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**IN THE
SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, A.D. 1964

STATE OF ILLINOIS,	}	No. 18 Original.
Plaintiff,		
vs.		
STATE OF MISSOURI,		
Defendant.		

**RESPONSE TO MOTION FOR LEAVE TO
FILE COMPLAINT.**

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**RESPONSE TO MOTION FOR LEAVE TO
FILE COMPLAINT.**

The State of Illinois through its Attorney General, the Honorable William G. Clark, has moved the Court for leave to file its complaint in an original action against the State of Missouri asserting the existence of a dispute concerning the common boundary of the states in the Mississippi River in the general area between Chester, Illinois and Ste. Genevieve, Missouri, resulting from an alleged avulsion.

In compliance with the Order of the Court entered January 18, 1965, Norman H. Anderson, Attorney General of Missouri, herein responds to the Motion for Leave to File Complaint in the following particulars, to-wit:

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1.

The respondent regards it as no longer open to question that this Court has jurisdiction to try original actions between the states concerning boundary disputes. However, as is manifest in the cases such jurisdiction need not always be exercised. In fact, the Court encourages adjustment between such parties rather than suit, see, for example, **Hinderlinder v. LaPlata** (1938), 304 U.S. 92, 105.

2.

The Mississippi River was made the boundary between the two states on their admission to the Union.

3.

It is impossible to determine from the Complaint which the State of Illinois seeks to file, the nature, extent, or location of those lands which it believes to be its own but over which it contends the State of Missouri wrongfully claims dominion, nor can it be determined whether the State of Illinois claims a proprietary interest in said lands or seeks merely to vindicate chains of Illinois title in private individuals. In this respect it states only (Plaintiff's Complaint, 7 & 10):

“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 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.

* * *

“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.”

4.

The Attorney General of the State of Missouri has been advised by the Attorney General of the State of Illinois that the State of Illinois believes a dispute exists in the area but at no time has there been a statement of what the dispute consists.

5.

There does exist in the general vicinity where the border is claimed to be in dispute an area known as Kaskaskia Island, a well defined and easily identified portion of land several thousands of acres in extent lying west of the main channel of the Mississippi River which, so far as respondent is able to determine with the meager resources available, is regarded locally by both Missouri and Illinois residents as falling within the sovereignty of the State of Illinois.

6.

The State of Missouri through its Attorney General has offered to meet with such representatives of the State of Illinois as it may designate for the purposes of investigating the facts so that monuments may be erected at places where the local residents agree that the boundary exists and for

the further purpose of discovering where the boundary cannot be agreed upon so as to negotiate its location but to date no such meetings have been forthcoming.

7.

The respondent after being advised by the Attorney General of the State of Illinois that a potential dispute existed made tentative local inquiries within the limits of the resources available to him without discovering a single unsettled incidence of any party claiming an interest by virtue of Illinois title to lands in the vicinity located west of the main channel of the Mississippi River except for those claimants of land located on the aforesaid Kaskaskia Island itself.

Conversely, within the ambit of the respondent's limited investigation, no party was found claiming a Missouri chain of title for lands located either on Kaskaskia Island or east of the main channel of the Mississippi River in the vicinity.

8.

The State of Missouri has no agency charged by law with inquiring into matters such as presented here and the Attorney General of Missouri has no presently appropriated funds with which to do more than conduct the preliminary investigation above referred to.

9.

Funds cannot be withdrawn from the treasury of the State of Missouri unless appropriated by its Legislature for specific purposes and until the Legislature of the State of Missouri makes such funds available the State will not be in a position to conduct surveys and proceed.

10.

Missouri's General Assembly convened January 6, 1965, and respondent has requested that it appropriate emergency funds for the purpose of this suit.

11.

From the very first case upon the subject in this Court, **Rhode Island vs. Massachusetts**, 14 Peters 210, 255, 10 L.Ed. 423, 445, it has been established that equitable principles apply, that neither party should be embarrassed in its defenses and that because of the nature of the parties they should not be required to proceed until fully prepared. Consequently, the State of Missouri should not be required to answer until such time as it has funds whereby to investigate fully, prepare an adequate defense and, if indicated, file a cross bill.

12.

The foregoing notwithstanding, the State of Missouri should not be required to answer in any event until the State of Illinois files an amendment which fulfills the function of a pleading, i.e., to advise the Court and the parties of what is at issue.

The point being that if the State of Illinois desires to claim sovereignty over lands on the opposite bank of the river established by Congress as its boundary it must be deemed to know the location, extent and origin of such lands and should, therefore, be required to state those facts before being permitted to proceed with a suit concerning them.

This requirement should be imposed not only to give the State of Missouri an opportunity to prepare its defenses but also to permit it to investigate and, if possible, agree with the allegations made. Neither is feasible until the State of Missouri is apprised of exactly what is at issue.

Wherefore, it is prayed that the State of Illinois be required to amend its pleadings so as to more fully advise the Court and the State of Missouri of the issues after which time the State of Missouri should be given further time in which to respond, and

Wherefore, it is also prayed that the State of Missouri be exempted from answering or proceeding further until such time as its legislature appropriates funds for that purpose.

Respectfully submitted,

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