver to take possession of that part of the riverbed lying between mid-channel and the south bank, and within the disputed oil field.

Pending the receivership, by order of June 7, 1920, made pursuant to the suggestion of the parties, we set the cause down for hearing at the present term upon two questions of law, with leave to take testimony pertinent to the purpose.

The testimony was taken and returned, a hearing has been had, and the matter is now to be decided.

The questions are as follows:

"(1) Is the decree of this Court in *United States v. Texas*, [162 U. S. 1](#) , final and conclusive upon the parties to this cause insofar as it declares that the Treaty of 1819 between the United States and Spain fixed the boundary along the south bank of Red River?"

"(2) If said decree is not conclusive, then did the Treaty of 1819, construed in the light of pertinent public documents and acts, fix the boundary along the mid-channel of Red River or along the south bank of said river?"

The first is a question of *res judicata*, and, obviously, if it is answered in the affirmative, the second becomes immaterial.

The general principle, applied in numerous decisions of this Court and definitely accepted in *Southern Pacific R. Co. v. United States*, [168 U. S. 1](#) , [168 U. S. 48](#) -49, is that a question of fact or of law distinctly put in issue and directly determined by a court of competent jurisdiction as a ground of recovery or defense in a suit or action between parties *sui juris* is conclusively settled by the final judgment or decree therein so that it cannot be further litigated in a subsequent suit between the same parties or their privies whether the second suit be for the same or a different cause of action. As was declared by Mr. Justice Harlan, speaking for the Court in the case cited (p. [168 U. S. 49](#)):

"This general rule is demanded by the very object for which civil courts have been established, which is to secure the peace and repose of society by the settlement of matters capable of judicial determination. Its enforcement is essential to the maintenance of social order, for the aid of judicial tribunals would not be invoked

for the vindication of rights of person and property if, as between parties and their privies, conclusiveness did not attend the judgments of such tribunals in respect of

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all matters properly put in issue and actually determined by them."

In order to aid us in ascertaining whether the question of boundary location now at issue was settled by the decision and decree in the Greer County case, the parties have stipulated that the entire record in that case, including pleadings, stipulations, testimony, briefs, and documents of every character, now on file in this Court, and the orders and decrees of the Court therein, are to be considered in evidence for all purposes. They have been examined and considered accordingly.

The jurisdiction of the Court over the subject matter of that suit -- its original jurisdiction over a suit in equity brought by the United States against one of the states to determine the boundary between such state and a territory of the United States -- was put at issue by a demurrer to the bill of complaint in that case, and decided in favor of the jurisdiction, *United States v. Texas*, [143 U. S. 621](#) , [143 U. S. 641](#) *et seq.* It was set at rest when followed by the making of a final decree, *United States v. Texas*, [162 U. S. 1](#) , [162 U. S. 90](#) -91.

That the Court had jurisdiction over the parties is obvious from the fact that the suit was brought in behalf of the United States pursuant to an act of Congress (Act of May 2, 1890, c. 182, 25; 26 Stat. 81, 92), that a bill of complaint and an amended bill were filed, to each of which the State of Texas demurred and also answered, and that the United States filed a replication (162 U.S. [162 U. S. 21](#) -23), and both parties introduced evidence and participated in the hearing.

There is identity of parties between the former suit and the present one so far as concerns the proprietary interest now set up by the United States. As to governmental jurisdiction, the State of Oklahoma has succeeded in part to the position formerly held by the United States, and therefore is in privity with it.

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The former decision was based upon final hearing, on issue joined between the parties and upon evidence taken by both, and, as stated, it resulted in a final decree (162 U.S. [162 U. S. 90](#) -91).

Therefore, it remains only to consider whether the "right, question, or fact" now in controversy -- the location of the boundary line with respect to the course of the Red River, and whether by the true construction of the Treaty of 1819 its location is along the south bank or in mid-channel -- was put in issue and directly determined in the former case. That the final decree purports to determine it is obvious from a reading of the language employed (162 U.S. [162 U. S. 90](#)):

"That the territory east of the 100th meridian of longitude, west and south of the river now known as the North Fork of Red River, and north of *a line following westward, as prescribed by the Treaty of 1819 between the United States and Spain, the course, and along the south bank, both of Red River and of the river now known as the Prairie Dog Town Fork or South Fork of Red River until such line meets the 100th meridian of longitude* -- which territory is sometimes called Greer County -- constitutes no part of the territory properly included within or rightfully belonging to Texas at the time of the admission of that state into the Union, and is not within the limits nor under the jurisdiction of that state, but is subject to the exclusive jurisdiction of the United States of America."

The literal meaning of this is not seriously disputed, but it is insisted that, so far as it describes the boundary line of the treaty as following the south bank of the river, it was outside the issues litigated, and hence is not conclusive upon the parties to this cause -- in effect that, in construing the decree, the words "along the south bank" should be excluded from consideration. Clearly the inclusion of those words amounted to a decision that the correctness of that particular definition of the boundary

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was within the issues in the cause. But we concede that, in a subsequent suit upon a different cause of action, the question whether the matter decided on the

former occasion was within the issues then proper to be decided, or was presented and actually determined in the course of deciding those issues, is open to inquiry, and that, unless it be answered in the affirmative, the matter is not *res judicata*.

What was involved and determined in the former suit is to be tested by an examination of the record and proceedings therein, including the pleadings, the evidence submitted, the respective contentions of the parties, and the findings and opinion of the court, there being no suggestion that this is a proper case for resorting to extrinsic evidence. *Russell v. Place*, [94 U. S. 606](#) , [94 U. S. 608](#) ; *Last Chance Mining Co. v. Tyler Mining Co.*, [157 U. S. 683](#) , [157 U. S. 688](#) *et seq.*; *Baker v. Cummings*, [181 U. S. 117](#) , [181 U. S. 124](#) -130; *National Foundry & Pipe Works v. Oconto Water Supply Co.*, [183 U. S. 216](#) , [183 U. S. 234](#) .

The Act of May 2, 1890, c. 18226 Stat. 81, 92, briefly recited the existence of a controversy between the United States and the State of Texas as to the ownership of the land known as Greer County and directed the Attorney General to bring suit in this Court in order that the rightful title to that land might be finally determined. Referring to this, and to the history and nature of the controversy, it is contended that the pleadings should be so construed as to confine the issue to the identification of one of the forks of the Red River with the Red River of the treaty. It is true that the principal matter in dispute was the claim of the United States to ownership of the tract of land lying between the forks and bounded on the west by the 100th meridian. But the bill and the amended bill, after reciting Article 3 of the treaty defining the boundary line between the United States and Spain, by which both parties to the cause were bound, and recounting

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the history of the controversy, concluded with a prayer that the bill might be filed and Texas made a defendant thereto,

"to the end and for the purpose of determining and settling the true boundary line between the United States and the State of Texas, and to determine and put at rest questions which now exist as to whether the Prairie Dog Town Fork or the North Fork of Red River, as aforesaid, constitutes the true boundary line of the Treaty of 1819;"

and that, upon final hearing, a decree might be entered establishing complainant's rights as set up in the bill, and there was a prayer for general relief. The contention now made is based upon an unduly narrow interpretation of the act and of the pleading. Granting that the substantial controversy related to the ownership of and jurisdiction over the tract lying between the forks, it was essential to a complete and precise disposition of that controversy that the Court should define with certainty the bounds of the tract. If it were to be awarded to the State of Texas, an accurate definition of its northerly boundary was essential; if to the United States, like accuracy in defining its southerly boundary was called for; in either case, the line to be defined was "the true boundary line between the United States and the State of Texas." And if, as suggested, the river is to be regarded as navigable (upon which we express no opinion), so that a boundary line separating national territory from that of the state, if described as following the river, without more, would by implication follow the middle of the main navigable channel, as in a case between adjoining states (*Iowa v. Illinois*, [147 U. S. 1](#) , [147 U. S. 13](#) ; *Arkansas v. Tennessee*, [246 U. S. 158](#) , [246 U. S. 171](#)), so much the more was specific mention of the bank essential to an accurate description of the tract in issue if the bank was the true line instead of mid-channel. And if, at the termination of the suit, the line were left undefined, a ground of further controversy would remain, and it is as foreign to correct

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practice as to the principles of equity that a final decree should be pregnant with further litigation.

Even less substantial is the suggestion that the language of 25 of the Act of 1890 (26 Stat. 92) authorizing suit to determine the title to the tract "lying between the

North and South Forks of the Red River," etc., and the use of that phrase in the amended bill had the effect of excluding from the issue land south of the middle of the South Fork. Upon so narrow an interpretation, the controversy might as well be confined to the upland between the forks, leaving the United States without claim to any part of the bed of the stream if the South Fork proved to be the river of the treaty. Of course, the phrase merely pointed out the tract in dispute, without attempting to delimit it.

The contention that the evidence and the arguments in the Greer County case raised no controversy as to whether the boundary followed the mid-channel or the south bank of the river is not well founded. The Treaty of 1819, and a mass of historical and other data bearing upon its proper interpretation, were before the Court. It appeared that the treaty was negotiated at Washington between the Spanish Minister, Don Luis de Onis, and the United States Secretary of State, John Quincy Adams; M. de Neuville, the French Minister, acting at times as an intermediary. The State of Texas itself introduced authenticated extracts from the instructions of the Spanish Minister, and excerpts from correspondence between him and Mr. Adams, from which latter it appeared that the question whether the boundary should follow the middle of the Sabine and Red Rivers or the westerly bank of the former and the southerly bank of the latter, was one of the points under discussion, the Spanish Minister proposing the middle lines, Mr. Adams the banks.

Furthermore, in the principal brief for the State of Texas, reference was made to entries in Mr. Adams' diary, found in his Memoirs, vol. 4, pp. 233-280, in connection

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with which the brief declared:

"An objection was long persisted in by Spain that, instead of the banks of the rivers named being boundaries, the middle of the river should be the dividing line [Adams, *supra*]. This objection was at last abandoned,"

etc. The diary itself, in the pages thus referred to, abounds in statements to the effect that the representative of Spain, during the course of the negotiation, insisted that the middle of the rivers should be taken for the boundary, Mr. Adams firmly insisting upon "the western and southern banks," and at last prevailing. J. Q. Adams' Memoirs, vol. 4, pp. 255, 256, 261, 264, 266, 267, 270. It is true these references were made by counsel for Texas principally with the object of showing the important part that the Melish Map (mentioned in the treaty) played in the negotiations, but it is impossible to escape the conclusion that both counsel and the Court understood that the question whether the boundary line, where it followed the Sabine and Red Rivers, should be so located as to establish the United States as owner of the rivers or so as to divide the ownership between the United States and Spain, figured to an important extent in the negotiations, was disposed of by the treaty, and hence was vital to the correct location of the boundary line as between the litigants. If the point was not controverted, it was only because counsel for Texas in effect conceded that the treaty line ran along the south bank of the Red River. It may have seemed at that time a matter of no great moment.

Finally, the precise matter was discussed in the opinion of the Court, and was made the subject of a finding which was carried into the final decree. In the course of an outline of the diplomatic correspondence and negotiations that preceded the making of the treaty, the Court said (p. [162 U. S. 27](#)):

"The Spanish Minister required that 'the boundary between the two countries shall be the middle of the rivers, and that the navigation of the said rivers

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shall be common to both countries.'"

Mr. Adams replied that the United States had always intended that "the property of the river should belong to them," and he insisted on that point

"as an essential condition, as the means of avoiding all collision, and as a principle adopted henceforth by the United States in its treaties with its neighbors."

He agreed, however, "that the navigation of the said rivers to the sea shall be common to both people" -- citing Annals of Congress, Appendix, 15th Cong., 2d Sess., 2120, 2021, 2123. The opinion then proceeded to set forth (pp. [162 U. S. 27](#) -29) the third and fourth articles of the treaty, in the former of which occurs the language that Mr. Adams had insisted upon as carrying out the purposes of the United States that "the property of the river should belong to them," and, at a later point, the opinion declared (p. [162 U. S. 37](#)):

"The two governments certainly intended that the line should be run from the Gulf along the western bank of the Sabine river, and after it reached Red River that it should follow the course of that river, leaving both rivers within the United States."

And, having decided the case in favor of the United States, the Court embodied in the final decree a description of the boundary line, in terms quoted above.

To sum it up, we find that the question of the true location of the boundary between the territory of the United States and Texas where it followed the Red River bordering upon Greer County, and the question whether the boundary followed the middle or the south bank of the river, were within the issues made by the pleadings, and so recognized by both parties, as well as by the Court; that, by the concession of both, the location was to be determined according to the true effect and meaning of the Treaty of 1819; that, in elucidation of the matter, the treaty, and much historical evidence of the negotiations that led up to it, were introduced, discussed by counsel in argument, and referred to in the opinion of the Court,

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and that the point was directly determined by the Court and the determination made a part of its final decree. By every test that properly can be applied, the matter is *res judicata*.

And, of course, it not only concludes the parties with respect to that part of the boundary which borders upon what was called Greer County, but settles the construction of Article 3 of the Treaty of 1819 as to the entire course of the Red

River where it marks the boundary between the territory then owned by the United States and that of the State of Texas.

Having reached this conclusion upon the first of the two questions proposed for decision, it is unnecessary to consider the second, which is whether the treaty, by proper construction, fixes the boundary along the mid-channel or the south bank. The matter being *res judicata* as the result of the decree in the former suit, it is of no consequence whether it was correctly decided or not. We say this without intending to intimate the least doubt about the propriety of that decision.

The parties may submit within 30 days a proper form of decree for carrying this decision into effect.

It is so ordered.

Mr. Justice CLARKE took no part in the consideration or decision of this case.

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