FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

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No. ~~14~~, Original

UNITED STATES OF AMERICA
Plaintiff

v.

STATE OF TEXAS
Defendant

MOTION OF THE STATE OF TEXAS FOR APPOINTMENT OF A SPECIAL MASTER

PRICE DANIEL
Attorney General of Texas
J. CHRYS DOUGHERTY
JESSE P. LUPTON, JR.
K. BERT WATSON
DOW HEARD
WALTON S. ROBERTS
CLAUDE C. MCMILLAN
Assistant Attorneys General

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UNITED STATES OF AMERICA
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STATE OF TEXAS
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MOTION FOR LEAVE TO FILE

The State of Texas, by its Attorney General, asks leave of the Court to file its motion for appointment of a special master.

PRICE DANIEL
Attorney General of Texas

MOTION FOR APPOINTMENT OF A SPECIAL MASTER

Unless the full Court can conduct the pre-trial proceedings and hear the evidence to be introduced in this case, defendant respectfully prays:

1. That the Court refer this case to a special master, to be hereafter designated and appointed, to conduct pre-trial proceedings, take the evidence, and make his report to this Court, together with such findings of fact and conclusions of law as the Court may deem proper; said master to have the same duties, power, and authority given to masters appointed under the rules prescribed by this Court for the district courts of the United States.

2. That the plaintiff and defendant, respectively, be required to make with the clerk of this Court such amount of deposits for fees, costs, and expenses of the master and clerk as may from time to time be requested by the clerk.

Statement in Support

That the presentation of evidence is necessary before the Court can decide the basic issues of this case has been maintained by Texas since the beginning of this litigation.[1] The issues of fact and law raised by the complaint and answer make the necessity for such presentation clear.

Under the due process clause of the Constitution of the United States, defendant is entitled to a full

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[1]Objections to Motion for Leave to File Complaint, p. 6; Supplemental Statement and Brief in Support of Objections to Motion for Leave to File Complaint, pp. 27-29.

hearing before the tribunal empowered to perform the judicial function. That includes the right to introduce evidence and have judicial findings based upon it.[2]

Defendant now seeks appropriate procedure under which it may exercise this constitutional right, because it believes the introduction of evidence is necessary in order properly to oppose the claims of the United States and to present its defenses. Defendant desires to offer a great amount of relevant testimony and documentary evidence in the form of maps, charts, diplomatic correspondence, foreign records, personal papers of many men who had a part in the annexation of Texas as well as in the subsequent interpretation of the annexation agreement by the United States, and numerous other similar types of documentary evidence.

The appointment of a special master to hear and take the evidence and report to the Court his findings of fact and conclusions of law has been the accepted procedure of this Court in the past in most of the original actions similar in nature to the present one.[3]

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[2]See *Baltimore & O. Ry. v. United States*, 298 U.S. 349, 369 (1936); *Oregon Ry. & Nav. Co. v. Fairchild*, 224 U.S. 510, 525 (1912).

[3]Special masters of the type here requested were appointed by this Court in the following cases: *United States v. Wyoming*, 325 U.S. 833 (1945); *Colorado v. Kansas*, 316 U.S. 645 (1942); *Kansas v. Missouri*, 311 U.S. 614 (1940); *Missouri v. Iowa*, 304 U.S. 549 (1938); *Texas v. Florida*, 301 U.S. 671 (1937); *Arkansas v. Tennessee*, 301 U.S. 666 (1937); *Texas v. New Mexico*, 298 U.S. 644 (1936); *United States v. Oregon*, 51 S. Ct. 482 (1931); *United States v. Utah*, 283 U.S. 65, 72 (1931); *New Jersey v. Delaware*, 280 U.S. 529 (1930); *Louisiana v. Mississippi*, 278 U.S. 557

The fact that there was no master appointed in *United States v. California*, 332 U.S. 19 (1947), before a decision on the merits is immaterial here, because in that case neither party "suggested any necessity for the introduction of evidence."[4] Moreover, the facts in the two cases are entirely different. In this case the United States already has admitted that Texas entered the Union under circumstances different from those under which California entered.[5] That Texas has special defenses was responsibly and repeatedly acknowledged by the Attorney General of the United States in his testimony before congressional committees in 1948.[6] This was recently reiterated by Solicitor General Philip B. Perlman in testimony before the House Judiciary Committee, where he said:

> "As you know, Texas has special defenses that it is entitled to make that did not apply in the case of California."[7]

Because of the importance of this case, defendant would prefer that the full Court hear and pass upon

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(1928); *Massachusetts v. New York*, 271 U.S. 65, 81 (1926); *Wisconsin v. Illinois*, 271 U.S. 650 (1926); *New Mexico v. Texas*, 266 U.S. 586 (1924); *Oklahoma v. Texas*, 256 U.S. 602 (1921); *Georgia v. South Carolina*, 253 U.S. 477 (1920). (The citation of the order of appointment has been given where available.)

[4]332 U.S. at 24.

[5]Motion for Leave to File Complaint, p. 3.

[6]Joint Hearings Before the Committees on the Judiciary, 80th Cong., 2d Sess., on S. 1988 and Similar House Bills, February-March, 1948, 616, 617, 635, 689, 690.

[7]Hearings Before Subcommittee No. 1, House Judiciary Committee, 81st Cong., 1st Sess., on H. R. 5991 and H. R. 5992, Aug. 29, 1949, Reporter's Transcript, v. III, p. 373.

the evidence, but if that procedure is not adopted, the appointment of a special master is the proper alternative. While less desirable, the latter procedure would be efficient and expeditious and, at the same time, would protect the rights of the defendant to a full and orderly presentation of its defenses. There can be no argument that a hearing of the case on exceptions to the master's report also would limit and clarify the ultimate issues that this Court must pass upon and would make the task of the Court less difficult and less time-consuming.

It is respectfully submitted that unless the full Court will conduct the pre-trial proceedings and hear the evidence, the motion for appointment of a special master should be granted.

Respectfully submitted,

PRICE DANIEL
Attorney General of Texas
J. CHRYS DOUGHERTY
JESSE P. LUPTON, JR.
K. BERT WATSON
DOW HEARD
WALTON S. ROBERTS
CLAUDE C. MCMILLAN
Assistant Attorneys General

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