

MAR 5 1968

JOHN F. DAVIS, CLERK

IN THE
SUPREME COURT OF THE UNITED STATES.

No. 33 Original.

THE STATE OF ARKANSAS,
Plaintiff,

vs.

THE STATE OF TENNESSEE,
Defendant.

**ANSWER AND COUNTERCLAIM OF THE
STATE OF TENNESSEE.**

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Answer.

The State of Tennessee, by its Attorney General, for answer to the Complaint filed against it by the State of Arkansas, respectfully states:

I.

It admits the allegations of paragraph I.

II.

It admits the allegations of paragraph II.

III.

It admits the allegations of paragraph III.

IV.

It admits the allegations of paragraph IV.

V.

It denies the allegations of paragraph V and avers, on information and belief, that there was not a General Land Office Survey of 1834. Defendant avers that the plat of the Land Office Survey, certified April 21, 1825, shows that there were Sections Twenty-Four (24), Twenty-Five (25) and Thirty-Six (36) of Township Five (5) North, Range Seven (7) East; that there were Sections Nineteen (19) and fractional parts of Sections Twenty (20), Twenty-One (21), Twenty-Nine (29), Thirty (30) and Thirty-One (31) Township Five (5) North, Range Eight (8) East and it denies there was a Section Twenty-Eight (28) or a fractional part thereof.

VI.

It admits the allegations of paragraph VI, except that it avers that the boundary line moved northwardly and westwardly by process of erosion and accretion until approximately the year 1913.

VII.

It denies the allegations of paragraph VII. In this connection, the State of Tennessee alleges that after reaching its point of maximum northward and westward migration, the channel of the Mississippi River, beginning in about 1913, adopted a new course by an avulsion, fixing the boundary line between the states at the location of its maximum northward and westward migration. The said new or avulsive channel was adopted as the main channel of commerce and eventually the former undivided 1913 channel lying in the deeper recess of the Bend was abandoned to sedimentation. The lands formed by accre-

tions to the Tennessee shore were not eroded away, but remained in place, except to the extent that in taking its new course to the southward and eastward, the river cut its channel through a portion of the lands which had been formed by accretions, leaving a large remnant thereof severed from the Tennessee shore. To said remnant there have been subsequent accretions, which remnant and accretions constitute all of the lands in controversy. All of said lands lie to the eastward or Tennessee side of the old channel of the river which was abandoned by the said avulsion, and which is in evidence to this date as a chute or high-water channel, in the identical location of the old channel. This new-made land is situated partly or wholly within Sections 3, 4, 5, 6, 7, 8, 9, 17 and 18 of Township 1 South, Range 10 West, Chickasaw Cession, Shelby County, Tennessee.

VIII.

The State of Tennessee denies the allegations of paragraph VIII, except that it admits that the State of Arkansas has attempted periodically to collect taxes on a small portion of said lands, and certain individuals have cultivated minute portions of said lands. It denies that any of these activities have been of such nature or extent as to affect title to or sovereignty over the lands in question.

IX.

It is admitted that the State of Tennessee is asserting rights of sovereignty and dominion over said area. In this connection, the Court of Appeals of Tennessee held in the case of **Brown v. Brakensiek**, 48 Tenn. App. 543, 349 S. W. 2d 146 (1961), that at least a portion of said lands lies in the State of Tennessee, and remanded the cause for determination of the extent of the lands so located and the ownership thereof. Certiorari was denied by the Ten-

nessee Supreme Court. At the present stage of the litigation, following further hearing in the Chancery Court, the Tennessee Court of Appeals has ruled that all of said lands are in Tennessee and that ownership thereof has been acquired through deeds passing title which is traceable to the State of Tennessee.

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Counterclaim.

The State of Tennessee for its counterclaim against the State of Arkansas adopts the allegations of Paragraphs I, II, III and IV of the Complaint and adopts and reiterates the admissions, denials and allegations contained in Paragraphs V, VI, VII, VIII and IX of the foregoing Answer of the State of Tennessee.

Counterclaimant further avers that the boundary line between the States of Tennessee and Arkansas in the area in controversy is located in the abandoned Mississippi River channel of Cow Island Bend now locally known as Scanlan Chute, 96 Chute, and Frog Chute.

Wherefore, counterclaimant prays that a decree be entered declaring the boundary line between the State of Tennessee and the State of Arkansas in the area in controversy to be in the abandoned Mississippi River channel of Cow Island Bend now locally known as Scanlan Chute, 96 Chute, and Frog Chute.

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