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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.

**REPLY TO THE DEFENDANT STATE OF MISSOURI'S
RESPONSE TO MOTION FOR LEAVE TO FILE
COMPLAINT.**

WILLIAM G. CLARK,Attorney General of the State of Illinois,
160 North La Salle Street, Suite 900,
Chicago 1, Illinois, FI 6-2000,*Counsel for Plaintiff.***RICHARD A. MICHAEL,**
Assistant Attorney General,**TERENCE F. MACCARTHY,**
Special Assistant Attorney General,
Of Counsel.

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The State of Illinois, by William G. Clark, its Attorney General, pursuant to the March 1, 1965, Order of Court, replies as follows to the State of Missouri's Response To Motion For Leave To File Complaint.

Missouri's Response, in effect, might best, for purposes of replying thereto, be divided into three distinct areas of consideration. This Reply, accordingly, addresses itself to Missouri's observations or arguments directed to; A) the pending Illinois Motion For Leave To File Complaint (this Court's January 18, 1965, Order directed response to the pending motion); B) the complaint itself; and C) its requested exemption from answering the com-

plaint unless and until its legislature specifically appropriates funds for this purpose.

(A)

MOTION FOR LEAVE TO FILE COMPLAINT.

The motion of the Plaintiff State of Illinois (hereinafter referred to as Illinois) for leave to file its complaint is predicated and dependent upon this Court having jurisdiction over the cause of action alleged in the complaint attached to the pending motion. The statement in support of and attached to the motion briefly characterizes the complaint as alleging a present boundary dispute between the States of Illinois and Missouri at a point on the Mississippi River where they share a common boundary. The complaint alleges such a dispute and predicates jurisdiction under Article III, Section 2, as involving a controversy between two states.

On January 18, 1965, this Court ordered the Defendant State of Missouri (hereinafter referred to as Missouri) to file a response to the motion of Illinois for leave to file its complaint. We suggest that the Response, rather than arguing against the pending motion for leave to file, for the most part admits its appropriateness. In the wording of Missouri's Response the complaint does allege an "... original action between the states concerning boundary disputes . . .". (Missouri's Response page 2, Paragraph 1, Lines 2 and 3). It appears that the State of Missouri candidly admits "... that this Court has jurisdiction". (Missouri's Response page 2, Paragraph 1, Line 2) In any event no argument or authority is even suggested to question the jurisdiction of this Court over the instant complaint.

Having admitted, or in any event failing to raise cogent issue with the Court's jurisdiction over the complaint, it is, however, suggested by Missouri that the Court need not exercise its jurisdiction. Neither fact nor law are cited to buttress this assertion. No allegation of fact or contention of law is offered to distinguish this complaint from other prior original action boundary complaints so as to materially distinguish it from such prior complaints and justify this Court in deciding not to exercise its unquestioned jurisdiction over this cause of action.

Admittedly, as stated by Missouri, apparently as the main thrust of its argument against the Court's exercise of its jurisdiction, this Court encourages adjustment—i.e. interstate legislative compacts—between boundary disputing states. However, as stated in *Hinderlider v. LaPlata Co.*, 304 U.S. 92, 104, the case cited by Missouri in support of this proposition, there are "... two means provided by the Constitution for adjusting interstate controversies." In addition to detailing and expressing satisfaction with the legislative compact method the Court is clear in observing that resort to the Court is essential where the states "... are unable to agree upon the terms of a compact, or Congress refuses its consent." (*Hinderlider*, 304 U.S. at p. 105.)

Although attempts at settlement and failure to agree are not essential prerequisites to instituting such interstate legal action, in keeping with the wishes of this Court and good common sense, in point of fact such attempts have been made and are alluded to in our complaint and statement in support of the motion for leave to file the complaint. As recently as one year ago settlement conferences attended by the respective Attorneys General or

their representatives were held at St. Louis, Missouri. These conferences proved unavailing.

Briefly then, the complaint sought to be filed by the pending motion alleges the present existence of an interstate boundary dispute between Illinois and Missouri. Although not a prerequisite to obtaining jurisdiction in this Court, settlement of the dispute has been in good faith though unsuccessfully attempted and, notwithstanding the instant lawsuit, will be continued. This Court does under the authority of Article III, Section 2 of the Constitution of the United States have exclusive jurisdiction over the instant complaint. Moreover, there does not appear to be any reason why the jurisdiction of this Court should not be exercised over this case. We respectfully submit that there is no reason why the pending motion of the State of Illinois for leave to file its complaint should not be granted.

(B)

THE COMPLAINT.

In substance much of Missouri's Response — i.e. Paragraphs 3, 4, 5 and 12 — give the appearance of being a Rule 12 (e) (Federal Rules of Civil Procedure) motion for a more definite statement. Accepting this premise, the position of Missouri as to the pending motion for leave to file the complaint is again confessed in that Rule 12 (e) motions for a more definite statement of necessity assume the need for responsive pleadings — i.e. an answer.

Treating Missouri's Response in part as a motion for a more definite statement, and necessarily assuming for purposes of such a consideration that the pending motion for leave to file the complaint will be granted, Missouri's position might best be summarized as addressing itself to

alleged insufficiency in pleading 1) the nature, extent and location of the lands in question and 2) the interest claimed by the State of Illinois.

The nature, extent and location of the lands in question are pleaded to be the generally referred to "Kaskaskia area" bordered on the south by the southern point of intersection between the present Mississippi River and an identifiable, extant channel of the former or pre-April, 1881, Mississippi River channel located generally at the town of Chester, Illinois; bordered on the north by the point of intersection between the present Mississippi River channel and an identifiable, extant channel of the former or pre-April, 1881, Mississippi River channel approximately eight miles north of Chester, Illinois; bordered on the east by the Mississippi River; and most importantly bordered on the west by an identifiable former or pre-April, 1881 channel of the Mississippi River. In sum, Illinois is making claim to the land east of the middle of the channel of the Mississippi River as it existed prior to the flood in April of 1881. The terminus of this old channel is sufficiently pleaded to be at the old channel's two points of intersection with the present Mississippi River near the town of Chester, Illinois, on the south, and approximately eight miles north thereof.

Surely an identifiable, extant although unused, river channel may serve to sufficiently state a definite boundary. For that matter the land in question is properly pleaded to be an island completely surrounded by river channels, although admittedly the old channel is at times and in part without water and no longer suitable for navigation. Cannot such a body of land, in satisfaction of our liberal pleading requirements, be sufficiently described by indicating its outer limits as being containing river channels? If Illi-

nois prevails in establishing its legal theory of avulsion then the pre-flood Mississippi River channel should properly become the boundary between the States of Illinois and Missouri.

That such pleadings are adequate to give Missouri indication, description and notice of the area in controversy is manifest by Missouri's Response wherein reference is made to "... the general vicinity where the border is claimed to be in dispute". (Missouri's Response page 3, Paragraph 5) and to its having conducted "inquiries" with the local residents.

As to the interest claimed by Illinois it is clearly and, we suggest, sufficiently pleaded, that the interest claimed is sovereignty and the incidents thereof.

Missouri's comments as to the sufficiency of the complaint suggests its use of a common law criteria method of judging the complaint. Construed liberally with emphasis on brevity and simplicity in accordance with the wording and spirit of Rule 8 (a) (Federal Rules of Civil Procedure), the instant complaint summarizes the legal position taken by the State of Illinois and sufficiently describes the land claimed and the claim made to permit their identification. Narrowing of issues and further particularity, to the extent necessary to prove the general facts pleaded in the complaint, can best be done at the pretrial discovery stage. In final analysis the case, if tried, will be tried on the proofs not the pleadings. Illinois will have the burden of proving that the proper boundary between the States is an identifiable former bed of the Mississippi River, and not the present bed of the Mississippi River.

(C)

MISSOURI'S REQUESTED EXEMPTION FROM ANSWERING UNTIL ITS LEGISLATURE APPROPRIATES FUNDS FOR DEFENSE OF THIS SUIT.

We appreciate, sympathize with and respect the unfortunate position Missouri finds itself in being without funds to defend this action. To the extent that our acquiescence will in no way materially prejudice the instant cause of action and the rights of the people of the State of Illinois, we are willing to cooperate to the fullest extent with the Attorney General of Missouri in the future conduct of this case.

We are of the opinion, however, that notwithstanding Missouri's financial plight, justice would be ill served by extending either indefinitely or for any extended period of time its duty to answer the complaint, assuming this Court were to grant our pending motion for leave to file the complaint.

Accepting the present liberal theory as to the requirements and intention of pleadings in the federal courts as more fully discussed in Section "B" of this Reply Brief, Missouri could and would in no way be prejudiced by being required to answer at this time. It is highly doubtful that the situation might arise where Missouri would find itself limited by virtue of its answer. Moreover, such an improbability is further neutralized by the always present potential Missouri would have to amend its answer. (Rule 15, Federal Rules of Civil Procedure)

Should Missouri be required to answer, we respectfully suggest that the Court appoint a Special Master to hear evidence and submit to the Court recommended findings of fact and conclusions of law. Illinois would not only wel-

come but request that such a Special Master direct the parties attendance at a pretrial conference or conferences held pursuant to Rule 16, Federal Rules of Civil Procedure.

WILLIAM G. CLARK,

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

Counsel for Plaintiff.

RICHARD A. MICHAEL,

Assistant Attorney General,

TERENCE F. MACCARTHY,

Special Assistant Attorney General,

Of Counsel.

