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JOHN T. FEY, Clerk

In the
Supreme Court of the United States
October Term, ~~1957~~ 1958

~~11~~
No. ~~12~~ ORIGINAL

COMMONWEALTH OF VIRGINIA,
Complainant

v.

STATE OF MARYLAND,
Defendant

REPLICATION AND REPLY TO DEFENDANT'S ANSWER

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Supreme Court—State Library Building
Richmond 19, Virginia

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Now comes the Commonwealth of Virginia, Complainant, by its Attorney General, and for its replication and reply to the Answer of the State of Maryland says:

I.

In reply to Paragraph I of the Answer, the Complainant denies the Defendant's statement that the matters complained of do not constitute any case or controversy within the meaning of Article III, Section 2 of the Constitution of the United States.

II.

The Complainant, in reply to Paragraph II of the Answer, says that if the State of Maryland is the sole and undisputed owner of the Potomac River and the lands

beneath its waters extending to the low water mark of the South or Virginia shore, it is such owner by reason of the Commonwealth of Virginia surrendering all claims to ownership of the Potomac River when it executed the Compact of 1785, with the assurance that she and her citizens would have all rights to the use and enjoyment of the Potomac River. The Complainant further says in reply to Paragraph II of the Answer that the Compact of 1785 did grant unto the owners of property along the Virginia shore riparian and property rights in the Potomac River, the Seventh Clause of the Compact providing, "The citizens of each state respectively shall have full property in the shores of Potowmack river adjoining their lands, with all emoluments and advantages thereunto belonging," and this grant of riparian and property rights was recognized by the arbitrators of the Black-Jenkins Award of 1877, in which Award is found the following provision:

"Fourth, Virginia is entitled not only to full dominion over the soil to low-water mark on the south shore of the Potomac, but has a right to such use of the river beyond the line of low-water mark as may be necessary to the full enjoyment of her riparian ownership, without impeding the navigation or otherwise interfering with the proper use of it by Maryland, agreeably to the compact of seventeen hundred and eighty-five."

III.

The State of Maryland, in Paragraph III of the Answer, does not deny the allegations of Paragraph III of the Bill of Complaint; however, the State of Maryland states that the allegations are immaterial, unnecessary and irrelevant as the Bill of Complaint does not pray for an adjustment or modification of the boundaries between the Commonwealth of Virginia and the State of Maryland. The Com-

plainant does not request an adjustment or modification of the boundaries so long as the Compact of 1785 exists between the two states; however, the allegations of Paragraph III of the Bill of Complaint are material and relevant, as they aver that Virginia, prior to the Compact, had a valid grant and claim to a portion of the Potomac River.

IV.

The Complainant, in reply to Paragraph IV of the Answer, says that the allegations and historical facts found in Paragraph IV of the Bill of Complaint are material, necessary and relevant to the relief prayed for in the Bill of Complaint, for the Complainant prays that the Compact of 1785 will be upheld and enforced and said allegations and historical facts aver the disputes and conflicting claims which existed between the two states prior to the execution of the Compact, and which were resolved thereby.

V.

The Complainant, in reply to Paragraph V of the Answer, says that the allegations and historical facts in Paragraph V of the Bill of Complaint are material, necessary and relevant, as said allegations aver the disputes and conflicting claims which existed prior to the execution of the Compact, and which would be reactivated if said Compact were allowed to be abrogated or repealed.

VI.

In reply to Paragraph VI of the Answer, the Complainant says that the boundary line between Virginia and Maryland was established by the Compact of 1785. (See, *Maryland v. West Virginia*, 217 U. S. 577; *Washington Airport v. Smoot Sand and Gravel Corp.*, 44 Fed. 2d 342; *Marine Railway v. U. S.*, 265 Fed. 437; and *Barnes v. State*, 186

Md. 287.) The Black-Jenkins Award consisted of an accurate survey of the line which had been so established.

VII.

In reply to Paragraph VII of the Answer, the Complainant says that when the Commonwealth of Virginia and the State of Maryland ratified the Federal Constitution of 1789 the two states by their mutual action and consent amended or altered the Compact of 1785 insofar as any provisions of the Federal Constitution were in conflict with the then existing provisions of the Compact; in all other respects the Compact still exists as a valid and binding agreement between the two states. The Complainant further says that there exists at present, and there has always existed, adequate consideration flowing to the State of Maryland under the provisions of the Compact. The Complainant further says that the Compact of 1785 established the boundary line between the two states along the Potomac River; that the Black-Jenkins Award was based on the Compact, is supported by the Compact and carried out the provisions of the Compact.

In further reply to Paragraph VII of the Answer, the Complainant denies each and every statement and claim made by the State of Maryland that the Commonwealth of Virginia has not executed the Compact with good faith.

VIII.

In reply to Paragraph VIII of the Answer, the Complainant says that the Commonwealth of Virginia has observed the Compact for 172 years, and denies that she has ever breached either the spirit or the letter of the Compact of 1785. The Complainant further denies that she has ever committed any act which has or would cause an abrogation

of the Compact of 1785. The Complainant further says that she is as interested as the State of Maryland in preserving the natural resources of the Potomac River; however, there may exist an honest difference of opinion between the two states as to what is the most effective method to preserve said natural resources, which differences, under the Compact, may be resolved only by the concurrent action of both states. Such differences as now or might hereafter exist, should be resolved by conferences, agreements, mediation, action of joint committees — the medium usually resorted to by sovereign powers — and then made effective by concurrent action of both states. The Complainant denies that she has used or permitted the Compact of 1785 to be used as a cloak to cover any illegal depletion of said natural resources.

The Complainant further denies that the Commonwealth of Virginia and its citizens have not maintained the good will, faith and honor expressed in the Compact of 1785, and further says that she has always regarded and respected the sovereign rights of the State of Maryland in the Potomac River, and further says that the State of Maryland, by her unilateral action in attempting to repeal and abrogate the Compact of 1785, has wholly and completely disregarded and ignored the sovereign rights of the Commonwealth of Virginia.

The Complainant further says that the Commonwealth of Virginia has always respected and enforced the concurrent laws governing fishing in and on the Potomac River. The Complainant denies that it has ever been her policy to ignore previously enacted concurrent legislation and further denies that she has ever given sanction of any type to illegal and unlawful methods of acquiring the natural resources of the Potomac River.

IX.

The Complainant says that Paragraph IX of the Answer does not necessitate a reply.

X.

The Complainant says that Paragraph X of the Answer does not necessitate a reply.

XI.

In reply to Paragraph XI of the Answer, the Complainant denies that she has ever committed any act, or taken any action which would justify or give the State of Maryland any grounds for attempting to abrogate by unilateral action or repeal the Compact of 1785. The Complainant further denies that she and her citizens have breached or shown any disrespect for the letter and intent of the Compact of 1785. The Complainant further denies that there is or has ever been any desire on the part of the Commonwealth of Virginia to disregard, disobey or interfere with the enforcement of laws regulating the acquisition, preservation and conservation of natural resources in the Potomac River.

The Complainant further denies that the State of Maryland is the sole owner of the natural resources in the Potomac River, but says that as to fish, shellfish and other aquatic life the Commonwealth of Virginia and the State of Maryland jointly own and control said fish and aquatic life. The Complainant denies that the State of Maryland has the right or duty to enact such legislation as is necessary, in its sole judgment, to protect and conserve the fish, shellfish and other aquatic life in the Potomac River, but asserts that the two states concurrently have the right to enact such statutes and adopt such regulations as may be necessary, in the joint and mutual judgment of both states, to protect

and conserve the fish, shellfish and other aquatic life in the Potomac River.

The Complainant further denies that she has effectively breached the letter and spirit of the Compact of 1785 by enacting and operating under laws which are contrary to the laws of the State of Maryland relating to the manner and means of acquiring oysters in the Potomac River. The Complainant admits that the General Assembly of Virginia, in 1946, enacted Chapter 235 of the Acts of Assembly of 1946; however, said chapter contains the following provision:

“(e) Upon the taking effect in the State of Maryland of the provisions of this section, the Governor of Virginia shall issue his proclamation declaring the provisions of this act to be effective.”

Chapter 235 does not become effective until the State of Maryland concurs in these provisions. The Governor of Virginia has never issued a proclamation declaring the provisions of this act to be effective. No citizen of Virginia has ever been permitted by the Commonwealth of Virginia to dredge oysters in the Potomac River under the provision or protection of this statute, which statute has never become effective. The Complainant further denies that legally regulated dredging of oysters would completely and effectively deplete the oyster beds of the Potomac River; the Complainant says that there exists an honest difference of opinion between the two states as to what methods of oyster acquisition should be permitted in the Potomac River. The Complainant denies that, since the passage of Chapter 235 of the Acts of Assembly of 1946, the Virginia law enforcement officials have repeatedly hindered and failed to cooperate with Maryland law enforcement officers in attempt-

ing to halt illegal dredging, and further denies that the Commonwealth of Virginia or her officials have ever given sanctuary to anyone who has engaged in unlawful dredging of oysters.

The Complainant admits that the General Assembly of Virginia amended §28-226 of the Code of Virginia by deleting certain provisions relating to the pursuit of offenders beyond the boundary line of either state. The Complainant denies that this statutory amendment was made in an attempt to discourage the enforcement of law prohibiting dredging, but says rather that the General Assembly of Virginia had evidence, and was of the opinion, that certain officials were abusing the authority given them to pursue offenders beyond the boundary line of either state.

The Complainant denies that the Commonwealth of Virginia has ever permitted or sanctioned illegal oyster dredging, and she further denies that the Commonwealth of Virginia has refused to cooperate in the enforcement of the concurrent laws relating to the conservation and preservation of shellfish, or that she has failed to meet her obligation to the State of Maryland to preserve the natural resources in the Potomac River jointly owned and controlled by the two states. The Complainant further denies that there has been any default committed by the Commonwealth of Virginia in executing, observing or enforcing the provisions of the Compact of 1785 or the concurrent laws enacted by the two states thereunder.

The Complainant further says that the illegal and void system of laws unilaterally enacted by the State of Maryland in 1957 relating to fish and shellfish in the Potomac River do not grant unto the citizens and residents of the Commonwealth of Virginia equal privileges with the citizens of Maryland for the use and enjoyment of the Potomac

River for the taking of fish, oysters and crabs thereof, for a citizen of Maryland is required to comply with the license provisions of his state, whereas a citizen of Virginia is illegally and without valid authority forced to comply with the license provisions of a foreign state and not those of his own state. The Complainant further says that under said system of laws a citizen of Maryland has a voice in the laws relating to the Potomac River which he must comply with because his elected representatives in the General Assembly of Maryland enact the laws, whereas a citizen of Virginia would have no voice in the laws with which he must comply, because the State of Maryland has unilaterally, illegally and without authority attempted to deny the General Assembly of Virginia any right to concur in any laws relating to fish and shellfish in the Potomac River. The Complainant further says that, under said system of laws, a citizen of the State of Maryland has law enforcement officials of his state patrolling the River, enforcing the laws and protecting his rights, whereas a citizen of the Commonwealth of Virginia would be denied the rights and benefits which would accrue to him in having law enforcement officials of his State patrolling the River, enforcing the laws and protecting the rights of the citizens of Virginia.

XII.

The Complainant, in reply to Paragraph XII of the Answer, reiterates the allegations of Paragraph XII of the Bill of Complaint and stands ready to prove said allegations if so required.

XIII.

The Complainant, in reply to Paragraph XIII of the Answer, denies that it has been the policy of the Commonwealth of Virginia not to enforce the laws relating to con-

servation of oysters in the Potomac River. In further reply to Paragraph XIII of the Answer, the Complainant reiterates the allegations of Paragraph XIII of the Bill of Complaint, and stands ready to prove said allegations if so required.

XIV.

The Complainant, in reply to Paragraph XIV of the Answer, reiterates the allegations of Paragraph XIV of the Bill of Complaint and stands ready to prove said allegations, if so required.

FOR FURTHER REPLICATION AND REPLY

Complainant denies each and every affirmative allegation of the Answer not specifically admitted in this replication and reply.

Wherefore, the Complainant, the Commonwealth of Virginia, prays as in its Bill of Complaint.

Respectfully submitted,

A. S. HARRISON, JR.
Attorney General of Virginia

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*Assistant Attorney General
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COMMONWEALTH OF VIRGINIA
CITY OF RICHMOND, TO-WIT:

I, J. Lindsay Almond, Jr., being first duly sworn, upon my oath depose and say that I am the duly elected, qualified and acting Governor of the Commonwealth of Virginia; that I have read the foregoing Replication and Reply to Defendant's Answer and know the contents thereof; that the facts therein set forth, save and except those averred on information and belief, are true, and that as to the facts therein alleged upon information and belief, I am credibly informed and verily believe that they are true.

J. LINDSAY ALMOND, JR.
Governor of Virginia

Subscribed and sworn to before me this day of March, 1958.

NERHEA S. EVANS
Notary Public

My Commission expires July 19, 1959.

PROOF OF SERVICE

I, A. S. Harrison, Jr., Attorney General of the Commonwealth of Virginia, Complainant herein, and a member of the Bar of the Supreme Court of the United States, certify that on the day of March, 1958, I personally mailed copies of the foregoing Replication and Reply to

Defendant's Answer to Honorable Theodore R. McKeldin, Governor of Maryland, 10 Light Street, Baltimore, Maryland, and to Honorable C. Ferdinand Sybert, Attorney General of Maryland, 10 Light Street, Baltimore, Maryland.

A. S. HARRISON, JR.

Attorney General of Virginia