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.

ADDITIONAL RESPONSE.

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Cases and Statutes Cited

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Missouri has responded to the Illinois motion for leave to file a boundary dispute complaint.

Illinois replied and Missouri requests the indulgence of the court in accepting this additional response.

I.

No party should be put to its remedies and defenses in any court unless some justiciable factual matter is pleaded which will set the judicial process in motion.

The crux of the Missouri response was to the effect that it cannot determine from the boundary dispute complaint which Illinois seeks to file what land is at issue and, while it is conceded that this court has jurisdiction to try boundary

disputes between states, there is nothing in Article III, Section 2, Constitution of the United States, which confers that power, or any of the cases thereunder, which suggests that it must, or will, exercise that jurisdiction where it is not demonstrated that a real dispute exists. This means that it is not enough to assert the abstract conclusion that there is a boundary dispute in a certain area. Facts constituting a dispute have to be pleaded so that the issues for decision can be made up. This is a fundamental jurisdictional matter which must appear in any case.

Though a state, seeking to bring a complaint to this court, is entitled to the gravest consideration and every reasonable indulgence, it must also be recognized that a state against which such a complaint is to be filed is entitled to at least an equal amount of latitude. All that Missouri wants in the premises is to be told where the land is that Illinois refers to in paragraph 10 of the complaint it seeks to file:

> "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." (Illinois Motion p. 6)

II.

A state responding to or defending a boundary dispute action in this court should not be required to advance or bear any of the cost of the suit before it appears that a real dispute exists.

Missouri contends that it has no argument with its neighbor Illinois concerning their common boundary—or at least it can't find anything to argue about. Illinois insists that a controversy does exist but so far has declined to state what it is with sufficient particularity for Missouri to go to the area involved and find the land in question.

In its reply, Illinois requests that its complaint be filed and Missouri required to answer so that a master may be appointed. In this, Illinois anticipates an event which may not occur for, as indicated above, Missouri might possibly admit the salient features of the Illinois case if it can ever find out what they are. This, in itself, would obviate the necessity for appointment of a master.

Further, the cost of proceeding in matters such as these are traditionally borne by the parties equally at such time as they may be prepared to proceed, see Arizona v. California, 373 U.S. 546, 10 L.Ed.2d 542. Illinois recognizes this principle in its reply.

In view of the pleading which Illinois seeks to file, Missouri may never be prepared to proceed because, as explained in its response, it has no presently appropriated funds for the purpose and, although it has requested the appropriation of such funds from its legislature now in session, its legislature is understandably reluctant to act until a full explanation is given of what the money is for. No such explanation can be given without the cooperation of the State of Illinois.

Nothing in any pleading it has yet filed gives any indication of what land Illinois deems to be its own which Missouri covets.

When Illinois clarifies this one point, it may very well prove to be that a boundary dispute exists. It may also prove out that Missouri does not claim the land in question, and for this reason alone, if for no other, some amplification of the facts should be ordered.

The statement by Illinois that it desires to lay claim to the "Kaskaskia area" between Chester, Illinois, and a point approximately eight miles north thereof is meaningless in view of the fact that locally it is seemingly well established (at least insofar as Missouri is concerned) that the "Kaskas-

kia area'' is known as Kaskaskia Island and, although it is on the Missouri side of the Mississippi River, no one, in the present knowledge of respondent, regards it as belonging to Missouri. In other words, unless compelling evidence to the contrary is produced, Missouri is willing to concede that Kaskaskia Island is a part of Illinois. Missouri has no evidence to the contrary presently available to it and doesn't desire to contest the point. This being the case, it hardly seems appropriate to subject Missouri to the pleading and discovery which Illinois suggests.

Of course, if Illinois desires to contend about something else, all it need do is state what it is.

The Illinois approach to this entire matter is typified by two erroneous statements found in its reply.

The first:

> ''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.'' (Illinois Reply p. 4)

The second:

> ''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 Reply p. 6)

Of course, with respect to the Illinois contention about the more definite statement, exactly the opposite is true. Rule

12 (e) permits the filing of a motion for a more definite statement in view of a pleading so vague as to make it impossible to answer and, where a more definite statement is ordered and ignored, such a pleading will be stricken in which case no responsive pleading will ever be required.

Even the most cursory perusal of the Illinois complaint discloses that it must be clarified before it can be answered intelligently. This means that it would be subject to a motion for a more definite statement just as Illinois appears to recognize.

If the pleading is going to be subject to a motion for a more definite statement anyway, it would seem to be the better practice and more conducive to harmonious conduct of the matter to get it started on the right foot by first requiring the moving party to lay its cards on the table and state in some understandable way what it is that it wants. Perhaps a few lines drawn on a chart and filed as an exhibit along with whatever narrative is required by way of explanation would suffice.

The second erroneous statement from the Illinois reply, quoted above, betrays the fact that it too regards the complaint as being couched in mere generalities. However, it urges, whatever clarity the pleading lacks can be taken care of by such discovery methods as it may choose to employ and by the proofs at trial. It is axiomatic that the trial of any lawsuit is naturally limited to the issues presented. Issues are made up in the pleadings, not by what happens to turn up at trial as is erroneously asserted in the reply and unless there are definite pleadings, as opposed to general allegations, there are no issues to resolve, ergo: there need be no trial.

Respondent suggests that the court need not, and in good conscience should not, permit the filing of the pleading herein

which is manifestly defective to the extent that it fails to apprise the court of the jurisdictional facts and the respondent of a specific justiciable question. Neither the court nor any party, state or otherwise, should be placed in the position of proceeding in the dark.

Illinois seeks to employ the good offices of this court as an investigative agency to inquire into that which it appears only to suspect. It would put a sister state to the wasting of its resources in the preparation of defenses which, because the issues are not defined or limited, could extend to enormous proportions. It seems to be asking the court to appoint a master to make inquiries at a pretrial conference under Rule 16 and draw up the issues for it, if any can be found, but it has not expressed its willingness to pay for this service.

None of the cost of the matter, as it stands, should be borne by the State of Missouri any more than is an innocent party required to pay costs in other kinds of actions. Neither should Missouri be confronted with the necessity of responding to Illinois discovery actions until there is clear and cogent reason which would require that it do so. No such reason appearing, absent clarification by the moving party, these proceedings should be held in abeyance.

Respectfully submitted,

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