



NO. 36, ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

THE STATE OF TEXAS,

Plaintiff,

vs.

THE STATE OF LOUISIANA,

Defendant.

ACCEPTANCE OF THE STATE OF TEXAS
OF THE REPORT OF SPECIAL MASTER,
WITH ONE EXCEPTION

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OPENING STATEMENT

The Report of the Special Master, Judge Robert Van Pelt, was filed in this Original action on May 22, 1972. The parties were given 45 days within which to file their exceptions, if any, to the Report. The State of Texas, Plaintiff, accepts and urges approval of the Report, subject to the one exception hereinafter stated.

EXCEPTION

The State of Texas excepts to that portion of the Report which reads as follows:

“It is the conclusion of the Special Master that all islands which were in the river in 1812 belong to the State of Louisiana . . . your Master recom-

mends that it be determined that all islands in the Sabine on April 8, 1812, the date of the passage of the Act admitting the State of Louisiana into the union, belong to Louisiana.” (35)

The controlling portion of the boundary description of the proposed new State of Louisiana, as set forth in the Enabling Act of 1811, reads:

“... 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; ...”

We have italicized that portion of the description which emphasizes the middle or centerline of the river, as the boundary line. The phrase “including all islands” is clearly secondary to the centerline and refers only to all islands east of the centerline and within the boundaries described in the Act. This was the precise interpretation placed on the “including all islands” phrase by the Attorney General of Louisiana in a previous brief filed in this Court in *U.S. v. Louisiana et al*, No. 10 Original,² in which it was said:

“Those *limits* include all islands eastward of the middle of the River Sabine to the thirty-second degree latitude and also all islands within three leagues of the coast in the Gulf of Mexico.” (22-23)

“However, the reference to the inclusion of islands within the limits of the state, whether in the east half of the River Sabine or within three leagues of the Gulf coast, should not confuse one’s thinking with the fact that by boundary description in the Congressional Enabling Act of 1811,

² Stat. 641. Emphasis supplied.

¹Louisiana’s Supplemental Brief in Opposition to Motion for Judgment, pp. 22-24, *U.S. v. Louisiana, et al.*, No. 10, Original, October Term, 1959. See quotations therefrom printed at pages 31-33, Brief for the State of Texas in Support of Motion for Judgment in the present case.

the 1812 Louisiana Constitution, and again in the Congressional Act of Admission of April 8, 1812, the purpose was to fix the territorial limits of the State of Louisiana, both landward and seaward and to include all islands within said limits." (24)

This also appears to be the interpretation of the States of Louisiana and Texas, when they both recognized that the western half of the Sabine was owned by neither State in their Resolutions of 1848,^{*} and of the Congress when it passed the Act of July 5, 1848 authorizing Texas to extend its 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."

Since the Special Master recognizes that if any existing islands in the west half of the Sabine were also in existence in 1812, they may in any event belong to the State of Texas by reason of prescription and acquiescence, and recommends a further hearing on this phase of the case, (36-37), we propose that judgment concerning initial ownership of any such islands be deferred and that the entire question of island ownership in the western half of the Sabine be restudied by the Master and reported on finally in his proposed supplementary report.

PRAYER

WHEREFORE, the State of Texas prays that the Report of the Special Master be in all things adopted and approved as the judgment of the Court, except for determination of the following matters in a subsequent report:

^{*}Both are copied in full in the Report of the Special Master, pp. 16-17.

^{*}Id., p. 18.

(1) Whether any presently existing islands in the western half of the Sabine were in existence in 1812, and if so, whether they were initially incorporated by Congress into and as a part of the State of Louisiana.

(2) Whether Texas has title to any such islands by reason of the Act of July 5, 1848 (9 Stat. 245) or by reason of prescription and acquiescence.

Respectfully submitted,

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July, 1972

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 July, 1972, I served copies of the foregoing Exceptions of the State of Texas to the Report of Special Master by first class mail, postage prepaid, to the offices of the Governor and Attorney General, respectively, of the State of Louisiana.

CRAWFORD C. MARTIN
Attorney General of Texas

