

Supreme Court, U. S.
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MICHAEL ROBAL JR., CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1972

No. 64, ORIGINAL

STATE OF NEW HAMPSHIRE, *Plaintiff*

v.

STATE OF MAINE, *Defendant*

ANSWER

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ANSWER

COMES NOW the State of Maine by and through its Attorney General and in response to the complaint filed by the State of New Hampshire, avers:

FIRST DEFENSE

The complaint filed by New Hampshire fails to state a claim upon which relief can be granted.

SECOND DEFENSE

In answer to each paragraph of the complaint filed by the State of New Hampshire, the State of Maine:

1. Admits the allegations in paragraphs I, II, III, VIII, X, XI, XII, and XIV.
2. Denies the allegations in paragraphs IV, V, and VI.

3. Admits so much of the allegations in paragraph VII which allege that Maine claims sovereignty over the entire area now in dispute. The remaining allegations in paragraph VII are denied.

4. Admits so much of the allegations in paragraph IX which allege that the Maine-New Hampshire lateral marine boundary line has been depicted on the Geological Survey map, Maine-New Hampshire/York Quadrangle, Edition of 1920, No. 4300-W 7030/15, and that such line is not straight. The remaining allegations in paragraph IX are denied.

5. Admits so much of the allegations in paragraph XIII which allege that Maine officials have informed New Hampshire officials that Maine laws would be enforced in this area. The remaining allegations in paragraph XIII are denied.

6. Admits the allegations in paragraph XV that boundary commissioners have met concerning this dispute and that no agreement has been reached. The remaining allegations in paragraph XV are denied.

THIRD DEFENSE

1. The complaint filed by New Hampshire delimits and depicts its claim of the lateral marine boundary line between these two States.

2. The complaint asserts as the sole basis for that claimed line the 1740 Order of the King in Council.

3. Both terminal points, as well as the course in between these points, of the New Hampshire claimed boundary line, as delimited and depicted in its complaint, violate the 1740 Order of the King in Council in that the New Hampshire claimed line completely ignores the requirement to pursue the thread of the channel.

FOURTH DEFENSE AND FIRST COUNTERCLAIM

1. The lateral marine boundary between these two States from Portsmouth Harbor to Gosport Harbor consists of two straight intersecting lines.

2. The northern segment of the boundary line follows the mid-channel line from Portsmouth Harbor demarcated by the range lights located in the vicinity of Pepperrell Cove, Kittery Point, Maine, which line is shown on Coast and Geodetic Survey Chart 211, Sixth Edition. Such northern segment follows in a straight course along such demarcated channel and it continues in the same straight southerly direction until it is intersected at a point about one and one half miles south of Gunboat Shoal buoy by the straight segment which emanates from Gosport Harbor.

3. The southern segment of the boundary line commences at the middle of the channel in the center of Gosport Harbor, between Smuttynose Island and Star Island, and follows the channel in a straight, westerly course, passing over the Gosport Harbor mid-channel buoy, continuing in the same straight, westerly direction until it intersects the northern segment at a point about one and one half miles south of Gunboat Shoal buoy.

4. This boundary line correctly construes the 1740 King in Council Order.

FIFTH DEFENSE AND SECOND COUNTERCLAIM

1. The lateral marine boundary between these two States from Portsmouth Harbor to Gosport Harbor consists of a curving line which pursues the thread of the channel in its southeasterly course through the Piscataqua River until it empties into the ocean southeast of Odiornes Point, New Hampshire.

2. This boundary line follows the thread of the Gosport Harbor channel in its westerly exit course until such channel passes into the ocean west of Lunging Island, New Hampshire.

3. These two channel lines are connected by a faired extension of the course of each channel.

4. Such faired extension of these two channel courses produces an equitable boundary line which follows a course which is substantially west and south of the "Maine-New Hampshire Boundary Line" depicted on the Geological Survey map, Maine-New Hampshire/York Quadrangle, Edition of 1920, No. 4300-W 7030/15.

5. This boundary line is an appropriate alternative construction of the 1740 King in Council Order.

SIXTH DEFENSE AND THIRD COUNTERCLAIM

1. The lateral marine boundary between these two States is as shown on the Geological Survey map, Maine-New Hampshire/York Quadrangle, Edition of 1920, No. 4300-W 7030/15.

2. Such boundary line placement is a reasonable construction of the 1740 King in Council Order.

3. It reasonably effectuates the intent of the King to assure each Province equal access into Piscataqua River, Portsmouth Harbor and Gosport Harbor, including equal access into and through the approaches to these two harbors.

4. This line substantially follows the thread of the channel in its southeasterly course through the Piscataqua River until it empties into the ocean southeast of Odiornes Point, New Hampshire.

5. This line also follows the thread of the Gosport Harbor channel in its westerly exit course until such

channel passes into the ocean west of Lunging Island, New Hampshire.

6. These two channel lines are connected by a nearly faired extension of the course of each channel, which nearly faired extension substantially favors New Hampshire throughout its course.

SEVENTH DEFENSE AND FOURTH COUNTERCLAIM

1. The lateral marine boundary between these two States is as shown on the Geological Survey map, Maine-New Hampshire/York Quadrangle, Edition of 1920, No. 4300-W 7030/15.

2. Such boundary line placement is justified by the international law principle of an equidistant line.

EIGHTH DEFENSE AND FIFTH COUNTERCLAIM

1. The lateral marine boundary between these two States is as shown on the Geological Survey map, Maine-New Hampshire/York Quadrangle, Edition of 1920, No. 4300-W 7030/15.

2. This line was placed on an official map of the Geological Survey, United States Department of the Interior, with shore line and control by Coast and Geodetic Survey, United States Department of Commerce, surveyed in 1916-1917 in cooperation with the War Department, and widely published in 1918 and on many other official United States coastal charts and maps.

3. New Hampshire has published many official New Hampshire maps which acknowledge this boundary line.

4. A similar boundary line appears on many other maps published during the past 100 years.

5. Maine has always claimed such a boundary line and has long, consistently and openly exercised sovereign jurisdiction to the limit of this line and to the exclusion of any such alleged right over this area by New Hampshire.

6. New Hampshire has never exercised any sovereign jurisdiction over any of this area.

7. New Hampshire has never assailed the validity of this boundary line until the present litigation.

8. New Hampshire, having long acknowledged, accepted and acquiesced in the validity of this boundary line and in the exercise of sovereign jurisdiction by Maine in this area, is now estopped and precluded from disclaiming the validity of that jurisdiction and of that boundary line.

WHEREFORE, having answered, Defendant prays and moves that the Court:

1. Dismiss the complaint; or
2. Establish the boundary line as delimited in the First Counterclaim; or
3. Establish the boundary line as delimited in the Second Counterclaim; or
4. Establish the boundary line as delimited in the Third, Fourth and Fifth Counterclaims, and
5. Grant such other and further relief as it may deem just and appropriate.

Dated: April 1, 1974.

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