

OCT 9 1964

JOHN F. DAVIS, CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1964.

NO. 18 ORIGINAL

STATE OF ILLINOIS,

Plaintiff,

vs.

STATE OF MISSOURI,

Defendant.

**MOTION FOR LEAVE TO FILE COMPLAINT
AND COMPLAINT**

WILLIAM G. CLARK,

Attorney General of the State of Illinois,
160 North La Salle Street, Suite 900,
Chicago 1, Illinois, FI 6-2000,

Attorney for Plaintiff.

RICHARD A. MICHAEL,
Assistant Attorney General,

TERENCE F. MACCARTHY,
Special Assistant Attorney General,

Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1964.

NO. _____ ORIGINAL

STATE OF ILLINOIS,

Plaintiff,

vs.

STATE OF MISSOURI,

Defendant.

MOTION FOR LEAVE TO FILE COMPLAINT AND COMPLAINT

MOTION FOR LEAVE TO FILE COMPLAINT

The State of Illinois, by William G. Clark, its Attorney General, for the reasons set forth in the accompanying Statement in Support of Motion for Leave to File Complaint, and again more fully set forth in the accompanying Complaint, asks leave of the Court to file its Complaint against the State of Missouri submitted herewith.

WILLIAM G. CLARK,

Attorney General of the State of Illinois,
160 North La Salle St., Suite 900,
Chicago (1), Illinois, (FInancial 6-2000),

Counsel for Plaintiff.

October 9, 1964

STATEMENT IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT

This is an action by the State of Illinois against the State of Missouri to be, upon leave of Court, instituted as an original action in this Court under authority of Article III, Section 2 of the Constitution of the United States, as it involves a controversy between the State of Illinois and the State of Missouri.

The establishment of a disputed interstate boundary, the cause of action pleaded in the complaint, is an action historically cognizable in equity and susceptible to judicial enforcement.

The purpose of the proposed action is to establish a claim by the State of Illinois to sovereignty over land generally referred to as the Kaskaskia area; more specifically to that area approximately 8 miles north of the town of Chester, Illinois, which immediately prior to the great flood of 1881 was then east of the middle of the bed or channel of the Mississippi River. The original jurisdiction of this Court is invoked because claims of sovereignty to all or part of the land have been and are presently being made by both the state of Illinois and the State of Missouri, and complete relief is possible only in this Court.

The complaint alleges a classical ox-bow situation where due to an 1881 flood the Mississippi River (the boundary line between Illinois on its western side and Missouri on its eastern side) suddenly cut through the neck of the land and assumed a new channel.

This sudden or avulsionary change could not and cannot legally effect the then existing boundary line between

the State of Illinois on the east and the State of Missouri on the west. The prior Mississippi River bed remains as the proper boundary line between the states, notwithstanding partial present physical attachment of the land to the Missouri or western side of the present channel of the Mississippi River.

Presently and for some time subsequent to 1881 the interstate boundary line between Illinois and Missouri has been in dispute as to this area. Both states have claimed and are claiming sovereignty over all or part of the area. Repeated efforts, in good faith, have been made unsuccessfully by the states to resolve this dispute and avoid the present litigation. Only after all such efforts at settlement had been exhausted was the present motion and complaint filed. Also, beyond the obvious tangible importance of this claim, the relationship of Illinois to the disputed land is of historical importance in that the claimed land was the site of the original capital of the State of Illinois.

WILLIAM G. CLARK,

Attorney General of the State of Illinois,
160 North La Salle St., Suite 900,
Chicago (1), Illinois, (FInarcial 6-2000),

Counsel for Plaintiff.

October 9, 1964

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, A. D. 1964

NO. ——— ORIGINAL

STATE OF ILLINOIS,

Plaintiff,

vs.

STATE OF MISSOURI,

Defendant.

COMPLAINT

The State of Illinois, by William G. Clark, its Attorney General, brings this suit in equity against the defendant, the State of Missouri, and for its cause of action states:

1. The jurisdiction of this Court is invoked under Article III, Section 2 of the Constitution of the United States.

2. At the time of its admission to statehood in 1818 the western boundary of the State of Illinois was established by an Act of Congress, 3 Stat. at Large 428-429, as the middle of the Mississippi River from its intersection with the northern boundary of the State of Illinois and thence down the middle of the Mississippi River to its confluence with the Ohio River.

3. At the time of its admission to statehood in 1820 the eastern boundary of the State of Missouri was established by an Act of Congress, 3 Stat. at Large 545, as the middle of the Mississippi River from its intersection with the northern boundary of the State of Missouri then southerly down the middle of said Mississippi River to Missouri's southern boundary at thirty-six degrees of north latitude.

4. Prior to April, 1881, the Kaskaskia River, flowing southwesterly across the State of Illinois, had its mouth and emptied into the Mississippi River at the city of Chester, Illinois.

5. Prior to April, 1881, the town of Kaskaskia, the original capital of the State of Illinois, was located in Illinois on the west bank of the Kaskaskia River approximately 8 miles northeast of the mouth of that river. The town of Kaskaskia was located on and was a part of an Illinois peninsula commonly referred to as the Kaskaskia area, bounded generally on the east by the Kaskaskia River and on the south and west by the Mississippi River.

6. Prior to April, 1881, at or near the site of the town of Kaskaskia, the Mississippi River in its southerly flow followed a channel which turned sharply west-by-southwesterly, thence southerly and back east-by-southeasterly toward the town of Chester, Illinois, causing an ox-bow geographical formation.

7. In April of 1881, the course of the Mississippi River suddenly, in a matter of days, changed and the river flooded over the neck of the ox-bow or the narrow sector of the Kaskaskia Peninsula where the town of Kaskaskia stood. The Mississippi River overflowed the Illinois river bank,, flooded away the town of Kaskaskia, and assumed as its new river bed or channel the channel of the Kaskaskia River from the point of the breach to what had been the mouth of the Kaskaskia River at the former point of its confluence with the Mississippi River at or near the town of Chester. The Kaskaskia area, once an Illinois peninsula, became an island.

8. Since the flood of 1881, the old or abandoned bed of the Mississippi River has been generally unused for navigation and has virtually dried up. The Mississippi River has

at all times since the 1881 flood followed the original channel of the Kaskaskia River from the point of the breach of the Kaskaskia River to its former mouth.

9. At no time since the flood of 1881, have the States of Illinois or Missouri been able to agree, relative to the Kaskaskia area, as to the boundary between the two states. Controversies have arisen and presently exist between the two states and their respective counties, Randolph County, Illinois, and Ste. Genevieve County, Missouri, relative to the sovereignty and the incidents thereof, such as taxation and law enforcement jurisdiction, with respect to this area.

10. The State of Missouri has since 1881 claimed sovereignty over Illinois land which prior to the flood of 1881 was and presently is east of the middle of the pre-1881 Mississippi River channel.

11. The claims and action of the defendant State of Missouri have caused and will continue to cause irreparable injury to the plaintiff State of Illinois, for which there is no adequate remedy at law.

WHEREFORE, Plaintiff prays:

A. That a decree be entered establishing sovereignty of the State of Illinois over the Kaskaskia area as it existed according to the interstate boundary immediately prior to the flood of April 1881, declaring that the State of Illinois is the sovereign entitled to exercise the incidents of sovereignty over said land; adjudging that the defendant, State of Missouri, have no sovereign right or interest in or to said land or any part thereof.

B. For such other and further relief as this Court may deem proper and necessary.

WILLIAM G. CLARK,

Attorney General of the State of Illinois,
160 North La Salle St., Suite 900,
Chicago (1), Illinois, (FInancial 6-2000),

Counsel for Plaintiff.

RICHARD A. MICHAEL,

Assistant Attorney General,

TERENCE F. MACCARTHY,

Special Assistant Attorney General,

Of Counsel.

