No. 36 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1969

THE STATE OF TEXAS,

Plaintiff,

v.

THE STATE OF LOUISIANA,

OPPOSITION OF THE STATE OF LOUISIANA TO THE FILING OF THE COMPLAINT BY THE STATE OF TEXAS, AND MEMORANDUM IN SUPPORT THEREOF

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THE STATE OF TEXAS,

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THE STATE OF LOUISIANA,

OPPOSITION OF THE STATE OF LOUISIANA TO THE MOTION FILED BY THE STATE OF TEXAS

The State of Louisiana, herein appearing through its Attorney General, respectfully objects to this Court granting leave to the State of Texas to file the complaint against the State of Louisiana for the reasons, namely:

I.

When Congress of the United States by joint resolution passed on March 1, 1845, consented that the territory properly belonging to the Republic of Texas and within its boundaries might be created into a State to be admitted into the Union, one of the conditions of such consent was that the new State to be formed was subject to the adjustment by the United States of all questions of boundary that might arise with other governments." (5 Stats. 797). The conditions were accepted by Texas. (1 Sayles Early Laws of Texas, Art. 1531.) By the joint resolution

of Congress, approved December 18, 1845, Texas was admitted as one of the States of the Union. (9 Stats. 108.) In admitting Texas as a State into the Union, Congress specifically reserved to the United States the exclusive power to appear on behalf of the State of Texas to settle all boundary disputes that may arise with other governments which includes the State of Louisiana. Therefore, the State of Texas does not have any right to institute the proceedings alleged in its complaint.

II.

The State of Louisiana further urges that no justicable controversy exists over that portion of the boundary between the State of Louisiana and the State of Texas purported to be covered in the complaint. That portion of the boundary was settled in the Treaty between the United States (as a sovereign nation appearing on behalf of the State of Louisiana) and Spain in 1819, which boundary was later confirmed on January 12, 1828 in a Treaty between the United States and the United Mexican States, and which boundary was recognized and ratified in a Treaty between the Republic of Texas and the United States on April 25, 1838. The boundary was actually surveyed and staked from the Gulf of Mexico on the West side of Sabine Pass, Sabine Lake, and Sabine River to the 32d degree of North latitude, and then North to the 33rd degree of North latitude. This boundary having been surveyed and staked is not in controversy, and, therefore, there is no jus-

ticable controversy over the location of such boundary.

III.

The Act of Congress of July 5, 1848, Chap. 94, 30th Congress, 9 Stat., relied upon by Texas and referred to in Paragraph VII (C) of the proposed complaint, made no transfer of title to any territory and could not transfer title to any territory of the State of Louisiana to the State of Texas without the specific consent of the Legislature of the State of Louisiana which was not given.[1]

IV.

Texas pretends to bring an original action against Louisiana for a judicial determination of the boundary between the two states but sues to have this Court decide a purported title issue, namely; "the jurisdiction over and ownership of the western half of the Sabine River (including Sabine Lake and Sabine Pass) from the mouth of said river on the Gulf of Mexico, to the 32d degree of North latitude." The complaint either sets forth an improper cumulation of actions or makes it uncertain as to the actual character of action to be instituted.

V.

If the court grants permission to the State of Texas to file its complaint, the State of Louisiana reserves the right to plead to the complaint and to

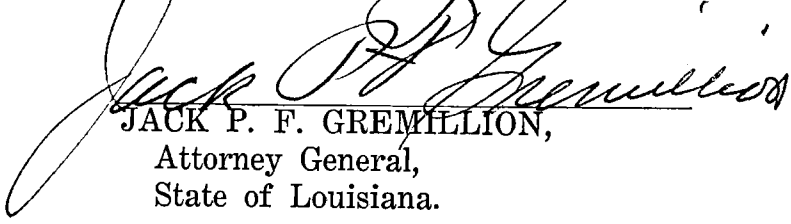
[1] *Louisiana v. Mississippi*, 202 U.S. 1, 26 Sup. Ct. 408 (1906); Art. 4, Sec. 3, U. S. Constitution.

file such other motions, counterclaims and cross claims as the circumstances may justify.

VI.

The State of Louisiana requests permission to be heard on this opposition.

WHEREFORE, the State of Louisiana prays that the motion of the State of Texas to file complaint against the State of Louisiana be denied.



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MEMORANDUM IN SUPPORT OF OPPOSITION

The State of Louisiana, hereinafter referred to as "Louisiana", denies the right of the State of Texas, hereinafter referred to as "Texas", to bring this action against the State of Louisiana for judicial determination of "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 32d degree of North latitude, and that such boundary between the two states be decreed in the middle of said stream." [2]

1.

THE UNITED STATES HAS THE SOLE RIGHT TO APPEAR ON BEHALF OF THE STATE OF TEXAS TO ADJUST AND SETTLE ANY BOUNDARY DISPUTE BETWEEN LOUISIANA AND TEXAS, IF SUCH DISPUTE EXISTS.

When Texas was admitted into the Union as one of the States of the Union on December 18, 1845 (9 Stats. 108), its eastern boundary and the western boundary of Louisiana had already been established, surveyed and staked starting at the River Sabine in the sea and continuing north along the west bank of Sabine Pass, Sabine Lake and Sabine River to the 32d degree of North latitude, thence by a line due North to the 33rd degree of North latitude.[3]

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[2] Prayer from Texas' Proposed Complaint.

[3] 8 Statutes 252; Senate Document 199, 27th Congress, 2d Session, 1842.

Congress of the United States consented that the territory properly belonging to the Republic of Texas and within its boundaries could be formed into a State on certain conditions, one of which was that when the State was formed, the United States reserved the right to make all adjustments of all questions of boundary that might arise with other governments. (5 Stats. 797). These conditions were accepted by Texas. (1 Sayles Early Laws of Texas, Art. 1531.) Texas was admitted as a State of the Union on December 18, 1845. (9 Stats. 108.) Louisiana maintains that no dispute exists over its boundary in the area described in the complaint but that in any event, the United States is vested with the sole right to appear on behalf of Texas to litigate any question of boundary between Texas and Louisiana by virtue of the reservation made by the United States in admitting Texas into the Union.

When once the United States, acting for the benefit of the State of Louisiana, settled and fixed the western boundary of Louisiana in the Treaties with Spain, Mexico and the Republic of Texas, the boundary could not thereafter be changed by the United States to benefit another State to the prejuduce of Louisiana.[4]

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[4] *Louisiana v. Mississippi,* 202 U. S. 1, 26 Sup. Ct. 408, (1906); Art. 4, Sec. 3 U.S. Constitution, which reads as follows:

"New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed

2.

LOUISIANA FURTHER URGES THAT NO JUSTICIABLE CONTROVERSY EXISTS SINCE THE BOUNDARY BETWEEN LOUISIANA AND TEXAS IN THE AREA DESCRIBED IN THE PROPOSED COMPLAINT OF TEXAS HAS ALREADY BEEN ESTABLISHED.

When the Louisiana Territory was a French possession, its western boundary had not been determined. The Louisiana Territory was secretly transferred by France to Spain on November 3, 1762, with the western boundary still indefinite. The Louisiana Territory was retroceded to France by Spain in 1800. The Louisiana Territory was then purchased by the United States from France in 1803, with the western boundary still in doubt.[5] By an act of Congress of March 25, 1804 (2 Stats. 283) there was created out of the Louisiana Purchase the Territory of Orleans, "which lies South of the Mississippi Territory and of an East and West line to commence on the Mississippi River, at the 33rd degree of North latitude, and to extend West to the western boundary of the said cession". The western boundary was not given since it had not at that time been established.

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by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress."

[5] Historical Sketch of "Louisiana" and the Louisiana Purchase, by Hank Bowle—Department of Interior Central Land Office—1933.

In November, 1811, a Convention met in New Orleans for the purpose of drafting a Constitution and to create a state of the Territory of Orleans. On April 10, 1812, the Territory of Orleans became the State of Louisiana. A few days later, a portion of West Florida between the Mississippi and Pearl Rivers (the present Florida parishes) was added to the State of Louisiana.[6]

The act enabling Louisiana to form a State reads in part as follows:

> "That the inhabitants of all that part of the territory or country ceded under the name of Louisiana, by the treaty made at Paris on the 30th of April, 1803, between the United States and France, contained within the following limits, that is to say, beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of said river, including all islands, to the thirty-second degree of latitude, thence due north to the northern-most part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the river Mississippi; thence down the said river to the river Iberville; and from thence along the middle of the said river and Lakes Maurepas and Pontchartrain, to the Gulf of Mexico; thence bounded by the said gulf to the place of beginning; including all islands within three leagues of the coast, be and they are hereby authorized to form for themselves a constitution and State government, and to assume such name as they may deem

[6] Gayrre, *History of Louisiana,* Vol. 4, pp. 265-275; see also, Encyclopedia Britanncia, Vol. 14, 14th Edition, p. 429.

proper, under the provisions hereinafter mentioned." [7]

Chambers, in his *History of Louisiana*, Vol. 1, p. 506 noted that the bill authorizing the creation of the State of Louisiana out of the Territory of Orleans fixed the Sabine as the western boundary even though Spain had never conceded the western limits of the Orleans Territory extended that far.

Congress admitted the new State into the Union and the President approved the Act of Congress on April 8, 1812 (2 Stat. 701.)

It, therefore, becomes quite obvious from the above that the new State of Louisiana was to encompass the whole of the Orleans Territory which was created by an Act of Congress in 1804, and the area on the east known as the Florida Parishes.

The question arose concerning the location of the Western boundary of the Orleans Territory which was to be the Western boundary of the State of Louisiana. The location of this western boundary had not been established when Louisiana was admitted as a State, for the United States was still negotiating with Spain at the time of the admission of Louisiana to statehood as to its western boundary.[8]

This dispute, as to the Western limits of the Or-

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[7] Annals of Congress, 1810-1811, p. 1326; Alcee Fortier, "A History of Louisiana"; Martin's "History of Louisiana."

[8] Thomas Jefferson, "The Limits and Bounds of Louisiana;" Marshall, "History of the Western Boundary of the Louisiana Purchase;" Phillip Coolidge, "Diplomacy and the Borderlands" (the Adams-Onis Treaty).

leans Territory continued between the United States and Spain. Finally a neutral zone was agreed to between General Wilkinson, representing the United States, and Lieutenant Colonel Herrera, representing Spain, in 1806. The neutral zone was ostensibly between the Sabine River to the 32d degree of North latitude, thence a straight line north to the Red River as the west boundary, thence a straight line running from the Rio Roxo to the intersection of the Mermento River a few miles from its mouth, thence the Mermento River to the Gulf of Mexico as the eastern boundary, and the Gulf of Mexico as the southern boundary. This neutral zone existed from 1806 to 1821. The condition that existed is graphically portrayed in "The Neutral Ground between Louisiana and Texas, 1806 to 1828".[9]

Louisiana had no authority to negotiate a boundary dispute with a foreign power. This is made very clear by the United States Constitution wherein this right is reserved to the Federal government. (See United States Constitution, Article I, Section 10, Clause 1, Article II, Section 2.)

To illustrate the disagreement over the western boundary, we call the Court's attention to some of the negotiations. On October 24, 1818, the Spanish Minister "to avoid all cause of dispute in the future" proposed to Mr. Adams, Secretary of State, that the

[9] Haggard, "The Neutral Zone Between Louisiana and Texas," Vol. 28 *The Louisiana and Historical Quarterly*, No. 4, (Oct. 1945) See also: Document 190, H. of R., 25th Congress, 2d Session (1838).

limits of possession of the two governments west of the Mississippi should be designated by a line beginning "on the Gulf of Mexico, between the Rivers Mermento and Calcasia, following the Arroyo Hondo between the Los Adaes and Natchitoches crossing the Rio Roxo or Red Rivers at the 32d degree of latitude, etc." (Annals of Congress, 15th Congress, 2d Session, 1819, p. 1900.) This proposal was not agreeable to Mr. Adams and finally Mr. Adams proposed to the Spanish Minister as a final proposal that Article III read that "the boundary line between the two countries west of the Mississippi shall begin on the Gulf of Mexico at the mouth of the River Sabine in the sea, continuing north along the west bank of that river to the 32d degree of latitude; thence by a line due north to the 32d degree of latitude where it strikes Rio Roxo of Natchitoches, etc." This was finally agreed to as the dividing line by the Treaty of 1819. (Annals of Congress, Appnd., 16th Congress, 2d Session, pp. 2120, 2121, 2123.) *It was* also provided in the same Treaty that "all the islands in the Sabine and the said River Red and Arkansas River throughout the country thus described belong to the United States; *but the use of the waters and navigation of the Sabine to the sea and of the said Rivers Rio Roxo and Arkansas throughout the extent of the said boundary on their respective banks shall be common to the respective inhabitants of both nations.*" (Underscore ours) [10]

[10] By this Treaty, which fixed the right of the parties, it is important to note the "use of the waters and navigation of

By the Treaty of 1828 between the United States of America and the United Mexican States, concluded January 12, 1828, the dividing limits of the respective countries were declared to by the same as those fixed by the Treaty of 1819. (8 Stats. 372.)

The Republic of Texas by an Act passed December 19, 1836, declared that the civil and political jurisdiction of that Republic recognized this boundary. (1 Sayles Early Laws of Texas, Art. 257.)

On the 25th of April, 1838, a Convention was concluded between the United States and the Republic of Texas for marking the boundary referred to in the Treaty of 1828. A Joint Commission was appointed with representatives of the Republic of Texas and the United States to survey out the boundary between the Republic of Texas and the State of Louisiana. The survey was completed.[11] This formed the western boundary of Louisiana.

The findings of the commission necessitated a resurvey of that portion of the lands of Louisiana transversed by the newly marked boundary. Under

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the Sabine to the sea. . . throughout the extent of such boundary on their respective banks shall be common to the inhabitants of both nations." It is clear from this language that neither the inhabitants of Louisiana nor of Texas have the exclusive use of the waters in the Sabine River or to navigate on these waters. But inasmuch as Louisiana had long exercised the jurisdiction mentioned, Congress wanted to be sure that Texas had the same common use of the Sabine, and that was the reason for the passage of the Act of Congress of July 5, 1848, 9 Stat. 245.

[11] Senate Document 199, 27th Congress, 2d Session, 1842, pp. 297 et seq. See also: 5 Stat. 312.

contract dated December 23, 1845, George W. Moss, Deputy Surveyor, was designated to retrace the meridional boundary and connect thereto the survey of the lands in Louisiana. Moss performed this work in the first quarter of 1846, and his notes and township plats were approved at Donaldsonville, Louisiana, by the Surveyor General of Louisiana on July 4, 1846. Louisiana has occupied the land portion of the boundary as thus established from the 32d degree of North Latitude to the 33rd degree of North latitude. The remainder of the boundary is a water boundary along the west bank of Sabine Pass, Sabine Lake and Sabine River.

By joint resolution passed on March 1, 1845, Congress consented that the territory properly belonging to the Republic of Texas and within its boundaries might be created into a State to be admitted to the Union. One of the conditions of such consent being that a new State be formed, subject to the adjustment by the United States of all questions of boundary that might arise with other governments. (5 Stats. 797). The conditions were accepted by Texas. (1 Sayles Early Laws of Texas, Art. 1531). By the joint resolution of Congress approved December 18, 1845, Texas was admitted as one of the States of the Union on an equal footing in all respects with the original states .(9 Stats. 108).

It thus becomes obvious that the western boundary of the State of Louisiana was that boundary established by the United States in the Treaty of 1819, and confirmed in the Treaty between the United

States and the United Mexican States in 1828, and again recognized in the Treaty between the Republic of Texas and the United States on April 25, 1838, and which was finally surveyed and marked on the ground.

At this point, there was nothing that the United States could do to change this boundary of the State of Louisiana.[12] This is actually not an action to establish a boundary. The boundary has already been established. This is a case where one State is attempting to acquire the property of another State by prescription.

3.

THE COMPLAINT WHICH TEXAS PROPOSES TO FILE AGAINST LOUISIANA CONSTITUTES EITHER AN IMPROPER CUMULATION OF ACTIONS OR MAKES IT CONJECTURAL AS TO THE NATURE OF THE ACTION PLEADED.

Texas confuses the issue, if any exists at all, in confecting its complaint, by asking the Court to decide whether that State or the State of Louisiana has "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 also requests the Court to adjudicate "*such portion* of the boundary between the two

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[12] *Louisiana v. Mississippi,* 202 U.S. 1, 26 Sup. Ct. 408, (1906); Art. 4, Sec. 3 U.S. Constitution.

states." It appears that Texas has improperly cumulated two separate and distinct actions, one of title and the other of boundary; moreover, the actual dispute, if one even remotely exists, is the boundary, the entirety of the boundary, between the two States, not the location of the boundary of the western half of the Sabine River. The boundary could not possibly lie between the center and the west bank of the river.

No dispute whatever exists, or could remotely exist, as to jurisdiction. The use of the Sabine River is common to both states, and Congress made that common use of the Sabine River even more definite by adopting the Act of July 5, 1848, 9 Stat. 245. This Act did not purport to transfer title since Congress recognized that it had no *power to transfer the property* of one State to another.

It is not contended that a title action could not be instituted by Texas against Louisiana in this Court, provided a justiciable controversy is clearly shown to exist in the complaint, but Louisiana is entitled to determine from the complaint itself whether Texas proposes by its complaint to institute a title action, a boundary action, or a cumulation of such actions against Louisiana, for only such knowledge would enable Louisiana to plead relevantly, intelligently and safely; moreover, different principles of law are involved in the two actions mentioned. Only the United States could bring a boundary action on behalf of Texas. Even if a dispute of some character exists between the two states, the complaint should be specific and not leave the question open to con-

jecture as to the specific dispute on which the action is predicated, and that such particular dispute is set forth in the complaint clearly enough to reveal the existence of a justiciable controversy.

CONCLUSION

By filing these objections, Louisiana does not admit the correctness of any allegation or allegations made in the complaint which Texas proposes to file. Should this court, with or without oral argument, grant leave to Texas to file such complaint, Louisiana reserves the right to plead to the complaint and/or interpose such motions, counterclaims and cross claims as the circumstances may justify.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jack P. F. Gremillion, Attorney General of Louisiana, and a member of the bar of the Supreme Court of the United States, hereby certify that on the 2 day of February, 1970, I served copies of the foregoing opposition by the State of Louisiana to the motion filed by the State of Texas, and memorandum in support thereof, by transmitting conforming copies of the same, by first class mail, postage prepaid, to the Office of the Governor and Office of the Attorney General, respectively, of the State of Texas.

Jack P. F. Gremillion

JACK P. F. GREMILLION
Attorney General
State of Louisiana