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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,

Defendant.

MOTIONS AND ANSWER OF THE STATE OF  
LOUISIANA TO COMPLAINT BY THE  
STATE OF TEXAS

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The State of Louisiana, herein appearing through its Attorney General, and in response to the complaint filed by the State of Texas, avers:

**FIRST DEFENSE**

The complaint filed by the State of Texas fails to state a claim upon which relief can be granted.

**SECOND DEFENSE**

The State of Texas failed to make the United States a party plaintiff to these proceedings, the proper party to bring these proceedings on behalf of the State of Texas. When Congress of the United States, by joint resolution passed on March 1, 1845, consented that the territory belonging to the Republic of Texas within its boundary 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 Stat. 797.) The conditions were accepted by Texas. (1 Sayles Early Laws of Texas, Art. 1531.) By joint resolution of Congress, approved December 18, 1845, Texas was admitted as one of the States of the Union (9 Stat. 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 United States is an indispensable party plaintiff to this litigation.

### THIRD DEFENSE

The State of Louisiana pleads accord and satisfaction in that the boundary between the State of Texas and the State of Louisiana, set forth in the complaint, 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 confirmed on January 12, 1828 in a Treaty between the United States and the United Mexican States and on April 25, 1838 in a Treaty between the Republic of Texas and the United States. The boundary was thereafter surveyed and staked by a Joint Commission appointed by the Republic of Texas and the United States from the Gulf of Mexico along

the west bank 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 (Senate Document 199, 27th Congress, 2d Session, 1842). The boundary having thus been fixed is not in dispute and, therefore, the State of Texas is not empowered to change such boundary.

#### FOURTH DEFENSE

In answer to each paragraph of the complaint filed by the State of Texas, the State of Louisiana avers:

1.

Article I requires no answer.

2.

In answer to Article II the State of Louisiana admits that the United States Congress approved an Act on July 5, 1848 (9 Stat. 245), which Act is the best evidence of its contents and provisions, but denies that the Statute had the effect of transferring title from the State of Louisiana to the State of Texas of the western half of the river bed and subsoil of Sabine River (including Sabine Pass and Sabine Lake) from the Gulf of Mexico to the 32nd degree of north latitude.

Further answering said Article the State of Louisiana admits that the Legislature of the State of Texas passed an Act approved November 24, 1849 (3 Gammels Laws of Texas 442), which Act is the best evidence of its contents and provisions, but the State of Louisiana denies that the Act had the effect of transferring from the State of Louisiana to the State of

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Texas title to the west half of the river bed and subsoil of Sabine River (including Sabine Pass and Sabine Lake) from the Gulf of Mexico to the 32nd degree of north latitude.

3.

Article III is denied.

4.

In answer to Article IV the State of Louisiana admits that since the western boundary of the State of Louisiana was established by the Treaty of 1819 and surveyed under a Commission appointed by the Republic of Texas and the United States by virtue of the Treaty dated April 25, 1838, the western boundary of the State of Louisiana was and has been fixed from the Gulf of Mexico along the west bank of Sabine Pass, Sabine Lake and Sabine River to the 32nd degree of north latitude and thence north to the 33rd degree of north latitude and that the Sabine Pass from the Gulf of Mexico, Sabine Lake and Sabine River are one continuous body of navigable water, which the State of Louisiana will collectively refer to as the "Sabine River", for clarity and convenience, in answer to this complaint.

5.

Article V is denied.

6.

Article VI is denied.

Further answering said paragraph the State of

Louisiana avers that by Act of Congress of March 25, 1804 (2 Stat. 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. On April 10, 1812, the Territory of Orleans became the State of Louisiana. A few days later a portion of West Florida was added to the State of Louisiana. At the time the State of Louisiana was admitted into the Union the western boundary of the Territory of Orleans, from which it was formed, had not been established. There was in existence an agreement in 1806 entered into between General Wilkinson, representing the United States, and Lieutenant Colonel Herrera, representing Spain, establishing a neutral zone between the Sabine River to the 32nd degree of north latitude, thence a straight line running from the Rio Roxo to the intersection of the Mermentau River a few miles from its mouth, thence along the Mermentau River to the Gulf of Mexico as the eastern boundary, and the Gulf of Mexico as the southern boundary. The western boundary of the State of Louisiana, as contained in its Act of Admission, was still to be established between the United States, acting for the State of Louisiana under its constitutional authority (see United States Constitution, Article I, Section 10, Clause 1, Article II, Section 2) and Spain. The boundary was finally settled by the Treaty of 1819

(Annals of Congress, Appnd., 6th Congress, 2d Session, pp. 2120-23). The boundary was established as beginning on the Gulf of Mexico at the mouth of Sabine River in the sea and continuing north along the west bank of that river to the 32d degree of north latitude; thence by a line due north to the 33rd degree of north latitude, etc., including "all the islands in the Sabine . . . 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".

## 7.

Article VII is denied.

Further answering each subparagraph of said Article the State of Louisiana avers:

A. In answer to this subparagraph the State of Louisiana refers the Court to its answer to Article VI of the complaint.

B. In answer to subparagraph B the State of Louisiana admits the existence of Senate Documents, 30th Congress, 1st Session, 1848, Miscellaneous No. 135, which document is the best evidence of its contents and provisions, but specifically denies that this document evidenced any intent on the part of the State of Louisiana to give up any of its title to the river bed and subsoil of the western half of the Sabine River. The waters and navigation of the Sabine River were and are common to both States and this resolution, if it



had any effect, only related to the water and navigation of the Sabine River.

C. Subparagraph C is denied.

Further answering, the State of Louisiana avers that it has never consented or acquiesced in any purported claim made by the State of Texas of jurisdiction, sovereignty, possession and ownership over the river bed and subsoil of the west half of the Sabine River.

D. The allegations of subparagraph D are denied for lack of sufficient information on which to form a belief, except that the State of Louisiana avers that it has continued to claim jurisdiction over, and ownership of, the river bed and subsoil of the west half of the Sabine River, including all islands, and that the case of *State v. Burton*, 105 La. 516, 29 So. 970 (1901) refers to the enforcement of criminal law on the waters of Sabine River and does not pertain to the State of Louisiana's ownership of the river bed and subsoil of the Sabine River to its western bank, including all islands.

E. In answer to subparagraph E the State of Louisiana avers that it has recognized the State of Texas' right of use and navigation of the waters of Sabine River along with the State of Louisiana as established in the Treaty of 1819 and by virtue of which the State of Louisiana has co-operated with the State of Texas in building bridges and providing ferries across the Sabine, but has never recognized or conceded any ownership in the State of Texas to the river

bed and subsoil of the Sabine River to its western bank, including all islands, and the remaining allegations of said subparagraph are denied.

F. Subparagraph F is denied for lack of sufficient information on which to form a belief.

Further answering, the State of Louisiana avers that it has recognized the right of the State of Texas to the use and navigation of the waters of the Sabine River along with the State of Louisiana as provided in the Treaty of 1819, but has never acquiesced in any purported claim of the State of Texas to the ownership of any portion of the river bed and subsoil of the Sabine River including all islands.

### 8.

The allegations of Article VIII are denied except that the State of Louisiana admits that it has and is asserting title to the river bed and subsoil of Sabine River to its western bank, including title to all islands, from the Gulf of Mexico to the 32d degree of north latitude and thence north to the 33rd degree of north latitude, including the submerged lands in the Gulf of Mexico acquired under the Submerged Lands Act. The State of Louisiana admits that it is objecting to the State of Texas leasing any of its territory set forth above and has threatened lawsuits against the State of Texas and its lessee.

The State of Louisiana avers that it has asserted ownership to the above and that it has attempted to resolve this dispute with the State of Texas without any success.

## 9.

In answer to Article IX the State of Louisiana admits this Honorable Court has original jurisdiction in disputes between States.

Further answering, the State of Louisiana avers that the boundary between the State of Louisiana and the State of Texas was settled in the Treaty between the United States as a sovereign nation, appearing on the part of the State of Louisiana, and Spain in 1819, which boundary was later confirmed on January 12, 1828, and on April 25, 1838 and actually surveyed and staked commencing in the Gulf of Mexico on the west side of Sabine River, thence along the west side of said river to the 32d degree of north latitude and thence north to the 33rd degree of north latitude (Senate Document 199, 27th Congress, 2d Session, 1842, pp. 297 et seq. See also: 5 Stat. 312), which boundary the State of Louisiana asserts in these proceedings is the actual boundary between the State of Texas and the State of Louisiana, and should be recognized and confirmed by this Honorable Court as such.

### **FIFTH DEFENSE**

#### **Motion to Refer to a Master for Initial Determination**

While the State of Louisiana maintains the boundary between it and the State of Texas has been established and surveyed, nevertheless in view of the claims made by the State of Texas and the response of the State of Louisiana, it is respectfully suggested that this is an appropriate case to be referred to a Master

for initial determination for a variety of reasons, namely:

(a) This litigation is of vast importance to the State of Louisiana and to the State of Texas and a resolution of the issues raised by both parties will require a most searching examination into all of the historical facts surrounding the Louisiana Purchase, the evolution of the States of Louisiana and Texas, and of the various treaties fixing and establishing the western boundary of the State of Louisiana.

(b) While the State of Louisiana disputes many of the facts alleged in the complaint filed by the State of Texas and the inferences to be drawn therefrom, it must be conceded that in a determination of this controversy a thorough investigation into, and a development of, all the facts relating to the use of the waters and the navigation of Sabine River from the date of the Louisiana Purchase to the present time should be established.

(c) The complaint of the State of Texas in itself justifies a suggestion to this Honorable Court that a Special Master should be appointed to receive and consider the evidence purported to be offered by the State of Texas in support of their allegation and by the State of Louisiana in refutation thereof.

(d) It will be necessary to consider the debates, correspondence, legislative enactments and other historical data on the events leading up to the creation of the State of Louisiana and the settlement of its western boundary by the Treaties of 1819 (Annals of

Congress, Appnd., 16th Congress, 2d Session, pp. 2120, 2121, 2123), 1828 (8 Stat. 372), and 1838 and the actual surveying and staking of the western boundary of the State of Louisiana (Senate Document 199, 27th Congress, 2d Session, 1842, pp. 297 et seq. See also: 5 Stat. 312).

(e) The State of Louisiana asserts in its complaint that the boundary between the State of Louisiana and State of Texas has already been established and that Louisiana has taken physical possession of that landed part of the boundary from the 32d degree of north latitude north to the 33rd degree of north latitude and has asserted ownership over the river bed and subsoil of the Sabine River to its western bank, including title to all islands from the Gulf of Mexico to the 32d degree of north latitude.

(f) If this Honorable Court should determine that the western boundary of the State of Louisiana was not fixed from the Gulf of Mexico along the west bank of Sabine Pass, Sabine Lake and Sabine River, to the 32 degree north latitude then evidence will be required to determine the exact location of the boundary of the State of Louisiana in the Sabine Pass, Sabine Lake and Sabine River, including the location of all islands which belong to the State of Louisiana from the Gulf to the 32d degree of north latitude.

(g) This Court has not hesitated to appoint a Special Master where there is a strong indication that to properly resolve the dispute involved in the original action it is necessary to consider volumes of evidence and to make findings of fact so that this Honorable

Court would be able to ultimately resolve the dispute. The Court said, in the case of *United States v. Texas*, 339 U. S. 707, 715 (1950), as follows:

“The Court in original actions, passing as it does on controversies between sovereigns which involve issues of high public importance, has always been liberal in allowing full development of the facts. *United States v. State of Texas*, 162 U. S. 1, 16 S. Ct. 725, 40 L. Ed. 867; *State of Kansas v. State of Colorado*, 185 U. S. 125, 144, 145, 147, 22 S. Ct. 552, 558, 559, 560, 46 L. Ed. 838; *State of Oklahoma v. State of Texas*, 253 U. S. 465, 471, 40 S. Ct. 580, 582, 64 L. Ed. 1015. If there were a dispute as to the meaning of documents and the answer was to be found in diplomatic correspondence, contemporary construction, usage, international law and the like, introduction of evidence and a full hearing would be essential.”

The Supreme Court, in the now pending case of *United States v. Louisiana*, 394 U. S. 11, 89 S. Ct. 773, referred to a Special Master various issues of fact to be resolved.

In justifying our request for a Special Master we call the Court's attention to “The Original Jurisdiction of the United States Supreme Court”, 11 Stan. L. Rev. 665, 701-19 (1959); *United States v. Utah*, 283 U. S. 64 (1931); *United States v. Wyoming*, 331 U. S. 440 (1947); *New Jersey v. Delaware*, 291 U. S. 361 (1934) and *Colorado v. Kansas*, 320 U. S. 383 (1943).

The reference of the case to a Special Master will not result in any delay, but will establish a forum for an orderly presentation of the evidence to be offered

by the parties to this litigation and a finding on this evidence by a Special Master to be submitted to this Honorable Court for a final decision.

The State of Louisiana respectfully submits, for the above reasons, that this case be referred to a Special Master and that the Master be instructed particularly to prepare detailed findings upon (a) the contention of the State of Louisiana that the United States in the Treaties of 1819, 1828 and 1838, acted on behalf of the State of Louisiana in settling the western boundary of the State of Louisiana; (b) the contention by the State of Louisiana that the boundary between the State of Louisiana and State of Texas has already been settled and surveyed; (c) the contention of the State of Louisiana that the Act of July 5, 1848 permitting the State of Texas to extend its jurisdiction to the center of the Sabine River had no effect of transferring any of the title to the river bed and subsoil of the Sabine River from the Gulf of Mexico to the 32nd degree of north latitude, which was owned by the State of Louisiana; and (d) the contention of the State of Louisiana that it accepted the boundary as established by the Treaties and surveyed by the Joint Commission by adjusting its boundary to conform to the survey and by taking possession up to the survey along the landed portion of the boundary from the west bank of the Sabine River at the 32d degree of north latitude north to the 33rd degree of north latitude and of the river bed and subsoil of the Sabine River to its western bank, including all islands from the Gulf of Mexico to the 32d degree of north latitude.

In making this motion the State of Louisiana reserves the right to provide the evidence and historical material referred to above to this Honorable Court in the most efficient manner prescribed by this Court, if the motion is denied.

WHEREFORE, the State of Louisiana prays that this matter be referred to a Special Master for initial determination on the various motions and merits of this controversy and that the Master be instructed to prepare detailed findings upon the contentions of the State of Louisiana, and on such other matters as this Honorable Court may direct.

PRAYS FURTHER that this Court decree that the boundary between the State of Louisiana and the State of Texas was established by the Treaties of 1819, 1828 and 1838, and fixed by the survey of the Joint Commission; that such boundary still exists, and that the claims set forth by the State of Texas be rejected.

Respectfully submitted,

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State of Louisiana.

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Assistant Attorney General.

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JACOB H. MORRISON,  
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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 \_\_\_\_\_ day of \_\_\_\_\_, 1970, I served copies of the foregoing motions and answer by the State of Louisiana to the complaint filed by the State of Texas, by transmitting conformed 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.

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JACK P. F. GREMILLION,  
Attorney General,  
State of Louisiana.

