

A CENTURY OF DISSENTION AT THE RED RIVER BOUNDARY

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A CENTURY OF DISSENTION AT THE RED RIVER BOUNDARY

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PREFACE

No other era in America's history has been more turbulent than the one when various governments were attempting to establish their jurisdiction over the Red River region. Most of the disputes occurred during 1818-1923, and were concerned with a satisfactory delineation of the boundary at Red River. The establishment of the boundary along this stream was accomplished by the employment of several intrigues which aroused an enormous amount of ill will among the peoples who were concerned with the controversy.

This treatise is intended to give a survey of disputes between the United States and the other countries who considered Red River as part of their boundary. Special attention was given to the Oklahoma-Texas boundary dispute that grew out of the older disputes which had not been determined prior to 1918 when the two states became involved in another boundary war at Red River.

The author does not attempt any justification of the somewhat equivocal method of settling this perplexing problem, but feels compensated for his work, in that the study has been not only one of interest and enjoyment but that his pursuance has brought out, for him at least, many interesting developments that are not treated in general histories, as well as a better appreciation of the efforts of those responsible for the settlement of the Red River boundary dispute.

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CHAPTER I

EARLY NEGOTIATIONS INVOLVING THE SOUTHWEST BOUNDARY

In the early part of the nineteenth century the United States was embarking upon a program of expansion which kept her boundaries in a state of constant alteration. As the young nation's frontiers were extended, new boundary lines had to be formed to keep pace with America's rapidly changing limits.

Of the southwest in particular, insufficient knowledge of the topographical features of the region made the fixing of the boundary line through that area a task of serious proportions. American statesmen, whose efforts to make the boundary lines definite and determinable were for the most part fruitless because of the lack of reliable data, found themselves the center of bitter controversies.

The Treaty of Washington, which was negotiated by the United States and Spain in 1819, and which was intended to settle the Florida issue and establish the boundary between the Louisiana Purchase and Spanish territory, has been a barrier for the statesmen. Because of the lack of scientific data as a foundation, the treaty is full of ambiguities. One of the phases of the Treaty of Washington which has given American statesman considerable trouble has to do with

the inclusion of the Red River as part of the boundary line. The negotiators, John Quincy Adams representing the United States and Louis de Onis representing Spain, who designated the Red River along with the Sabine and Arkansas Rivers as integral parts of the boundary between their respective countries, failed to realize that more than a century would be required to clarify the provisions of the treaty.

Some of the ambiguities in the boundary provisions may, of course, be attributed to the conditions under which the negotiations were conducted. Mr. Adams, before concluding the treaty, had to overcome Spanish antipathy aroused by Andrew Jackson's expedition into Florida during the latter part of 1818. Mr. de Onis considered General Jackson's activities "outrageous and unprecedented in history,"^{1/} and demanded restitution and compensation before the negotiations could proceed. These protests did not prevent Mr. Adams from continuing his overtures for a boundary agreement that would permanently settle the Florida issue and extend the southern limits of the United States to the "northern bank of the Red River."^{2/} This suggestion Mr. de Onis considered as "inconsistent" and "exorbitant." He proposed, instead, a boundary which would be a line running from the mouth of the Sabine River up the west bank

1/ Walter Lowrie and Matthew St. Clark, joint editors, American State Papers: Foreign Relations, Washington: 1834, IV, 530.

2/ Letter of John Quincy Adams to Louis de Onis, October 31, 1818, ibid., p. 531.

of that river to the thirty-second parallel and then due north to the Mississippi River, then down the middle of that river to its source. The land on the left would go to Spain; the land on the right would go to the United States.^{3/} He would take it upon himself, Mr. de Onis said, to see that the line would be drawn "obliquely to the west" if the United States would not assent to a line drawn north. Skeptical of the generosity of this offer, Mr. Adams refused to accept the proposition. This refusal caused Mr. de Onis to warn him that persistence in his former "unreasonable" demands would cause the decision of the negotiations to be turned over to the Congress of Monarchs then assembled at Aix-la-Chapelle.^{4/}

No assistance from the Quadruple Alliance was forthcoming, however, and Spain had to assent to a treaty which followed, to a certain extent, the earlier "unreasonable" demands of Mr. Adams. The boundary provisions of this treaty stated that the boundary between the two countries

shall begin on the Gulph [sic] of Mexico, at the mouth of the river Sabine, in the Sea, continuing north along the western bank of that river, to the 32nd degree; thence, by a line due north, to the degree of latitude where it strikes the Rio Roxo of Nachitoches, or Red River; thence following the course of the Rio Roxo westward, to the degree of longitude of 100 west from London and 23 from Washington; then crossing the said Red River and running thence, by a line due north, to the Arkansas, to its source, in the latitude of 42 north; and thence by that parallel of latitude to the sea. The whole being as laid down in Melishes

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- ^{3/} Mr. de Onis evidently believed that the Mississippi River ran westward to the Pacific Ocean and could be used as a boundary for the Spanish Territory.
- ^{4/} Letter of de Onis to Adams, November 16, 1818, *ibid.*, p. 531.

map of the United States, published in Philadelphia improved to the 1st of January, 1818. ^{5/}

Close inspection of this statement reveals an inadequate definition of that part of the boundary which lay along the Red River. Had the negotiators specified their intentions to be guided by the real south bank and the real south fork of that river and the true 100th meridian rather than the erroneously located one "laid down" on Melish's map, the ensuing controversy which lasted until 1923 might have been averted. But the negotiators failed to foresee the trouble which might grow out of this bit of obscure verbiage; they signed it on February 22, 1819. Because of diplomatic difficulties between Spain and the United States, ratifications were not effected until two years later. On February 22, 1821, President Monroe proclaimed the acceptance of this treaty. ^{6/}

The fallacious boundary provision, however, did not prove detrimental to the United States; for the consequent interpretations of the treaty, usually made by American statesmen, were invariably in favor of their government. Mr. Adams may have deliberately made a vague boundary provision, with the idea of relying on the dexterity of American statesmen to capitalize on what was implied rather than on what was actually expressed.

Although this treaty was more generous in its boundary provision than any which had been suggested by Spain, there

^{5/} Peter Richards, editor, The Statutes at Large of the United States, Boston: 1846, VIII, 254.

^{6/} American State Papers: Foreign Relations, V, 138.

were some who felt that it was not as favorable as it might have been. Senator Thomas Hart Benton, for one, said that he was shocked by it and insisted that the treaty dismembered the valley of the Mississippi. He was willing to predict an unpleasant fate for any statesman who would "surrender one drop of its water, one inch of its soil to a foreign power."^{7/} The "laws of God and nature" were, to him, the basis of his claim. Senator Benton asserted also that "benediction would thicken over the head of the American President who would restore it to its natural owner."^{8/} Senator Clay was another congressman who denounced the treaty. He felt that it failed to extend our boundary far enough west.^{9/} When Andrew Jackson, a popular hero of the west, saw the boundary provision, he expressed the belief that the administration would be criticized for receding as far north as the Red River.^{10/} Others contended that the United States had a legitimate claim to a boundary as far west as the Rio Grande, which they felt to be the true western limit of the Louisiana Purchase.

Despite this adverse criticism, Mr. Adams considered the conclusion of this treaty as one of the most important

^{7/} Thomas Hart Benton, Thirty Years View, New York: 1893, I, 15.

^{8/} Congressional Globe, 28 Cong., 1 sess., XIII, 702.

^{9/} Allan Nevins, editor, The Diary of John Quincy Adams, 1794-1845, New York: 1929, 547.

^{10/} Ibid., 209.

events of his life ^{11/} because it gave the United States its first tangible boundary in the southwest.

Unsatisfactory as it was, the treaty of 1819 was to be short-lived as far as Spain was concerned, because that country was soon dispossessed of her authority in North America. A few months after the ratification of the treaty, Mexico fought a successful revolution and declared herself independent of Spanish control. The Monroe administration in Washington was prone to recognize this change of status for reasons both foreign and domestic. The promptness of American recognition attested to this fact. ^{12/}

The abrupt ending of Spain's control of the territory adjoining the Red River made it necessary for the United States to negotiate a new treaty with the Mexican government to reestablish the validity of the southwestern boundary. Some of the incidents which followed the opening of boundary negotiations with Mexico constitute a series of diplomatic acts which defy justification. Some American expansionists considered the unstable condition in Mexico as an excellent opportunity to improve the somewhat unsatisfactory boundary. During the next two years the activities of these expansionists were such as to arouse the suspicions of a Mexican official in Texas, who wrote

11/ Ibid., 211.

12/ Hunter Miller, editor, Treaties and Other International Acts of the United States, Washington: 1933, IV, 139. (President Monroe, on December 12, 1822, received Jose Zozaya as minister from the independent government of Mexico.)

his government on April 15, that he was "certain that the United States was trying to annul the boundary provisions of 1819 and going to assert its claim to the banks of the Rio Grande."^{13/} This allegation voiced the animosity of certain Mexican officials who held that the United States had taken advantage of "Spain's weakness" and had forced her to make the treaty of 1819 which gave the United States much territory rightfully belonging to Mexico.^{14/}

Yet, several months passed before any action was taken by either party on the boundary question. On June 15, 1826, the Mexican Secretary of State approached the American minister in Mexico, Mr. Joel Roberts Poinsett, and proposed a "friendly settlement" of the controversy, suggesting that each nation appoint a commission to meet and determine the boundary.^{15/}

That the United States intended to form a new boundary rather than accept the provisions of 1819 is implied in Mr. Poinsett's reply to this request. He informed the Mexican government that such a plan did not meet with President Monroe's approval. The President had expressed a willingness to form a "new" boundary that might "obviate some difficulties which are supposed to attend the existence

^{13/} William Ray Manning, Diplomatic Relations between the United States and Mexico, Baltimore: 1916, 218.

^{14/} House Executive Document 351, 25 Cong., 2 sess., XII, 285.

^{15/} American State Papers: Foreign Relations, VI, 599.

of the present limits of the treaty of 1819;" but he did not agree to a joint commission because he "had found by experience that such commissions seldom reached any satisfactory agreements." The commissioners, according to President Monroe, were too "prone to be prejudiced by the interests of their respective countries."^{16/}

By rejecting Mexico's offer to effect an emendation of the boundary, the United States substantiated Mexico's fear that the "new boundary" mentioned by President Monroe would be different from the one stipulated in the treaty of 1819. Mexico, meantime, became aggravated at the attitude of the President; and as a means of countering his manoeuvres protested against any alterations on the premise that the limits were fixed by a solemn treaty with Spain, that the treaty had been ratified at a time when Mexico was an integral part of that country, and that her own independent status did not in any way impair the validity of the original agreement.^{17/}

^{16/} Ibid., 600. Mr. Poinsett had been sent to Mexico by President Monroe, June 26, 1825. Mr. Adams had instructed him to obtain a boundary to the Colorado River and stated that "If we could obtain such a boundary as we desire . . . the United States might be disposed to pay a reasonable pecuniary compensation." Congressional Globe, XIII, Appendix, 445.

^{17/} William M. Malloy, compiler, Treaties and Conventions between the United States and Other Powers, Washington; 1910, I, 1082.

Mexico presented its argument with sufficient evidence to convince Mr. Poinsett that further demands for a new boundary would provoke unfriendly feeling and would, as well, prove ineffective. He, therefore, consented to a convention which would form a new treaty.^{18/} After a protracted delay and many diplomatic skirmishes a "treaty of limits" was signed on January 12, 1828 by Messrs. J. R. Poinsett, Sebastian Comacho, and Jose Ygnacio. If the new treaty was intended to resolve the ambiguities of the treaty of 1819, it was a failure. That part of the treaty which referred to the boundary was lifted verbatim out of the provision drawn up almost a decade before by Messrs. Adams and de Onis. This repetition of moot statements involved the two countries in considerable controversy, so much, in fact, that the treaty was not formally ratified by Congress within the time limit of four months. As a result, for the next three years relations between the two countries were none too friendly.^{19/}

On April 5, 1831 Mexico and the United States made an effort to salvage the treaty. An additional article which would extend the time for ratification one more year was added. This extension was also insufficient, for no ratifications were exchanged during the period. The

^{18/} Jessie S. Reeves, American Diplomacy under Tyler and Polk, Baltimore: 1907, 58.

^{19/} Hunter Miller, editor, op. cit., III, 488.

blame for this failure was laid directly against certain officials in the United States. The Mexican charge d'affaires, Jose Montaya, insisted that his government had been willing to ratify the treaty since the time of its inception but that he had received no cooperation from officials in the United States who were "thinking of Texas" and a boundary "different from that specified in the treaty."^{20/} The Mexican Secretary of State, Mr. Alaman, was of the same opinion. He accused Mr. Poinsett of deliberately preventing the exchange of ratifications by mislaying the treaty making powers of the Mexican minister in Washington. Mr. Alaman claimed that this treaty making authority was sent "confidentially through Mr. Poinsett" who was, in turn, to send it on to Washington. According to Mr. Alaman there was "sufficient proof to lead to a conviction that the power to effect that exchange . . . was mislaid," because their minister failed to receive it.^{21/} The dissention which developed from these charges was intensified by other misunderstandings. These misunderstandings arose from the interpretations which each country attempted to apply to the boundary provisions of the treaty.

The United States advanced the claim that the Sabine River, mentioned in the treaty, was in reality the Neches River which joined the Sabine at its junction with Sabine

^{20/} Ibid., 411.

^{21/} H. Ex. Dec. 351, 25 Cong., 2 sess., 317.

22/ Lake. The establishment of this claim would have extended the boundary some hundred miles farther west. 23/ This claim, which was never accepted, did much to increase the ill feeling between the two countries. 24/

At this time another source of trouble came to the fore. The Mexican government had received information to the effect that American plotters were organizing an army for the purpose of invading Texas. Jose Bocanegra wrote Mr. Poinsett asking for an official statement concerning the alleged troop concentrations at the border. 25/ Mr. Poinsett replied that these rumors were merely "fabrications of the libelous publications" that were being circulated in Mexico by enemies of the United States. He assured them that the United States had no "designs" on any part of Mexico. 26/ The Mexicans were not satisfied with this non-committal explanation. Mr. Poinsett was asked for "explanations more clear and precise" for the Mexicans felt the former assertion did not give the "true facts of the case." 27/

22/ Register of Debates in Congress, XI, 884-85.

23/ Charles Oscar Paullin, Atlas of the Historical Geography of the United States, New York: 1932, 63.

24/ Eugene C. Barker, "The United States and Mexico," Mississippi Valley Historical Review, I, (June, 1914), 3-30.

25/ Letter of Jose Bocanegra to J. R. Poinsett, H. Ex. Doc. 351, 25 Cong., 2 sess., 281.

26/ Letter of Poinsett to Bocanegra, July 31, 1821, ibid., 291.

27/ Ibid., p. 293.

This request left no doubt that Mr. Poinsett's wily activities were making him unpopular in Mexico. His egregious conduct, as well as his alleged duplicity in border affairs, caused the Mexican government to demand his recall. Secretary of State Van Buren complied with the demand, despite his belief that Mr. Poinsett's predicament was due to "circumstances."^{28/} Mr. Poinsett was relieved of his position in the latter part of 1829, when Anthony Butler was dispatched to replace him.

If Mr. Van Buren expected the new minister to restore amicable relations with Mexico he was to be disappointed. Mr. Butler's actions were, if anything, more collusive than those of his predecessor. Instead of going directly to his post in the Mexican capital, he chose to go through Texas, spending several weeks in activities of a dubious nature. The claim was made that Mr. Butler made the trip to stir up a revolt in Texas as an attempt to force a concession on the boundary settlement.^{29/}

Coincident with Mr. Butler's arrival was another embarrassing incident which grew out of the rumor that he had come to Mexico for the purpose of obtaining possession of Texas. "El Sol," a Mexican newspaper, published an article in which the author claimed knowledge of Mr. Butler's

^{28/} H. Ex. Doc. 351, 25 Cong., 2 sess., XII, 53.

^{29/} Richard R. Stenberg, "Jackson, Anthony Butler and Texas," The Southwestern Social Science Quarterly, XIII (June, 1932--March, 1933), 283.

authorization to offer five million dollars for the possession of Texas.^{30/} This was considered as a cheap trick on the part of the United States to defy the "treaty of limits" which, although concluded in 1823, had never been ratified.

Mr. Butler considered the delay of the ratification as "a most fortunate event for the United States," which could be "turned to good account," in that it would enable him to "urge the American claims to the territory as far west as the Rio Grande del Norte." He also stated that if he were given permission to use "these pretensions as an auxiliary there is no doubt of its being made to operate favorably on the expected negotiations for Texas," as they would assist in the removal of the objections which "without some aid of this character might seriously embarrass the proceedings."^{31/}

This statement is evidently an amplification of Mr. Butler's meaning of "a good account," which he used on the former occasion, as well as his admission that he did not believe the United States had a valid claim to a boundary which would extend to the Rio Grande. The establishment of this claim was obviously of no moment, but it was to be used in forcing a concession from the Mexican government.

Andrew Jackson, President Monroe's successor, inherited this troublesome boundary question. On several

^{30/} H. Ex. Doc. 351, 25 Cong., 2 sess., XII, 316.

^{31/} Ibid., 312.

occasions President Jackson's name was linked with that of Mr. Butler and his questionable scheming for the annexation of Texas.^{32/} John Quincy Adams was one of several who protested against the underhanded method. He maintained that President Jackson was trying "to buy Texas with one hand," and "instigate a revolt with the other."^{33/} Mr. Butler and Sam Houston were also objects of Mr. Adams' disapproval; they, he felt, were aiding the President in his schemes, involving the use of bribery to remove the objections of the Mexican officials with whom Mr. Butler was negotiating.^{34/}

This theory is not, however, generally shared; others expressed the belief that these "ideas originated with Mr. Butler and were not approved by President Jackson."^{35/} Regardless, however, of their origin, there is some evidence that these "ideas" were known to the President. In a letter dated May 23, 1830, he tells Mr. Butler that "prejudices . . . in order to be corrected may be touched in connection with the other motives for a new boundary." This same letter cautions Mr. Butler against "exposing" the United States to the charges of "ambition or unfriendliness" in the eyes of the Mexican Republic.^{36/}

^{32/} Richard R. Stenberg, "The Texas Schemes of Jackson and Houston," Southwestern Social Science Quarterly, XV, 229.

^{33/} Allan Nevins, editor, The Diary of John Quincy Adams, 548.

^{34/} Stenberg, "The Texas Schemes of Jackson and Houston," loc. cit., XV, 229.

^{35/} Stenberg, "Jackson, Anthony Butler and Texas," loc. cit., XIII, 269.

^{36/} John Spencer Bassett, editor, The Correspondence of Andrew Jackson, Washington: 1829, IV, 30.

The President failed to specify the method of "touching the prejudices," but the probability that he implied the use of bribery cannot be denied. This interpretation becomes more plausible when it is known that on other occasions he had authorized Mr. Butler to attempt an extension of the western boundary to the "desert or Grand Prairie."^{37/} The impending revolt in Texas caused him to urge Mr. Butler not to allow Mexico to "postpone a negotiation for such a boundary."^{38/}

Mr. Butler's questionable methods of complying with these instructions led to new charges arising from his purported attempt to bribe Mexican officials.^{39/} In a letter of June 23, 1831 to the President, Mr. Butler writes guardedly that "the influence of money. . . had no doubt of doing its office."^{40/} Later, he wrote the President, telling of his attempt to effect the "transfer of Texas." When Mr. Butler approached the Mexican Secretary of State with this delicate question, he was told that the Mexican government lacked the constitutional authority to transfer Texas because the land was owned jointly by several states and was not national domain. Mr. Butler assured the President in his report that the subject "was approached without

^{37/} Stenberg, *loc. cit.*, XIII, 220.

^{38/} Bassett, editor, *op. cit.*, IV, 138.

^{39/} H. Ex. Doc. 351, 25 Cong., 2 sess., XII, 319.

^{40/} Stenberg, *loc. cit.*, XIII, 270. He referred to the boundary negotiations.

intimating that the United States had any desire to become the owner." He added that he did not consider the lack of constitutional authority a serious obstacle because he felt that the secretary's "scruples" could be "obliterated."^{41/} By this did he mean that money might again be used to do its office?

President Jackson's reply expressed his thanks as well as his approval for the discreet manner in which Mr. Butler had approached the subject. He was reluctant to accept Mexico's contention that they lacked constitutional authority to part with Texas. This, he felt, was just an excuse to "delay" the negotiations.^{42/} During the next few months Mr. Butler made persistent efforts to obtain a favorable boundary settlement. In the latter part of 1832, he reported that he felt there was a possibility of extending the boundary to the Colorado River if the negotiations were "handled properly."^{43/} This optimistic report did not represent the true facts; a revolution in Mexico had removed the officials with whom Mr. Butler was negotiating. He was, then, forced to abandon his deals.

With the Mexican revolution, Santa Anna became prominent in government affairs. The exigencies of the boundary question caused him to appoint a commissioner to

^{41/} Butler to Jackson, October 6, 1831, Bassett, editor, *op. cit.*, IV, 354.

^{42/} Jackson to Butler, December 9, 1831, *ibid.*, IV, 380.

^{43/} H. Ex. Doc. 351, 25 Cong., 2 sess., XII, 422.

confer with Mr. Butler about a boundary which would be mutually satisfactory. But a new scheme of Mr. Butler's prevented the actuation of this plan. Knowing that Mexico was in dire need of money, he proposed that nation a loan which would be secured by the territory of Texas.^{44/} Unstable financial conditions in Mexico would have insured the success of this pusillanimous plan enabling the United States to acquire Texas in lieu of payment of the proposed loan.^{45/} The President refused to sanction the scheme. The Texas revolution was becoming imminent, and he felt that any such agreement made with the Mexican government was in danger of nullification if Texas became independent.

The revolution failed to materialize as soon as expected; Mr. Butler became impatient and suggested to the President that the disputed territory be "seized by force." Furthermore, he expressed his willingness to lead the expedition himself if he were given a "hint" similar to the one Jackson had asked of President Monroe prior to his expedition into Florida.^{46/} Although President Jackson had earlier suggested that the United States "might" have to seize Texas "in self defense," he doubted the advisability of the repetition of such doubtful tactics and failed to comply with Mr. Butler's subtle proposal.^{47/}

^{44/} Ibid., XII, 466.

^{45/} Jessie S. Reeves, American Diplomacy Under Tyler and Polk, 72.

^{46/} Butler to Jackson, October 2, 1833, Bassett, editor, op. cit., V, 270.

^{47/} Stenberg, loc. cit., XIII, 270.

In the latter part of 1835, after the boundary negotiations reached a stalemate, Mr. Butler returned to New York to plot further intrigues and secure the agency for the New York-Texas Land Company, dealers in Texas lands. This plural capacity of being United States minister and agent for the land company was to cause Mr. Butler considerable discredit. The Mexican government demanded his dismissal. Mr. Butler's affiliation with the Texas Land Company convinced President Jackson that his minister's interest in the Texas question was commercial rather than political. He assented to the Mexican request for Mr. Butler's removal. On December 20, 1835, the Secretary of State notified Mr. Butler of his dismissal.^{48/} The President's salutary act came as a surprise to Mr. Butler. He protested that it was unwise to remove him at this time, since his scheme was on the verge of "a successful completion."^{49/} His obsequious plea that he be allowed to remain in Mexico was not granted; Mr. Powhatan Ellis was sent to replace him.^{50/}

Although Mr. Ellis was well qualified for his position he was never able to effect a reconciliation with the Mexican

^{48/} H. Ex. Doc. 351, 25 Cong., 1 sess., 80.

^{49/} H. Ex. Doc. 256, 24 Cong., 1 sess., 4.

^{50/} H. Ex. Doc. 351, 25 Cong., 2 sess., 159.

government. The ebullience of anti-American feeling in that country constituted a serious obstacle to the re-establishment of friendly relations. The ill feeling, which was a result of Mr. Butler's duplicity, took a more serious form of expression when Mexicans perpetrated insults to the American flag.^{51/} The President gave Mr. Ellis permission to seek reparation for these acts, but the latter reported on January 12, 1837 his inability to accomplish this and asked for permission to leave Mexico.

Diplomatic relations between the two countries were near a breaking point. When Mr. Grootiza, the Mexican minister in Washington, learned that General Gaines and his army had occupied the territory near the Sabine River, he made a formal protest. He maintained that General Gaines should confine his activities to the "known territory of the United States," as the disputed territory was the property of Mexico until a boundary commission "adjudged it otherwise."^{52/} He accompanied this denouncement with a warning that the United States had better "keep hands off" until such a decision was made.

Such belligerence on the part of the Mexican officials prompted President Jackson to assure Mr. Grootiza that the occupation was a temporary measure which would have no

51/ Register of Debates in Congress, XIV, Appendix A, 243.

52/ Ibid., 249.

53/ Barker, loc. cit., 22.

effect on the final boundary settlement. But Mr. Grostiza was not assuaged; and when he learned that President Jackson would not recall the Gaines expedition, he demanded his passport.^{54/}

Prior to his withdrawal from Washington, Mr. Grostiza had been accused of publishing and circulating a pamphlet in which he accused the United States of "promoting" a revolution in Texas and of "keeping bad faith" in the boundary negotiations.^{55/} Mr. Buchanan, chairman of the Committee on Foreign Affairs, demanded an apology for this reflection on America's honor. It was later learned that the Mexican government had given its consent to the publication of this pamphlet. At times during the next few weeks the two countries were on the verge of going to war. Drastic action was averted mainly by the efforts of Senators Clay and Adams who advised a more moderate means of settling the differences.^{56/}

This violent outburst of international ill will did not facilitate Mr. Ellis' attempt to reopen the negotiations for a boundary settlement. The objections to his overtures voiced the anti-American feeling that ran rampant in Mexico.^{57/} On several occasions, Mr. Ellis was threatened and subjected to insults. On December 28, 1836, President Jackson broke off diplomatic relations with Mexico, and

^{54/} Reports of the Committee on Foreign Relations, U. S. Senate, 1789-1901, Washington: 1901, IV, 76.

^{55/} Ibid., 77.

^{56/} Sketches of the Debates and Proceedings of the 25 Cong., 2 sess., Washington: 1838, IV, 94.

^{57/} H. Ex. Doc. 103, 24 Cong., 2 sess., 20.

our official representative retired from the Mexican capitol.^{58/} This began a three year period during which the United States had no official representative in Mexico.

The possibility of any resumption of boundary negotiations between the United States and Mexico had been quite definitely removed on April 31, 1836 when Texas won its independence at the battle of San Jacinto. After this the American Committee on Foreign Affairs declared the establishment of the boundary at the Red River "to be no concern of Mexico."^{59/}

The American Congress officially recognized the new republic on March 2, 1836, when a law was enacted giving the President permission to appoint a diplomatic agent to the republic of Texas whenever "the President of the United States may receive satisfactory evidence that Texas is an independent power."^{60/}

President Jackson elected to withhold his final recognition until his last full day in office, March 3, 1837; then he appointed Alcee la Br anche to be charge d'affaires to the republic of Texas. This recognition brought about a change in the contesting parties of the Red River boundary dispute. The question which John Quincy Adams had thought settled in 1819 was not to become a paramount issue between the United States and the newly created republic of Texas.

^{58/} Reports of the Committee on Foreign Relations, IV, 636.

^{59/} Ibid., V, 34.

^{60/} United States Statutes at Large, V, 170.

CHAPTER II

THE TEXAS BOUNDARY PROBLEM

The recognition of Texas had been a controversial issue for some time. President Jackson's attitude on this subject was quite different now from his earlier attitude. In his annual message to Congress of August 13, 1836, he said that "prudence . . . seems to dictate that we should still stand aloof and maintain our present attitude . . . until one of the great foreign Powers shall recognize the independence of the New government."^{1/} Later developments evidently removed the causes of his hesitancy, for ere long his own action indicated a change of policy.^{2/}

The newly formed government of Texas soon recognized the necessity for an immediate boundary settlement. But the slowness of the United States to assent to favorable boundary lines between the two countries caused the ensuing negotiations to be fraught with many difficult situations and much laborious diplomatic activity before an agreement was reached.

The first discordant note was struck when the United States reasserted her old claim to a boundary on the Rio

1/ Register of Debates in Congress, XIII, Appendix, 53.

2/ Allan Nevins, editor, op. cit., 474.

Grande River.^{3/} This claim had been presented during the negotiations with Mexico and did much to cause serious difficulties in the diplomatic relations between the two countries.^{4/} The United States contended that Texas had recognized such a boundary in its secret treaty with Santa Anna at the conclusion of the Revolution.^{5/} This claim was rejected by Texas. Its president, Stephen F. Austin, instructed the Texas minister in Washington to announce the boundaries of the republic as beginning at the mouth of the Sabine River and running northward to the Red River, following the Red River to the 100th meridian, then following the line described in the treaty of 1819.^{6/} Texas originally planned to claim all territory north to 30 degrees and west to the Pacific Ocean but abandoned the claim because the government felt that it could not control a "wandering population so distant."^{7/}

The claim giving Texas jurisdiction over half of the Red and Sabine Rivers was denounced by several officials in

3/ Congressional Globe, 29 Cong., 1 sess, 809.

4/ Randolph Greenfield Adams, A History of the Foreign Policy of the United States, New York: 1924, 163.

5/ Congressional Globe, 29 Cong., 1 sess, 809.

6/ George P. Garrison, editor, Diplomatic Correspondence of the Republic of Texas, (Annual Report of the American Historical Association, 1907), II, 132.

7/ Register of Debates in Congress, XIII, Appendix, 87.

the United States as unreasonable. Texas, as a means of clarifying the situation passed an act (December 19, 1838) which described its boundary as beginning at:

the mouth of the Sabine river, and running west along the Gulf of Mexico three leagues from land to the mouth of the Rio Grande, thence up the principal stream of said river to its source, thence due north to the forty second degree of north latitude, thence along the boundary line as defined in the treaty between the United States and Spain, to the beginning. 8/

Again, the old boundary provision of 1819, which had made a satisfactory interpretation of the treaty impossible, was used. The bitter disputes which characterized the boundary negotiations with Mexico were shortly to reappear.

The source of the initial dispute was that part of the boundary between the 32nd degree and the south bank of the Red River. In 1838 the United States incurred the disfavor of Texas by forming a county in the region claimed by Texas.^{9/} Texas' Secretary of State, Mr. R. A. Irion, protested to such action on the premise that his government had received this area from Mexico at the time of the revolution and that it could not be considered part of the United States. Mr. La Branche, United States' charge d'affaires at Austin replied that the reason for the misunderstanding was that the boundary through this region was uncertain. It had not been surveyed at this time.

8/ Laws of the Republic of Texas, cited by Miller, editor, Treaties and Conventions, IV.

9/ Garrison, editor, op. cit., II, 291.

10/ Ibid., 319.

During the next few weeks several vitriolic communications were exchanged. Mr. La Branche attempted to convince the Texans that the United States did not intend to occupy the disputed area by force.^{11/} This charge had been made earlier by Mr. Irion. In an effort to preserve harmony between the two countries, the President of the United States directed Congress to adopt the measures necessary to prevent prospective difficulties. Congress, when it met, decided to postpone the acceptance of the new country until a settlement of the boundary question had been effected. This settlement was to be accomplished by a joint commission of agents from each country.^{12/}

Both countries sent representatives to a convention at which a new treaty was ratified on October 12, 1835. According to this treaty, each country agreed to appoint a commissioner and surveyor who should meet within one year to survey the boundary described in the treaty of 1819.^{13/} Congress approved the survey on January 11, 1839 and voted \$10,000 to pay the expenses of the commissioners.^{14/}

Although the two countries recognized the necessity for the survey, they could not agree on just how much of

^{11/} Ibid., 302. Mr. Irion was Texas' Secretary of State.

^{12/} Ibid., 297.

^{13/} Miller, editor, op. cit., IV, 133.

^{14/} U. S. Stat. at Large, V, 313.

the boundary should be determined at this time. The United States wanted to survey the entire line including the 42nd parallel, the northern extremity.^{15/} Since the Texas legislature had not appropriated sufficient money to mark the entire line, it could not concur in the plan. On March 21, 1838, the Secretary of State of Texas notified Washington that his government did not "wish to run the line, at present, farther than the 100th degree of west longitude to a point on Red River," leaving the rest of the distance "to be run at a future time when it can be done at less expense."^{16/} That part of the boundary extending through unsettled Indian country was not surveyed because of the danger of Indian attacks.

Fortunately, this question did not become a serious issue; it was settled on April 13, 1838, when the Texas minister in Washington reported that "the United States had receded from their former demand that the whole line be surveyed."^{17/} There was another question, however, that prevented the restoration of amicable relations between the two governments. The United States contended that the Neches River, and not the Sabine, was the true eastern boundary described in the treaty of 1819.^{18/} Secretary

^{15/} Garrison, editor, op. cit., II, 288.

^{16/} Ibid., 319.

^{17/} Ibid., 325.

^{18/} Miller, editor, op. cit., IV, 136.

Forsythe of the United States pointed out that since this river was more prominent and more navigable than the Sabine, it must have been the river Messrs. Adams and de ^{19/}Onis had in mind when they made the previous delineation.

The Texas government replied that the boundary provisions of the treaty of 1819 were explicit and that they could not be "construed to mean anything other than the Sabine River as laid down in Melish's map of 1818." ^{20/}

The fact that the disputed area involved ten thousand square miles gave impetus to the effort of the United States to establish a liberal interpretation of the treaty. The pretensions were abandoned, however, when the United States' commissioner examined the two rivers and informed Mr. Forsythe that "there was little hope" of sustaining the ^{21/}claim.

The urgency of the situation hastened the selection of commissioners whose duty it was to agree on the validity of one of the claims. Political differences caused several changes in the personnel of the Texas commission before the final selection was completed on October 23, 1839. ^{22/} At the initial meeting there was rather bitter divergence of opinion, as each group vied with the other to secure

^{19/} H. Ex. Doc. 51, 27 Cong., 2 sess., 7.

^{20/} Garrison, editor, op. cit., II, 287.

^{21/} Senate Document 199, 27 Cong., 2 sess., 17.

^{22/} Ibid., 4.

the most favorable concessions of the boundary questions on the basis of the interpretation of the treaty of 1819.^{23/}

This meeting, held on February 16, 1840, revealed that the Texas commission had no instruments to carry out its part of the survey. Mr. Graham, the American surveyor, offered to permit the Texas commissioner to check every observation he made and in this manner make one set of instruments suffice for both groups. Mr. Hunt of Texas did not feel that he could rely on American observations and refused the offer. He demanded that the survey be postponed until the Texas commissioner received his instruments.^{24/}

During this delay, the commissioners became involved in a dispute over the meaning of that part of the treaty of 1819 which referred to the Sabine River. Mr. Hunt of Texas maintained that the real bank of the river was the one which was, at times, submerged in the main channel of the river.^{25/} Messrs. Adams and de Onis had failed to reveal their intentions concerning this point as well as to make clear whether or not they intended to include the Sabine River and Sabine pass as part of the boundary line. The Texas commission, in order to protect harbor and wharves which the citizens of Texas had built to take care of the Sabine River traffic, suggested that the makers of the treaty of 1819 did not intend to include the Sabine as part of the boundary. For if the United States assumed

^{23/} Ibid., 17.

^{24/} Ibid., 18.

^{25/} Ibid., 23-27.

possession of the west bank of the river, it would mean that these properties would fall under the jurisdiction of that government. To support this argument, Mr. Hunt pointed out that the Melish map, specified by the treaty of 1819, did not show the Sabine lake and pass as being integral parts of the river.^{26/} Unfortunately, Messrs. Adams and de Onis specified the use of a map which was non-existent at the time of this dispute. The United States' Secretary of State wrote in vain to several publishers in an attempt to locate one of these maps.^{27/} He was informed, after several months of searching, that no such map was available. The only map which could be located was an uncopyrighted one, published in 1819. Because it was not the Melish map it could not, of course, be used.^{28/} The rejection of this map was a serious blow to Texas' contentions, for it had, to a certain extent, borne them out.

When the Texas commission became convinced that it would be unable to establish this claim, it suggested that only the line above the lake be surveyed at that time, leaving the rest to be determined later. The United States commission refused assent to this suggestion and insisted that the entire line be surveyed.^{29/}

^{26/} H. Ex. Do c. 351, 25 Cong., 2 sess., XII, 25.

^{27/} Ibid., 19.

^{28/} Sen. Doc. 199, 27 Cong., 2 sess., 46.

^{29/} Ibid., 25.

The Texans then offered another alternative: that each group make an independent survey and then let their respective governments decide on which survey should be accepted as official. This suggestion, like the previous one, was rejected by the United States.^{30/}

This recusance on the part of the United States commission caused Mr. Hunt to refuse to begin the survey until he could obtain more favorable terms. In the next few weeks volumes of arguments which reviewed the entire history of the Adams and de Onis negotiations were reviewed.^{31/} Proposals and counter proposals were offered by Texas, but Mr. Overton, representing the United States, remained adamant and threatened to abandon the survey if Texas persisted in her pretensions. This threat caused Mr. Hunt to relinquish his claims and agree to begin the survey at once.

In accordance with Mr. Overton's demands, the initial location was determined at the mouth of the Sabine River on the west bank. The location was marked with a mound fifty feet wide, the center of which was designated with a thirty foot pole. Near the base of this pole was buried a bottle which contained the following inscription:

Be it remembered, that on the 21 day of May, 1840, the demarkation of the boundary between the United States and the republic of Texas was begun at this

30/ Ibid., 37, 38.

31/ Ibid., 40.

point, being in conformity with the provisions of the convention for the demarkation of the said boundary concluded and signed by the respective Plenipotentiaries of said countries at Washington, 25th of April, 1838. ^{32/}

Thus began the first attempt to locate and mark the southwestern boundary of the United States. That part of the boundary from the monument to the thirty second degree of north latitude was finished in June 25, 1840. ^{33/} The remaining part of the line, to the south bank of Red River, was finished the next year. Immediately after the completion of this survey the Mexican government notified the United States that it would not recognize the boundary in the event Texas was ever recovered. ^{34/}

The correction of this boundary line revealed that almost two ranges of townships, which formerly had been within the United States, were now within the limits of the republic of Texas. ^{35/} The inhabitants of the region thus became aliens overnight. ^{36/} Many of them had received land from the United States government, the titles of which passed now to the jurisdiction of Texas. This unfortunate

^{32/} H. Ex. Doc. 51, 27 Cong., 2 sess., 63.

^{33/} Edward M. Douglas, Boundaries, Areas, Geographic Centers of the Altitudes of the United States; Geog. Survey Bulletin, 817, 2nd ed., 140.

^{34/} Miller, editor, op. cit., 140.

^{35/} Sen. Doc. 1., 27 Cong., 2 sess., 11.

^{36/} Journal of House of Representatives, 27 Cong., 2 sess., 16.

development caused the United States to pass an act to ameliorate the emergencies which faced the population. Passed on June 15, 1844, this act permitted the residents of the affected area to move their possessions across the line, where they could retain their citizenship in the United States.^{37/}

The people who availed themselves of this and moved across the line soon found such action unnecessary. New circumstances came about by which those who remained in the region obtained the same end without sacrificing their homes.

This was accomplished with the annexation of Texas. For several years this had been the subject of many a congressional dispute. The free state and slave state leaders had fought bitterly over taking Texas into the union.^{38/} Texas had made several attempts to join the union but failed to acquire the necessary support in Congress. Only when it became known that Texas had been courting the favor of England did Congress make a serious effort to annex that country.^{39/} Northern opposition, however, caused the defeat of the annexation bill presented on June 10, 1844. Senator Adams considered this defeat "an interposition of Almighty God" which he hoped would be permanent.^{40/} His position grew out of a fear that such an act

^{37/} U. S. Stat. at Large, V, 674.

^{38/} Abridgement of the Debates in Congress, VI, 574-80.

^{39/} "Correspondence from the British Archives Concerning Texas," Southwestern Historical Quarterly, XV, 295-96.

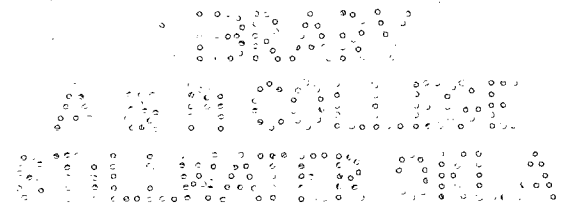
^{40/} Allan Nevins, editor, op. cit., 570.

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would be but the first step in the conquest of all Mexico.
But this and other strenuous objections, including peti-
tions from New York, New Hampshire, and Vermont,^{41/} could not
deter the ultimate passage of the act. The Congress which
Mr. Adams described as the most "worthless and perverse"
body who ever "disgraced" the country, passed the annex-
ation bill on February 23, 1845.^{42/}

In March of the same year, Texas was given permission
to form as many as four states from her territory.^{43/} This
policy was the result of Henry Clay's recommendation which
was included in the report of the committee of which he
was chairman. It was his opinion that "the formation of
any new states should not originate with Congress. The
initiative . . . should be taken by the people of Texas."^{44/}
But the people of Texas, however, were unwilling to divide
their state.

^{41/} Blair and Rives, joint editors, op. cit., 54.
^{42/} Allan Nevins, editor, op. cit., 571.
^{43/} U. S. Stat. at Large, XI, 108.
^{44/} Sen. Doc. 123, 31 Cong., 1 sess., 2.



CHAPTER III

THE UNITED STATES V. THE STATE OF TEXAS
AT THE RED RIVER BOUNDARY

The limits of this new state were described by Congress as "that territory properly included within and rightfully belonging to the Republic of Texas."^{1/} This vague verbiage became the source of some complicated litigation as there was much divergence of opinion as to how much territory was included in the state of Texas. Part of this area was removed from the potential controversy when Texas sold for \$10,000,000 all her territory north of 36-30 as well as the strip of land between the 100th and 103rd meridian,^{2/} to the central government who reciprocated by relinquishing its claim to the west half of the Sabine River.^{3/}

No spirit of generosity characterized the negotiations that followed over the Red River. This boundary had been neglected in all preceding mediations between the United States and the several countries who had considered it as part of their boundary. It had been taken for granted that the treaty of 1819 made an adequate delineation of this

1/ U. S. Stat. at Large, V, 797.

2/ U. S. Stat. at Large, IX, 446.

3/ Douglas, op. cit., 245-46. This jurisdiction had been denied in earlier negotiations.

boundary and consequently no attempt had been made to re-establish an interpretation of the inadequate boundary provision of that treaty.

Texas took the initiative in attempting to eliminate this uncertainty by enacting a bill on April 17, 1850, which resolved that:

our senators in the United States congress be instructed and our representatives requested, to procure the passage of a law giving to the State of Texas, civil jurisdiction over the south half and criminal jurisdiction over the whole of Red River, from the point where the original boundary line between the United States and the late republic of Texas strikes said Red ^{4/} River, to the 100th degree of west longitude.

Texas' intention to obtain the central government's sanction to her claim of jurisdiction to the middle of Red River is clear. Another serious dispute over the location of the western boundary and the jurisdiction of part of eastern New Mexico ^{5/} caused a temporary postponement of the Red River question. Only after Texas had relinquished her claims to New Mexico and agreed to a western boundary that was acceptable to the central government ^{6/} was it resumed.

This new dispute was broader in scope in that it involved the ownership of the territory between ^{the} north and south forks of Red River. The treaty of 1819 had made no mention of which fork should be taken as the boundary. All attempts to establish this point had failed. ^{7/} Texas had

^{4/} Sen. Mis. Doc. 104, 31 Cong., 1 sess, I, 1.

^{5/} H. Ex. Doc. 82, 31 Cong., 1 sess., V. 1-5: correspondence relative to this dispute is found in Sen. Ex. Doc. 24, 31 Cong., 1 sess., 4, 1-12.

^{6/} H. Ex. Doc. 8, 31 Cong., 2 sess., III, 1.

^{7/} H. Ex. Doc. 49, 33 Cong., 2 sess., I, 1.

occupied the area between the forks for several years and was of the opinion that this occupation was recognized by the central government, since the United States had made no protest when Texas was annexed.^{8/}

The failure of Messrs. Adams and de Onis to mention the forks of Red River in their treaty may have been the result of their faulty conception of the region. The maps of 1813 failed to show more than one stream. In 1844 the army engineers of the United States mapped the region, but they failed to correct this error and showed only one main channel of Red River. Naturally, the matter was not clear in 1845 when Texas was admitted to the Union. A few years later Captain R. B. Marcy and George McLelland made a survey of Red River and discovered that it had two forks. Most of Captain Marcy's findings were useless, however, because they were based on his erroneous location of the 100th meridian.^{9/} Messrs. Jones and Brown in 1858 found, in the process of verifying two forks of Red River that the 100th meridian was more than eighty miles west of their junction.^{10/}

Texas refused to recognize this designation of the meridian, and passed an act authorizing the appointment of a surveyor and commissioner to meet with a similar commission appointed by the federal government to determine the true

8/ Paullin, Atlas of Historical Geography of the United States, New York: 1932, 78. This controversy is found in Sen. Rept. 314, 47 Cong., 1 sess., and following.

9/ Sen. Doc. 54, 32 Cong., 2 sess., 29; Captain Marcy states that he located the 100th meridian 6 miles east of forks of Red River.

10/ H. Rept. 1282, 47 Cong., 1 sess., V. 2.

location of the Red River boundary.^{11/} Governor Sam Houston of Texas instructed the commissioner of that state as follows:

In the prosecution, then of the survey you will be guided by Melish's map and insist upon the north fork of Red River as the main Rio Roxo . . . as the true boundary line as described in ^{12/} the treaty of 1819.

Mr. Houston's contention was, as is shown, based on Melish's map, which he indicated designated the north fork of the Red River as the main stream.^{13/} When the commissioners finally met they were unable again to agree on the rights of their respective governments.

The commissioners of the central government disregarded Texas' claims and located the initial monument of the survey on the south bank of the south fork of the Red River, at its intersection with the 100th meridian. This branch, they claimed, was the official boundary between Texas and the United States. The Texas commissioners rejected this. They proceeded to the north fork of the river and established that branch as the only acceptable boundary.

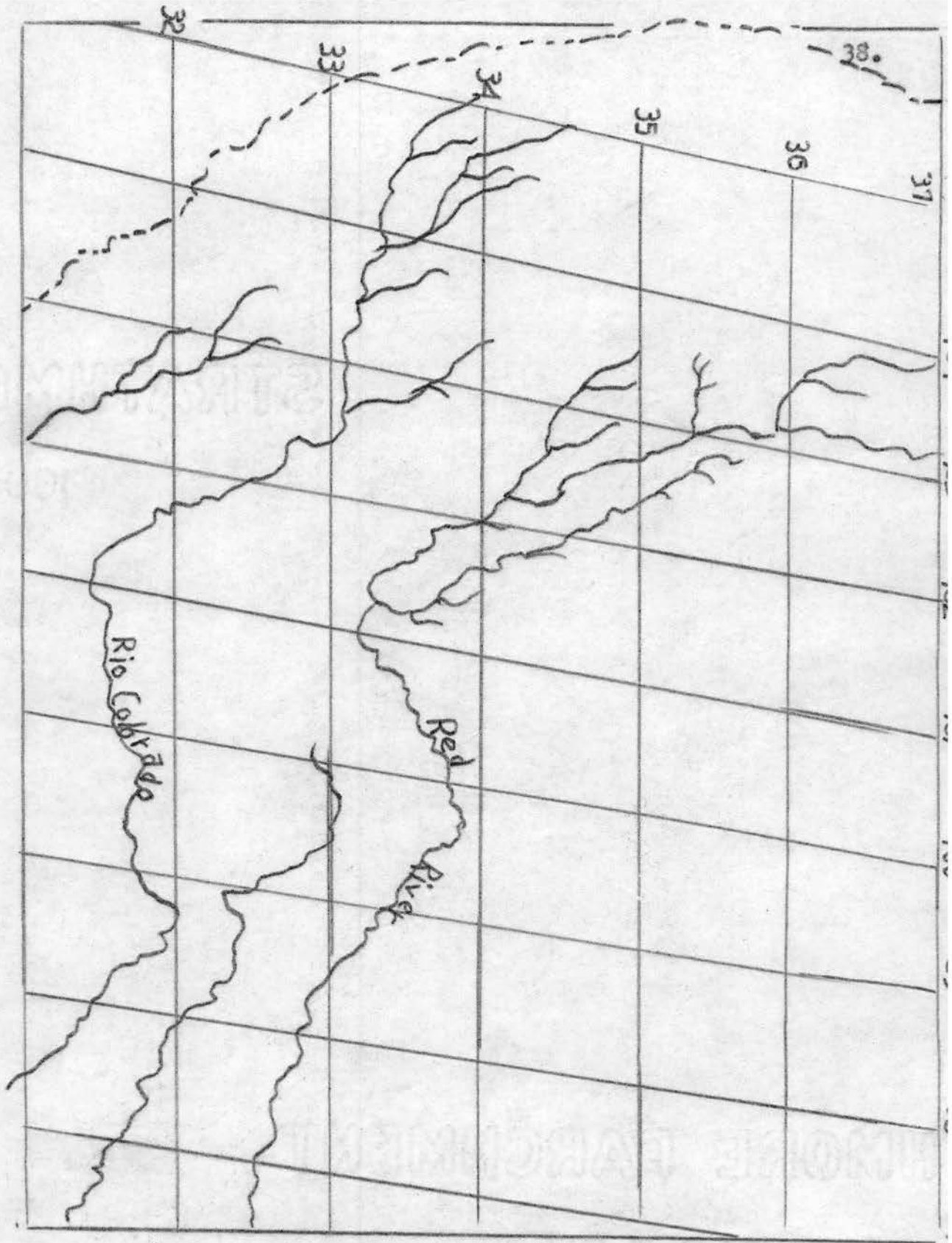
Texas considered the boundary question settled, however, without any reason to assume the central government's

^{11/} U. S. Stat. at Large, XI, 319.

^{12/} H. Rept. 1282, op. cit., 2.

^{13/} In reality there are no branches east of the 100th meridian shown on this map.

See following page.



Tracing of Melish' map of 1818 which was used as a basis for the treaty of 1819. The erroneous location of the 100th meridian led to much complicated litigation between the United States and the state of Texas. Original found in H. Rept. 1282, 47 Cong., 1 sess., V, 5.

acquiescence to this claim, passed on February 8, 1860 an act which created Greer county. This county, composed of the entire disputed area, was declared to have the following boundary:

beginning at the confluence of Red River and Prairie dog south fork River, thence running up Red River, passing the mouth of south fork and following main or North Red River to its intersection with the 23rd degree of west longitude; thence due south across salt fork and to Prairie Dog River, thence following that river to the ^{14/} place of beginning.

A few months later, on April 23, the Governor of Texas instructed one of his congressmen to introduce a bill in Congress to secure the central government's acceptance of this act which formed Greer county. ^{15/} The representative was told to insist upon the north fork of Red River as the true boundary line between the United States and Texas. He found the federal government reluctant to relinquish its jurisdiction over this million and a half acre area, ^{16/} and was unable to secure the passage of the act.

Although the central government never gave its sanction to Texas' jurisdiction over Greer county, Texas continued ^{17/} to occupy that region and extend its laws and institutions. Conflicts began to arise between authorities of Texas and

^{14/} Sales, Early Laws of Texas, II, art. 2886; cited by United States v. Texas, 162 U. S., law. ed., 39-40, 67.

^{15/} United States v. Texas, 162 U. S., law. ed., 39-40, 67.

^{16/} H. Rept. 1282, 47 Cong., 1 sess., V, 1.

^{17/} Ray Gittinger, The Formation of the State of Oklahoma, Norman, Oklahoma: 1936, p.

the United States, both of whom attempted to govern in the disputed area. Bloodshed and death resulted from some of the conflicts and attested to the necessity of an immediate settlement of the struggle.^{18/} After 1879 the ultimate determination of the area's status became more complicated. Congress created a new judicial district in northern Texas and declared Greer county to be within the limits of this district.^{19/} Texas considered this act as the central government's recognition of Greer county as an integral part of that state. This attitude was encouraged further by the fact that the residents of Greer county had been permitted to vote as residents of Texas in the last two presidential elections.^{20/}

Texas' persistence in holding jurisdiction over Greer county caused Congress to appoint a special committee to determine if there were sufficient evidence to justify a change in the Red River boundary.^{21/}

This committee considered the case and reported that, in its opinion, the south fork of Red River was the true boundary and Texas' claims to a boundary on the north fork

^{18/} H. Rept. 1282, op. cit., 3.

^{19/} U. S. Stat. at Large, XX, 318.

^{20/} Paullin, op. cit., 78.

^{21/} This report is contained in H. Rept. 1282, 47 Cong., 1 sess., 1-6.

was unwarranted. It recommended, however, that further investigation made in cooperation with Texas officials should be made before definite determination could be made.

The Department of the Interior spent the following year collecting evidence that would substantiate the claims of the central government that: (1) the treaty of 1819 had defined the boundary of Red River without mentioning the north fork as the main stream; (2) the treaty with Mexico had confirmed the validity of these limits at a time when Texas was a part of that country; consequently the same boundary was still in force; (3) the resolution which admitted Texas into the Union had described the state as "the territory properly included within and rightfully belonging to the republic of Texas;"^{22/} (this act could not be construed to mean that Greer county was included as part of the state at the time of its annexation) (4) the survey of Jones and Brown had determined the south fork which measured seventy six chains and eighty five links in width, while the north fork, in the same locality, measured only twenty three chains wide, as the main stream of the Red River;^{23/} (5) in 1850 the south bank of the river had been designated as the official boundary in the presence of the Texas commission and should be taken as evidence of that

^{22/} U. S. Stat. at Large, V. 797.

^{23/} Sen. Doc. 54, 32 Cong., 2 sess.; Captain R. B. Marcy disagreed; he said the two forks "were of the same magnitude." 20.

state's acceptance of the south fork as the boundary line.^{25/}

The controversial evidence caused a further postponement of the Greer county decision until more conclusive evidence could be accumulated. During the delay of several years which followed, hundreds of farmers and cattlemen settled in the district. Finally, on January 6, 1882, the Governor of Texas wrote the President of the United States asking for immediate settlement of the dispute. He assured the President that he was confident that the territory belonged to Texas, who had issued a large amount of the land to veterans of the Texas revolution. The issuance of these patents caused him to request that no change be made in the jurisdiction of Greer county.^{26/}

When it became apparent that Texas would not receive any such assurance, its legislature passed an act on May 2, 1882, which designated the north fork of Red River as the official boundary line.^{27/} A Texas senator, at the suggestion of his governor, introduced a similar bill in Congress which would secure this boundary and give Texas civil jurisdiction to the middle of Red River.^{28/} Another bill was presented at the same time to create a federal commission to settle the dispute. Both were defeated June, 1882.

^{25/} U. S. Stat. at Large, XI, 310.

^{26/} Sen. Doc. 99, 48 Cong., 1 sess., V, 5.

^{27/} Ibid., 1.

^{28/} H. Rept. 1282, 47 Cong., 1 sess., XII, 1.

Two years later, Congress, now fully aware that the boundaries could not be permitted to remain uncertain, passed an act on January 31, 1885, which authorized the President to "detail one or more officers of the army" to act in conjunction with a commission from Texas in an effort to determine which branch of the river should be taken as the boundary.^{29/} The investigation of the senate committee revealed that the former bill was inadequate, that one or two officers of the army could not settle the question. The senate committee secured the passage of another bill which created a commission to mark the Red River boundary in accordance with the treaty of 1819.^{30/}

The convention met as scheduled; after due deliberation it issued the following definition of the Red River boundary:

beginning in the Gulf of Mexico, at the outlet of Sabine lake and up the middle of Sabine River to the point where the river intersects the parallel of 32; thence north along the meridian of that point of intersection to the point where that meridian intersects the Red River; thence up that south bank of Red River along the south fork to the 100th meridian. . . ; thence north^{31/} on that meridian to the parallel of 36° - 30°

This delineation meant very little, certainly not enough to settle the boundary question or the Greer county controversy. It stated that the boundary along Red River would

^{29/} U. S. Stat. at Large, XXIII, 296-97.

^{30/} United States v. Texas, 162 U. S., Law ed. 39, 75.

^{31/} Malloy, comp., op. cit., I, 1159.

extend to the 100th meridian and then go north, offering Texas the opportunity to contend that the literal interpretation of the treaty of 1819 would place the disputed territory within the limits of that state, as this map showed the meridian as being east of the forks of Red ^{32/} River.

Each previous survey of this meridian had located the line at a different point and had agreed in only one thing; that the designation of this line on the Melish map was incorrect. The Brown and Jones survey of 1858 had located the meridian west of the forks of the river. This survey, which favored the contentions of the central government, had to be rejected as evidence when the Clark survey of 1860 showed it also to be in error. ^{33/}

An astronomer, in the employ of Texas, surveyed the line again in 1892 and declared the Clark survey to be ^{34/} 3,900 feet west of the true line.

The central government decreed that none of these conflicting surveys would be used as evidence in the Greer county case and ordered instead another survey which would

^{32/} U. S. Stat. at Large, XI, 310.

^{33/} H. Ex. Doc. 395, 57 Cong., 2 sess., 2.

^{34/} U. S. Geological Survey Bulletin, 194, 31.

35/
make the final determination of this line.

35/ Douglas, op. cit., 78. It is interesting to note the history of these surveys of the 100th meridian. Since the Greer county case was decided, it has been found that the location of the line, used in the trial, was in error. In 1902, Arthur D. Kidder found the line to be 3,699 feet east of the line used at that time. (H. D. 33, 57 Cong., 2 sess.) In 1905, the commissioner of the land office ordered another survey of the line which revealed that the former line deflected to the east and intersected the parallel of 36-30 at a point 743.16 of its true location. (H. Doc. 38, 58 Cong., 3 sess.) This new survey placed 2,002 acres of the Indian Territory within the limits of Texas. (H. Rept. 443, 59 Cong., 1 sess.) The federal government refused to relinquish this territory and continued its jurisdiction over the area. In 1919, Texas passed an act requiring that a suit be instituted in the supreme court for the purpose of settling this issue. (Oklahoma v. Texas, 252 U. S. Law ed. 65, 562.) Several years were required to determine this decision. Another survey was required. The United States Geodetic Survey ran the line again in 1923 and found that the line where it crossed Red River should be 371.5 farther west than the line of 1902. (Oklahoma v. Texas, 272 U. S. Law. ed. 72, 153). The supreme court decided that the line must be determined with more accuracy and summoned Samuel F. Gannett to employ the most scientific means to determine the accurate location of the line. This was done, and the supreme court decreed that this line was the true boundary as of April, 1927. (Oklahoma v. Texas, 274 U. S. Law. ed. 81, 1311. This decision gave Texas seventeen farm tracts on which the Oklahoma School Land Commission held mortgages amounting to 2,786 acres and valued at \$15,000. The money was lent to the owners when they were considered residents of Oklahoma. On February 28, 1941, the legislature of Oklahoma appropriated \$5,000 to attempt to regain the land on which the school commission holds mortgages. Because one sovereign state cannot own land in another state, the department would be required to sell the tract in the event of the foreclosure of the mortgages. (Oklahoma City Times, February 28, 1941, 9.)

While the survey was being completed, President Grover Cleveland issued a proclamation which gave evidence of the government's intention to persist in its claim to Greer county. Given on December 30, 1887, it stated that Greer county was part of the Indian Territory which was separated from Texas by the south fork of Red River. President Cleveland admonished all persons from purchasing any territory or attempting to exercise any authority over the region.^{36/}

Congress did not consider President Cleveland's proclamation sufficient to assure the United States jurisdiction of Greer county and passed an act in 1890 which authorized the attorney general to prosecute the final determination of ownership of the land lying between the north and south forks of Red River.^{37/}

The trial which followed was long and tedious. The state of Texas claimed that Greer county had been placed within its limits by the treaties of February 22, 1819 (between the United States and Spain), January 12, 1828 (between the United States and Mexico), and April 25, 1838 (between the United States and the republic of Texas. All of these treaties stipulated the use of Melish's map that showed the meridian to be west of the forks of Red River,

^{36/} U. S. Stat. at Large, XXV, 1484.

^{37/} U. S. Stat. at Large, XXVI, 92.

thus placing Greer county west of this line and within the limits of Texas. Another development that favored Texas was the decision of the assistant attorney general who, on an earlier date (August 29, 1894) had rendered the decision that "the boundary between the Indian Territory and the State of Texas is the line in the middle of the main channel of the Red River as it existed when Texas was annexed to the United States."^{38/} This decision, according to the contentions of Texas, would establish the north fork as the main channel. Such a claim was based on the fact that several surveys had decided that the south fork was not the main stream because it contained running water only part of the year, whereas the north fork of the river contained running water throughout the year.^{39/} This was borne out by the testimony of many residents of the region who claimed that the old Spanish trail, used by the Mexicans and Indians, was along the north fork which had always been considered by these peoples as the main stream of Red River.^{40/} Prior to the trial, Colonel Snively of the Texas militia had been disarmed by officers of the United States army for violating his authority when, in compliance

^{38/} Douglas, op. cit., 79.

^{39/} James A. Barnett, The Empire of Greer, Masters Thesis, Oklahoma A. and M. College, 1938, 56.

^{40/} United States v. Texas, 162 U. S., Law. ed. 39, 899.

with his orders from the Texas governor he occupied Greer county. ^{41/} A few weeks later, at the suggestion of Secretary of State Calhoun, an act was passed by Congress authorizing the payment of \$30,000 to Texas for arms and equipment which were taken from Col. Snively. ^{42/} Texas cited this act as evidence that the federal government had considered Greer county as part of the state of Texas and that the disarmament of Col. Snively's troops was a result of the army's fallacious belief that Greer county was not a part of Texas. The fact that the federal government had designated post offices in the region as being within the state of Texas, as well as including Greer county as part of the Northern Judicial district of Texas, offered Texas additional arguments to prove that removing Greer county from its jurisdiction was inconsistent.

The federal government retaliated by contending that the treaty of 1819 had provided for the fixing of the boundary line with more precision and did not imply that the inaccurate Melish map should be accepted as setting the real line. ^{43/} According to this, Texas had accepted in 1850 the true 100th meridian as the western boundary. ^{44/}

^{41/} H. Ex. Doc. 1, 28 Cong., 2 sess., 12.

^{42/} U. S. Stat. at Large, III, 155.

^{43/} United States v. Texas, 162 U. S., Law. ed, 39, 867.

^{44/} Ibid., 867.

The United States also insisted that the Red River was described in the treaty of 1819 as running westward to the 100th meridian. This description fitted the south fork as that branch was the wider, deeper, and longer and consequently must be considered the main stream rather than the north fork which ran in a northwestern direction contrary to the description.^{45/} According to the federal government's arguments, the inclusion of Greer county in the Northern Judicial district in Texas was made for judicial purposes and was not intended to intimate that the United States would surrender its jurisdiction over the disputed area.^{46/}

The central government's arguments were sufficiently convincing to cause the supreme court to declare that Texas was in error. On March 16, 1896, the supreme court decreed that:

the territory east of the 100th meridian, west and south of . . . 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 along the south bank of Red River and the south bank of 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. . . belonging to Texas at the time of the admission of that State into the Union. . . but is subject to the exclusive jurisdiction of the ^{47/} United States of America.

^{45/} Ibid.

^{46/} Ibid.

^{47/} United States v. Texas, op. cit., 90.

This decision was based on the assumption that the south fork was the longer and larger of the two forks, and because it kept in the same general direction as the main stream of Red River, it must have been the river Messrs. Adams and de Onis had in mind when they made the treaty of 1819.^{43/}

This decision marked the end of Texas' jurisdiction over Greer county.^{49/} Four years later the area was included as part of the Indian Territory. As long as the territory remained wild and unsettled no one cared for any further delineation of the Red River boundary, but this state of inactivity was not destined to prevail very long. The old boundary war was soon renewed. On June 16, 1906 Texas was presented with a new neighbor; the state of Oklahoma was admitted into the Union.^{50/}

^{43/} United States v. Texas, 162 U. S., 90.

^{49/} The patents which Texas had issued to Greer county were declared void. Congress passed a law for their relief. (Act of 18, 1897, 29, Stat. at Large, 496). This act gave "preferential right to acquire 160 acres to any person in possession thereof at a given date about the time of the decision."

^{50/} U. S. Stat. at Large, XXXIV, 28.

CHAPTER IV

THE OKLAHOMA - TEXAS BOUNDARY SUIT

The enabling act of 1906 which admitted Oklahoma into the Union, described the boundaries of the new state as being bound on the north and south by the state of Texas. This act left the impression that the boundary at both places was a land boundary, but such was not the case. The southern boundary of Oklahoma did not join Texas directly but was somewhere along five hundred and thirty five miles of Red River and located somewhere along the river's bed which ranged from one and one-half to one-third of a mile in width.^{1/} Ten Oklahoma and eleven Texas counties lay along the course of this river. Eleven percent of Oklahoma's population and nine percent of Texas' population are contained in these counties.^{2/} The negligence of Congress to specify what part of Red River would constitute the boundary between these two states was responsible for the misunderstanding which according to one authority "was the most complicated boundary dispute on record."^{3/}

For several years there was no disagreement about the boundary. Texas and Oklahoma followed the conflicting

1/ Oklahoma v. Texas, 258 U. S., Law. ed. 64, 779.

2/ Isaiah Bowman, "An American Boundary Dispute," The Geographical Review, XIII, 163.

3/ Ibid., 165.

practice of assuming joint jurisdiction of the river bed. Texas had assumed criminal jurisdiction over the river bed, sentencing the criminals which were taken from the area.^{4/} Back of this attitude was Texas' refusal to relinquish its jurisdiction over the south half of the river bed on the grounds that ^{the} Greer county case was "uncertain," "vague," and "ambiguous." There was no consistency of action at this point. The eight railroads which crossed Red River paid taxes to the state of Oklahoma on the bridges which extended from the north bank to the south bank. The passenger rates charged by these railroads were in accord with the laws of Oklahoma and were not in compliance with those of Texas. No change in fare was made until the train had crossed the south bank of the river.^{5/} This indifference continued until 1918; neither state attempted to settle the boundary question because both considered the river bed useless.

After oil was discovered at Burkburnett, Texas, which is located on the south bank of the Red River, however, these rolling waste lands became very desirable. On July 26, 1918 the first well blew in, filling the nearby cotton rows with crude oil. For several days people could hardly realize that this well, which eventually produced 3,500 barrels a day was a real producer. Several skeptics even

^{4/} Jessie B. Roote, comp., Reply of the Burke Divide Oil, Guthrie Serials 014144, 014145, 014146, in the Department of the Interior, 6.

^{5/} General Land Office Circular 376, cited ibid., 12.

insisted that the flow of oil was some "sort of trick."^{6/}
 As news of the discovery spread, Burkburnett became the mecca of thousands of independent oil operators whose exploits resulted in a notorious oil boom.

The oil wells soon spread to the bed of Red River; the first well brought in within this area was the property of Senator Tom Testerman and was called the "Burke Senator No. 1." The operation of this well under the laws of Oklahoma met with bitter protests from the state of Texas.^{7/} Soon after the Burke Senator No. 1 was brought in on the 18th of January, 1919, several citizens of and near Grandfield, Oklahoma, rushed to the south half of Red River and filed placer mining claims.^{8/} On the same day, the same amount of land was claimed by another group. Two days later, a third group filed on an adjoining one hundred

^{6/} H. N. Patterson, editorial in Grandfield Enterprise, January 24, 1919, 3.

^{7/} Mr. Testerman was arrested and placed in jail by a sheriff from Texas. Only after he had paid a fine of \$100 was he released. This incident was caused by Mr. Testerman's refusal to recognize a Texas court injunction which attempted to prevent any further oil development by anyone outside of Texas who contended that the south half of the river was within the jurisdiction of that state.

^{8/} This town is located five miles north of Red River and is near the scene of the Oklahoma - Texas boundary dispute.

The land was considered public domain, but could not be claimed under the homestead law of 1862 because it was not fit for agriculture.

and forty acres.^{9/}

In the summer of 1919, all three claims were conveyed to the Burke Divide Oil Company, which was to develop the property and explore its possibilities for oil production. The original well of this company was located about twenty five feet from the south bank of the river and was well within the main channel.^{10/} Actual drilling began on November 7, 1919. The well was completed to 1,760 feet by April of the following year. At this time the drilling was stopped because of impending legal difficulties between Oklahoma and Texas. The differences were temporarily postponed, and the well was brought in on January 23, 1920. About \$60,000 had been expended; production averaged one thousand barrels per day.^{11/}

This valuable property was not long within the possession of the Oklahomans. According to the account given to the Department of the Interior, January 26, 1920

The Governor of Texas sent his army of ruffians
Texas Rangers into the state of Oklahoma, armed
with rifles and revolvers; and those ruffians by

9/ Jessie B. Roote, ¹ compl., Rejoinder of Burke Divide Oil Company, Guthrie serials 014144, 014145, 014146, in the Department of the Interior, appendix A, 2.

10/ M. C. Anderson, Personal Interview, MS. Mr. Anderson stated that the well was deliberately located within the channel of the river to avoid any trouble involving the location of the south bank of the river.

11/ Roote, Rejoinder, op. cit., Appendix A, 12.

violence and force took possession of the Burke Divide property, and in so doing assaulted and ^{12/} brutally beat some of the Burke Divide employees.

The Texas Rangers drove off all the Oklahoma operators.

The Burke Divide Oil Company had hired a force of eighteen armed guards to keep trespassers off the leased area. Some of these guards offered to dig in and fight the Rangers, but one of the officials of the company felt that such an act would result in unnecessary bloodshed and "would have no effect on the settlement of the dispute."^{13/}

Texas attempted to justify this act by claiming a "de facto jurisdiction" over the south half of the river. It was claimed by that state that the area occupied by the Burke Divide Company had been leased to Sam Sparks, a resident of Texas. Sparks had assigned the lease to the General Oil Company who reported to some questionable

^{12/} Roote, Reply, op. cit., 14; this account further states that the Texas Rangers assaulted a surveyor who was working on the tract at the time of the invasion. This man's skull was fractured and he was so "brutally beaten that it was thought he would die before he could be removed to a hospital." The man's companions begged permission to remove him to a nearby house for treatment by a physician. The man lay at the point of death for weeks; the injury to his brain caused him to remain an imbecile the rest of his life. (page 29). Another victim was Thomas F. Potter who was struck in the head two or three times by a revolver wielded by a Ranger, then kicked, and brutally beaten. L. W. Harrington, attorney for the Burke Divide was similarly treated, as were many other employees. (page 30).

^{13/} B. H. Gaddin, Personal Interview, 13. "Most of these guards had just returned from the World War and were restrained with the utmost difficulty."

tactics to gain possession of this property.^{14/}

During the time of the dispute the land within the river bed was becoming very valuable; on one occasion one hundred and ninety acres were leased for \$460,000; a few days later another tract of forty acres was leased for \$100,000. By December 19, 1919, land prices were soaring, and leases had reached as high as \$4,000 per acre.^{15/} With such prices prevailing, it is easy to understand why the two states became involved in a pitched battle to gain possession of the south half of the river that offered a vast amount of taxable property.

The district court of Texas issued a writ of injunction to prohibit the development of the oil properties until the jurisdiction of the south half of the river bed was

^{14/} The General Oil Company claimed that they had an oil derrick built on the property before the Oklahomans even filed their claim. Several residents of Grandfield signed affidavits stating that there was no such derrick on the property at the time of the formation of the three placer mining claims. Roote, Reply, op. cit., appendix A, 90-95. It also became known that this company built derricks near the southern edge of the Burke Divide lease and slipped the derrick over onto the Oklahoma side where they assumed illegal possession of the land and drilled for oil, despite the protests of Oklahomans who knew that the derricks were on their property. B. H. Goddin, Personal Interview, MS. Also found in affidavit of J. C. Eversole, Roote, Rejoinder, op. cit., 74. Texas claimed that Sam Sparks had been issued a claim to the property on April 20, 1919. Why did the state of Texas fail then to claim the property instead of waiting until the discovery of oil?

^{15/} Grandfield Enterprise, November 28, 1919, 1.

determined.^{16/} This injunction issued by Judge George Calhoun, did not, however, give the Texas Rangers authority to drive off the Oklahoma claimants. According to Oklahoma's contentions:

There is nothing in the writ of injunction that issued out of the District Court of Travis County that directed the Texas Rangers, nor gave them authority, to dispossess the Burke Divide Companies. Even if the writ of injunction had so directed, when it was issued without notice, it would be infamous for the Texas claimants to urge it as a justification for the violence and force employed by the Texas Rangers in dispossessing the Burke Divide Companies. Had the district court of Travis County issued such a mandatory injunction, directing any officer to dispossess the Burke Divide company, without first having given the Burke Divide company notice and an opportunity to be heard, it would have been judicial usurpation ^{17/} and oppression. . . .

It is possible, in this connection, that the officers of the Texas Rangers might have been under the influence of the General Oil Company and acted without authority. Even if such had been the case, however, seizure of the entire river bed cannot be justified. The property claimed by Sparks and his associates consisted of only eighty acres, a very small portion of the total area which the Rangers seized. The General Oil Company denied that any of the upper part of the river bed was taken, but one operator who was located several miles up the river testified that his property was also taken by force by the Texas Rangers on January 26, 1920.^{18/}

^{16/} Roote, Rejoinder, op. cit., 27.

^{17/} Ibid., 28.

^{18/} Affidavit of J. E. Goens, ibid., 29.

The attorney for the Burke Divide Company was of the opinion that the district court of Texas did not have any right to issue this injunction, because property within the state of Oklahoma was not subject to the laws of Texas. Texas' insistence on a boundary to the middle of the river was called by Oklahomans a "false notion," and an "hallucination" which was followed like a "sheep follows a bellwether."^{19/} Oklahoma admitted that such a claim might have been admissable "prior to the decision of the Greer county case;" but, on the other hand, "if Texas occupied any part of the south half of Red River" it was as a "mere trespasser and not as a de facto sovereign."^{20/} It was asserted that the claim of "Texas to the middle of the river was a subterfuge--something to give them courage enough to send an army of ruffians into the State of Oklahoma to rob others of the fruits of their labors." This act was described as robbing the Oklahoma oil operators of "thousands of dollars worth of personal property and secured for Texans a possession that was tainted with dishonorable conduct."^{21/}

The basis for these objections was the belief that the question of the boundary had been settled in the Greer county case when the Supreme Court of the United States had, according to Oklahomans, defined the boundary "in such

^{19/} Roote, Rejoinder, op. cit., 31.

^{20/} Ibid., 28.

^{21/} Roote, Reply, op. cit., 27.

a clear, and precise language that no man, though a fool, need to err therein."^{22/} All these protests did not, however, secure the release of the oil property located in the south half of the river. Texas Rangers remained on guard and prevented any Oklahoman from coming near the river. Oil operators from Texas came into the area and exploited the property the Oklahomans had developed.^{23/}

It was estimated that \$100,000 worth of oil was removed by the Texans who were in illegal possession of the property.^{24/}

This soon became intolerable. Two Oklahomans, Andy Alexander and A. J. Hunt asked the Governor of the state for an army machine gun to drive the Rangers off the property. A group of owners, including several residents of Grandfield, Oklahoma, went to the state capitol asking Governor James Robinson to send six militiamen to the scene of dispute to protect Oklahoma property.^{25/} For some reason, the governor refused; instead he sent General Barrett and Colonel Markham to the scene. They recognized the desperate situation and reported that the property

^{22/} Ibid., 6.

^{23/} Oklahoma v. Texas, Original Supreme Court Transcript, XX, 2644, cited Roote, Rejoinder, op. cit., 49.

^{24/} Roote, Reply, op. cit., 27.

^{25/} B. H. Goddin, Personal Interview, MS.

could be retaken, "but at the cost of much bloodshed and the probable loss of many lives."^{26/}

The attorney for Oklahoma's interests reported Governor Robinson's indifference to the Secretary of the Interior: "It is to be regretted that the then Governor of Oklahoma did not see fit to protect the citizens of his own state, and defend them from the ruffians that invaded Oklahoma from the state of Texas."^{27/}

The Governor's passive attitude may be questioned when it is known that the Texas Rangers deliberately disregarded the authority of the courts who had been appointed to take charge of the oil properties until the boundary question was settled, thereby violating the authority of the District Court of Oklahoma. Mr. A. P. Marsh, who had been appointed receiver on January 7, 1920, realized that the operators from his state would require protection during the time the litigation was being settled in the courts and placed numerous signs about the property stating that the area was under the jurisdiction of the District Court of Oklahoma. He contended that when the Rangers came on the property they "insulted him" and "flaunted" the authority of the court by tearing down these signs.^{28/}

^{26/} Ibid., 15.

^{27/} Roote, Reply, op. cit., 69.

^{28/} Affidavit of A. P. Marsh, cited by Roote, Rejoinder, op. cit., 64.

The lack of support from the state militia prevented the Oklahomans from securing repossession of the property. The ownership was left to the determination of the Supreme Court of the United States.

When the case came to trial, Oklahoma attempted to prove that Texas did not have "de facto sovereignty" over the south half of the river where most of the oil properties were located.^{29/} This contention was borne out by the testimony of A. J. Hunt, deputy United States Marshal, who stated that Texas had previously recognized the fact that the boundary of that state did not extend beyond the south bank of Red River. Supporting this contention, Mr. Hunt testified that the District Court of Texas had instructed him to watch for cars along the highway on the south bank of Red River and intercept those which were carrying whiskey into Oklahoma, which was a dry state. Mr. Hunt said further that he was instructed by the court to refrain from arresting any suspects until the four wheels of their vehicles had passed the vegetation on the south bank of Red River, and the boundary line (as it was considered) between Texas and Oklahoma.^{30/} Other evidence was presented which caused the United States Supreme Court to decide, in the latter part of 1921, that the boundary line was on the south bank of the Red River, and

^{29/} This evidence contained in General Land Office Circular 876, cited by Roote, Reply, op. cit., 2.

^{30/} Oklahoma v. Texas, Original Supreme Court Transcript, XX, 2808, cited by Roote, Rejoinder, op. cit., 49.

the area between the south bank and the medial line "was within the state of Oklahoma and beyond the reach of the laws of Texas."^{31/}

While this decision was pending some arrangement for supervision over the disputed area was necessary. The federal government appointed Frederick A. Delano as receiver of the oil field area. Mr. Delano took charge of all drilling activities and oil disposals during the time the controversy was being settled. The proceeds from the oil wells were to be held in trust and turned over to the persons whom the court decided to be the rightful owners. But dubious business methods made serious inroads into the profits which were entrusted to the management of the receiver.^{32/} The federal government was required to make several changes in the limits of the area controlled by the receiver.

^{31/} Ernest Knaebel, reporter, Cases Adjudged in the Supreme Court October Term 1922, Washington: 1923, CCLVIII, 582.

^{32/} The attorney for one of the oil companies contended that his company spent \$100,000 developing its property and never received but \$46,000 during the five years that its wells were being handled by the receiver. Roote, Reply, op. cit., 32. One prominent stockholder estimated that \$12,000,000 worth of oil had been taken from property he and his associates had held before it was seized by Texas Rangers and subsequently placed in federal receivership. B. H. Goddin, Personal Interview, MS. Another informant insisted that the money released by the receiver was trivial in comparison with the gross incomes from the wells. J. C. Eversole, Personal Interview, MS.

On several occasions the court issued orders which relinquished to Texas those wells which were outside the receivership area. ^{33/} On June 1, 1921, when it became apparent that drilling activities were getting out of hand, the United States Supreme Court issued another order which prevented the drilling of any new wells. The receiver was required to confine his activities to those wells which were already established. This same order authorized the receiver to publish a notification in two Texas and two Oklahoma newspapers that all private claims for oil which were judged to have been illegally taken by the receiver must be made within sixty days. Before the ownership of any oil wells could be established, the jurisdiction of the south half of the river bed would have to be determined by the court.

When the case came to trial, Oklahoma contended that the entire river bed, from bank to bank, was within the borders of that state. Under the laws of riparian ownership, ^{34/} the river bed would belong to Oklahoma if it could

33/ Oklahoma v. Texas, 254 U. S., Law. ed. 65, 270.

34/ Upon the admission of a state into the Union, the new state, by virtue of the constitutional rule of equality among states, becomes, as was each of the original states, owner of the soil underlying the navigable waters within its boundaries. Where the United States owns the bed of a non-navigable stream and the upland on both sides, it is free to retain all or any part of the river bed. Oklahoma v. Texas 258 U. S., Law. ed. 65, 771.

be proved that the river was navigable at the time of that state's admission into the Union.

Oklahoma contended that Messrs. de Onis and Adams recognized the navigability of Red River when they wrote into the treaty of 1819, that

the navigation of the Sabine River to the Sea and of Red and Arkansas Rivers, throughout the extent of the boundary fixed by the treaty, should be ^{35/} common to the inhabitants of both countries.

The federal government refused to recognize this description as justification of Oklahoma's claim to riparian ownership and contended that the area was public domain. Oklahoma offered as evidence an earlier law passed by Congress which permitted the construction of bridges across the river provided "that there should be no interference with navigation."^{36/} Oklahoma contended that this law recognized the navigability of Red River. The federal government insisted that this was merely a precautionary measure to prevent the construction of barriers which would obstruct the natural flow of the river and that it could not be used to mean that the river was navigable.

Oklahoma then advanced the theory that the federal government had recognized the navigability of Red River when Congress appropriated \$500,000 for dredging the

^{35/} Kanebel, op. cit., CCLVIII, 574.

^{36/} U. S. Stat. at Large, XXXIX, 251.

channel to facilitate navigation.^{37/} The engineers on the project had informed the government that the expenditures were not justified. In 1921 they recommended that the venture be abandoned.^{38/} The federal government's refusal to recognize this recommendation was construed, by Oklahoma, to mean that the river was considered navigable or else the project would have been continued.

Another point which favored Oklahoma's contentions was based on the failure of the United States land commissioners to survey the river bed when the townships on the northern bank were laid out. Leaving a river bed unsurveyed was a practice employed only in the case of navigable rivers. Oklahoma seized on this omission as additional evidence that the river was considered navigable.

These claims were refuted by the central government with the contention that the river was navigable only in times of floods, which were exceptional. Many old pioneers were brought into the trial to testify as to the past behavior of the river.^{39/} Oklahoma relied on this testimony

^{37/} H. Doc. 947, 64 Cong., 1 sess., 1-6.

^{38/} H. Doc. 87, 67 Cong., 1 sess., 2.

^{39/} Some of these old settlers told of enormous herds of buffalo that had passed through the region and broke down the river banks when they crossed. These herds killed the vegetation and were responsible for the disastrous dust storms which filled the river's channels. Grant Foreman, "Red River and the Spanish Boundaries," Chronicles of Oklahoma, Oklahoma City: 1924, II, 303.

to prove that the river was navigable during the time of the treaty of 1819, but had been filled up by the forces of nature during the years before the present trial. Other evidence presented to prove this was: the journals of Messrs. Lewis and Clark; the records of Majors Z. M. Pike, Stephen H. Long, Ames Stoddard; and the writings of Captain R. B. Marcy. ^{40/} The scientific and historical writings of Messrs. Humboldt and Bancroft played an important part in the proceedings.

Most of the scientific data presented by Oklahoma was disregarded by the court as unreliable in that it expressed a tendency to overemphasize the exceptional conditions which prevailed only at the times of floods, and floods were rare. ^{41/}

The federal government based most of its arguments denying the navigability of Red River on the report of Captain A. E. Waldron, army engineer, who had made a careful study of the river's characteristics in 1910. According to his report, the river ranged from one-half to one and one-half miles in width. The banks ran from ten to thirty feet in height at places where the water in the channel was only four inches deep. Captain Waldron related that a boat drawing only five and one-half inches had to

^{40/} An interesting account of Captain Marcy's explorations in the southwest is found in Sen. Doc. 54, 32 Cong., 2 sess.

^{41/} Knaebel, op. cit., CCLVIII, 587.

be dragged over many sand bars which ranged from three hundred to one thousand feet in length. An observation point was established near Dennison, Texas; at this station Captain Waldron found that on only eighty one days per year did the river exceed one foot in depth, while on only forty days did the river exceed two feet in depth. The average depth for the entire year was given as five inches.^{42/} This report was offered by the federal government to prove that Red River was not navigable on that part which was within the limits of the state of Oklahoma.^{43/}

To determine the navigability of Red River was not an easy matter. The congressional acts of 1890 which created the Indian Territory,^{44/} of 1867 which created the Kiowa Indian reservation,^{45/} and of 1906 which created the Big Pasture, all described the southern limits of these regions as extending to "the middle of the Main channel of the Red River." Previously this term "middle of the main channel" was used to describe only boundaries which fell within navigable rivers, and its use in this instance contradicted the federal government's contention that the river was not navigable.^{46/}

^{42/} H. Doc. 193, 63 Cong., 1 sess., 4-5.

^{43/} "Full-sized steamboats came up the Arkansas as far as Ft. Gibson, and up the Red as far as Jones Landing southwest of Hugo." Oklahoma City Times, April 2, 1941, 26.

^{44/} U. S. Stat. at Large, XXXI, 241.

^{45/} Ibid., XV, 589.

^{46/} Knaebel, op. cit., 595.

Despite these inconsistencies, the federal government's contentions were upheld by the court, which issued a partial decree, June 5, 1922, stating that: (1) Red River was not a navigable river on that part which extended through Oklahoma; (2) that Oklahoma did not, by virtue of her admission into the Union, acquire any title to the bed ^{the} of/river; (3) that the State of Oklahoma had no rights, titles, or interests to any part of the river bed save such as incidental to the individuals who owned land abutting the northern bank. Under the rights of riparian ownership,^{47/} these individuals were entitled to jurisdiction of the land that extended to the middle of the river.

This decision placed the south half of the river bed within the jurisdiction of the federal government. The possession of oil wells which had been drilled under placer mining claims filed in 1919 and 1920 was retained by the federal government. Unfortunately, this action on part of the court did not insure the return of oil properties to their former owners; it merely nullified the Texas claims to the south half of the river. Another development came to the fore that threatened to prevent the operators of the oil wells from regaining their property.

A few months before the above case was determined, the Supreme Court of the United States had decided that the

^{47/} Oklahoma v. Texas, 258 U. S., Law. ed. 65, 772.

the placer mining patents which had been issued to the river bed did not imply that drilling for oil and mining for minerals were in the same category. This opinion endangered the titles held by oil operators whose property was still held in federal receivership.

The Burke Divide Oil Company, which held a lease on a large part of the affected area, sent Mr. Jessie B. Roote to Washington to confer with the Secretary of the Interior; Mr. Roote attempted to secure the passage of a relief law which would clear up the titles held by his employers and other claimants who had leased their holdings to the company.^{48/}

Secretary Fall of the Department of the Interior investigated the case and reported to the chairman of the House Committee on Public Affairs that:

The situation is such that this department feels that early action should be taken to protect the interests of the United States as well as others involved. Presumably those who entered upon the lands in good faith under what they believed to be valid locations under the placer mining laws . . . claiming the area . . . which had a substantial, if not legal, foundation, are entitled to equitable ^{49/} consideration.

The necessity of some remedial law became apparent. Congress passed an act on March 4, 1923, guaranteeing the titles to the oil field area. This bill was introduced by Senator Watson of Indiana. It stated that the Secretary of the Interior was authorized to "adjust and determine"

^{48/} Roote, Reply, op. cit. 8. Senator T. P. Gore was active in securing the passage of this bill.

^{49/} Ibid., 9.

the equitable claims of the "United States, and Domestic corporations, or their predecessors in interests, prior to February 25, 1920," and upon which land expenditures were made "in good faith and with reasonable diligence in an effort to discover gas and oil."^{50/} One of the newspapers in a nearby town reported that the passage of the Watson bill "would cause \$300,000,000 to be turned over to the State of Oklahoma."^{51/}

Although this act was a definite advantage to the Oklahomans, there was still much litigation before they could secure the release of their oil wells. The question of where the boundary lay between Oklahoma and Texas had not been determined; the court had defined it as being on the south bank of the Red River, but the two states had widely divergent opinions as to what constituted the bank of the river. A good explanation of the river's characteristics was given as follows by a prominent geologist:

Red River rises on the semi-arid Staked Plains of western Texas and flows east across belts of soft Triassic and Permian beds from which the spasmodic rainfall sweeps enormous quantities of sand into the river. During the floods the sandy banks erode rapidly, and the channel becomes greatly overwidened. As the river falls and chokes the channel, sand bars form and the stream becomes completely braided. Later, the broad river bed becomes a dry waste of sand bars. Dunes and vegetation may build these sand bars into islands. By choking the intervening channels, these islands unite with one another, or are tied by avulsion to the flood plain on either side of the river.

^{50/} U. S. Stat. at Large, XLIII, 1448.

^{51/} Grandfield Enterprise, March 4, 1923.

The flood plains grow, not by accretion, but by avulsion as is shown by their being composed of a mosaic of former islands whose outlines are still well defined since they are separated by old channels still plainly traceable. Often an old river channel still separates the flood plain as a whole from the adjacent upland. By constantly cutting and rebuilding its flood plain the river is continually shifting the position of its south bank. Since this bank is the boundary between the states of Texas and Oklahoma, perplexing problems constantly arise as to the location of the boundary 52/ lines separating these states.

The anticipated difficulty was not long appearing.

The court's designation of the south bank of Red River remained to be determined. For centuries the river had meandered through the valley, cutting numerous channels and undergoing various alterations of its banks. It became the problem of the court to establish the location of the south bank of the river as it was in 1819, because only that which was accepted by Spain, Mexico, and later the republic of Texas could be taken as the legal boundary.

A long range of bluffs lay just south of the river, separated from the bank of the river by a wide strip of lowlands. Oklahoma contended that in 1819 the river was running along the foot of these bluffs. Accordingly, the low lands adjoining them must belong to Oklahoma because her southern boundary was determined in 1819 rather than in 1921 when the court placed the boundary on the south bank. The postponement of the determination of the boundary

52/ Leonidas C. Glenn, "Geology and Physiography of the Red River Boundary between Texas and Oklahoma," The Pan American Geologist, XLIII, 1925, 365.

question for one hundred years was unfortunate. It would have been much easier to have set the boundary when the river was in its old channel. Waiting until erosion had removed all the evidence complicated the settlement of the controversy. The court was faced with a prodigious task; it was required to determine the changes which had taken place in the river's channel during the hundred years which had passed since the treaty of 1819 had been made.^{53/} Three hundred pages were required to establish the location of the river in 1819. The cost of printing the testimony was at \$14,000. Five hundred photographs and one hundred maps were employed in the proceedings.^{54/} To offer geologic and ecologic information, the United States had L. C. Glenn, Isaiah Bowman, H. C. Coulee, and L. L. Jones. The state of Texas was represented by a group of scientists composed of E. H. Sellards, R. T. Hill, and B. C. Tharp. Arthur A. Stiles and Robert Livingston made maps to show the topographical conditions of the disputed area. Thirty eight soil experts were used in the trial to describe the soil conditions of the river bed.^{55/}

Much of the scientific testimony was concerned with the habits of the river, particularly the processes of building its valley lands. Witnesses for the United States

^{53/} Knabel, reporter, *op. cit.*, CCLX, 614.

^{54/} E. H. Sellards, "The Oklahoma-Texas Boundary Suit," *Science*, LVII, March, 1923, 347.

^{55/} *Ibid.*, 347. It was estimated that the determination of the south bank of the Red River cost \$500,000.

and Oklahoma concluded, from their investigations, that the valley land in the upper part of the river bed was not existing in its present form when the treaty of 1819 was made. It was the opinion of these scientists that the method of building this valley land in the upper Red River was by a process known as "island building" which is uncommon to other rivers.^{56/} According to this theory, the valley land is built up through the formation of a succession of islands followed by the abrupt transfer of the water of the river around such islands.^{57/} The working and rebuilding of the valley lands by this method was assumed, by the United States scientists, to have progressed so rapidly that all valleys in the upper reaches of the river have been completely reworked and rebuilt within the past one hundred years.^{58/}

The court recognized the possibility of such changes but required further evidence to prove them. These contentions, if proved, would bear considerable force. It is a well known principle of law, recognized by both contestants, that when a river forming a boundary line changes its course by the usual process known as erosion and accretion^{59/} the boundary line follows the river and changes with it.^{60/} On the other hand, when a river abruptly leaves

^{56/} Knäbel, reporter, op. cit., CCLX, 619.

^{57/} This process is known as "avulsion."

^{58/} Sellards, op. cit., 347.

^{59/} This process involves a more or less gradual washing of banks at one place and the deposition of the washed material at another, usually the opposite bank.

^{60/} Decided Arkansas v. Tennessee, 246 U. S., Law. ed. 60, 638.

its channel and makes a new one, by the process of avulsion, leaving the intervening land between the old and new channels undisturbed, the boundary does not go with the river to ^{61/} the new channel but continues to follow the old one.

These processes, in the case of Red River, were confused and difficult to distinguish. Because the banks were made of sand, which eroded rapidly, it was almost impossible to trace the various changes in the river's channel. ^{62/}

This uncertainty caused the United States and Oklahoma to abandon the attempt to prove that the river had formerly reached the red bluffs which were several hundred yards south of the river on the Texas side. The successful establishment of these contentions would have taken from Texas about 500,000 acres of land which lay on the southern side of the river valley. This land had been in cultivation for almost one hundred years and contained churches, cemeteries, and school houses which had been built by the state of Texas. ^{63/}

That this region had never been part of Oklahoma was maintained by the ecologists who testified that there were trees growing in the region which Oklahoma claimed to be the location of the river in 1819. ^{64/} According to them, a part of this region was cultivated and used for pasture

^{61/} This principle was determined in Nebraska v. Iowa, 132 U. S., Law. ed. 36, 186-90.

^{62/} Bowman, op. cit., 169.

^{63/} Knabel, reporter, op. cit., CCLX, 617.

^{64/} Oklahoma v. Texas, 260 U. S., Law. ed. 67, 434.

as early as 1877. At that time many trees, some of which were over three feet in diameter, were used by the settlers for fire wood, fence posts, and building logs.^{65/} A section of a pecan tree which was growing in the low lands near the river was presented as evidence. This tree was claimed to be at least one hundred and seventy years old, a fact which proved that the river had not occupied that region since the treaty with Spain. Oklahoma offered the explanation that trees were growing on the islands which had become attached to the mainland by avulsion.^{66/} The court did not concur in this opinion; the evidence of the old tree was considered conclusive proof that the entire region was more than one hundred years old and must have been a part of the mainland of Texas at the time of the treaty of 1819 and so must remain within the limits of that state.^{67/}

This decision was welcomed by the state of Texas who had issued patents to most of the land in the disputed area. Had this land been declared part of Oklahoma, these owners would have been faced with dispossession.^{68/}

Four kinds of evidence were used to prove that the valley lands on the south side of the river belonged to Texas: (1) Physiographic, including the discussion of the

^{65/} Knabel, reporter, op. cit., CCLX, 639.

^{66/} Ibid., 638.

^{67/} Bowman, op. cit., 170.

^{68/} Oklahoma v. Texas, 260 U. S., Law. ed. 67, 434.

physical features of the valley such as sand dune, their age, their habits of building and shifting, sand bars, marginal fans, and old stream channels; (2) Geologic, including discussion of sedimentation of river valleys in general, and such evidence as fossils and mineralized bones of buffalo and other animals which had formerly lived in the valley; (3) Agrologic, including the thickness method of accumulating, age indication, alteration, and succession of soils; (4) Ecologic, including relation to the vegetation of the valley to that of the upland, as well as the age indication of the valley's timber, shrubs, and herbaceous vegetation.^{69/}

The trial brought out, as well, a humorous situation which might have resulted from the government's acquisition of the south one-half of the river. Texas contended that the treaty of 1819 had given the farmers of that state the solemn right to the waters of Red River which ran past their farms. But these farmers, in order to enjoy these rights and go fishing when the river was in a low stage would need a pole a mile long because the water of the river would be located on the farm of some Oklahoma riparian owner and separated from the Texas bank by a mile of government-owned land.^{70/}

^{69/} Sellards, op. cit., 348.

^{70/} Bowman, loc. cit., 182.

Despite these unusual possibilities, the court's determination of the boundary did not give Texas any jurisdiction in the river bed. The decree of March 12, 1923, stated that the boundary between Oklahoma and Texas was the same as the international line established along the south bank of the Red River by the treaty of 1819. When changes of the bank occurred through the gradual process of erosion and accretion, the boundary followed the change. Where the stream left its former channel and made a new one through adjacent uplands by avulsion, the boundary did not follow the change but remained at what constituted the south bank before the changes occurred.^{71/}

The court described the south bank of the river as:

The water washed and relatively permanent elevation or acclivity commonly called a cut bank, along the southerly side of the river which separates its bed from the adjacent upland, whether valley or hill, and usually serves to confine the waters within the bed and to preserve the course of the river.

The boundary between the two states is along that bank at the mean level attained by the waters of the river when they reach and wash the bank without overflowing it.

At exceptional places where there is no well defined cut bank, but only a gradual incline from the sand bed of the river to the upland, the boundary is a line over such incline conforming to the mean level of the waters when at other places in that vicinity they ^{72/} reach and wash the cut bank without overflowing it.

Both Goat and Burke islands, in the big bend area, near Grandfield, Oklahoma, were declared to be within the juris-

^{71/} Oklahoma v. Texas, 260 U. S., Law. ed. 67, 435.

^{72/} Knabel, reporter, op. cit., CCLXV, 265.

diction of the United States.

Conclusion

This decision did not end the boundary troubles at Red River; one authority expressed the belief that future litigation will evolve from the determination of the medial line of the river which is the southern boundary of Oklahoma. This line is not definite but is changing constantly both actually and legally and will require constant attention. The ownership of the oil wells near this line will be constantly in doubt. At one time they will be south of the medial line within the government owned area; but after a flood or high water stage, they will become the property of an Oklahoma riparian owner because the banks of the river will be so changed that the medial line will pass south of the well and in this manner change the ownership of the well.^{73/}

There are here certain inconveniences, but the court evidently thought its decision to be the lesser of two evils. In any case, the decision gives advantages to the central government which will become the recipient of an increasing amount of oil property as subsequent floods cause the river to become wider and wider.

^{73/} Bowman, loc. cit., 187.

It is interesting to note how the present demarcation of the present Red River boundary was developed. The original provision of 1819 stated that the boundary would be along the "course" of Red River. Necessity demanded that more explicit terms should be applied to the delineation of the boundary. The United States Supreme Court and various legislative acts have since amplified this designation. If Mr. Admas could read the current description of the Red River boundary he would not recognize any resemblance to his original words. By no means could he visualize his meagre phraseology as meaning that the boundary along Red River would be along the south bank when the water was at mean water level; and that when changes occurred by erosion and accretion the boundary followed the change. Nor could he see where his statements carried the implication that the jurisdiction of the river would be determined by whether or not it was navigable. The method of determining his intention to designate the south fork of Red River rather than north fork as the boundary would certainly impress him that the governmental functions of the present era are more complex than the one which he knew in the period when the original boundary settlement was attempted.

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