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MAY 27 1970

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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

**MOTION FOR JUDGMENT AND MEMORANDUM
WITH RESPECT TO THE MOTION AND REPLY
TO DEFENDANT'S ANSWER AND MOTION**

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IN THE
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No. 36, Original

THE STATE OF TEXAS,

v.

Plaintiff

THE STATE OF LOUISIANA,

Defendant

MOTION FOR JUDGMENT

The State of Texas moves the Court for judgment as prayed in the Complaint on the ground that there is no genuine issue as to any material fact and the State of Texas is entitled to judgment as a matter of law.

CRAWFORD C. MARTIN
Attorney General of Texas

May 1970

MEMORANDUM WITH RESPECT TO MOTION FOR JUDGMENT

Pursuant to the Court's permission for the State of Texas to file its Complaint, the State of Louisiana has filed its Answer to the Complaint and a motion for referral of the case to a Special Master. The answer raises no genuine issue as to any material fact.

The controlling issue, as framed by the pleadings, is whether the western half of the Sabine River¹ from its mouth to the 32nd degree of north latitude was part of the territory of the United States of America and subject to its jurisdiction and ownership on July 5, 1848, when the Congress (9 Stat. 245) gave consent for the State of Texas to extend its eastern boundary so as to include such area. Texas alleges that the United States possessed such exclusive territorial jurisdiction and ownership on July 5, 1848, and Louisiana denies it.

A determination of the issue depends upon the proper legal interpretation of portions of two treaties, four Acts of Congress, the 1812 Constitution of Louisiana, and one Act of the Texas Legislature, which are cited by the parties in support of their opposing contentions. All are subject to judicial notice. There is no uncertainty or dispute about the wording or meaning of their terms, none of which is subject to being varied by extrinsic evidence. These treaties and laws are as follows:

1. The Louisiana Purchase Treaty of 1803 (8 Stat. 200), under which Louisiana admits that the half of the Sabine River in controversy

¹Defendant admits that Sabine Pass, Sabine Lake, and Sabine River form one continuous body of navigable water. Defendant's Answer, page 4, par. 4. For convenience they are collectively referred to as "Sabine River."

was part of the territory acquired by the United States from France.²

2. The Act of Congress of March 26, 1804 (2 Stat. 283) creating the Territory of Orleans from that portion of the Louisiana Purchase lying west of the Mississippi River and south of the 33rd degree of north latitude. Louisiana admits that the western boundary of this Territory, from which the State of Louisiana was formed, "had not been established."
3. The Act of Congress of February 20, 1811 (2 Stat. 641) providing "That the inhabitants of all *that part* of the territory or country ceded under the name of Louisiana . . . *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 the said river, including all islands to the thirty-second degree of latitude*; thence due north to the northernmost part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the river Mississippi . . . be, and they are hereby authorized to form for themselves a constitution and state government." . . .⁴ Louisiana does not deny the passage or the terms of this enabling act.
4. The Constitution of the State of Louisiana adopted on January 22, 1812, in which the western boundary of the new State was fixed in the middle of the Sabine River in the same wording authorized by Congress. Louisiana

²Defendant's Answer, p. 5. Louisiana does not deny Plaintiff's allegations that "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. 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." Complaint and Brief, p. 9.

³Defendant's Answer, p. 5.

⁴Emphasis supplied unless otherwise noted.

does not deny the wording of this provision of its Constitution, and neither does it deny the specific allegation of Plaintiff (Complaint, p. 5, par. A) that “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.”

5. The Act of Congress of April 8, 1812 (2 Stat. 701) admitting the State of Louisiana into the Union, with the preamble reciting that “the representatives of the people of all *that part* of the territory . . . *contained within the following limits*” . . . (here repeating the same boundaries quoted in 3 above), “did . . . form for themselves a constitution and state government.” . . . Louisiana does not deny the terms of the Act of Admission, but alleges that it and 3 and 4 above did not fix the western boundary of the State. Defendant’s Answer, pp. 4-6.
6. The Treaty, 1819, of Amity, Settlement, and Limits between the United States and Spain (8 Stat. 252), whereby the United States relinquished to Spain its claim to all of that portion of Texas lying west of the west bank of the Sabine and a line drawn north from the intersection of the Sabine and the 32nd degree of north latitude to the Red River and thence with the Red River and other boundaries west to the Pacific Ocean, in exchange for Spain’s relinquishment to the United States of all claims to territory east and north of the above line, including the disputed area of West Florida. Louisiana alleges (Defendant’s Answer, pp. 5-6) that the United States was “acting for the State of Louisiana” in making this treaty and boundary agreement with Spain, and that this treaty had the effect of automatically extend-

ing the western boundary of the State of Louisiana to the west bank of the Sabine.*

Texas denies that the United States was “appearing on the part of the State of Louisiana” in making the treaty or in its subsequent marking of this west bank boundary with the successors of Spain. Texas alleges that this treaty, as clearly recited on its face, was made by the United States on its own behalf respecting the limits of its “bordering territories in North America”; that the State of Louisiana is not referred to in the treaty or in the proceedings leading up to its consummation; that from 1803 until November 24, 1849, the United States had exclusive jurisdiction and ownership over the western half of the Sabine the same as over all other territory ceded in the Treaty of 1819 which lay outside the boundaries of the State of Louisiana and other States.

7. The Act of the Congress of July 5, 1848 (9 Stat. 245) authorizing the State of Texas to “extend her eastern boundary so as to include within her limits one half of Sabine Pass, one half of Sabine Lake, also one half of Sabine River, from its mouth as far north as the thirty-second degree of north latitude.” Louisiana admits this enactment 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 riverbed and subsoil of Sabine River. . . .” Defendant’s Answer, p. 3.
8. Act of the Texas Legislature, November 24, 1849, extending its eastern boundary to the middle of the Sabine as authorized by Congress. 3 Gammels Laws of Texas 442. Louisiana

*Louisiana also alleges that this west bank boundary was subsequently confirmed when the United States entered agreements with Mexico in 1828 and the Republic of Texas in 1838 for the marking of same on the ground. Defendant’s Answer, p. 9.

makes the same admission and denial of effect here as with respect to 7 above. Defendant's Answer, pp. 3-4.

Obviously, the Court may take judicial notice of the above listed acts and treaties which the parties agree to be relevant and controlling. Their proper interpretation involves only questions of law. Neither party alleges that any of their terms or meanings are uncertain. The only dispute arises from the opposing legal interpretations of their effect. For these reasons the State of Texas submits that the case should be decided on the basis of the pleadings, briefs and arguments, and that there is no reason to refer the case to a Special Master.

It is respectfully suggested that Plaintiff's Motion for Judgment be set for hearing on a date which will permit Plaintiff 60 days within which to file its brief in support of the Motion, the Defendant 60 days thereafter for its brief in opposition, and the Plaintiff 30 days for reply.

Respectfully submitted,

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PLAINTIFF'S REPLY TO DEFENDANT'S ANSWER AND OPPOSING DEFENDANT'S MOTION FOR APPOINTMENT OF A SPECIAL MASTER

Plaintiff's foregoing Memorandum With Respect to its Motion for Judgment constitutes a partial reply to Defendant's Answer and motion for referral to a Special Master, but this Reply will formally respond to Defendant's enumerated separate defenses in the same order as they are set forth in Defendant's Answer.

REPLY TO FIRST DEFENSE

To Defendant's allegation that the Complaint "fails to state a claim on which relief can be granted," Plaintiff simply says that it is obvious from the pleadings (See Defendant's Answer, page 8, paragraph 8) that a real controversy does exist and that this Court has jurisdiction under Article III, Section 2, Clause 2, of the Constitution of the United States. The Court has so decided in granting leave to file the Complaint.

REPLY TO SECOND DEFENSE

The provision in the Texas Annexation Agreement (5 Stat. 797) that it was "subject to the adjustment by the United States of all questions of boundary that might arise with other governments" was applicable to disputes with foreign nations, particularly Mexico, and it does not require that the United States be a party to or appear on behalf of Texas in this dispute with another State of the Union.^o

^oSee the Court's opinion in *United States v. Louisiana, et al.*, 363 U.S. 1, 44-62, for a complete discussion of the meaning of this provision and the manner in which it was carried to conclusion. There the Court said at page 44: "Rather, the precise fixation of the new State's boundaries was left to future negotiations with Mexico. The circumstances surrounding the Resolution's passage make it clear that this was the understanding of Congress."

Further, the provision applied only to that territory which was in 1845 “properly included within and rightfully belonging to the Republic of Texas.” The western half of the Sabine River was never within the boundaries of the Republic of Texas. It became a part of the State of Texas only by Act of Congress on July 5, 1848 (9 Stat. 245) authorizing the State to “extend her eastern boundary” to include the western half of the Sabine River and by Act of the Texas Legislature so extending the boundary on November 24, 1849.

If in fact the United States had any responsibility under the Texas Annexation Agreement for adjusting future domestic boundaries, it was no greater than the responsibility it has under the Constitution with respect to approval of changes in any State’s boundary, and it was fully discharged with respect to the Sabine boundary by the Act of July 5, 1848. In no event is the United States a necessary party to this action, since it has already acted and this suit seeks to uphold that action and the jurisdiction and title the United States granted to Texas as against the adverse claims of Louisiana.

REPLY TO THIRD DEFENSE

Plaintiff denies Defendant’s plea of “accord and satisfaction” based upon a contention that the State of Louisiana’s western boundary was automatically extended to the west bank of the Sabine River when the United States relinquished its claim to all territories west of the west bank of that stream in the Treaty with Spain in 1819. (8 Stat. 252) Plaintiff specifically denies that in this instance the United States was “appearing in behalf of the State of Louisiana” in making the Treaty of 1819 or in its subsequent agreements with Mexico and the Republic of

Texas for marking the west bank boundary. The Treaty of 1819 recites that it was made by the United States on its own behalf, as the national sovereign, respecting the limits of its "bordering territories in North America." The State of Louisiana is not mentioned or referred to in the Treaty or the proceedings leading up to its consummation or in any subsequent confirmations thereof with Mexico and the Republic of Texas as successors to the government of Spain.

The United States exercised exclusive jurisdiction and ownership over the west half of the Sabine River from the time of the Louisiana Purchase in 1803 until it authorized Texas to extend its eastern boundary to the middle of the stream by Act of Congress on July 5, 1848, in the same manner that the United States exercised jurisdiction over all of the other territory relinquished by Spain which lay outside the boundaries of the State of Louisiana and other States.

The Congress permitted Louisiana to include within its State boundaries only the eastern half of the Sabine, including all islands within the stream (2 Stat. 641; 2 Stat. 701), and the State of Louisiana by its Constitution of 1812 adopted such middle of the stream boundary. Neither the United States nor Louisiana has ever enacted any law extending such western boundary of the State of Louisiana. On the contrary, the State of Louisiana acquiesced in the possession, title and jurisdiction of the United States over the west half of the Sabine from 1812 to 1849, and of the State of Texas from November 24, 1849 until this controversy arose.⁷

⁷The Louisiana Legislature, by Resolution adopted April 28, 1848, so recognized the status of the area by reciting 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 Cong. 1st Sess. 1848, Misc. No. 135.

REPLY TO FOURTH DEFENSE

Defendant's FOURTH DEFENSE merely answers the Complaint and makes no affirmative allegations other than those contained in its THIRD DEFENSE (replied to above), except on page 5 it alleges that "On April 10, 1812, the Territory of Orleans became the State of Louisiana," and that "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 . . . and Spain." These allegations are denied. Plaintiff specifically denies that all of the Territory of Orleans was included within the State of Louisiana. Both the Enabling Act (2 Stat. 641) and the Admission Act (2 Stat. 701) specifically limit the State of Louisiana to "*that part of the territory . . . contained within the following limits,*" which fix the west boundary in the middle of the Sabine, the same as was done in the Louisiana State Constitution of 1812. By the Act of Admission, Congress further confirmed that part of the Territory of Orleans was not included within the State when it provided in Section 3 "That the said State, *together with the residue of that portion of the country which was comprehended within the territory of Orleans . . . shall be one district . . .*" for jurisdiction of a federal court.

REPLY TO FIFTH DEFENSE

Defendant's FIFTH DEFENSE is comprised solely of a motion for referral of this case to a Special Master for initial determination. Plaintiff refers the Court to its foregoing Memorandum With Respect to its Motion for Judgment for a detailed reply to Louisiana's request for a Special Master. In that Memorandum, Plaintiff has listed and commented on eight

treaties and legislative acts, the proper legal interpretation of which is controlling of the issues raised by the pleadings. All of the proposed findings enumerated by Louisiana for determination by a Master (Answer, p. 13) relate to one or more of these treaties and acts. All are subject to judicial notice, and the meaning of none are alleged to be uncertain or doubtful. Therefore, there is no need at this time for the taking of any evidence or for referral of the case to a Master.

It is true that Plaintiff has alleged long possession and exercise of jurisdiction over the controverted area, first by the United States from 1803 to 1849 and thereafter by the State of Texas, and that Louisiana has acquiesced therein. However, in view of the admissions in Louisiana's Answer and the narrowing of the issues to the legal effect of the eight controlling treaties and legislative acts, it is doubtful that there will be any need to reach the issue of prescription. Even if it should be necessary to develop such issue, the proof can be made by both parties through statutes enacted, official acts, maps and documents which are subject to judicial notice and suitable for attachment to the briefs.

Louisiana further suggests that if the Court should determine that the western boundary of the State is in the middle of the Sabine, then evidence will be required to determine the exact location of the boundary in the River, Pass and Lake, including the location of all islands which belong to Louisiana. It would seem premature to appoint a Master for such purpose at this stage of the case. The question now is whether the boundary is in the middle of the Sabine or along the west bank. If it is determined to be in the middle, and if a subsequent controversy arises which cannot be re-

solved by the States as to the exact location of the middle of the stream at any given point, that would be time enough for the Court to appoint a Master to hear evidence and make findings. In many original actions involving boundaries the Court has retained jurisdiction for such future specific determinations. In this instance, it is doubtful that such controversies will arise, because over a long period of years mapping experts of the United States government have platted and published maps showing the mid-stream Sabine boundary between Texas and Louisiana. In this connection, Plaintiff refers the Court to the following examples:

1. Map published by the U. S. Geological Survey of the Department of Interior, 1932 edition, designated "Texas-Orange Quadrangle," which shows the east boundary of Orange County, Texas in the middle of the Sabine. This map recites assistance of the U. S. Army Air Corps and the U. S. Coast and Geodetic Survey.
2. Map No. NH 15-8 compiled in 1956 by the U. S. Army Map Service, Corps of Engineers, and published in 1956 by the U. S. Geological Survey, which shows the boundary between the two States in the middle of Sabine Lake and Sabine Pass.
3. Map of the Port Arthur Quadrangle compiled by the U. S. Army Corps of Engineers in 1957, showing the boundary between the two States in the Middle of Sabine River, Sabine Pass and Sabine Lake. Apparently Louisiana is fully familiar with this map, since the following legend is printed on its face: "For sale by the U. S. Geological Survey . . . and by the State of Louisiana, Department of Public Works, Baton Rouge 4, Louisiana."

For the reasons stated, Plaintiff opposes the Defendant's motion for referral to a Special Master at this time and urges that the Motion be denied and that the case should be heard on Plaintiff's Motion for Judgment hereto annexed.

Respectfully submitted,

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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 ---- day of -----, 1970, I served copies of the foregoing Motion for Judgment, Memorandum with Respect to the Motion and Reply to Defendant's Answer and Motion, by first class mail, postage prepaid, to the office of the Governor and Attorney General, respectively, of the State of Louisiana.

CRAWFORD C. MARTIN
Attorney General of Texas

