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No. 36, ORIGINAL

Supreme Court, U.S.

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E. ROBERT SEAVER, CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1969

THE STATE OF TEXAS,

Plaintiff,

v.

THE STATE OF LOUISIANA,

Defendant.

AMENDED ANSWER AND COUNTERCLAIMS
OF THE STATE OF LOUISIANA

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The State of Louisiana, herein appearing through its Attorney General and as authorized by the Special Master on July 8, 1970, files this amended answer and counterclaims against the State of Texas, and avers:

FOURTH DEFENSE

The Fourth Defense in the original answer filed by the State of Louisiana is amended as follows:

In lieu of the answer of the State of Louisiana to Article II of the complaint, the answer to Article II of the complaint is amended to read as follows:

“2.

In answer to Article II the State of Louisiana admits that the United States Congress approved an Act of 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 to the western half of the river bed and sub-soil of Sabine River (including Sabine Pass and Sabine Lake) from the Gulf of Mexico to the 32d degree of north latitude.

In the alternative, if the Court should determine that the Act purported to transfer title, then the Act is unconstitutional under the Constitution of the United States and particularly under Article IV, Section 3 of said Constitution.

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 Gammel's 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 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 32d degree of north latitude.

In the alternative, if the Court should determine that the Act purported to transfer title, then

the Act is unconstitutional under the Constitution of the United States and particularly under Article IV, Section 3 of said Constitution."

II.

In lieu of the answer of the State of Louisiana to Article VII B of the complaint, the answer to Article VII B of the complaint is amended to read as follows:

"7B.

In answer to subparagraph B the State of Louisiana admits the existence of Senate Document, 30th Congress, 1st Session 1848, Miscellaneous No. 135, which purports to be a copy of Resolution 212 of the Legislature of the State of Louisiana for the year 1848, but the State of Louisiana denies that said Document 135 is a true copy of Resolution 212, in that Resolution 212 provides:

"Between the middle of the Sabine river and the western bank thereof, to begin at the mouth of said river where it empties into the Gulf of Mexico, and thence to continue along the said western bank to the place where it intersects the thirty-second degree of north latitude, *it being the boundary line between the said State of Louisiana and the State of Texas.*" (Emphasis ours), and that Miscellaneous Document 135 leaves out the word "Texas" at the end of the above paragraph.

The State of Louisiana denies that Resolution 212 gave up any rights of the State of Louisiana, but on

the contrary confirmed the western boundary of the State of Louisiana along the west bank of the Sabine River as fixed by the Treaty of Limits.

III.

That the original answer, as amended, is adopted and re-urged herein.

SIXTH DEFENSE

COUNTERCLAIM NO. 1

1.

The State of Louisiana, for the reasons set forth in its original answer, as amended hereby, avers that the boundary between the State of Texas and the State of Louisiana from the Gulf of Mexico to the 33rd degree of north latitude was settled in the Treaty of Limits 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 Mexican States and the United States, and on April 25, 1838, reaffirmed 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).

2.

That the State of Louisiana, from the adoption of the Treaty of Limits of 1819, has recognized and asserts its west boundary as that established in said Treaties from the Gulf of Mexico to the 33rd degree of north latitude and extending from said point on the Gulf of Mexico south into the Gulf of Mexico to the extent of the rights acquired by the State of Louisiana under the Submerged Lands Act.

3.

The State of Texas stipulated in these proceedings that its eastern boundary "between the 32nd and 33rd degrees of north latitude is a line marked on the ground in 1840-1841 by Commissioners appointed by the United States and the Republic of Texas from the junction of the west bank of the Sabine River with the 32nd degree of north latitude, thence north to the 33rd degree of north latitude, being the same line fixed by the Treaties between the United States and Spain in 1819, between the United States and Mexico in 1828, and between the United States and the Republic of Texas in 1838", and that this line has remained the same since it was so marked on the ground. This leaves in dispute with the State of Texas only that portion of the boundary from the Gulf of Mexico to the 32d degree of north latitude (other than the boundary in the Gulf of Mexico which is not involved in this litigation). The State of Louisiana, therefore, urges this Court to recognize and declare its boundary between the State of Texas to be that line marked and

staked on the ground by the said Commission in 1840-1841 from the Gulf of Mexico along the west side of Sabine Pass, Sabine Lake and Sabine River to where it strikes the 32d degree of north latitude and joins the line already admitted by the State of Texas as being its eastern boundary.

COUNTERCLAIM NO. 2

In the alternative, should this Court decide against the State of Louisiana under Counterclaim No. 1, then the State of Louisiana claims ownership of the bed and subsoil from the middle of Sabine River, Sabine Lake and Sabine Pass to the west bank thereof as established by the Treaty of Limits and actually surveyed and staked as set forth in paragraph 1 of Counterclaim No. 1 for the following reasons:

(a) That when the Treaty of Limits was entered into in 1819 fixing the western boundary along the west bank of the Sabine River, there was no United States territory west of said boundary and, therefore, the bed and subsoil of the west half of the Sabine Pass, Sabine Lake and Sabine River vested in the State of Louisiana subject to the right of other nationals to use the River in accordance with the Treaty.

(b) That the State of Louisiana asserted this right of ownership in Resolution 212 of the Legislature of the State of Louisiana of 1848.

(c) That the fact that the State of Louisiana was to acquire all islands in said body of water indicated that the State of Louisiana was to have title to the bed

and subsoil of Sabine Pass, Sabine Lake and Sabine River to the west bank as established by said treaty.

(d) That the State of Louisiana was to encompass the Orleans Territory, which boundary was to be settled by the United States, which was settled by the Treaty of Limits in 1819.

COUNTERCLAIM NO. 3

In the alternative, should the Court decide against the State of Louisiana under Counterclaims Nos. 1 and 2, then Louisiana claims that the boundary between the State of Louisiana and the State of Texas is in the middle of the Sabine River, under accepted international law, from the Gulf of Mexico to the 32d degree of north latitude, including title not only to the islands in existence in 1812, which is admitted, but all other islands formed from that date in said bodies of water.

WHEREFORE, the State of Louisiana prays that its plea of accord and satisfaction be sustained and that the State of Texas' claims be denied at its costs.

PRAYS FURTHER, in the alternative, that if its plea of accord and satisfaction is denied, that it have judgment under Counterclaim No. 1 declaring the boundary between the State of Texas and the State of Louisiana is that line marked and staked on the ground by the Commission in 1840-1841 from the Gulf of Mexico along the west side of Sabine Pass, Sabine Lake and Sabine River to where it strikes the 32d degree of north latitude and joins the line already

admitted by the State of Texas as being its eastern boundary.

PRAYS FURTHER, in the alternative, that if the Court should reject the plea of accord and satisfaction and the claim under Counterclaim No. 1, that the State of Louisiana be decreed as having title to the bed and subsoil of the west half of Sabine Pass, Sabine Lake and Sabine River to the west bank thereof as established by the Treaty of Limits from the Gulf of Mexico to the 32d degree of north latitude.

PRAYS FURTHER, in the alternative, that if the foregoing claims be denied by the Court, that the State of Louisiana have judgment fixing the boundary between the State of Louisiana and State of Texas in the middle of Sabine River, under accepted international law, from the Gulf of Mexico to the 32d degree of north latitude, with title to all islands in existence in 1812, and all other islands formed from that date in said bodies of water.

PRAYS FURTHER, for all orders and decrees necessary in the premises; for full, general and equitable relief.

Respectfully submitted,

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

JOHN L. MADDEN,
Assistant Attorney General.

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Assistant Attorney General.

OLIVER P. STOCKWELL,

SAM H. JONES,

JACOB H. MORRISON,
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State of Louisiana.

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 amended answer and counterclaims of the State of Louisiana, 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; also, upon the Solicitor General of the United States, in compliance with Rule 33.2(b) of the Rules of the Supreme Court of the United States.

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

B-2672, 7-70

