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NO. **36**-----, Original

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1969

THE STATE OF TEXAS, PLAINTIFF

v.

THE STATE OF LOUISIANA

MOTION FOR LEAVE TO FILE COMPLAINT,
COMPLAINT AND BRIEF IN SUPPORT OF
MOTION

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NO.-----, Original

THE STATE OF TEXAS, PLAINTIFF

v.

THE STATE OF LOUISIANA

MOTION FOR LEAVE TO FILE COMPLAINT

The State of Texas asks leave of the Court to file its complaint against the State of Louisiana submitted herewith.

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v.

THE STATE OF LOUISIANA

COMPLAINT

The State of Texas, by its Attorney General, brings this suit against the Defendant, the State of Louisiana, and for its cause of action states:

I

The jurisdiction of this Court is invoked under Article III, Section 2, Clause 2, of the Constitution of the United States.

II

By act of the United States Congress approved July 5, 1848, consent was given to the State of Texas to extend its eastern boundary so as to include that portion of the western half of Sabine River (including Sabine Lake and Sabine Pass) from the mouth of said River as far north as the thirty-second degree of north latitude. 9 Stat. 245.

Pursuant thereto, by Act approved November 24, 1849, the Legislature of the State of Texas so extended the eastern boundary of the State. 3 Gammels Laws of Texas 442.

III

Since November 24, 1849, the State of Texas has been and now is entitled to the jurisdiction of its constitution and laws over and the ownership of the western half of Sabine River, Sabine Lake and Sabine Pass from the mouth of the River on the Gulf of Mexico to the thirty-second degree of north latitude. Since the aforesaid date the State of Texas has exercised exclusive jurisdiction, sovereignty, possession and ownership over the western half of said streams, subject only to the constitutional rights and functions of the United States.

IV

Sabine Lake, Sabine Pass, and that portion of the Sabine River above described form a continuous body of navigable water and are collectively referred to in treaties and laws as the "Sabine River." Together, they will be so referred to in this Complaint.

V

From the time of the Louisiana Purchase in 1803, 8 Stat. 200, until November 24, 1849, the western half of that portion of Sabine River between its mouth in the Gulf of Mexico and the thirty-second degree of north latitude was a portion of the territory of the United States and was not within the boundaries of any state. During such period, the United States exercised exclusive jurisdiction and sovereignty over and possession and ownership of the area.

VI

In 1811, the citizens of that portion of the Louisiana Territory lying east of the middle of Sabine River and within other stated boundaries were authorized by the Congress of the United States to form a State government and apply for admission to the Union. 2 Stat. 641. After forming a government and adopting a Constitution calling for a western boundary . . . “beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of the said river, including all islands to the thirty-second degree of latitude” . . . Louisiana was admitted as a State, with the Act of Admission again repeating the western boundary of the State as being in the middle of the Sabine River. 2 Stat. 701.

VII

The State of Louisiana has never had and does not now have any jurisdiction over or ownership of the western half of Sabine River. Such area has never been within the boundaries of the State of Louisiana, and that State has never exercised any jurisdiction, sovereignty, possession or ownership over same. On the contrary, the State of Louisiana, for more than a century, recognized and acquiesced in the jurisdiction, possession, and exercise of sovereignty and dominion over such area by the United States from 1812 until November 24, 1849, and by the State of Texas from November 24, 1849, until recently when it began to assert contrary claims described in Paragraph VIII hereof.

Among Louisiana's long and continuous acts of recognition and acquiescence in the jurisdiction, possession and exercise of sovereignty and dominion first by

the United States and then by Texas are the following:

A. In 1812, Louisiana adopted its State Constitution as aforesaid, with its western boundary in the middle of the Sabine River. It was with this boundary that Louisiana sought and was granted admission to the Union, and this boundary act has not been changed by Louisiana.

B. On April 28, 1848, the Louisiana Legislature adopted a Resolution instructing its members of Congress to seek passage of a law permitting the State to extend its jurisdiction over the western half of the Sabine, the preamble of which said:

Whereas the constitution and laws of the State of Louisiana, nor those of any other State or territory, extend over the waters of the Sabine river from the middle of said stream to western bank thereof; and that it is of importance to the citizens living contiguous thereto . . . that the jurisdiction of some State should be extended over said territory . . . Senate Documents, 30th Congress, 1st Session, 1848, Miscellaneous No. 135.

C. The State of Louisiana acquiesced in and did not contest the action of Congress on July 5, 1848 authorizing Texas to extend its boundary to the middle of the Sabine or the action of Texas so extending its boundary, an acquiescence and failure to contest which has continued during the entire 120 years that Texas has exercised jurisdiction, sovereignty, possession and ownership over the area.

D. Upon extending its State boundary to the middle of the Sabine on November 24, 1849, Texas in the same Act extended the jurisdiction of its adjacent counties to the middle of the stream. Since that date, its

State laws have extended to and have been enforced by State and county officials on the western half of the Sabine. Louisiana has not extended its boundary, the boundaries of its adjacent parishes, or its laws over the western half of the Sabine, but has continuously acquiesced in the jurisdiction of Texas laws and the enforcement of same by Texas State and county officials in such area. As early as 1901, the Supreme Court of Louisiana held that . . . “the middle of the Sabine River is the boundary line between Louisiana and Texas . . .”, and that Louisiana could not enforce its liquor laws west of that line. *State v. Burton*, 29 So. 970 (1901). There have been other Louisiana Supreme Court decisions to the same effect and none to the contrary.

E. On March 19, 1857, the Louisiana Legislature appropriated money to improve the Sabine River for navigation provided Texas “has appropriated at least an equal sum for the same purpose. . . .” Texas has continuously appropriated and expended funds for improvement of the Sabine and for its one-half of the State cost of bridges and ferries across the Sabine, and in each instance, Louisiana not only acquiesced but encouraged and agreed to Texas’ exercise of this type of sovereignty to the middle of the stream. Louisiana has never exercised the responsibility for construction of bridges on the western half of the stream.

F. Texas has continuously passed and enforced special laws regulating the taking of game and fish from the western half of the Sabine. Louisiana has acquiesced therein and has never enacted or enforced laws relating to game and fish or any other activities west of the middle of the Sabine.

VIII

In spite of its long recognition and acquiescence in Texas' boundary and sovereignty over the western half of the Sabine, the State of Louisiana, acting through its Attorney General, is now asserting and claiming some right, title and jurisdiction adverse to the State of Texas in that portion of the Sabine River lying between the middle of the stream and the west bank thereof. The Attorney General of Louisiana has notified the Texas Attorney General and Commissioner of the General Land Office of such adverse claim; has protested the leasing of the submerged land under the western half of the Sabine for the recovery of valuable minerals; has notified Texas lessees of such adverse claim; and has threatened lawsuits against the State of Texas and its lessees.

There is urgent need for the exploration and development of the mineral resources of the area in controversy, and this is being interfered with and obstructed and will continue to be interfered with and obstructed by the State of Louisiana, thereby causing great and irreparable damage to the State of Texas unless the rights of Texas are established and confirmed by this Court. The State of Texas has made diligent efforts to obtain settlement of the issue by compact with Louisiana, but these efforts have failed. Therefore, Texas has no other adequate remedy than that which is sought in this Complaint.

IX

The original jurisdiction of this Court is invoked because there is urgent need for prompt and final settlement of the controversy, and because the fundamen-

tal question in issue is the location of that portion of the boundary between the States of Texas and Louisiana lying from the mouth of the Sabine River on the Gulf of Mexico to the thirty-second degree of north latitude.

WHEREFORE, the State of Texas prays that a decree be entered declaring its rights against the State of Louisiana to the jurisdiction over and ownership of the western half of the Sabine River (including Sabine Lake and Sabine Pass) from the mouth of the river on the Gulf of Mexico to the thirty-second degree of north latitude, and that such portion of the boundary between the two States be decreed to be in the middle of said stream.

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BY:-----
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BRIEF IN SUPPORT OF MOTION

Jurisdiction

The State of Texas seeks to bring this suit against the State of Louisiana under the authority of Article III, Section 2, Clause 2, of the Constitution of the United States.

Statement

The purpose of this litigation is to establish and confirm the boundary between the States of Texas and Louisiana as the middle of the Sabine River¹ from the mouth of said river on the Gulf of Mexico to the thirty-second degree of north latitude, and to establish the rights of Texas to jurisdiction over and ownership of the western half of the Sabine River from its mouth to the thirty-second degree of north latitude, subject only to the constitutional rights and powers of the United States.

Under the Louisiana Purchase of 1803 the United States acquired from France a vast area between the Mississippi River and the Rocky Mountains from which all or part of thirteen States were carved.² Until 1819, the United States claimed that the western boundary of the Purchase was the Rio Grande River and that it thus included the present State of Texas.³

¹Use of the term "Sabine River" herein includes Sabine Lake and Sabine Pass, all of which constitute a continuous body of navigable waters collectively referred to in various Treaties and Acts of Congress as the "Sabine River."

²Encyclopedia Britannica (1965), vol. 14, p. 358.

³Adams, *History of the United States*, II, 5-7, 298; Channing, *History of the United States*, IV, 331-333; Jefferson's "Examination" in *Documents Relating to the Purchase and*

In the meantime, Congress authorized the inhabitants of a certain portion of the Louisiana Purchase to form a government and seek admission as the State of Louisiana. The Enabling Act specifically defined the area over which such authority was granted, with the relevant portion of the western boundary described:

... "beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of the said river, including all islands to the thirty-second degree of latitude." ...'

The inhabitants of this specifically defined area carved out of the Louisiana Territory formed their government and adopted the State Constitution of Louisiana, which described the western boundary of the State in exactly the same words as quoted above.¹ The Act of Admission by the Congress, approved April 8, 1812, again recited the western boundary in the same language as above.² This boundary in the middle of the Sabine River from its mouth to the thirty-second degree of north latitude is the only boundary of Louisiana between such points ever established or assented to by the Congress of the United States or by the Legislature or the people of the State of Louisiana.

Exploration of Louisiana (Houghton Mifflin Co., 1904). As late as June 2, 1818, President Monroe, through Secretary of State Adams, sent an emissary to call upon a colony of Napoleonic exiles to remove themselves from their establishment in Texas on the Trinity River and at Galveston, claiming that the places were within the territorial limits of the United States. Adams to George Graham, June 2, 1818, MS. Archives, Department of State. See also *Adams Memoirs*, IV, 97-100 and Reeves, *The Napoleonic Exiles in America*, 1815-1819, the Johns Hopkins Press, 1905, pp. 93-106.

¹2 Stat. 641.

²West's Louisiana Statutes Annot., Constitution, vol. 3, p. 511.

³2 Stat. 701.

By the Treaty with Spain in 1819, the United States relinquished its claim to Texas, but fixed the west bank of the Sabine River as the western boundary line between Spain and Mexico,⁷ thus leaving the western half of the Sabine as part of the territory of the United States unincorporated within the boundary of Louisiana or any other State.⁸

By 1848, Texas had become a member of the Union, and both Texas and Louisiana petitioned the Congress for consent to extend their jurisdiction over the western half of the Sabine.⁹ The Congress decided the issue in favor of Texas on July 5, 1848 by the following enactment:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Congress consents that the legislature of the State of Texas may extend her eastern boundary so as to include within her limits one half of Sabine Pass, one half of Sabine

⁷8 Stat. 252. Article 3 states: "The boundary line between the two countries, west of the Mississippi, shall begin on the Gulph of Mexico, at the mouth of the river Sabine, in the sea, continuing north, along the western bank of that river, to the 32d degree of latitude; . . ."

⁸The State of Louisiana officially recognized this status of the western half of the Sabine in a Resolution quoted in Paragraph VII-B of the Complaint wherein the Louisiana Legislature recited that "the constitution and laws of the State of Louisiana, nor those of any other State or territory, extend over the waters of the Sabine river from the middle of said stream to the western bank thereof . . .". Senate Documents, 30th Congress, 1st Session, 1848, Miscellaneous No. 135.

⁹The Legislature of Texas petitioned its members of Congress to request such action on April 17, 1848, and the Legislature of Louisiana instructed its members of Congress to do likewise on April 28, 1848. See copies of these Resolutions in Senate Documents, 30th Congress, 1st Session, 1848, Miscellaneous No. 123 and 135, respectively.

Lake, also one half of Sabine River, from its mouth as far north as the thirty-second degree of north latitude. 9 Stat. 245.

By Act of its Legislature approved November 24, 1849, Texas so extended its boundary to include the western half of the Sabine as authorized by the Congress. 3 Gammels Laws of Texas 442. As a result, Texas acquired not only State sovereignty and jurisdiction over the area but also ownership of the submerged land beneath the western half of the navigable stream.¹⁰ Since November 24, 1849, the State of Texas has continuously exercised its sovereignty, jurisdiction, possession and ownership over the area, and the State of Louisiana has continuously recognized and acquiesced in the exercise of such State powers, rights and functions by the State of Texas, until recent adverse claims were asserted by the Attorney General of Louisiana.

Some of the series of acts of long recognition and acquiescence on the part of Louisiana are recited in the Complaint. Others of equal importance can and will be cited. They include continuous recognition and holdings by the Supreme Court of Louisiana that "... the middle of the Sabine River is the boundary line between Texas and Louisiana . . . ;"¹¹ the fact that Texas has continuously extended its laws and the enforcement thereof to the middle of the Sabine, while Louisiana has never extended or enforced its laws west

¹⁰This rule was announced in *Pollard's Lessee v. Hagan*, 3 Howard 212 and followed in *Martin v. Waddell*, 16 Peters, 367, 410, and numerous other decisions of this Court relating to inland navigable waters within State boundaries. In any event, this submerged land within the boundary of Texas as approved by the Congress was quit-claimed and conveyed to the State by the Submerged Lands Act of 1953, 67 Stat. 29.

¹¹*State v. Burton*, 29 So. 970 (1901).

of the middle of the Sabine; and the fact that Texas, with Louisiana's acquiescence and encouragement, has borne the cost of all bridges and other improvements to the boundary in the middle of the river.¹²

Neither has Louisiana protested or contested the official maps prepared over the years by agencies of the United States showing the boundary in the middle of the Sabine. On the contrary, such maps have been used and distributed by the State of Louisiana in their mineral leasing and other activities.¹³

Argument

I

There is a controversy between the parties requiring adjudication

Despite the Act of Congress in 1848 permitting Texas

¹²The most recent agreement and mutual action of the two States in improving and sharing the cost and benefits from improvements on the Sabine River is the completion of Toledo Bend Dam, which forms on the Sabine one of the largest man-made reservoirs in the United States. While the Compact for this project (Art. IX) expressly states that it shall not constitute evidence of the boundary location between the two States, its provisions call for and have resulted in equal sharing of the cost of construction of the reservoir and an equal share in the waters derived from such impoundment. 68 Stat. 690.

¹³See Map of the "Port Arthur Quadrangle" compiled in 1957 by the U. S. Army Corps of Engineers, which states on its face that it is "for sale by the U. S. Geological Survey - - and by the State of Louisiana, Department of Public Works, Baton Rouge 4, Louisiana"; Map No. NH 15-8, compiled in 1956 by the U. S. Army Map Service, Corps of Engineers, and published by the U. S. Geological Survey; and the "Texas-Orange Quadrangle" published by the U. S. Geological Survey with the assistance of the U. S. Army Air Corps and the U. S. Coast and Geodetic Survey, edition of 1932.

to extend its boundary to the middle of the Sabine, the State's action pursuant thereto, and more than a century of recognition and acquiescence therein by the State of Louisiana, there now exists a dispute and controversy between the two States as a result of Louisiana's recent adverse claim to jurisdiction and ownership of the entire river. This arose only after valuable minerals were discovered in the subsoil and Texas began selling leases on portions under the western half of the stream for exploration and development. Louisiana, acting through its Attorney General, is now protesting the actions of Texas and its lessees and will continue to harass and obstruct development of valuable minerals unless the boundary issue is settled by final adjudication of this Court. The Legislature of the State of Louisiana recognized the need for an adjudication when it passed an Act in 1942 authorizing the Attorney General of Louisiana to institute proceedings "to locate, rectify and establish the true and correct boundary,"¹⁴ but no action has been taken pursuant thereto.

Repeated efforts have been made by Texas since 1942 to obtain recognition of its lawful boundary through Compact with Louisiana, but these efforts have failed. Irreparable damage will result to the State of Texas if the issue is not promptly adjudicated, and the State has no other adequate remedy.

II

This is an appropriate case for exercise of this original jurisdiction of this Court

This case is one which eminently justifies invoking

¹⁴Act 295, approved July 12, 1942, *Acts of the Louisiana Legislature . . . 1942*.

of the original jurisdiction of this Court. It is not a case of merely monetary importance, nor is it one of only local or transitory significance. It involves the boundary line between two States and the respective extent of the jurisdiction of their constitutions and laws.

Under Article III, Section 2, Clause 2 of the Constitution of the United States and the decisions of this Court in *Virginia v. Tennessee*, 148 U. S. 503; *Rhode Island v. Massachusetts*, 12 Peters 657 and *Durfee v. Duke*, 375 U. S. 106, the present case is a proper one for the exercise of this jurisdiction.

Conclusion

It is respectfully submitted that the motion for leave to file the Complaint should be granted.

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OCTOBER, 1969

By: _____
CRAWFORD C. MARTIN

Certificate

I, Crawford C. Martin, Attorney General of Texas, a member in good standing of the Bar of the Supreme Court of the United States, hereby certify that on the 9th day of December, 1969, I served copies of the foregoing motion for leave to file complaint, by first class mail, postage prepaid, to the office of the Governor and Attorney General, respectively, of the State of Louisiana.

CRAWFORD C. MARTIN
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