

DECIDED

PER CURIAM

JAN 8

1973

Office-Supreme Court, U.S.

FILED

JUL 20 1964

JOHN F. DAVIS, CLERK

In The
Supreme Court of the United States
October Term, 1964

No. 17, Original

STATE OF NEBRASKA, PLAINTIFF,

v.

STATE OF IOWA, DEFENDANT.

**MOTION FOR LEAVE TO FILE BILL OF
COMPLAINT, STATEMENT IN SUPPORT
OF MOTION, AND COMPLAINT**

CLARENCE A. H. MEYER
Attorney General of Nebraska
State Capitol Building
Lincoln Nebraska

JOSEPH R. MOORE
Special Assistant Attorney General
of Nebraska
1028 City National Bank Building
Omaha Nebraska

HOWARD H. MOLDENHAUER
Special Assistant Attorney General
of Nebraska
1100 First National Bank Building
Omaha Nebraska

INDEX

	PAGE
MOTION FOR LEAVE TO FILE BILL	
OF COMPLAINT	1
STATEMENT IN SUPPORT OF MOTION	2
COMPLAINT	5
EXHIBITS:	
"A"—Iowa-Nebraska Boundary Compact, Ratifi- cation by Iowa Legislature	24
"B"—Iowa-Nebraska Boundary Compact, Ratifi- cation by Nebraska Legislature	28
"C"—Petition in Equity, <i>State of Iowa v. Darwin</i> <i>Merrit Babbit et al</i>	31
"D"—First Amendment to Plaintiff's Petition, <i>State of Iowa v. Darwin Merrit Babbit,</i> <i>et al</i>	36
"E"—Interrogatories, <i>State of Iowa v. Darwin</i> <i>Merrit Babbit, et al</i>	38
"F"—Answers to Interrogatories, <i>State of Iowa</i> <i>v. Darwin Merrit Babbit, et al</i>	42
"G"—Plaintiff's Interrogatories, <i>State of Iowa v.</i> <i>Darwin Merrit Babbit, et al</i>	51
"H"—Second Amendment to Plaintiff's Petition, <i>State of Iowa v. Darwin Merrit Babbit,</i> <i>et al</i>	57
"I"—Answers and Objections to Plaintiff's Interrogatories, <i>State of Iowa v. Darwin</i> <i>Merrit Babbit, et al</i>	61
"J"—Decree, <i>Shipley v. Hull</i>	66
"K"—Decree, <i>Shipley v. Hull</i>	73
"L"—Petition, <i>State of Iowa v. Henry E.</i> <i>Schemmel, et al</i>	77
"M"—Separate Answer of Henry E. Schemmel, et al and Counterclaim	82

ii.

"N"—Separate Answer of F. Pace Woods, et al and Counterclaim	90
"O"—Reply to Answer and Answer to Counter- claim of Henry E. Schemmel, et al	94
"P"—Reply to Answer and Answer to Counter- claim of F. Pace Woods, et al	98
"Q"—Legislative Resolution 47, Seventy-third Legislature of the State of Nebraska	99

CITATIONS

CASES:

<i>Kinkead v. Turgeon</i> , 74 Neb. 580, 109 N. W. 744 (1906) reversing 74 Neb. 573, 104 N. W. 1061 (1905)	11
<i>McManus v. Carmichael</i> , 3 Iowa 1 (1856)	11
<i>Nebraska v. Iowa</i> , 143 U. S. 359, 12 S. Ct. 396, 36 L. Ed. 186 (1892)	7
<i>Nebraska v. Iowa</i> , 145 U. S. 519, 12 S. Ct. 976, 36 L. Ed. 798 (1892)	7

CONSTITUTION & STATUTES

Art. III, Sec. 2, Clause 2 of the Constitution of the United States	1, 5
Art. IV, Sec. 1, Constitution of the United States	3, 18, 21
28 U. S. C., Sec. 1251(a)(1) (1948)	5
Act of Congress July 12, 1943, Ch. 220, 57 U. S. Stat. At Large 494	8
Iowa-Nebraska Boundary Compact of 1943	2, 3, 4, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 28
Iowa Code Chapter 568	11

MISCELLANEOUS:

Part 1 of the Missouri River Planning Report	10, 17
Legislative Resolution 47, Seventy-third Legisla- ture of the State of Nebraska	19, 99

In The
Supreme Court of the United States
October Term, 1964

No. _____, Original

STATE OF NEBRASKA, PLAINTIFF,

v.

STATE OF IOWA, DEFENDANT.

**MOTION FOR LEAVE TO FILE
BILL OF COMPLAINT**

Now comes the State of Nebraska, by its Attorney General and moves the Court for leave to file the Bill of Complaint submitted herewith. The State of Nebraska seeks to bring this suit under the authority of Article III, Section 2, Clause 2 of The Constitution of the United States.

CLARENCE A. H. MEYER
Attorney General of Nebraska
State Capitol Building
Lincoln Nebraska

JOSEPH R. MOORE
Special Assistant Attorney General
of Nebraska
1028 City National Bank Building
Omaha Nebraska

HOWARD H. MOLDENHAUER
Special Assistant Attorney General
of Nebraska
1100 First National Bank Building
Omaha Nebraska

STATEMENT IN SUPPORT OF MOTION

The purpose of this litigation is to resolve the controversy between the Plaintiff, The State of Nebraska, and the Defendant, The State of Iowa, growing out of the actions of the State of Iowa in attempting to unilaterally abrogate the Iowa-Nebraska Boundary Compact of 1943 and in attempting to assert title to lands which prior to 1943 had been within the jurisdiction of the State of Nebraska and title to which had been in citizens of the State of Nebraska.

Prior to the extensive work along the Missouri River's length by the U. S. Army Corps of Engineers and the construction of upstream control dams, the river comprising the boundary between these two states was a notoriously unpredictable and unreliable force. Through the years, islands have appeared and disappeared and the banks and channels have constantly shifted between the bluffs which are sometimes miles apart. The boundary between Iowa and Nebraska has therefore likewise been a constantly shifting thing.

Prior to 1943, as the river became more and more stable, much bottom land had avoided the periodic flooding and many large islands had formed and in many cases become attached to one bank or the other. Much of this land had been settled by citizens claiming Nebraska residence and The State of Nebraska had exercised its jurisdiction over the land and the residents without question or interference by the State of Iowa. Certain of these lands were found on the easterly side of the main channel or Thalweg after the more or less final stabilization of the channel by the work of the Engineers, however, the Iowa-Nebraska Compact of 1943, duly ratified by the two States and by the Con-

gress of the United States provided that although the boundary would thenceforth be the center line of the proposed stabilized channel of the Missouri River as established by the U. S. Engineers Office, Omaha, Nebraska, that nevertheless, "Titles, mortgages, and other liens good in Nebraska shall be good in Iowa as to any lands Nebraska may cede to Iowa and any pending suits or actions concerning said lands may be prosecuted to final judgment in Nebraska and such judgments shall be accorded full force and effect in Iowa."

The lands involved in this controversy are richly productive farm land in many cases and have been cleared of wild growth and improved at considerable expense by individuals claiming ownership and have been conveyed between private individuals under claim of title without notice of any claim or right in the State of Iowa. It is estimated (without actual knowledge of the extent of the ambition of Defendant) that there may be as much as 15,560 acres involved in this dispute having a value of several million dollars.

Because of the doctrine of Iowa law whereby the State is held to own from the high water mark to the center of the bed of the stream, the State of Iowa has laid claim to certain lands which were ceded by Nebraska in the Boundary Compact of 1943. A project has been launched to seize these lands for the State of Iowa, ostensibly for recreational development.

To the extent that this project seeks to quiet title in the State of Iowa to lands ceded by Nebraska in 1943, the action of the State of Iowa is a violation of the Iowa-Nebraska Boundary Compact of 1943 and Article IV, Section 1 of the Constitution of the United States.

The complaint seeks to restrain and permanently enjoin the State of Iowa from violating the Iowa-Nebraska Boundary Compact of 1943 and from interfering with the rights of citizens of either State which were secured to them by the laws of the State of Nebraska prior to 1943.

It is respectfully submitted that the motion for leave to file the Bill of Complaint should be granted.

CLARENCE A. H. MEYER
Attorney General of Nebraska

JOSEPH R. MOORE
Special Assistant Attorney
General of Nebraska

HOWARD H. MOLDENHAUER
Special Assistant Attorney
General of Nebraska

In The
Supreme Court of the United States
October Term, 1964

No. _____, Original

STATE OF NEBRASKA, PLAINTIFF

v.

STATE OF IOWA, DEFENDANT

COMPLAINT

The State of Nebraska, by its Attorney General, brings this suit against the defendant, the State of Iowa, and for its cause of action states:

I.

The original jurisdiction of this Court is invoked under Article III, Section 2, Clause 2, of the Constitution of the United States and 28 U.S.C., Sec. 1251(a) (1) (1948).

II.

The State of Iowa was admitted into the Union in 1846 with boundaries as follows:

Beginning in the middle of the main channel of the Mississippi River, at a point due east of the middle of the mouth of the main channel of the Des Moines River; thence up the middle of the main channel of the said Des Moines River, to a point on said river where the northern boundary

line of the State of Missouri, as established by the constitution of that State, adopted June twelfth, eighteen hundred and twenty, crosses the said middle of the main channel of the said Des Moines River; thence, westwardly, along the said northern boundary line of the State of Missouri, as established at the time aforesaid, *until an extension of said line intersect the middle of the main channel of the Missouri River; thence, up the middle of the main channel of the said Missouri River, to a point opposite the middle of the main channel of the Big Sioux River, according to Nicollet's map; thence, up the main channel of the said Big Sioux River, according to said map, until it is intersected by the parallel of forty-three degrees and thirty minutes north latitude; thence east, along said parallel of forty-three degrees and thirty minutes, until said parallel intersect the middle of the main channel of the Mississippi River; thence, down the middle of the main channel of said Mississippi River, to the place of beginning.*

III.

The State of Nebraska was admitted into the Union in 1867 with boundaries as follows:

Commencing at a point formed by the intersection of the western boundary of the state of Missouri with the fortieth degree of north latitude; extending thence due west along said fortieth degree of north latitude to a point formed by its intersection with the twenty-fifth degree of longitude west from Washington; thence north along said twenty-fifth degree of longitude to a point formed by its intersection with the forty-first degree of north latitude; thence west along said forty-first degree of north latitude to a point formed by its intersection with the twenty-seventh degree of longitude west from Washington; thence north along said twenty-seventh degree of west longitude to a point formed

by its intersection with the forty-third degree of north latitude; thence east along said forty-third degree of north latitude to the Keya Paha river; thence down the middle of the channel of said river, with its meanderings, to its junction with the Niobrara river; thence down the middle of the channel of said Niobrara river, and following the meanderings thereof, *to its junction with the Missouri river; thence down the middle of the channel of the said Missouri river, and following the meanderings thereof, to the place of beginning.*

IV.

Controversy developed between Nebraska and Iowa concerning the boundary between the two states and on October 21, 1890, the State of Nebraska filed an action captioned "*Nebraska vs. Iowa*, No. 4 Original," in the Supreme Court of the United States requesting the Court to ascertain and establish the boundary between Nebraska and Iowa. This case resulted in the opinion found in *Nebraska v. Iowa*, 143 U.S. 359, 12 S.Ct. 396, 36 L. Ed. 186 (1892) in which the Court determined that the boundary between Iowa and Nebraska was the center of the main channel of the Missouri River and that boundary moved with the changes of the channel where the alteration was gradual or imperceptible by the process known as accretion, but, where the river suddenly abandoned its old bed and sought a new bed by the process known as avulsion, the boundary remained the center of the abandoned river channel. The case resulted in the Decree found at 145 U. S. 519, 12 S. Ct. 976, 36 L. Ed. 798 (1892) establishing the then boundary between Nebraska and Iowa.

V.

Because of the peculiar character of the Missouri River, the rapidity of the current, the course of the

river, and the soil through which it flows, many natural changes, by avulsion, accretion, and reliction have occurred in the Missouri River since 1892. During the period of the 1930's the United States Army Corps of Engineers commenced a program of channel stabilization along the Missouri River, which program has continued up to the present time. Part of this program consisted of the construction of dikes and revetments and in dredging operations, all of which in many areas along the Missouri River diverted the Missouri River from its normal course into a new and stabilized channel. As a result of the natural and man-made changes, land belonging to Nebraska became situated on the easterly or Iowa side of the Missouri River and land belonging to Iowa became situated on the westerly or Nebraska side of the Missouri River, and it became almost impossible to determine the exact boundary between Iowa and Nebraska in many places at any given time in the past.

VI.

In 1943, Iowa and Nebraska entered into the Iowa-Nebraska Boundary Compact establishing the boundary line between Iowa and Nebraska by agreement which was approved by Act of Congress July 12, 1943, Ch. 220, 57 U. S. Stat. At Large 494. A copy of the Iowa Act which was ratified by the Iowa legislature and approved on April 15, 1943 is attached hereto and marked Exhibit "A". A copy of the Nebraska Act which was ratified by the Nebraska legislature and approved on May 7, 1943, is attached hereto and marked Exhibit "B".

VII.

The Iowa-Nebraska Boundary Compact redefined the boundary between Iowa and Nebraska as the middle of

the main channel of the Missouri River, being the center line of the proposed stabilized channel of the Missouri River as established by the United States Engineers' office, Omaha, Nebraska, and shown on the alluvial plain maps of the Missouri River from Sioux City, Iowa, to Rulo, Nebraska, and identified by file numbers AP-1 to 4, inclusive, dated January 30, 1940, and file numbers AP-5 to 10, inclusive, dated March 29, 1940, which maps are now on file in the United States Engineers' office at Omaha, Nebraska, and copies of which maps are now on file with the Secretary of State of the State of Iowa and with the Secretary of State of the State of Nebraska.

VIII.

In addition to establishing the boundary, the Compact as approved by the Iowa legislature contained the following provisions pertinent to this action:

"Sec. 2. The State of Iowa hereby cedes to the State of Nebraska and relinquishes jurisdiction over all lands now in Iowa but lying westerly of said boundary line and contiguous to lands in Nebraska.

Sec. 3. Titles, mortgages, and other liens good in Nebraska shall be good in Iowa as to any lands Nebraska may cede to Iowa and any pending suits or actions concerning said lands may be prosecuted to final judgment in Nebraska and such judgments shall be accorded full force and effect in Iowa.

Sec. 4. Taxes for the current year may be levied and collected by Nebraska or its authorized governmental subdivisions and agencies on lands ceded to Iowa and any liens or other rights accrued or accruing, including the rights of collection, shall be fully recognized and the county treasurers of the counties affected shall act as agents in carrying out

the provisions of this section: Provided, that all liens or other rights accrued or accruing, as aforesaid, shall be claimed or asserted within five years after this act becomes effective, and if not so claimed or asserted, shall be forever barred."

IX.

Following the Iowa-Nebraska Boundary Compact, many Nebraska citizens possessing land on the easterly or Iowa side of the Missouri River continued in the peaceful use and enjoyment of their land without interference by Iowa governmental authorities during the 1940's and 1950's. Some of this land was placed on the tax rolls of counties in Iowa after the Iowa-Nebraska Boundary Compact. Much of such land had formerly been of little value, consisting of scrub timber, willows and heavy undergrowth and not immediately suited for farming or other productive use. A great deal of money and labor was spent by these owners in the clearing of this land and it has, through their efforts, become useful, productive land with values ranging from approximately \$400 to \$500 per acre. In January, 1961, the State Conservation Commission of the State of Iowa published a document entitled "Part 1 of the Missouri River Planning Report" introducing a plan by the State of Iowa to acquire "twenty-five potential recreation areas" along the Missouri River. This plan proposed that the State of Iowa institute quiet title actions in an attempt to prove state ownership of approximately twenty-five areas along the Missouri River containing an estimated 15,567 acres of water, land, marsh, and sand dunes. In pursuance of this plan, the Attorney General of the State of Iowa instituted various legal actions and intervened in other actions to attempt to quiet title in the State of Iowa to

much of this property. Some of these actions have been determined in the Supreme Court of Iowa and some are presently pending.

X.

The Supreme Court of the State of Iowa, beginning with the case of *McManus v. Carmichael*, 3 Iowa 1 (1856), has followed the principle of law that the state owns title to the beds of all navigable streams within the State of Iowa to the high water mark and that any islands arising out of the beds of navigable streams in the state belong to the State of Iowa. Chapter 568 of the Iowa Code provides for the disposition and sale by the State of Iowa of all land between high water mark and the center of the former channel of any navigable stream, where such channel has been abandoned so that it is no longer capable of use and is not likely again to be used for the purpose of navigation, and all bars or islands in the channels of navigable streams not previously surveyed or platted by the United States or the State of Iowa and within the jurisdiction of the State of Iowa. The Supreme Court of the State of Nebraska, beginning with the case of *Kinkead v. Turgeon*, 74 Neb. 580, 109 N. W. 744 (1906) reversing 74 Neb. 573, 104 N. W. 1061 (1905) has followed the doctrine that the riparian owner owns to the thread of the channel of navigable streams in Nebraska subject to the public easement of navigation. The State of Iowa, in prosecuting the previously mentioned quiet title actions, has proceeded under the Iowa common law principle of state ownership to the bed of the Missouri River from the high water mark to the thread of the stream and of state ownership of abandoned river channels of the Missouri River, in some cases in complete disregard of the provisions of the Iowa-Nebraska Boundary Compact

and without regard to the state in which such land was formed and the facts surrounding the formation and occupancy or control over said land.

XI.

On March 18, 1963, the State of Iowa filed a Petition in Equity in the District Court of Iowa in and for Mills County captioned "*State of Iowa, Plaintiff, vs Darwin Merrit Babbit, et al*, Equity No. 17433" a copy of which is attached hereto and marked Exhibit "C", attempting to quiet title to certain land in Mills County, Iowa, presently bordering the Missouri River on the eastern or Iowa side. On March 26, 1963, the State of Iowa filed a First Amendment to Plaintiff's Petition in said action, a copy of which is attached hereto and marked Exhibit "D". On April 18, 1963, certain of the defendants filed interrogatories, a copy of which is attached hereto and marked Exhibit "E". On January 14, 1964, the State of Iowa filed answers to interrogatories, a copy of which is attached hereto and marked Exhibit "F" in which the State of Iowa set forth its theory under which it was claiming title to the property, and the State of Iowa filed Plaintiff's Interrogatories, a copy of which is attached hereto and marked Exhibit "G". On January 14, 1964 the State of Iowa also filed a Second Amendment to Plaintiff's Petition, changing the description of the property claimed, a copy of which is attached hereto and marked Exhibit "H". On June 2, 1964, certain defendants in the above case filed Answers and Objections to Plaintiff's Interrogatories, a copy of which is attached hereto and marked Exhibit "I".

XII.

Land claimed by the State of Iowa in the case of *State of Iowa v. Babbit, et al*, had been surveyed by

the County Surveyor of Cass County, Nebraska, in August of 1933 and such survey was filed in the Office of the Register of Deeds of Cass County, Nebraska, on January 3, 1935, and recorded in Plat Book 2, Page 19, and the property had been on the tax rolls of Cass County, Nebraska, prior to the Iowa-Nebraska Boundary Compact. On April 4, 1940, an action to quiet title to some of the property was filed in the District Court of Cass County, Nebraska, and captioned "*Harvey Shipley, et al, v. Frank G. Hall, et al*, Doc. 9, No. 237". A copy of the Decree entered on August 1, 1940, as to part of the land is attached hereto and marked Exhibit "J" and a copy of the Decree entered on June 19, 1941, as to other of the land is attached hereto and marked Exhibit "K". Some of the individuals presently claiming ownership and possession of such land as against the State of Iowa obtained their titles through parties to whom title had been quieted in the case of *Shipley v. Hall*. Prior to the Iowa-Nebraska Boundary Compact, a portion of the property was sold by administrator's sale through proceedings in the District Court of Cass County, Nebraska. Prior to the Iowa-Nebraska Boundary Compact this property, which was surrounded by waters of the Missouri River, was inhabited by Nebraska residents who voted in Nebraska and were included within the census report to the County Superintendent of Cass County, Nebraska. Children living on this land went to school in Nebraska, the birth of a child born upon this land was recorded in the State of Nebraska, and the State of Nebraska at all times took and exercised jurisdiction over these inhabitants and the land involved. The inhabitants of the property at all times considered themselves residents and citizens of the State of Nebraska. The State

of Iowa acquiesced in the possession of said territory by the State of Nebraska and did not exercise or attempt to exercise sovereignty and dominion over this land.

XIII.

The land involved in *State of Iowa v. Babbitt* formed as accretions to the Nebraska riparian land of the Missouri River or as an island commencing in the Missouri River on the Nebraska side of the thalweg or boundary, and from the time of such formation, continued under the jurisdiction and dominion of the State of Nebraska until the Iowa-Nebraska Boundary Compact. Action by the United States Army Corps of Engineers in stabilizing the channel of the Missouri River diverted the course of the river so that the thread of the stream following stabilization work and the construction of dikes and revetments clearly caused the land involved to become contiguous to the land on the eastern side of the Missouri River and this land was ceded to Iowa by virtue of the Iowa-Nebraska Boundary Compact, and following the Iowa-Nebraska Boundary Compact, the State of Nebraska continued to assess taxes in accordance with the provisions of Section 4 of the Compact.

XIV.

Approximately the westerly fifty feet of the land described in the second amendment to plaintiff's Petition in *State of Iowa v. Babbitt* marked Exhibit "H" is presently in the State of Nebraska and is west of the center line of the proposed stabilized channel of the Missouri River as established by the alluvial plain maps referred to in the Iowa-Nebraska Boundary Compact. This land is not within the jurisdiction of the courts of the State of Iowa, is not owned by the State of Iowa, is

within the jurisdiction of the State of Nebraska, and Iowa's attempt to quiet title to this land constitutes an encroachment upon the sovereignty and territory of the State of Nebraska.

XV.

On March 26, 1963, the State of Iowa filed a Petition in the District Court of Iowa in and for Fremont County, captioned "*State of Iowa, Plaintiff vs. Henry E. Schemmel, et al, Defendants*, Equity No. 19765", a copy of which is attached hereto and marked Exhibit "L". On March 18, 1964, a Separate Answer of Henry E. Schemmel, et al, and Counterclaim was filed in said action, a copy of which is attached hereto and marked Exhibit "M", and on March 18, 1964, a Separate Answer of F. Pace Woods, et al, and Counterclaim was filed in said action, a copy of which is attached hereto and marked Exhibit "N". On April 7, 1964, the State of Iowa filed a Reply to Answer and Answer to Counterclaim of Henry E. Schemmel, et al, a copy of which is attached hereto and marked Exhibit "O" and on the same date the State of Iowa filed a Reply to Answer and Answer to Counterclaim of F. Pace Woods, et al, a copy of which is attached hereto and marked Exhibit "P". Plaintiff is informed and believes that the boundary line between Nebraska and Iowa at the time of the Iowa-Nebraska Boundary Compact was to the east of the land described in said Petition because of prior avulsive action by the Missouri River which resulted in a change in the channel, but not in a change of the boundary between the states. Plaintiff is informed and believes that the channel of the Missouri River as it existed in 1943 at the time of the effective date of the Iowa-Nebraska Boundary Compact was entirely within Nebraska at such place and that, under the terms of

the Iowa-Nebraska Boundary Compact, the State of Iowa recognized that it had relinquished all claim to the ownership of land located in the bed of the Missouri River at that place. In the 1930's the United States Army Corps of Engineers, by dredging and the construction of dikes and revetments, shifted the channel of the Missouri River in such manner that, if it should be determined that the then main channel of the Missouri River did in fact constitute the boundary between Iowa and Nebraska at that place, the boundary did not change, leaving land described in said Petition in the State of Nebraska, though located on the easterly side of the Missouri River. Such land was ceded to Iowa by Nebraska under the provisions of the Iowa-Nebraska Boundary Compact.

XVI.

Some of the defendants named in the action of *State of Iowa v. Schemmel* had paid taxes on the land in the State of Nebraska prior to the Iowa-Nebraska Boundary Compact and their chain of title is traced through previous quiet title actions in the courts of the State of Nebraska. Following the Iowa-Nebraska Boundary Compact, the lands had been placed on the tax rolls of Fremont County, Iowa, and taxes had been paid by said owners to the State of Iowa, and title to some of the property can be traced through a tax sale and deed from the County Treasurer of Fremont County, Iowa.

XVII.

A great deal of time, money and effort has been expended by the defendants in the cases of *State of Iowa v. Schemmel, et al*, and *State of Iowa v. Babbitt, et al*, in the clearing of land and cultivation, fertiliza-

tion, and improvement in order to make it productive. In the case of *State of Iowa v. Schemmel, et al*, there are approximately 660 acres of land involved which has a value of \$400 to \$500 per acre, and in the case of *State of Iowa v. Babbitt, et al*, there are approximately 1,990 acres of land involved of the value of approximately \$400 to \$500 per acre. There are several thousands of other acres along the Missouri River in similar circumstances, the titles to which are being questioned by the State of Iowa and the legal principles determined by the Court in this action should operate to clarify and make more certain the status of this additional land. Unless this matter is determined, the State of Iowa threatens to attempt to obtain title in similar fashion to such other land as evidenced by its Missouri River Planning Report.

XVIII.

Plaintiff alleges that Section 3 of the Iowa-Nebraska Boundary Compact as ratified by the Iowa legislature which provides: "Section 3. Titles, mortgages and other liens good in Nebraska shall be good in Iowa as to any lands Nebraska may cede to Iowa and any pending suits or actions concerning said lands may be prosecuted to final judgment in Nebraska and such judgments shall be accorded full force and effect in Iowa." is applicable to the land involved in the cases of *State of Iowa v. Babbitt*, and *State of Iowa v. Schemmel*, and that Iowa, in attempting to obtain title to said land, is in violation of the Iowa-Nebraska Boundary Compact.

XIX.

Prior to and at the time of the adoption of the Iowa-Nebraska Boundary Compact, the boundary line between Iowa and Nebraska had not been determined in

many places and was almost impossible of exact determination without tremendous expense and considerable litigation because of the movements of the Missouri River and the action of the United States Army Corps of Engineers in diverting and changing the channel of the Missouri River in connection with its channel stabilization program. At the time of adoption of the Compact, no procedure was established to identify specific land which was ceded by one state to the other and no procedure was established to identify land transferred from one state to the other by new legal descriptions and section numbers using the designation points of the state to which such land had been ceded, and no machinery was established to place such land of record in the other state. It was the purpose of the Iowa-Nebraska Boundary Compact to establish the boundary line as the center of the stabilized channel of the Missouri River and Sections 3 and 4 were included in the Iowa-Nebraska Boundary Compact in order to protect the titles of individual citizens of both Iowa and Nebraska who claimed title to land along the Missouri River. Both states were aware of the problems of definitely identifying lands which were ceded by one state to the other and a purpose of the Compact was to settle and eliminate controversy. Those claiming title to lands along or in proximity to the Missouri River or its abandoned channels and those claiming title through such persons should not be subject to having their titles questioned by either state. The State of Iowa, by its course of action herein alleged, is thereby attempting to unilaterally abrogate the Iowa-Nebraska Boundary Compact, and Iowa is violating the provisions of Article IV, Section 1 of the Constitution of the United States which provides that "Full faith and credit shall be given

in each State to the Public Acts, Records and judicial Proceedings of every other State.”

XX.

The aggressive policies of the State of Iowa have caused great consternation to the State of Nebraska and its citizens and have threatened to result in armed conflict on the part of landowners and the State of Iowa and its representatives. In recognition of the gravity of the problem, the Seventy-third Legislature of the State of Nebraska passed Legislative Resolution 47 on May 28, 1963, a copy of which is attached hereto and marked Exhibit “Q”. The problems in connection with the determination of the Iowa-Nebraska boundary have been, and are, of great concern to both states. The problem is compounded by the fact that the alluvial plain maps referred to in the Iowa-Nebraska Boundary Compact are of too small a scale (1" equals 2,640') and do not contain sufficient detail for a surveyor to accurately locate the boundary on the ground. At one time it was possible to locate the state boundary from the United States Army Corps of Engineers construction maps (1" equals 400') because the river alignment shown on those maps conformed to the alignment as shown on the alluvial plain maps. However, since the Iowa-Nebraska Boundary Compact was ratified, numerous channel re-alignments have been made and the basic 1" equals 400' tracings have been revised to show these alignments. Plaintiff has been informed and believes that copies of the 1" equals 400' maps which showed the alignment in accordance with the alignment shown on the alluvial plain maps were not retained and it is not possible in many areas to locate the center line of the “proposed stabilized channel” of the Mis-

souri River (within the meaning of the 1943 Compact) on the ground from maps presently on file in the office of the United States Army Corps of Engineers.

XXI.

The State of Nebraska is not, and should not be, required to submit to the jurisdiction of the state courts of Iowa to determine the proper construction of the Iowa-Nebraska Boundary Compact nor to decide its effect as between the two states or the effect upon titles to lands bordering the Missouri River. The State of Nebraska also should not be bound by any determination by the state courts of Iowa as to the location of the Iowa-Nebraska boundary as of any given date. The jurisdiction of the Supreme Court of the United States in boundary disputes between states is exclusive and original, and the jurisdiction of the Supreme Court of the United States in actions between states to construe a boundary compact is exclusive and original.

WHEREFORE, plaintiff prays:

I.

That the Court adjudge and decree that the Iowa-Nebraska Boundary Compact of 1943 settled not only the issue of the sovereignty of the respective states over the lands along the Missouri River bordering the two states but also settled any issues of private ownership of said lands as between the State of Iowa and private citizens with respect to property which has been settled and occupied or as to which the incidents of ownership had been exercised all prior to the ratification and approval of the Iowa-Nebraska Boundary Compact of 1943.

II.

That the Court adjudge and decree that the State of Iowa is bound to recognize the validity of titles, mortgages and other liens to lands lying easterly of the boundary line as established by the Iowa-Nebraska Boundary Compact of 1943 as such titles, mortgages and other liens were recognized in Nebraska prior to the ratification and approval of the said Compact.

III.

That the Court further adjudge and decree that the State of Iowa, by the ratification and approval of the Iowa-Nebraska Boundary Compact of 1943, waived and relinquished any right to claim ownership over lands which prior to 1943 had been on the tax rolls of the State of Nebraska or its authorized governmental subdivisions on lands which had been subject to change by action of the Missouri River and which had been subject to taxation and on which taxes had been levied and collected by Nebraska for the year 1943 and years prior thereto.

IV.

That the Court adjudge and decree that the State of Iowa, in attempting to presently establish ownership over certain lands along the Missouri River by the application of legal principles recognized by the State of Iowa, and particularly with reference to lands which at any time had been governed by the Nebraska principles of law, is in violation of the Iowa-Nebraska Boundary Compact of 1943 and in violation of Article IV, Section 1 of the Constitution of The United States which provides that "Full faith and credit shall be given in each State to the Public Acts, Records and Judicial Proceedings of every other State."

V.

That the Court enforce the Iowa-Nebraska Boundary Compact of 1943 so as to give full effect to its intention to settle completely ownership rights to land along or in proximity to the Missouri River and its abandoned river channels.

VI.

To adjudge and decree that in those places where the boundary between the States of Nebraska and Iowa was a varying line so far as affected by the changes of diminution and accretion in the mere washings of the waters of the Missouri River, and particularly with reference to the period preceding the ratification and approval of the Iowa-Nebraska Boundary Compact of 1943, the State of Iowa could not and did not acquire title or ownership over any lands between the eastern high water mark and the center of the main channel, ownership of which had ever been in private individuals particularly the residents of Nebraska, notwithstanding any principle of Iowa law reserving ownership in the State.

VII.

For an injunction restraining the State of Iowa, its officers, agents and servants from any further prosecution in the cases of *State of Iowa v. Schemmel* and *State of Iowa v. Babbitt* pending the outcome of this proceeding or until further order of this court.

VIII.

That a special master be appointed to take evidence to the extent deemed necessary and report to the Court as to whether the lands involved in the case of *State of*

Iowa v. Babbitt and *State of Iowa v. Schemmel* referred to hereinabove, in whole or in part were formed in and were a part of the State of Nebraska and as Nebraska lands were ceded to the State of Iowa by the Iowa-Nebraska Compact of 1943 and upon the taking of such report that the Court find the State of Iowa did not acquire any claim of ownership or title in such lands.

IX.

That all matters at issue between these two States, pertinent to said Compact, may be heard and determined in such manner as the Court may direct and that all proper inquiries may be had, and decrees and orders entered.

X.

That the Court may retain jurisdiction of this matter, to make such further orders as may be necessary to enforce its decrees; and that Plaintiff may have such other and further relief as to which in equity and good conscience it may be entitled.

CLARENCE A. H. MEYER
Attorney General of Nebraska

JOSEPH R. MOORE
Special Assistant Attorney
General of Nebraska

HOWARD H. MOLDENHAUER
Special Assistant Attorney
General of Nebraska

EXHIBIT "A"

IOWA-NEBRASKA BOUNDARY COMPACT

Ratification by Iowa Legislature

AN ACT

To Establish the Boundary Line Between Iowa and Nebraska by Agreement; to Cede to Nebraska and to Relinquish Jurisdiction Over Lands Now in Iowa but Lying Westerly of Said Boundary Line and Contiguous to Lands in Nebraska; to Provide that the Provisions of this Act Become Effective Upon the Enactment of a Similar and Reciprocal Law by Nebraska and the Approval of and Consent to the Compact Thereby Effected by the Congress of the United States of America and to Declare an Emergency.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. That on and after the enactment of a similar and reciprocal law by the State of Nebraska, and the approval and consent of the Congress of the United States of America, as hereinafter provided, the boundary line between the States of Iowa and Nebraska shall be described as follows:

Commencing at a point on the south line of section 20, in township 75 N., range 44 W. of the fifth principal meridian, produced 861½ feet west of the S. E. corner of said section, and running thence northwesterly to a point on the south line of lot 4 of section 10, in township 15 N., of range 13 E. of the sixth principal meridian 2,275 feet east of the S. W. corner of the N. W. ¼ of the S. E. ¼ of said section 10, thence northerly, to a point on the north line of lot 4 aforesaid, 2,068 feet east of the center line of said section 10; thence north, to a

point on the north line of section 10, 2,068 feet east of the quarter section corner on the north line of said section 10; thence northerly, to a point 312 feet west of the S. E. corner of lot 1, in section 3, township 15 N., range 13 E., aforesaid; thence northerly, to a point on the section line between sections 2 and 3, 358 feet south of the quarter section corner on said line; thence northeasterly, to the center of the S. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of section 2 aforesaid; thence east, to the center of the W. $\frac{1}{2}$ of lot 5, otherwise described as the S. W. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of section 1, in township 15, range 13, aforesaid; thence southeasterly, to a point on the south line of lot 5 aforesaid, 1,540 feet west of the center of section 1, last aforesaid; thence south 2,050 feet, to a point 1,540 feet west of the north and south open line through said section 1; thence southwesterly, to the S. W. corner of the N. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of section 21, in township 75 N., range 44 W. of the fifth principal meridian; thence southeasterly, to a point 660 feet south of the N. E. corner of the N. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of section 28, in township 75 N., range 44 W., aforesaid; and said line produced to the center of the channel of the Missouri river; thence up the middle of the main channel of the Missouri river to a point opposite the middle of the main channel of the Big Sioux river.

Commencing again at the point of beginning first named, namely, a point on the south line of section 20, in township 75 N., range 44 W. of the fifth principal meridian, produced 861 $\frac{1}{2}$ feet west of S. E. corner of said section, and running thence southeasterly to a point 660 feet east of the S. W. corner of the N. W. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of section 28, in township 75 N., range 44 W. of the fifth principal meridian, and said line produced to the center of the channel of the Missouri river; thence down the middle of the main channel of

Exhibit

the Missouri river to the northern boundary of the State of Missouri.

The said middle of the main channel of the Missouri river referred to in this act shall be the center line of the proposed stabilized channel of the Missouri river as established by the United States engineers' office, Omaha, Nebraska, and shown on the alluvial plain maps of the Missouri river from Sioux City, Iowa, to Rulo, Nebraska, and identified by file numbers AP-1 to 4 inclusive, dated January 30, 1940, and file numbers AP-5 to 10 inclusive, dated March 29, 1940, which maps are now on file in the United States engineers' office at Omaha, Nebraska, and copies of which maps are now on file with the secretary of state of the State of Iowa and with the secretary of state of the State of Nebraska.

Sec. 2. The State of Iowa hereby cedes to the State of Nebraska and relinquishes jurisdiction over all lands now in Iowa but lying westerly of said boundary line and contiguous to lands in Nebraska.

Sec. 3. Titles, mortgages, and other liens good in Nebraska shall be good in Iowa as to any lands Nebraska may cede to Iowa and any pending suits or actions concerning said lands may be prosecuted to final judgment in Nebraska and such judgments shall be accorded full force and effect in Iowa.

Sec. 4. Taxes for the current year may be levied and collected by Nebraska or its authorized governmental subdivisions and agencies on lands ceded to Iowa and any liens or other rights accrued or accruing, including the right of collection, shall be fully recognized and the county treasurers of the counties affected shall act as agents in carrying out the provisions of this section: *Provided*, that all liens or other rights accrued or accruing, as aforesaid, shall be claimed or

asserted within five years after this act becomes effective, and if not so claimed or asserted, shall be forever barred.

Sec. 5. The provisions of this act shall become effective only upon the enactment of a similar and reciprocal law by the State of Nebraska and the approval of and consent to the compact thereby effected by the Congress of the United States of America. Said similar and reciprocal law shall contain provisions identical with those contained herein for the cession to Iowa of all lands now in Nebraska but lying easterly of said boundary line described in section 1 of this act and contiguous to lands in Iowa and also contain provisions identical with those contained in sections 3 and 4 of this act but applying to lands ceded to Nebraska.

Sec. 6. Whereas an emergency exists, this act shall be in full force and effect, subject to conditions as hereinabove expressed from and after its publication in the Sioux City Journal, a newspaper published at Sioux City, Iowa, and in the Nonpareil, a newspaper published at Council Bluffs, Iowa.

(Signed) Henry W. Burma
Speaker of the House.

(Signed) Robert D. Blue
President of the Senate.

I hereby certify that this Bill originated in the House and is known as House File 437, Fiftieth General Assembly.

(Signed) A. C. Gustafson
Chief Clerk of the House.

Approved April 15th, 1943.

(Signed) Bourke B. Hickenlooper
Governor.

(Laws 1943, p. 797.)

EXHIBIT "B"

Ratification by Nebraska Legislature

AN ACT to establish the boundary line between Iowa and Nebraska by agreement; to cede to Iowa and to relinquish jurisdiction over lands now in Nebraska but lying easterly of said boundary line and contiguous to lands in Iowa; to provide that the provisions of this act shall become effective upon the approval of and consent of the Congress of the United States of America to the compact effected by this act and House File 437 of the 1943 Session of the Iowa Legislature; to repeal Chapter 121, Session Laws of Nebraska, 1941; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That on and after the approval and consent of the Congress of the United States of America to this act and a similar and reciprocal act enacted by the Legislature of the State of Iowa, as hereinafter provided, the boundary line between the States of Iowa and Nebraska shall be described as follows:

Commencing at a point on the south line of section 20, in township 75 N., range 44 W. of the fifth principal meridian, produced 861½ feet west of the S. E. corner of said section, and running thence northwesterly to a point on the south line of lot 4 of section 10, in township 15 N., of range 13 E. of the sixth principal meridian, 2,275 feet east of the S. W. corner of the N. W. ¼ of the S. E. ¼ of said section 10; thence northerly, to a point on the north line of lot 4 aforesaid, 2,068 feet east of the center line of said section 10; thence north, to a point on the north line of section 10, 2,068 feet east of the quarter section corner on the north line of said sec-

tion 10; thence northerly, to a point 312 feet west of the S.E. corner of lot 1, in section 3, township 15 N., range 13 E., aforesaid; thence northerly, to a point on the section line between sections 2 and 3, 358 feet south of the quarter section corner on said line; thence northeasterly, to the center of the S. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of section 2 aforesaid; thence east, to the center of the W. $\frac{1}{2}$ of lot 5, otherwise described as the S. W. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of section 1, in township 15, range 13, aforesaid; thence southeasterly, to a point on the south line of lot 5 aforesaid, 1,540 feet west of the center of section 1, last aforesaid; thence south 2,050 feet, to a point 1,540 feet west of the north and south open line through said section 1; thence southwesterly, to the S. W. corner of the N. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of section 21, in township 75 N., range 44 W. of the fifth principal meridian; thence southeasterly, to a point 660 feet south of the N. E. corner of the N. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of section 28, in township 75 N., range 44 W., aforesaid; and said line produced to the center of the channel of the Missouri river; thence up the middle of the main channel of the Missouri river to a point opposite the middle of the main channel of the Big Sioux river.

Commencing again at the point of beginning first named, namely, a point on the south line of section 20, in township 75 N., range 44 W. of the fifth principal meridian, produced 861 $\frac{1}{2}$ feet west of S. E. corner of said section, and running thence southeasterly to a point 660 feet east of the S. W. corner of the N. W. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of section 28, in township 75 N., range 44 W. of the fifth principal meridian, and said line produced to the center of the channel of the Missouri river; thence down the middle of the main channel of the Missouri river to the northern boundary of the State of Missouri.

Exhibit

The said middle of the main channel of the Missouri river referred to in this act shall be the center line of the proposed stabilized channel of the Missouri river as established by the United States engineers' office, Omaha, Nebraska, and shown on the alluvial plain maps of the Missouri river from Sioux City, Iowa, to Rulo, Nebraska, and identified by file numbers AP-1 to 4 inclusive, dated January 30, 1940, and file numbers AP-5 to 10 inclusive, dated March 29, 1940, which maps are now on file in the United States engineers' office at Omaha, Nebraska, and copies of which maps are now on file with the Secretary of State of the State of Iowa and with the Secretary of State of the State of Nebraska.

Sec. 2. The State of Nebraska hereby cedes to the State of Iowa and relinquishes jurisdiction over all lands now in Nebraska but lying easterly of said boundary line and contiguous to lands in Iowa.

Sec. 3. Titles, mortgages, and other liens good in Iowa shall be good in Nebraska as to any lands Iowa may cede to Nebraska, and any pending suits or actions concerning said lands may be prosecuted to final judgment in Iowa and such judgment shall be accorded full force and effect in Nebraska.

Sec. 4. Taxes for the current year may be levied and collected by Iowa, or its authorized governmental subdivisions and agencies, on lands ceded to Nebraska and any liens or other rights accrued or accruing, including the right of collection, shall be fully recognized and the county treasurers of the counties affected shall act as agents in carrying out the provisions of this section; Provided, that all liens or other rights accrued or accruing, as aforesaid, shall be claimed or asserted within five years after this act becomes effective, and if not so claimed or asserted, shall be forever barred.

Sec. 5. The provisions of this act shall become effective only upon the approval and consent of the Congress of the United States of America to the compact effected by this act and the similar and reciprocal act enacted by the 1943 Session of the Legislature of Iowa as House File 437 of that body.

Sec. 6. That Chapter 121, Session Laws of Nebraska, 1941, is repealed.

Sec. 7. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.

Approved May 7, 1943. (Laws 1943, c. 130, p. 434.)

EXHIBIT "C"

IN THE DISTRICT COURT OF IOWA, IN AND FOR
MILLS COUNTY.

Equity No. 17433

STATE OF IOWA, Plaintiff,

vs.

Darwin Merrit Babbit, Frances Babbit, Ernest Barker, Edna Barker, William Watts, Mason Watts, Mrs. Mason Watts, Eugene W. Burdic, Dixie Burdic, Margaret T. O'Brien, Charles E. O'Brien, Bert Colwell, Helen Colwell, Harry Schroeder, Amanda Schroeder, Metropolitan Life Insurance Company, Merrill Sargent, Elva Sargent, Darrell Sargent, Carol Sargent, R. C. Good, Laura C. Good, All Unknown Heirs, Devisees, Grantees, Assignees, Successors in Interest and Unknown Spouses of the Above Named Defendants or any of them, Mills

Exhibit

County, Iowa, and All Unknown Claimants and all Persons, Firms, or Corporations Unknown Claiming any Right, Title or Interest in or to the Following Described Real Estate Situated in Mills County, State of Iowa, To-wit:

Commencing at the east ordinary high water mark of the east channel of the Missouri River at or near the section corner common to Sections 29, 30, 31, and 32, Township 67 North, Range 43 West of the 5th P. M., in Mills County, Iowa, thence northeasterly along said east ordinary high water mark of said east channel of the Missouri River to a point at or near the northwest corner of the Northeast Quarter of the Southwest Quarter of said Section 29, thence northerly along said ordinary high water mark to a point at or near the northwest corner of the Northeast Quarter of the Northwest Quarter of said Section 29, thence northeasterly along said ordinary high water mark to a point at or near 500 feet west of the center of Section 20, Township 67 North, Range 43 West of the 5th P. M., thence along said ordinary high water mark to a point approximately 1000 feet west of the north quarter corner of said Section 20, thence northwesterly along said ordinary high water mark to a point at or near 1500 feet west of the center of Section 17, Township 67 North, Range 43 West of the 5th P. M., thence northwesterly along said ordinary high water mark to a point at or near 500 feet south of the northwest corner of said Section 17, thence northwesterly along said ordinary high water mark to the point where same intersects the east ordinary high water mark of the main channel of the Missouri River, said point being approximately one quarter mile west of the east quarter corner of Section 7,

Township 67 North, Range 43 West of the 5th P. M., thence west along the East-West center line of said Section 7 to the Iowa-Nebraska State boundary line, thence southerly along said Iowa-Nebraska State boundary line to the point where it intersects the east section line of Section 31, Township 67 North, Range 43 West of the 5th P. M., thence north along said east section line of said Section 31 to the east ordinary high water mark of the main channel of the Missouri River, thence northwesterly along said east ordinary high water mark of the main channel of the Missouri River to the point where it intersects the east ordinary high water mark of the east channel of the Missouri River, thence northeasterly to point of beginning, containing altogether 1960 acres, more or less, Defendants.

PETITION IN EQUITY

Comes now the plaintiff and for cause of action against the defendants and each and all of them, states as follows:

1. That the plaintiff is the absolute and unqualified owner in fee simple of the real estate hereinabove described in the caption of this case, which said real estate description is hereby made a part hereof by reference.

2. That the plaintiff is credibly informed and believes that the defendants, or some of them, make claim to said real estate, or claim some interest therein, said claims being adverse to plaintiff's title, but plaintiff alleges that all such claims are spurious and wholly without right.

Exhibit

3. That plaintiff is credibly informed and believes that unknown persons make claim to said real estate or claim some interest therein, said claims being adverse to plaintiff's title and that said unknown persons are made parties hereto as "unknown claimants"; that plaintiff has used all reasonable means to ascertain the nature and extent of said claims and the identity of said claimants, but has been unable to do so; that all of said claims are wholly without merit or right; that the names and addresses of said unknown claimants are unknown to plaintiff despite diligent effort to ascertain the same.

4. That the plaintiff has been credibly informed and believes and hereby alleges that one or more of the defendants have stated or published remarks to the effect that any attempt by any agents or employees of plaintiff to view, inspect or survey the subject real estate of this case, such agents and employees would be physically and violently stopped and prevented from so doing. That in order to ascertain the precise boundaries of the subject real estate of this case, a survey will be necessary; that an order of this court should issue pursuant to Iowa Rule of Civil Procedure No. 131 permitting plaintiff by its officers, agents, and employees to enter on the subject real estate and on lands adjacent thereto if necessary for the purpose of inspecting, viewing, measuring, surveying, photographing, locating section corners and locating monuments as may be necessary in order for plaintiff to make and file herein an exact legal description of the subject real estate and in order for plaintiff to prepare for trial of this case.

WHEREFORE plaintiff prays that its title to and estate in the real estate hereinabove described be

quieted and confirmed as an absolute title in fee simple; that all named defendants and unknown claimants be forever barred and estopped from having or claiming any right, title or interest in or to said real estate adverse to the plaintiff's said fee simple title; that plaintiff have and be awarded all such other and further general equitable relief as the court may deem right and proper in the premises, including judgment for costs.

PLAINTIFF FURTHER PRAYS that this Court issue its order directing that plaintiff by its officers, agents, and employees be allowed to enter the described property and properties adjacent thereto as necessary for the purpose of inspecting, viewing, measuring, surveying, photographing, and locating section corners and monuments, without hindrance or interference by the defendants or any of them or any persons acting for or on behalf of said defendants or any of them.

EVAN HULTMAN

Attorney General of Iowa,

WILLIAM J. YOST

Assistant Attorney General of Iowa,

(s) *Michael Murray*

Attorney at Law, Logan, Iowa,

Attorneys for the State of Iowa.

State of Iowa)

) ss.

Mills County)

I, Michael Murray, being first duly sworn on oath depose and state that I am one of the attorneys for the plaintiff in the above entitled action; that I have personal knowledge of the facts alleged in the foregoing petition and that the statements contained in said petition are true and correct as I verily believe.

(s) *Michael Murray*

Exhibit

Subscribed in my presence and sworn to before me by the said Michael Murray this 18 day of March, 1963.

(s) *I. L. Donner*
Clerk of Court in and for
Mills County, Iowa.

EXHIBIT "D"

IN THE DISTRICT COURT OF IOWA, IN AND FOR
MILLS COUNTY.

Equity No. 17433

STATE OF IOWA, Plaintiff,

vs.

DARWIN MERRIT BABBIT, ET AL, Defendants.

FIRST AMENDMENT TO PLAINTIFF'S PETITION

Comes now the plaintiff State of Iowa and for its First Amendment to its Petition in Equity heretofore filed, states to the Court the following:

1. That it hereby amends the caption of said case and particularly the metes and bounds description of real estate contained and set forth in said caption by striking from said caption the words and figures "Township 67 North", wherever said words and figures appear and by substituting in lieu of said stricken words and figures the following words and figures "Township 71 North".

2. For further amendment to said Petition, plaintiff hereby states that jurisdiction of the parties and subject matter of this case cannot be obtained in this Court in sufficient time for hearing on plaintiff's ap-

plication for inspection and survey of the real estate involved in this case to be held on April 25, 1963, as heretofore ordered by this Court. That therefore, said prior Order of this Court setting hearing of said matter for April 25, 1963, should be cancelled and annulled and hearing of said matter should be set by order of Court for a later date.

WHEREFORE plaintiff prays as in its original Petition and further prays for a new Order for Hearing as to the matter of an inspection and survey of the real estate involved herein.

EVAN HULTMAN
Attorney General of Iowa
WILLIAM J. YOST
Assistant Attorney General of Iowa
(s) *Michael Murray*
Attorney at Law, Logan, Iowa
Attorneys for Plaintiff

State of Iowa)
) ss.
Mills County)

I, Michael Murray, being first duly sworn on oath depose and state that I am one of the attorneys for the plaintiff in the above entitled case; that I have prepared the foregoing Amendment to Plaintiff's Petition and know its contents and that the statements therein contained are true as I verily believe.

(s) *Michael Murray*

Subscribed in my presence and sworn to before me by the said Michael Murray this 26 day of March, 1963.

(s) *I. L. Donner*
Clerk of Court in and for
Mills County, Iowa.

Exhibit

EXHIBIT "E"

IN THE DISTRICT COURT OF IOWA, IN AND FOR
MILLS COUNTY

No. 17433

State of Iowa, Plaintiff,

vs.

Darwin Merrit Babbit, et al., Defendants.

Interrogatories.

Defendants William Watts, Mason Watts, Mrs. Mason Watts, Eugene W. Burdic, Dixie Burdic, Margaret T. O'Brien, Charles E. O'Brien, Bert Colwell, Helen Colwell, Harry Schroeder, Amanda Schroeder, Metropolitan Life Insurance Company, Merrill Sargent, Elva Sargent, Darrell Sargent, and Carol Sargent respectfully submit the following interrogatories pursuant to Rules 121 to 126 inclusive of the Iowa Rules of Civil Procedure, which interrogatories are deemed continuing so as to require further answers as to any further information obtained before the trial:

Interrogatory 1. Describe specifically by what acts or instruments plaintiff claims ownership of the land described in plaintiff's petition.

Interrogatory 2. Describe what event, instrument or act commenced plaintiff's claim of ownership to the land described in plaintiff's petition and the date of said event, instrument or act.

Interrogatory 3. State whether plaintiff has continuously claimed ownership of the property described in plaintiff's petition since the time of the event under which plaintiff now claims ownership.

Interrogatory 4. State whether plaintiff is now in possession of the land described in plaintiff's petition and, if so, describe the extent and nature of such possession.

Interrogatory 5. State whether plaintiff has ever been in possession of the land described in plaintiff's petition and, if so, describe the period of time involved and the extent and nature of such possession in plaintiff.

Interrogatory 6. State whether or not the defendants are in complete, actual and sole possession of the land described in plaintiff's petition and, if not, state who is now in actual possession of said land.

Interrogatory 7. State whether plaintiff has in its possession any deed, abstract of title or other instrument tending to establish in the plaintiff ownership of the land described in plaintiff's petition, and, if so, give a specific description of the same.

Interrogatory 8. If plaintiff claims a portion of the land described in its petition was an island in the Missouri River state at what time did said island first rise above the ordinary high water mark, and in which state did said island form, and who owned the bed upon which said island formed.

Interrogatory 9. State whether or not plaintiff has ever filed in the office of the Mills County Recorder of deeds any statement in writing duly acknowledged describing the real estate involved in plaintiff's petition or any part of it, the nature and extent of the right or interest therein claimed by plaintiff, and stating the facts upon which the same is based, or has any other instrument of any nature been filed by plaintiff.

Exhibit

Interrogatory 10. Has the plaintiff, State of Iowa, any contract, agreement or understanding with any commission or political subdivision of the State of Iowa in connection with the filing and prosecution of this suit in the name of the State of Iowa as plaintiff? If so, state whether such contract, agreement or understanding is oral or written, and identify the same and state the substance of the same.

Interrogatory 11. Is the State Conservation Commission of the State of Iowa a party of interest in any capacity in this litigation?

Interrogatory 12. What is the interest, if any, of the Iowa State Conservation Commission in this litigation?

Interrogatory 13. Has the State Conservation Commission of the State of Iowa ever relinquished claim to the land described in plaintiff's petition or any part of it?

Interrogatory 14. Is the land described in plaintiff's petition or any part of it generally known as Nottleman's Island? If so, how long has it been so known?

Interrogatory 15. Was the land described in plaintiff's petition or any part of it at any time in the State of Nebraska? If so, during what period of time?

Interrogatory 16. Was any part of the land described in plaintiff's petition in the State of Nebraska in 1941? If so, what part?

Interrogatory 17. Was any part of the land described in plaintiff's petition subject in 1943 to the provisions of the Iowa-Nebraska Boundary Compromise, Chapter 306 H.F. 437 Acts 50th General Assembly, effective April 21, 1943? If so, what part?

Interrogatory 18. Has the plaintiff, State of Iowa, and the defendant Mills County, Iowa, collected taxes on the land described in plaintiff's petition for more than fourteen years last past? Have the defendants and their predecessors in title paid such taxes?

Interrogatory 19. Does plaintiff claim that any part of the land described in plaintiff's petition was formed by accretion? If so, state when said accretion or accretions occurred, in which state said accretion or accretions occurred, and who was the owner of the lands to which said land accreted.

Interrogatory 20. Does plaintiff claim that any of said land originated with an avulsion? If so, state when avulsion occurred, in which state said land was located at the time said avulsion occurred, and who was the owner of said land before said avulsion occurred.

Interrogatory 21. State the names, addresses and present employers of all persons who are known to have information or knowledge concerning the formation of said land and the possession of said land since its formation and at the present time.

Interrogatory 22. State who now has record title to said land and which persons have record title as to which parts.

Interrogatory 23. State how long each of the persons referred to in the answer to Interrogatory No. 22 and their immediate and remote grantors have continuously been shown by the record of title to have held chain of title to said land.

Interrogatory 24. State on which side of said land the main channel of the Missouri River now flows.

Exhibit

Interrogatory 25. Did the main channel of the Missouri River ever flow on the other side of said land? If so, state when said change occurred and over what period of time said change took place.

Respectfully submitted,

(s) *Thomas & McGee*

Thomas & McGee, Glenwood, Iowa.

EXHIBIT "F"

IN THE DISTRICT COURT OF IOWA, IN AND FOR
MILLS COUNTY.

Equity No. 17433

STATE OF IOWA, Plaintiff,

vs.

DARWIN MERRIT BABBIT, ET AL, Defendants.

ANSWERS TO INTERROGATORIES FILED
APRIL 18, 1963.

Answer 1. Plaintiff's claim of ownership of the land described in plaintiff's Petition as Amended is not based on any acts or instruments.

Answer 2. Plaintiff acquired its ownership of that part of the bed of the Missouri River which then lay within the State of Iowa when the State of Iowa was admitted to the Union in 1846. As the Missouri River changed its bed after 1846, plaintiff acquired title to all beds which the river occupied from time to time within the State. This principal of law was first announced by the Iowa Supreme Court in the case of

McManus vs. Carmichael in 1856, 3 Iowa 1, and this legal principal has been continuously applied by the Iowa Supreme Court down to the present date in all cases involving ownership of the beds of navigable streams within the State of Iowa. Insofar as the description of real estate contained in plaintiff's Petition as amended constitutes a description of river bed (areas below ordinary high water mark), the above constitutes its answer to Interrogatory 2. The land contained within the real estate described in plaintiff's Petition as Amended formed as accretion to the State-owned bed of the river. State ownership of it never ceased. The State continued ownership of said land even after it arose above ordinary high water mark because the land formed as an accretion to the State-owned bed of the river. No exact date when this land arose above ordinary high water mark can be given because the process was gradual and occupied a period of several years. For answer to Interrogatory 2, plaintiff states that the first portion of this land to arise from the river bed above ordinary high water mark so arose within ten years prior to 1923.

Answer 3. Yes

Answer 4. (Plaintiff objects to Interrogatory 4 on the ground that it inquires into matters which are irrelevant and immaterial to any issue in this case, it not being legally or equitably possible for any claim of ownership adverse to plaintiff to be based or founded on adverse possession as against plaintiff. For this reason, plaintiff has made no investigation concerning exactly who is or may be in possession of parts or portions of the disputed area adversely to plaintiff and plaintiff should not be required to make an investiga-

Exhibit

tion concerning possession merely for the purpose of answering interrogatories. The matter of possession is irrelevant and immaterial for the further reason that mere possession cannot have any significance in law or equity unless the same, from its inception, be coupled with color of title, and in this case, none of defendants have ever had any color of title. Interrogatory 4 is objected to for the further reason adverse possession is not at present an issue in this case, and if the same is to become an issue, it can only do so by means of defendants raising the same as an affirmative defense. That therefore, before plaintiff should be required to answer any interrogatories or present any proof concerning possession of the area in controversy, defendants, or some of them, must plead and offer some proof of adverse possession. That the burden of pleading and proving adverse possession rests with the defendants in this case, and Interrogatory 4 is an improper attempt under IRCP to shift the burden of research and investigation on said issue to the plaintiff.)

Subject to the Court's rulings on the foregoing objections, plaintiff's answer to Interrogatory 4 is that plaintiff is now in possession of that part of the area in controversy which presently constitutes Missouri River bed; that is to say, that part of the area which is presently below ordinary high water mark of the river. Plaintiff is also in possession of all parts of the area which are above ordinary high water mark and which have not been taken under possession by private parties or persons. The extent and nature of plaintiff's possession is that all portions possessed by it are in the public domain and not adversely possessed by private parties or persons.

Answer 5. (Same objections as noted to Interrogatory 4.) Subject to the Court's rulings on the foregoing objections, plaintiff's answer to Interrogatory 5 is that plaintiff is now in possession of all that part of the described area which is presently below ordinary high water mark and therefore presently constitutes Missouri River bed. As various portions of the described area arose above ordinary high water mark, plaintiff continued in possession of them until the defendants and their immediate and remote grantors illegally, improperly and without any right to do so, took possession of various portions from time to time. The extent and nature of plaintiff's possession was and is that all portions possessed by it from time to time were in the public domain and not possessed by any private parties.

Answer 6. (Same objections as noted to Interrogatory 4.) Subject to the Court's rulings on the foregoing objections, plaintiff's answer to Interrogatory 6 is "No". For further particulars, plaintiff refers to Answer 4. Concerning portions of the area which are not presently in plaintiff's possession, plaintiff hereby states that some portions of the area have been cultivated and farmed for several years last past. Plaintiff, deeming the entire matter of possession to be irrelevant and immaterial, has no information as to how long the various tracts in the area have been cultivated or by whom this has been done, nor any exact descriptions of the tracts cultivated by different parties.

Answer 7. No.

Answer 8. As stated heretofore, plaintiff claims all parts of the described area which are now above ordinary high water mark because the same formed as an

Exhibit

island in the Missouri River, and plaintiff claims other portions of the described area as accretions to said island. The island first arose above ordinary high water mark between 1913 and 1923 in the State of Iowa. The State of Iowa owned the bed upon which said island formed. The formation of accretions to said island has continued since the original formation of the island down to the present time, and accretions are still forming to the island.

Answer 9. (Plaintiff objects to Interrogatory 9 on the ground that it inquires into matters which are irrelevant and immaterial to any issue in this case, plaintiff's claim to the area involved in this case being bot-tomed on the law of the State of Iowa which all parties to this case were and are presumed to know and to have known.) Subject to the Court's ruling on the foregoing objection, plaintiff's answer to Interrogatory 9 is "No".

Answer 10. (Plaintiff objects to Interrogatory 10 on the ground that it inquires into matters which are irrelevant and immaterial to any issue in this case.) Subject to the Court's ruling on the foregoing objection, plaintiff's answer to Interrogatory 10 is "No".

Answer 11. (Plaintiff objects to Interrogatory 11 on the ground that it inquires into matters which are irrelevant and immaterial to any issue in this case.) Subject to the Court's ruling on the foregoing objection, plaintiff's answer to Interrogatory 11 is "No".

Answer 12. (Plaintiff objects to Interrogatory 12 on the ground that it inquires into matters which are irrelevant and immaterial to any issue in this case.) Subject to the Court's ruling on the foregoing objection, plaintiff's answer to Interrogatory 12 is that the

Iowa State Conservation Commission is a political subdivision or department of plaintiff, possessing the power, authority, and duty of managing and controlling the area involved in this litigation if it be determined that same is owned by plaintiff.

Answer 13. No.

Answer 14. Yes, for approximately 26 years.

Answer 15. No.

Answer 16. No.

Answer 17. No.

Answer 18. (Plaintiff objects to Interrogatory 18 on the ground that it inquires into matters which are irrelevant and immaterial to any issue in this case, because any taxes which any of the defendants may have paid to plaintiff on the land involved in this case were infinitesimal. Interrogatory 18 is objected to for the further reason that the matter of payment of taxes can only become material in this case if the defendants or some of them elect to plead some affirmative defense based thereon, and no such affirmative defense has been pleaded by any defendant at the present time; therefore, at present, the matter of taxes is irrelevant and immaterial. That Interrogatory 18 is an illegal, improper and unauthorized attempt by defendants to shift the burden of proof from themselves to plaintiff on an issue which is not now an issue in the case and on which, if it becomes an issue, the burden of proof will be on them. That plaintiff should not be subjected to the burden of researching, investigating and proving the facts concerning said issue unless and until some burden is cast upon it by reason of the de-

Exhibit

defendants or some of them having pleaded and offered sufficient proof on said issue to shift some burden to plaintiff. That any facts concerning taxes are either already in the possession of defendants or are as readily available to defendants as to plaintiff and therefore, Interrogatory 18 is not for discovery purposes and is not authorized by IRCP). Subject to the Court's ruling on the foregoing objection, plaintiff's answer to Interrogatory 18 is that taxes have or have not been paid on the land involved in this case as shown by the books and records of the County Treasurer of Mills County, Iowa. Therefore, for particulars as to Interrogatory 18, plaintiff incorporates into this Answer said books and records of the Mills County Treasurer and makes the same a part of this Answer by reference.

Answer 19. Yes. The accretions to the bed of the river started forming between 1913 and 1923 and have continued forming continuously until the present time and are still forming. All said accretions have formed and are forming in the State of Iowa and to the bed of the Missouri River which has been at all times owned by plaintiff.

Answer 20. No.

Answer 21. Plaintiff at the time of answering these Interrogatories does not know of any persons who have personal eyewitness knowledge concerning the formation of said land. R. L. Huber, formerly employed by the U. S. Army Corps of Engineers, now retired, of Omaha, Nebraska, possesses knowledge and information concerning the formation of said land by reason of having studied books, records, maps, photographs, and other data in the possession of the U. S. Army Corps of Engineers office at Omaha, Nebraska. He also pos-

sesses eyewitness knowledge concerning formation of that part of the land which was formed since about 1936. Gerald J. Jauron, Earling, Iowa, an employee of plaintiff, possesses knowledge by reason of extensive investigation and study of records, maps, pictures and data of numerous government agencies, including U. S. Army Corps of Engineers and by reason of on-site studies and investigation. Ivan Windenberg, Des Moines, Iowa, an employee of plaintiff, has surveyed the area and made a study and investigation of the area and possesses information gained thereby. Plaintiff presumes that there are perhaps some residents of the vicinity of said land who possess information and knowledge concerning the formation of said land and the possession of it since its formation, but interviewing of such possible persons has not been accomplished at this time and therefore names, addresses, and present employers cannot be furnished at this time.

Answer 22. (Plaintiff objects to Interrogatory 22 because it calls for information irrelevant and immaterial to any issue in this case. Also, because it does not call for the best evidence of who now has record title to the land involved herein and which persons have record title to which parts, the best evidence of said matters being the records in the various county offices of Mills County, Iowa.) Subject to the Court's ruling on the foregoing objection, plaintiff for answer to Interrogatory 22 states that it is informed and believes that some of the defendants and immediate or remote grantors of the defendants attempted in about 1946 to record various spurious, fictitious instruments in Mills County, Iowa, which purported to establish that they had been the owners of various portions of the land involved herein when said land had been lo-

Exhibit

cated in Nebraska and under and by virtue of the laws of the State of Nebraska, but plaintiff hereby states that said purported instruments of title were and are spurious and fictitious and of no force or effect to serve as the commencement of any record title in Iowa because no part or portion of the land involved herein was ever in the State of Nebraska or subject to the laws of the State of Nebraska or subject to jurisdiction of the courts of the State of Nebraska. Plaintiff is informed and believes that the county recorder and other county officials of Mills County, Iowa, refused to accept said spurious and fictitious instruments for recording in said county and that thereupon the persons seeking to record said instruments commenced an equity action against said county officials to force them to so do. Plaintiff was not a party to said action and had no notice or knowledge thereof and therefore is not bound by any decision rendered therein. Plaintiff is informed and believes that this Court ordered the county officials of Mills County to accept said spurious and fictitious instruments for record and said county officials have complied with said Court Order. Plaintiff in answering Interrogatory 22 hereby states that the recording of said spurious and fictitious instruments in Mills County, Iowa, did not commence any lawful record title to any of said land, and if it be claimed by defendants that they now have record title in Mills County, Iowa, to any of the land involved in this case, based upon the recording of said spurious and fictitious instruments of title in about 1946, such record title is also spurious, fictitious, and of no legal force or effect.

Answer 23. Same answer as to Interrogatory 22.

Answer 24. West.

Answer 25. Plaintiff's opinion is negative.

EVAN HULTMAN,
Attorney General of Iowa

WILLIAM J. YOST,
Assistant Attorney General of Iowa

(s) *Michael Murray*
Attorney at Law, Logan, Iowa
Attorneys for the State of Iowa

EXHIBIT "G"

IN THE DISTRICT COURT OF IOWA, IN AND FOR
MILLS COUNTY.

Equity No. 17433

STATE OF IOWA, Plaintiff,

vs.

DARWIN MERRIT BABBIT, ET AL, Defendants.

PLAINTIFF'S INTERROGATORIES

The plaintiff hereby propounds the following Interrogatories to each and all of the following named defendants: Darwin Merrit Babbit, Frances Babbit, Ernest Barker, Edna Barker, William Watts, Mason Watts, Mrs. Mason Watts, Eugene W. Burdic, Dixie Burdic, Margaret T. O'Brien, Charles E. O'Brien, Bert Colwell, Helen Colwell, Harry Schroeder, Amanda Schroeder, Metropolitan Life Insurance Company, Merrill Sargent, Elva Sargent, Darrell Sargent, Carol Sargent, R. C. Good, Laura C. Good:

Interrogatory 1. Do you claim to own any of the area described in plaintiff's Second Amendment to Peti-

Exhibit

tion, and if so, specifically describe that part which you claim to own.

Interrogatory 2. Is that part of the area which you claim to own presently situated in the State of Iowa, and if so, for what period of time last past has the same been continuously in the State of Iowa?

Interrogatory 3. Do you claim to own and hold record title in Iowa to that part of the area which you claim to own? If so, list and describe the instruments, documents, court records or other muniments of title which constitute your record title in Iowa and locate where the same are found in the records of Mills County, Iowa.

Interrogatory 4. Is your claim of title and ownership based to any extent on a claim that you or your immediate or remote grantors owned said land and held title thereto under the laws of the State of Nebraska, and if so, list and describe the instruments, documents, court records, or other muniments of title evidencing such ownership or title under the laws of the State of Nebraska, and locate where same are found of record in Cass County, Nebraska.

Interrogatory 5. If you claim that any part of the same identical land you now claim to own was ever situated within the State of Nebraska, state for what period or periods of time same was situated in the State of Nebraska, and state in what State said land which you claim to own was at all other times.

Interrogatory 6. Is any part of the area which you claim to own presently below the ordinary high water mark of the Missouri River? If so, what part?

Interrogatory 7. Is any part of the area you claim to own presently above the ordinary high water mark of the Missouri River? If so, when did such part first arise above said ordinary high water mark?

Interrogatory 8. Was the thalweg of the Missouri River running on the east side or the west side of the land which you claim to own at the time said land first arose above ordinary high water mark?

Interrogatory 9. Describe as accurately as possible where the State boundary line between the States of Iowa and Nebraska in the vicinity of this land was when the land claimed by you first arose above ordinary high water mark.

Interrogatory 10. If you claim that the State boundary line was any different from the thalweg of the Missouri River at the time the land claimed by you first arose above ordinary high water mark, state why, when and by what method or means the State boundary line had become separated from the thalweg of the river.

Interrogatory 11. Was any part of the land above ordinary high water mark and contained within plaintiff's metes and bounds description in plaintiff's Second Amendment to Petition formed by accretion? If so, when did such accretions first arise above ordinary high water mark, and in what State did the same first arise above ordinary high water mark?

Interrogatory 12. Is any part of the land in controversy the same original identical land which was included in either the original Iowa survey of the area made in 1851 and 1852, or in the original Nebraska territorial survey made of the area in 1856? If so,

Exhibit

which survey included it and what part of the land in controversy was so included?

Interrogatory 13. Did any part of the land in controversy come into existence by accretion? If so, when did such accretions form? In what State did they form, and to what did they accrete?

Interrogatory 14. If you have answered the preceding Interrogatory in the affirmative, state who was the owner or who were the owners of the river bed or riparian lands to which the land in controversy accreted?

Interrogatory 15. If you have stated in answer to any foregoing Interrogatories that any part of the land in controversy in this case was in existence prior to 1920, state by what means or method you now identify that part of the land in controversy as being the same identical land.

Interrogatory 16. Give the names, addresses, and present employers of all persons who have any knowledge or information concerning the formation of the land in controversy.

Interrogatory 17. Has the thalweg of the Missouri River ever flowed to the east of the area described in plaintiff's Second Amendment to Petition, or to the east of any part thereof, or to the east of any of the same identical land which now exists in the area above ordinary high water mark, and if so, when did the thalweg of the Missouri River so flow, and for what period of time or periods of time?

Interrogatory 18. Did any part of the land in controversy in this case form as an island in the Missouri River? If so, when did such island start to form and

on what side of the thalweg of the Missouri River did it start to form and if such part ever ceased to be an island, when did it so cease to be an island, and to which riparian shore did it make connection?

Interrogatory 19. Was any part of the land in controversy ever situated in the State of Nebraska, and if so, when and for what period of time?

Interrogatory 20. Is your claim of ownership based in any degree or in any manner on any patent, deed, or conveyance from the plaintiff, or on any judgments or decrees of any court in any case or cases to which the plaintiff was a party, or on any conduct or lack of conduct on the part of plaintiff by which you claim plaintiff released or relinquished its ownership and title to you or your immediate or remote grantors? If so, describe such patents, deeds, conveyances, judgments, decrees, conduct or lack of conduct, and if any of same are of record, state where the same are found of record.

Interrogatory 21. Do you claim any right, title or interest in or to the area in controversy or do you claim any estoppel against the plaintiff arising out of the payment of any taxes to the plaintiff, and if so, state the dates and amounts of such payments of taxes by you or your immediate or remote grantors which are the basis for your said claim.

Interrogatory 22. Do you claim any right, title or interest in or to the area in controversy or do you claim any estoppel against the plaintiff arising out of the payment of any taxes to Mills County, Iowa, and if so, state the dates and amounts of such payments of taxes by you or your immediate or remote grantors which are the basis for your said claim.

Exhibit

Interrogatory 23. Do you claim any right, title or interest in or to the area in controversy or do you claim any estoppel against the plaintiff arising out of the payment of any taxes to the State of Nebraska, or any political subdivision thereof, and if so, state the dates and amounts of such payments of taxes by you or your immediate or remote grantors which are the basis for your said claim.

Interrogatory 24. Do you claim by, through or under John Nottleman or Harvey Shipley, either directly, or that the land claimed by you formed as accretions to land formerly claimed by them? If so, how did John Nottleman or Harvey Shipley acquire any title or ownership to any part or parts of the area in controversy and what part or parts of the area in controversy do you claim they owned?

Interrogatory 25. If any part of your answer to the preceding Interrogatory was in the affirmative, and you have answered that John Nottleman or Harvey Shipley acquired ownership or title by adverse possession, coupled with color of title, state what period of time they, or either of them, were in possession, and describe the instruments or records which constituted their color of title.

EVAN HULTMAN
Attorney General of Iowa

WILLIAM J. YOST
Assistant Attorney General of Iowa

(s) *Michael Murray*
Attorney at Law, Logan, Iowa
Attorneys for the State of Iowa

EXHIBIT "H"

IN THE DISTRICT COURT OF IOWA, IN AND FOR
MILLS COUNTY.

Equity No. 17433

STATE OF IOWA, Plaintiff,

vs.

DARWIN MERRIT BABBIT, ET AL, Defendants.

Second Amendment to Plaintiff's Petition

Comes now the plaintiff, State of Iowa, and for its Second Amendment to its Petition in Equity heretofore filed, states to the Court the following:

1. That the plaintiff does hereby amend the caption of its Petition in Equity filed March 18, 1963, by striking from said caption all of the real estate description from and after the following: "The following described real estate situated in Mills County, State of Iowa, to-wit:", and by substituting in lieu of said stricken portion of said caption the following real estate description, to-wit:

Beginning at station 16+41 of the Corps of U. S. Army Engineers, Cutoff Dike Number 629.9, which lies 2717.31 feet North, and 7063.24 feet West of the East one-quarter corner of Section seventeen (E $\frac{1}{4}$ Cor. Sec. 17), Township Seventy-one North (T 71N), Range Forty-three West (R 43W), of the Fifth P. M., in Mills County, Iowa, Thence along said dike 629.9, South 69° 05' West 377.00 feet to station 20+18, which lies on left bank of the designed channel of the Missouri River, Thence North 60° 04 $\frac{1}{2}$ ' West, 300.00 feet, to the center of the designed channel of the Missouri River, said point being on the boundary line between the State of Iowa and the State of Nebraska, as established by the State

Exhibit

of Iowa and Nebraska and approved by the 78th Congress in 1943, Thence along the Iowa-Nebraska Boundary Line, South $31^{\circ} 06\frac{1}{2}'$ West 690.18 feet, Thence South $31^{\circ} 02'$ West 584.79 feet, Thence South $30^{\circ} 56'$ West 495.09 feet, Thence South $29^{\circ} 04'$ West 489.87 feet, Thence South $27^{\circ} 04'$ West 490.84 feet, Thence South $25^{\circ} 34'$ West 489.61 feet, Thence South $24^{\circ} 07\frac{1}{2}'$ West 487.71 feet, Thence South $20^{\circ} 18'$ West 582.69 feet, Thence South $15^{\circ} 11\frac{1}{2}'$ West 488.35 feet, Thence South $13^{\circ} 37\frac{1}{2}'$ West 488.40 feet, Thence South $10^{\circ} 46'$ West 484.50 feet, Thence South $8^{\circ} 21'$ West 872.13 feet, Thence South $9^{\circ} 32\frac{1}{2}'$ West 314.24 feet, Thence South $4^{\circ} 09'$ West 421.39 feet, Thence South $1^{\circ} 38\frac{1}{2}'$ West 489.00 feet, Thence South $0^{\circ} 08'$ West 581.07 feet, Thence South $4^{\circ} 57\frac{1}{2}'$ East 475.78 feet, Thence South $6^{\circ} 50'$ East 1251.76 feet, Thence South $6^{\circ} 03'$ East 532.90 feet, Thence South $8^{\circ} 21\frac{1}{2}'$ East 991.40 feet, Thence South $9^{\circ} 18\frac{1}{2}'$ East 488.68 feet, Thence South $11^{\circ} 35'$ East 386.94 feet, Thence South $14^{\circ} 16'$ East 593.92 feet, Thence South $14^{\circ} 38'$ East 495.73 feet, Thence South $16^{\circ} 28'$ East 486.37 feet, Thence South $20^{\circ} 23\frac{1}{2}'$ East 482.27 feet, Thence South $21^{\circ} 55'$ East 479.82 feet, Thence South $26^{\circ} 44'$ East 475.72 feet, Thence South $31^{\circ} 09\frac{1}{2}'$ East 482.76 feet, Thence South $33^{\circ} 21'$ East 485.58 feet, Thence South $37^{\circ} 26'$ East 488.97 feet, Thence South $38^{\circ} 54\frac{1}{2}'$ East 479.18 feet, Thence South $40^{\circ} 48'$ East 500.34 feet, Thence South $44^{\circ} 33\frac{1}{2}'$ East 467.57 feet, Thence South $50^{\circ} 46'$ East 670.86 feet, Thence South $56^{\circ} 24'$ East 883.96 feet, Thence North $2^{\circ} 13\frac{1}{2}'$ West 346.26 feet to Station 6 +40 of the Corps of U. S. Army Engineers Dike Number 626.3. Said Station 6 +40 lies on the left

bank of the designed channel of the Missouri River. Thence North $1^{\circ} 46'$ West 252.26 feet to a point which lies at the present ordinary high water line on the left bank of the abandoned channel of the Missouri River, said point being 1553.08 feet South, and 5752.45 feet West of the Southeast corner of Section 29 (SE cor 29) Township 71 North, (T 71N), Range Forty-three West (R 43W), of the Fifth P. M., Thence along the present ordinary high water line of said abandoned channel left bank. North $5^{\circ} 59'$ East 155.86 feet,

Thence North $15^{\circ} 15\frac{1}{2}'$ West 151.20 feet,

Thence North $7^{\circ} 23'$ East 149.61 feet,

Thence North $14^{\circ} 50\frac{1}{2}'$ West 72.34 feet,

Thence North $32^{\circ} 34\frac{1}{2}'$ West 72.45 feet,

Thence North $44^{\circ} 16\frac{1}{2}'$ West 192.03 feet,

Thence North $2^{\circ} 01\frac{1}{2}'$ West 59.84 feet,

Thence North $34^{\circ} 29'$ East 146.48 feet,

Thence North $15^{\circ} 55'$ East 86.14 feet,

Thence North $18^{\circ} 54\frac{1}{2}'$ West 163.15 feet,

Thence North $30^{\circ} 06'$ East 113.05 feet,

Thence North $24^{\circ} 26\frac{1}{2}'$ East 104.56 feet,

Thence North $40^{\circ} 25\frac{1}{2}'$ East 125.37 feet,

Thence North $29^{\circ} 26\frac{1}{2}'$ East 239.84 feet,

Thence North $26^{\circ} 22\frac{1}{2}'$ East 219.23 feet,

Thence North $19^{\circ} 04\frac{1}{2}'$ East 137.90 feet,

Thence North $21^{\circ} 40'$ East 269.51 feet,

Thence North $35^{\circ} 08\frac{1}{2}'$ East 260.26 feet,

Thence North $45^{\circ} 07\frac{1}{2}'$ East 159.57 feet,

Thence North $30^{\circ} 02'$ East 366.11 feet,

Thence North $52^{\circ} 08'$ East 751.77 feet,

Thence North $22^{\circ} 42\frac{1}{2}'$ East 400.05 feet,

Thence North $19^{\circ} 45\frac{1}{2}'$ East 302.30 feet,

Thence North $12^{\circ} 30\frac{1}{2}'$ East 320.55 feet,

Thence North $0^{\circ} 34'$ East 242.92 feet,

Thence North $16^{\circ} 04'$ West 426.27 feet,

Thence North $13^{\circ} 44\frac{1}{2}'$ West 351.75 feet,

Thence North $7^{\circ} 35\frac{1}{2}'$ West 365.27 feet,

Thence North $12^{\circ} 04\frac{1}{2}'$ West 262.51 feet,

Thence North $0^{\circ} 59\frac{1}{2}'$ West 625.10 feet,

Exhibit

Thence North 14° 23' East 975.92 feet,
Thence North 19° 19½' East 779.71 feet,
Thence North 59° 55' East 134.60 feet,
Thence North 10° 44½' East 716.46 feet,
Thence North 29° 16' East 168.96 feet,
Thence North 2° 21' East 943.69 feet,
Thence North 3° 25½' West 296.25 feet,
Thence North 4° 38½' West 257.84 feet,
Thence North 24° 30' West 347.76 feet,
Thence North 1° 47½' East 851.14 feet,
Thence North 2° 03½' West 348.37 feet,
Thence North 2° 07½' East 426.77 feet,
Thence North 0° 53½' West 235.27 feet,
Thence North 20° 09½' West 148.89 feet,
Thence North 18° 55' West 1304.56 feet,
Thence North 19° 34½' West 1048.26 feet,
Thence North 28° 02½' West 585.56 feet,
Thence North 32° 02½' West 330.22 feet,
Thence North 37° 08½' West 604.16 feet,
Thence North 55° 48½' West 467.18 feet,
Thence North 50° 11½' West 404.60 feet,
Thence South 68° 28' West 230.78 feet,
Thence North 31° 49' West 167.05 feet,
Thence North 66° 02' West 300.70 feet,
Thence North 64° 38' West 679.66 feet to the point
of beginning. The area of the tract thus described
comprises 1990.289 Acres.

WHEREFORE plaintiff prays as in its original Petition that its title to and estate in the real estate hereinabove described be quieted and confirmed as an absolute title in fee simple; that all named defendants and unknown claimants be forever barred and estopped from having or claiming any right, title or interest in or to said real estate adverse to the plaintiff's said fee simple title; that plaintiff have and be awarded all such other and further general equitable relief as the Court may deem right and proper in the premises, including judgment for costs.

EVAN HULTMAN,
Attorney General of Iowa

WILLIAM J. YOST,
Assistant Attorney General of Iowa

(s) *Michael Murray*
Attorney at Law, Logan, Iowa
Attorneys for the State of Iowa

EXHIBIT "I"

IN THE DISTRICT COURT OF IOWA, IN AND FOR
MILLS COUNTY.

No. 17433

STATE OF IOWA, Plaintiff,

vs.

DARWIN MERRIT BABBIT, et als., Defendants.

Answers and Objections to Plaintiff's Interrogatories.

Come now the defendants Darwin Merrit Babbit, Frances Babbit, Ernest Barker, Edna Barker, William Watts, Mason Watts, Mrs. Mason Watts, Eugene W. Burdic, Dixie Burdic, Margaret T. O'Brien, Bert Colwell, Helen Colwell, Merrill Sargent, Elva Sargent, Darrell Sargent, Carol Sargent, R. C. Good, Laura C. Good, and The Travelers Insurance Company, and, by their Attorneys, make the following answers and objections to plaintiff's interrogatories filed herein:

Answer to Interrogatory 1. Yes. All of the lands apparently claimed by the plaintiff.

Answer to Interrogatory 2. Yes. Since the Iowa-Nebraska Boundary Compromise of 1943.

Exhibit

Answer to Interrogatory 3. Yes. For further answer to this interrogatory, reference is made to case No. 15525 in the District Court of Iowa in and for Mills County, which shows the claimed derivation of title in the defendants.

Answer to Interrogatory 4. See answer to interrogatory 3.

Answer to Interrogatory 5. The lands in question were lands located at all times in the State of Nebraska until the time of the Iowa-Nebraska Boundary Compromise of 1943.

Answer to Interrogatory 6. Objection is made to interrogatory No. 6 for the reason that the information sought to be obtained thereby is equally within the knowledge or ability of plaintiff to determine as to these defendants, and calls for an opinion and conclusion.

Answer to Interrogatory 7. Objection is made to interrogatory No. 7 for the reason that the information sought to be obtained thereby is equally within the knowledge or ability of plaintiff to determine as to these defendants, and calls for an opinion and conclusion.

Answer to Interrogatory 8. East.

Answer to Interrogatory 9. East.

Answer to Interrogatory 10. See answer to interrogatory 9.

Answer to Interrogatory 11. Answering interrogatory 11, these defendants state that it is impossible at this time to determine the answer to this question for the reason that these defendants have not been fur-

nished with a proper map, plat or survey showing the area contained within plaintiff's metes and bounds description in plaintiff's second amendment to petition.

Answer to Interrogatory 12. See answer to interrogatory 11.

Answer to Interrogatory 13. See answer to interrogatory 11.

Answer to Interrogatory 14. See answer to interrogatory 11.

Answer to Interrogatory 15. See answer to interrogatory 11.

Answer to Interrogatory 16. The defendant Mason Watts, the defendant Darwin M. Babbit, the defendants Merrill Sargent and Darrell Sargent, State Surveyor of the State of Nebraska, and other persons whose identity may become known upon further investigation.

Answer to Interrogatory 17. See answer to interrogatory 11.

Answer to Interrogatory 18. Yes. It is not exactly known when such island started to form, but it was sometime shortly after the turn of the century and long prior to 1943, and said island formed on the then Nebraska side of the thalweg of the Missouri River and, in fact, never ceased to be an island.

Answer to Interrogatory 19. The land claimed by these answering defendants was at all times situated in the State of Nebraska prior to the Iowa-Nebraska Boundary Compromise of 1943.

Answer to Interrogatory 20. Yes; see answers to interrogatories 3 and 4. Further answering interrogatory

Exhibit

No. 20 with respect to the conduct or lack of conduct on the part of the plaintiff, the State of Iowa through the Conservation Commission of the State of Iowa, under date of April, 1950, disclaimed any ownership of the lands claimed by these defendants, and stated in writing:

“Pease be advised that the island you refer to is not state property. The information we have is that this island belongs to four parties as follows:

Wm. Watts

N. Babbitt

Margaret O'Brien

Jones & Babbitt”

That these answering defendants are the successors in title to said parties. That these answering defendants have been the parties in possession of the lands claimed by them as shown in the affidavits of possession filed by them under the provisions of Section 614.17 I. C. A. That no claim has ever been filed by the State of Iowa in the office of the Recorder of Mills County, Iowa, as required by said Section 614.17, and that the State of Iowa has never had possession of said land nor has it ever made any indication of claim of ownership or possession prior to the filing of the within action.

Answer to Interrogatory 21. Yes. That information is equally available to the plaintiff as it is to the defendants as shown by the records in the custody of the County Treasurer of Mills County, Iowa, and the County Assessor of Mills County, Iowa.

Answer to Interrogatory 22. Yes. See answer to interrogatory 21.

Answer to Interrogatory 23. Yes. Records as to taxes paid prior to the Iowa-Nebraska Boundary Compromise of 1943 are as readily available to the plaintiff as they are to the defendant in Cass County, State of Nebraska.

Answer to Interrogatory 24. The land claimed to be owned by the answering defendants, as described in their affidavits of possession on file, are claimed through John Nottleman and Harvey Shipley, and that said interrogatory cannot be further answered as to area in controversy for the reasons set out in the answer to interrogatory 11.

Answer to Interrogatory 25. These answering defendants object to interrogatory 25 for the reason that it is immaterial.

For the defendant Margaret T. O'Brien,
Smith, Peterson, Beckman & Willson
Council Bluffs, Iowa
By *Raymond A. Smith*
Raymond A. Smith

For the defendants William Watts, Mason Watts,
Mrs. Mason Watts, Ernest Barker and Edna Barker,
L. T. Genung, Glenwood, Iowa, and Thomas &
McGee, Glenwood, Iowa
By *Eliot Thomas*
Eliot Thomas

For the defendants Bert Colwell and Helen Colwell,
(s) *L. T. Genung*
L. T. Genung, Glenwood, Iowa

For the defendants Eugene W. Burdic, Dixie Burdic, Merrill Sargent, Elva Sargent, Darrell Sargent, Carol Sargent, and The Travelers Insurance Co.,
Thomas & McGee, Glenwood, Iowa
By *Eliot Thomas*
Eliot Thomas

For the defendants Darwin Merrit Babbit, Frances Babbit, R. C. Good and Laura C. Good,
Cook & Drake, Glenwood, Iowa
By *William B. Drake*
William B. Drake

Exhibit

EXHIBIT "J"

IN THE DISTRICT COURT OF CASS COUNTY,
NEBRASKA

Doc. 9 No. 237

Case 9924

Harvey Shipley, William Watts, Mason Watts and
Katherine Julia O'Brien, Plaintiffs,

-vs-

Frank G. Hull, et al, Defendants.

DECREE

This matter came on for hearing this 1 day of August, 1940, upon the petition of the plaintiffs and the evidence, and it appearing to the court that the defendants Frank G. Hull and Gertha Hull, his wife, and John Nottelmann Jr. have voluntarily appeared and defendants Mrs. Jno. A. Donelan, Jesse M. Fitchhorn, single, Virgie A. McCarrol, and _____ McCarrol, Her Husband, Ira L. Fitchhorn and _____ Fitchhorn, His Wife, Elmer R. Fitchhorn and _____ Fitchhorn, His Wife, ~~Letha M. Fitchhorn, minor under 14, Glen Fitchhorn, minor under 14, John Fitchhorn, minor under 14 Wanda Fitchhorn, minor under 14,~~ Mildred Fitchhorn, guardian of Letha M., Glen, John, and Wanda Fitchhorn, James Warga and Irene Warga, His Wife, Plattsmouth State Bank, a corporation, Charles Warga and _____ Warga, His Wife, Albert J. Godwin and _____ Godwin, His Wife, Herbert Church and Pearl Church, His Wife, and each of them, have been duly served with process herein, but that they and each of them failed to appear, plead or answer, and the above named defendants, and each of them are hereby found and adjudged to be in default.

Thereafter on the same day, this cause was submitted to the Court upon the Petition and the evidence, and the Court being fully advised in the premises finds generally in favor of the plaintiffs and against the defendants and each of them who have been adjudged in default, more particularly finding that the plaintiffs are the owners in fee of the following described real estate and all accrued and accruing accretion and accretions, to wit: Beginning at a point 2074.0 feet North 9 degrees and 31 minutes West and 4667.88 feet due East of the section corner common to Sections 8, 9, 16, and 17, Township 11 North, Range 14, Cass County, Nebraska, thence 386 feet North 9 degrees and 31 minutes West, thence 940 feet North 26 degrees and 21 minutes East, thence 4002 feet North 12 degrees and 10 minutes East, thence 2180 feet North 39 degrees and 40 minutes East, thence 1600 feet South 56 degrees and 48 minutes East, thence 380 feet South 28 degrees and 05 minutes East, thence 1500 feet South 22 degrees and 13 minutes East, thence 2060 feet South 19 degrees and 58 minutes East, thence 900 feet South 3 degrees and 55 minutes West, thence 225 feet South 7 degrees and 47 minutes West, thence 960 feet South 18 degrees and 00 minutes West, thence due West to the point of beginning, and all accrued and accruing accretion and accretions, otherwise known as the North half of Nottleman's Island which was surveyed in August of 1933 by R. D. Fitch Jr. and filed in the office of the Register of Deeds of Cass County, Nebraska, on January 3, 1935 and recorded in Plat Book 2 Page 19; that in November 1928, Herbert Church and his grantors had been in actual, uninterrupted, continuous, notorious, peaceable, adverse and exclusive possession for at least two years; that in November of 1928 Herbert Church, single, sold

Exhibit

said tract of land to Harvey Shipley, single; that Harvey Shipley and his subsequent grantees have been in actual, uninterrupted, continuous, notorious, peaceable, adverse and exclusive possession of said tract of land and every part of it since November, 1928 to the present time and for more than ten years next preceding the bringing of this action.

The Court further finds that in April of 1937 Harvey Shipley, single, sold and conveyed by deed to William Watts and Mason Watts, as joint tenants, the following described real estate, to wit: Beginning at a point 4939 feet due North and 7764.2 feet due East of the section corner common to Sections 8, 9, 16, and 17, Township 11, Range 14, Cass County, Nebraska, thence 361 feet North 70 degrees and 26 minutes East to Station 14, thence due East to center of chute on East side of the island, thence Northwest upstream along center of said chute to a point due North of the point of beginning, thence due South to point of beginning; that this deed was filed on April 10, 1937 in the office of the Register of Deeds in Cass County, Nebraska, and recorded in book 73 of deeds on page 626, and the land is now made into tax lot 2 in Section 10 and tax lot 2 of Section 3, all in Township 11, Range 14, Cass County, Nebraska; that since the above conveyance William Watts and Mason Watts have been in actual, uninterrupted, continuous, notorious, peaceable, adverse and exclusive possession of said tract or tracts of land and that said tract or tracts of land have been in the actual, uninterrupted, continuous, notorious, peaceable, adverse and exclusive possession of Harvey Shipley and his immediate grantees, William Watts and Mason Watts, for more than ten years next preceding the bringing of this action.

The Court further finds that on the 4th day of December, 1939, Harvey Shipley, single, sold and conveyed by warranty deed to Katherine Julia O'Brien, single, the following described real estate, to wit: Beginning at a point 4939 feet due North and 7764.2 feet due East of the section corner common to Sections 8, 9, 16, and 17, Township 11, Range 14, Cass County, Nebraska, thence due South 365 feet, thence due West to the Missouri River, thence Northerly and Northeasterly along the Missouri River to a point due North of the point of beginning, thence due South to the point of beginning; that the deed conveying said land described it as beginning at Station 13 of the survey made in August, 1933, by R. D. Fitch, Jr. and filed in the Register of Deeds of Cass County, Nebraska, in Plat Book 2 at page 19, on January 3, 1935, thence 365 feet South, thence West to the Missouri River, thence along the Missouri River in a Northerly and Northeasterly direction to a point made by crossing a line running due North from said Station 13, thence South to Station 13, and the deed was filed on December 4, 1939 in the office of the Register of Deeds in Cass County, Nebraska, and recorded in Book 77 of Deeds on page 690, and the land is now made into tax lot 1 in Section 10 and tax lot 1 of Section 3 and tax lot 18 of Section 4 and tax lot 13 of Section 9, All in Township 11, Range 14, Cass County, Nebraska; that since December 4, 1939, Katherine Julia O'Brien has been in actual, uninterrupted, continuous, notorious, peaceable, adverse and exclusive possession of said tract or tracts of land, and that said tract or tracts of land have been in the actual, uninterrupted, continuous, notorious, peaceable, adverse and exclusive possession of Harvey Shipley and his immediate grantee, Katherine Julia O'Brien, for more than ten years next preceding the bringing of this action.

Exhibit

The Court further finds that the plaintiff, Harvey Shipley, has been in the actual, uninterrupted, continuous, notorious, peaceable, adverse and exclusive possession of the following tract of land for more than ten years next preceding the bringing of this action: Beginning at a point 4939 feet due North and 7764.2 feet due East of the section corner common to Sections 8, 9, 16, and 17, Township 11, Range 14, Cass County, Nebraska, thence 365 feet due South, thence due West to the Missouri River, thence Southerly down the Missouri River to a point 2047.5 feet North of the section line between Sections 9 and 16, Township 11, Range 14, thence due East across island to center line of chute on East side of said island, thence northerly up the chute to a point due East of a point 361 feet North 70 degrees and 26 minutes East of the point of beginning, thence South 70 degrees and 26 minutes West to the point of beginning, and said land is now made into tax lot 3 of Section 10 and tax lot 14 of Section 9, All in Township 11, Range 14, Cass County, Nebraska.

IT IS THEREFORE ORDERED, adjudged and decreed that fee simple title to the following described real estate, to wit: Beginning at a point 4939 feet due North and 7764.2 feet due East of the section corner common to Sections 8, 9, 16, and 17, Township 11, Range 14, Cass County, Nebraska, thence due South 365 feet, thence due West to the Missouri River, thence Northerly and Northeasterly along the Missouri River to a point due North of the point of beginning, thence due South to the point of beginning, otherwise known as tax lot 1 in Section 10 and tax lot 1 of Section 3 and tax lot 18 of Section 4 and tax lot 13 of Section 9, All in Township 11, Range 14, Cass County, Nebraska, be quieted, established and confirmed in the plaintiff,

Katherine Julia O'Brien, and that the defendants adjudged to be in default under this decree and each of them be and they hereby are perpetually enjoined from claiming, or asserting any right, title, or interest in and to said real estate or any part thereof against the plaintiff, Katherine Julia O'Brien, or anyone claiming by, through or under her.

IT IS FURTHER ORDERED, adjudged and decreed that fee simple title to the following described real estate, to wit: Beginning at a point 4939 feet due North and 7764.2 feet due East of the section corner common to Sections 8, 9, 16, and 17, Township 11, Range 14, Cass County, Nebraska, thence 361 feet North 70 degrees and 26 minutes East to Station 14, thence due East to center of chute on East side of the island, thence Northwest upstream along center of said chute to a point due North of the point of beginning, thence due South to point of beginning, otherwise known as tax lot 2 in Section 10 and tax lot 2 of Section 3, All in Township 11, Range 14, Cass County, Nebraska, be quieted, established and confirmed in the plaintiffs, William Watts and Mason Watts, as joint tenants, and that the defendants adjudged to be in default under this decree and each of them be and *they* hereby are perpetually enjoined from claiming, or asserting any right, title, or interest in and to said real estate or any part thereof against the plaintiffs, William Watts and Mason Watts, or anyone claiming by, through or under them.

IT IS FURTHER ORDERED, adjudged and decreed that fee simple title to the following described real estate, to wit: Beginning at a point 4939 feet due North and 7764.2 feet due East of the section corner common to Sections 8, 9, 16, and 17, Township 11, Range 14, Cass County, Nebraska, thence 365 feet due South, thence

Exhibit

due West to the Missouri River, thence Southerly down the Missouri River to a point 2047.5 feet North of the section line between sections 9 and 16, Township 11, Range 14, thence due East across island to center line of chute on East side of said island, thence northerly up the chute to a point due East of a point 361 feet North 70 degrees and 26 minutes East of the point of beginning, thence South 70 degrees and 26 minutes West to the point of beginning, otherwise known as tax lot 3 of Section 10 and tax lot 14 of Section 9, All in Township 11, Range 14, Cass County, Nebraska, be quieted, established and confirmed in the plaintiff, Harvey Shipley, and that the defendants adjudged to be in default under this decree and each of them be and they hereby are perpetually enjoined from claiming, or asserting any right, title, or interest in *an* to said real estate or any part thereof against the plaintiff, Harvey Shipley, or anyone claiming by, through or under him.

IT IS FURTHER ORDERED that the action shall be continued as to all defendants not adjudged to have been in default under this decree.

By the Court,

W. W. Wilson
Judge

EXHIBIT "K"

IN THE DISTRICT COURT OF CASS COUNTY,
NEBRASKA

Doc. 9 No. 237

Case 9924

HARVEY SHIPLEY, WILLIAM WATTS, MASON
WATTS, KATHERINE JULIA O'BRIEN, Plaintiffs,

-vs-

FRANK G. HULL, et al, Defendants.

D E C R E E

This matter came on for hearing on the 1st day of August, 1940 upon the petition of the plaintiffs and the evidence and the defendants Frank G. Hull and Gertha Hull, his wife, John Nottlemann Jr., Mrs. Jno. A. Donelan, Jesse M. Fitchhorn, single, Virgie A. McCarrol, and _____ McCarrol, her husband, Ira L. Fitchhorn and _____ Fitchhorn, his wife, Elmer R. Fitchhorn and _____ Fitchhorn, his wife, Mildred Fitchhorn, guardian of Letha M., Glen, John, and Wanda Fitchhorn, James Warga and Irene Warga, his wife, Plattsmouth State Bank, a corporation, Charles Warga and _____ Warga, his wife, Albert J. Godwin and _____ Godwin, his wife, Herbert Church and Pearl Church, his wife, and each of them were found to have voluntarily appeared or to have been duly served with process and were adjudged to be in default and the cause was submitted to the court upon the basis of the petition and the evidence and the Court found generally in favor of the plaintiffs and against said defendants and more particularly found that the plaintiffs were the owners in fee of the real estate described in the petition with all accrued

Exhibit

and accruing accretion and accretions and the Court ordered said action continued as to all defendants not adjudged to have been in default.

Now, therefore, this matter came on for hearing on the 8th day of May, 1941 at the hour of 9:30 A.M., as to all other defendants including Walter Gochenour and upon the pleadings and the evidence and it appearing to the Court that all defendants except Walter Gochenour are in default and that they and each of them were duly served with process herein but they and each of them except Walter Gochenour, have failed to appear, plead or answer, the defendants and each of them except Walter Gochenour are hereby found and adjudged to be in default.

Thereafter on the 8th day of May, 1941 this cause came on for hearing on the petition of the plaintiffs and the answer and cross-petition of Walter Gochenour and the evidence, Walter Gochenour being present at the hearing, and the Court being fully advised in the premises finds generally in favor of the plaintiffs and against the defendants and each of them, more particularly finding that the plaintiffs are the owners in fee simple of the land described in the caption of the petition and set out in the petition with all accrued and accruing accretion and accretions and that they and their immediate grantors have been in actual, open, notorious, peaceable, continuous, exclusive and adverse possession as against all defendants and each of them, both named and unnamed, for more than ten years next preceeding the beginning of this action, and that all defendants and each of them, whether named or unnamed, have no right, title or interest in and to said land and should be barred and precluded from asserting

or claiming any right, title or interest in and to said land.

IT IS THEREFORE ORDERED, adjudged and decreed that fee simple title to the following described real estate, to wit: Beginning at a point 4939 feet due North and 7764.2 feet due East of the section corner common to Sections 8, 9, 16 and 17, Township 11, Range 14, Cass County, Nebraska, thence due South 365 feet, thence due West to the Missouri River, thence North-erly and Northeasterly along the Missouri River to a point due North of the point of beginning, thence due South to the point of beginning, otherwise known as tax lot 1 in Section 10 and tax lot 1 of Section 3 and tax lot 18 of Section 4 and tax lot 13 of Section 9, All in Township 11, Range 14, Cass County, Nebraska, and all accrued and accruing accretion and accretions be quieted, established and confirmed in the plaintiff, Katherine Julia O'Brien, and that the defendants and each of them be and they hereby are perpetually enjoined from claiming, or asserting any right, title or interest in and to said real estate or any part thereof against the plaintiff, Katherine Julia O'Brien, or anyone claiming by, through or under her.

IT IS FURTHER ORDERED, adjudged and decreed that fee simple title to the following described real estate, to wit: Beginning at a point 4939 feet due North and 7764.2 feet due East of the section corner common to Sections 8, 9, 16 and 17, Township 11, Range 14, Cass County, Nebraska, thence 361 feet North 70 degrees and 26 minutes East to Station 14, thence due East to center of chute on East side of the island, thence North-west upstream along center of said chute to a point due North of the point of beginning, thence due South to point of beginning, otherwise known as tax lot 2 in

Exhibit

Section 10 and tax lot 2 of Section 3, All in Township 11, Range 14, Cass County, Nebraska, and all accrued and accruing accretion and accretions, be quieted, established and confirmed in the plaintiffs, William Watts and Mason Watts, as joint tenants, and that the defendants and each of them be and they hereby are perpetually enjoined from claiming or asserting any right, title, or interest in and to said real estate or any part thereof against the plaintiffs, William Watts and Mason Watts, or anyone claiming by, through or under them.

IT IS FURTHER ORDERED, adjudged and decreed that fee simple title to the following described real estate, to wit: Beginning at a point 4939 feet due North and 7764.2 feet due East of the section corner common to Sections 8, 9, 16 and 17, Township 11, Range 14, Cass County, Nebraska, thence 365 feet due South, thence due West to the Missouri River, thence Southerly down the Missouri River to a point 2047.5 feet North of the section line between Sections 9 and 16, Township 11, Range 14, thence due East across island to center line of chute on East side of said island, thence northerly up the chute to a point due East of a point 361 feet North 70 degrees and 26 minutes East of the point of beginning, thence South 70 degrees and 26 minutes West to the point of beginning, otherwise known as tax lot 3 of Section 10 and tax lot 14 of Section 9, All in Township 11, Range 14, Cass County, Nebraska, and all accrued and accruing accretion and accretions, be quieted, established and confirmed in the plaintiff, Harvey Shipley, and that the defendants and each of them be and they hereby are perpetually enjoined from claiming or asserting any right, title or interest in and to said real estate or any part thereof against the plaintiff, Harvey Shipley, or anyone claiming by, through or under him.

IT IS FURTHER ORDERED that the answer and cross petition of the defendant Walter Gochenour be dismissed at Walter Gochenour's costs, taxed in the sum of \$15.00.

Dated, June 19, 1941.

By the Court,
W. W. Wilson
Judge

EXHIBIT "L"

IN THE DISTRICT COURT OF IOWA IN AND FOR
FREMONT COUNTY

Equity No. 19765

STATE OF IOWA, Plaintiff,

vs.

Henry E. Schemmel and Lucille Schemmel, husband and wife, Douglas Henry Schemmel, Robert Edgar Schemmel and Mary Schemmel, husband and wife, Mary Leak Persons, Cecil McAlexander, Le Roy McAlexander, Ben E. Givens and Sally D. Givens, husband and wife, James E. Givens and Helen Givens, husband and wife, Frances Givens Taylor and Clarence Taylor, wife and husband, Ruth M. Givens Thiessen Lehr and John L. Lehr, wife and husband, Boyd Richardson and Velma Richardson, husband and wife, Sterling McLaren, Eugene Tiemeyer, Frank H. Schwake and Unknown Spouse, William H. Schwake and Unknown Spouse, Henry H. Schwake and Unknown Spouse, First Trust Company, Lincoln, Nebraska, as Trustee for Schwake Estate, Thurman Hukill and Dor-

Exhibit

othy Hukill, husband and wife, Glen E. Mitchell and Alice Mitchell, husband and wife, F. Pace Woods and Olive Black Woods, husband and wife, Harold Mitchell and Verona Mitchell, husband and wife, John Hancock Mutual Life Insurance Company of Boston, Massachusetts, Arlene Ritchie, William Stenzel, All Unknown Heirs, Devisees, Grantees, Assignees, Successors in Interest and Unknown Spouses of the Above Named Defendants or any of them, Fremont County, Iowa, and All Unknown Claimants and All Persons, Firms, or Corporations Unknown Claiming any Right, Title or Interest in or to the Following Described Real Estate Situated in Fremont County, State of Iowa, To-wit:

Commencing at the section corner common to Sections 10, 11, 14, and 15, Twp. 67 North, Range 43 West of the 5th P. M., thence north $89^{\circ} 37'$ west 1192.26 feet to the ordinary high water line on the east bank of the abandoned channel of the Missouri River, which is the point of beginning, thence along said ordinary high water line north $45^{\circ} 21'$ west 283.28 feet, thence north $70^{\circ} 04'$ west 177.25 feet, thence north $89^{\circ} 00'$ west 478.25 feet, thence north $57^{\circ} 46'$ west 434.10 feet, thence north $69^{\circ} 20\frac{1}{2}'$ west 615.80 feet, thence north $55^{\circ} 37\frac{1}{2}'$ west 316.40 feet, thence south $73^{\circ} 36\frac{1}{2}'$ west 313.70 feet, thence north $37^{\circ} 56\frac{1}{2}'$ west 378.80 feet, thence south $64^{\circ} 44\frac{1}{2}'$ west 111.75 feet, thence south $12^{\circ} 03'$ west 254.20 feet, thence south $58^{\circ} 55'$ west 44.40 feet to a point on the east bank of the main channel of the Missouri River, thence north $88^{\circ} 49\frac{1}{2}'$ west 350.00 feet to the Iowa-Nebraska boundary as established by the States of Iowa and Nebraska and approved by the 78th Congress in 1943, thence along said boundary line south $0^{\circ} 15'$ west 755.50 feet, thence south $0^{\circ} 50'$ west 643.20 feet,

thence south $0^{\circ} 56'$ west 129.10 feet,
thence south $2^{\circ} 00'$ east 493.65 feet,
thence south $4^{\circ} 52'$ east 482.65 feet,
thence south $7^{\circ} 37'$ east 478.50 feet,
thence south $11^{\circ} 55'$ east 470.25 feet,
thence south $17^{\circ} 20'$ east 459.60 feet,
thence south $25^{\circ} 10\frac{1}{2}'$ east 453.75 feet,
thence south $32^{\circ} 33\frac{1}{2}'$ east 458.40 feet,
thence south $38^{\circ} 47'$ east 465.30 feet,
thence south $43^{\circ} 55'$ east 471.80 feet,
thence south $48^{\circ} 00'$ east 475.25 feet,
thence south $52^{\circ} 01\frac{1}{2}'$ east 480.20 feet,
thence south $54^{\circ} 28\frac{1}{2}'$ east 487.10 feet,
thence south $55^{\circ} 40\frac{1}{2}'$ east 1584.75 feet,
thence south $50^{\circ} 03'$ east 1015.30 feet,
thence south $42^{\circ} 00'$ east 489.90 feet,
thence south $38^{\circ} 22'$ east 479.80 feet,
thence south $34^{\circ} 54\frac{1}{2}'$ east 420.80 feet,
thence south $32^{\circ} 00'$ east 300.80 feet,
thence south $26^{\circ} 20\frac{1}{2}'$ east 287.90 feet,
thence south $22^{\circ} 28'$ east 292.50 feet,
thence south $18^{\circ} 33\frac{1}{2}'$ east 289.70 feet,
thence south $14^{\circ} 39'$ east 293.30 feet,
thence south $10^{\circ} 30\frac{1}{2}'$ east 430.90 feet,
thence leaving the Iowa-Nebraska boundary line
north $82^{\circ} 07\frac{1}{2}'$ east 325.00 feet to the left or east
bank of the designed channel of the Missouri River,
thence north $34^{\circ} 28'$ east 245.95 feet to the ordinary
high water line along the east bank of the abandoned
channel, thence north $24^{\circ} 08\frac{1}{2}'$ east 311.45
feet, thence north $5^{\circ} 38\frac{1}{2}'$ west 625.60 feet,
thence north $24^{\circ} 59'$ west 417.90 feet,
thence north $19^{\circ} 26\frac{1}{2}'$ west 267.90 feet,
thence north $71^{\circ} 06'$ west 204.55 feet,
thence north $38^{\circ} 01\frac{1}{2}'$ west 378.05 feet,
thence north $37^{\circ} 48'$ west 582.00 feet,
thence north $14^{\circ} 06\frac{1}{2}'$ west 123.45 feet,
thence north $5^{\circ} 28'$ west 685.80 feet,
thence north $14^{\circ} 36'$ east 336.15 feet,
thence north $22^{\circ} 12'$ east 159.20 feet,

Exhibit

thence north $6^{\circ} 20\frac{1}{2}'$ east 1,024.00 feet,
thence north $2^{\circ} 33'$ west 489.70 feet,
thence north $9^{\circ} 31'$ west 295.80 feet,
thence north $25^{\circ} 09'$ west 494.00 feet,
thence north $72^{\circ} 30\frac{1}{2}'$ west 502.15 feet,
thence north $48^{\circ} 44'$ west 323.65 feet,
thence north $42^{\circ} 17\frac{1}{2}'$ west 421.00 feet,
thence north $26^{\circ} 48\frac{1}{2}'$ west 806.15 feet,
thence north $23^{\circ} 12'$ west 592.30 feet,
thence north $22^{\circ} 04'$ west 480.25 feet,
thence north $0^{\circ} 12\frac{1}{2}'$ west 268.10 feet,
thence north $6^{\circ} 54\frac{1}{2}'$ west 232.55 feet,
thence north $7^{\circ} 51\frac{1}{2}'$ west 278.80 feet,
thence north $34^{\circ} 03\frac{1}{2}'$ west 323.95 feet,
thence north $45^{\circ} 21'$ west 452.67 feet to the place
of beginning; containing in all 660.944 acres, De-
fendants.

PETITION IN EQUITY

Comes now the plaintiff, and for cause of action against the defendants and each of them respectfully states:

1. That plaintiff is the absolute and unqualified owner in fee simple of the real estate hereinabove described.

2. That plaintiff is credibly informed and believes that the defendants, or some of them, make claim to said real estate or claim some interest therein, said claims being adverse to plaintiff's title, but plaintiff alleges that all said claims are wholly without right.

3. That plaintiff is credibly informed and believes that unknown persons make claim to said real estate or claim some interest therein, said claims being adverse to plaintiff's title, and that said unknown persons are made parties hereto as Unknown Claimants; that plaintiff has used all reasonable means to ascertain the na-

ture and extent of said claims and the identity of said claimants, but has been unable to do so; that all of said claims are wholly without merit or right; that the names and addresses of said Unknown Claimants are unknown to plaintiff despite diligent effort to ascertain the same.

4. That the real estate described in the caption hereof and involved herein is part of the South half of Section 10, Township 67 North, Range 43 West of the 5th P. M.; Part of the Southwest Quarter of Section 14, Township 67 North, Range 43 West of the 5th P. M.; Part of Section 15, Township 67 North, Range 43 West of the 5th P. M.; Part of the Northeast Quarter of Section 22, Township 67 North, Range 43 West of the 5th P. M. and Part of the West Half of Section 23, Township 67 North, Range 43 West of the 5th P. M., all in Fremont County, Iowa. That a Plat of said real estate is hereto attached, marked "Exhibit 1" and made a part of this Petition by reference.

WHEREFORE, plaintiff prays that its title to and estate in the above described property be quieted and confirmed as an absolute title in fee simple; that defendants be forever barred and estopped to have or claim any right, title or interest thereto; and for such other and further equitable relief as the Court may deem just.

EVAN HULTMAN
Attorney General of Iowa

WILLIAM J. YOST
Assistant Attorney General of Iowa

(s) *Michael Murray*
Attorney at Law, Logan, Iowa
Attorneys for Plaintiff

Exhibit

State of Iowa)
) ss.
Fremont County)

I, Michael Murray, being first duly sworn on oath depose and state that I am one of the attorneys for the plaintiff in the above case; that I have prepared the foregoing Petition and know its contents and that the statements therein contained are true as I verily believe.

(s) *Michael Murray*

Subscribed in my presence and sworn to before me by the said Michael Murray this 26 day of March, 1963.

(s) *Olive Van Sant*
Clerk of Court in and for
Fremont County, Iowa.

EXHIBIT "M"

IN THE DISTRICT COURT OF THE STATE OF
IOWA, IN AND FOR FREMONT COUNTY

THE STATE OF IOWA, PLAINTIFF

VS.

HENRY E. SCHEMMEL AND LUCILLE SCHEMMEL,
husband and wife, DOUGLAS HENRY SCHEMMEL,
ROBERT EDGAR SCHEMMEL AND MARY SCHEM-
MEL, husband and wife, MARY LEAH PERSONS
AND ROBERT H. PERSONS, HER HUSBAND, et al,
DEFENDANTS

SEPARATE ANSWER OF HENRY E. SCHEMMEL,
et al. AND COUNTERCLAIM

ANSWER

Come now the Defendants, Henry E. Schemmel and Lucille Schemmel, husband and wife, Douglas Henry Schemmel, Robert Edgar Schemmel, and Mary Schemmel, husband and wife, Mary Leah Persons and Robert H. Persons, wife and husband and for ANSWER to plaintiff's petition, state to the Court:

1. They specifically deny paragraph 1 thereof.
2. Answering paragraph 2 thereof, they admit that they make claim to the real estate in the petition, adverse to plaintiff's alleged title, and deny all other allegations thereof.
3. They deny paragraph 3 thereof for lack of information.
4. Answering paragraph 4 thereof, defendants deny that the land described in the caption and involved in this case is a part of the various sections and tracts described therein by referring to government survey and plat, but allege that the land herein involved may be located by reference to and extensions of the Iowa survey.

Further answering the said paragraph 4, defendants allege that the said land is now located on the Iowa side of the Missouri river, by reason of the Iowa-Nebraska Boundary Pact of 1943, but that prior to such boundary pact it was located within the State of Nebraska and a part of Sections 29, 30, 31 and 32, Township 8, Range 15 East of the 6th P. M. in Otoe County, State of Nebraska and accretions thereto.

Defendants admit that the Plat Exhibit 1 locates and describes the land in controversy.

Exhibit

5. Further answering plaintiff's petition, defendants deny land formed within the State of Iowa, and deny that the plaintiff has any claim to the said land, and allege that its pretended claims are wholly without right.

6. That plaintiff's claim in contrary to and in violation of the said Iowa-Nebraska Boundary pact of 1943, in that it fails to recognize and give effect to defendant's title and rights to the said land under Nebraska law; that the defendants and their grantors, and predecessors in interest are the riparian owners of the lands bordering on the main channel on the West, or Nebraska side of the Missouri River; that as such riparian owners, under the Nebraska common law, as such riparian owners, they owned and held the title of the land to the middle or thread of the main channel subject only to the rights of the public to use the stream for navigation, or other proper public use. Among the authorities so holding are *Kinkead v. Turgeon*, 74 Nebraska 587, 109 N. W. 746, 13 Ann. Cas. 43; *Whitaker v. McBride*, 197 U. S. 510, 25 S. Ct. 530; *Independent Stock Farm v. Stevens, et al*, 259 N. W. 647, 128 Nebraska 619. That the land involved herein is a part of the said riparian land and accretions thereto and that the defendants have title, good in Nebraska to such land.

7. That the within action and claims on the part of the State of Iowa, invades and violates the constitutional rights of the defendants, and is an attempt to appropriate, and to deprive them of their property for public use, without just compensation, and without due process of law, without just compensation, and without due process of law, in violation of Article 9 of Section 1

of the Constitution of the State of Iowa, and the 14th Amendment to the Constitution of the United States.

8. That defendants and their grantors and predecessors in interest for more than ten years before this suit was begun, and for more than ten years before the boundary pact above referred to, continuously been in the actual, open notorious, exclusive and uninterrupted possession of said real estate under color of title and claim of rightful ownership, in fee simple and adverse to the claim herein made by the plaintiff.

9. That the possession of the defendants has been in good faith under color of title and claim of rightful title and ownership and relying thereon, the defendants have made valuable improvements on the said land, clearing, and levelling the same, and rendering the same tillable for general farming purposes, all at a cost of many thousands of dollars, with the result that the same is now valuable farm land; that they have paid the taxes thereon, both in Nebraska, and in Iowa after it was ceded to Iowa and under the boundary pact and placed on the tax rolls. That the State of Iowa has never been in possession of the said real estate, nor asserted any claim to it prior to the commencement of this action; that by reason of the lapse of time and failure of the State of Iowa, to allege or assert a pretended claim to the said premises, the plaintiff is now estopped from asserting any right, title or claim adverse to the defendants.

WHEREFORE, defendants pray that plaintiff's petition be dismissed at plaintiff's costs.

(s) *John S. Redd*
John S. Redd
Attorney for Defendants
Address: Sidney, Iowa

Exhibit

COUNTERCLAIM

Come now the defendants, Henry E. Schemmel and Lucille Schemmel, husband and wife, Douglas Henry Schemmel, Robert Edgar Schemmel and Mary Schemmel, husband and wife, Mary Leah Persons and Robert H. Persons, her husband, et al., and for Counterclaim against the plaintiff state:

DIVISION I.

1. Defendants adopt and replead paragraphs 4 to 9, inclusive of their foregoing Answer and make the same a part hereof by this reference.

2. That these defendants, in the aggregate are the absolute owners in fee simple of the land described in plaintiff's petition and all accretions thereto, except for such portions thereof as may be accretions to the riparian land of other owners to the East and subject to the rights of the public as to such portions thereof as is now within the stabilized channel of the present Missouri River.

3. That plaintiffs pretended claims in and to such lands of the defendants are wholly without right, and cloud the title of these defendants.

4. That the defendants, their grantors and predecessors in interest were at all time material herein the riparian owners of the highbank land, bordering on the West Bank of the Missouri River, in Sections 29, 30, 31 and 32, Township 8, Range 15 East of the 6th P.M. in Otoe County, State of Nebraska and accretions thereto.

5. That at all time material herein, it was and still is the law of Nebraska that the riparian owner of the high bank on the Nebraska or West side of the Mis-

souri River, own the fee title to the bed of said river, to the thread of the Main Channel, or the boundary of the said state. Authorities so holding are cited in the foregoing Answer.

6. That the defendants or their predecessors in interest, were the owners and holders of the said riparian land, and the owners of the bed of the Missouri River to the thread on the main channel immediately prior to and at the time the Corps of Engineers, U. S. Army, commenced its work to place the main channel of the river in its present designed channel.

7. That in about the year of 1934, the U. S. Army Engineers by means of dredging, revetments, pile dikes and other devices, cut and moved to the West into land within the State of Nebraska, the new designed channel of the Missouri River, and in so doing, such channel was cut through the riparian lands of these defendants within the State of Nebraska, above described, leaving a portion thereof on the East or Iowa side of the new designed channel that such sudden artificial change of the prior channel to the new designed channel was an avulsive change of the course of the main channel of the Missouri River, and that title ownership of the defendant in the said riparian lands was not affected thereby; that the lands in controversy herein are such riparian lands together with accretions thereto.

DIVISION II

For Division II of their Counterclaim, these defendants allege and state:

1. That the defendants and Counterclaimants, are individually or in the aggregate, the absolute owners in fee simple of the following described and identified real estate, situated in Fremont County to wit:

Exhibit

All that portion of the East Half (E½) of Section 15, Township 67, North, Range 43, West of the 5th P.M. lying East of the former East bank of the Missouri River set out and described in the Plat Exhibit I attached to in plaintiff's petition, together with all accretions thereto.

2. That at all times material herein, these defendants, their grantors, and predecessors in interest, were the owners of said riparian high bank land, bordering on the East bank of the said Missouri River.

3. That the said Missouri river, moved and receded to the West from the defendant's said high bank land, and as it so receded, the lands involved in this case formed and accreted thereto, that the portion thereof which formed and accreted to defendant's, lying between the said high bank lands and the present channel of the Missouri River, is the property of these defendants, and that these defendants are the absolute and unqualified owners thereof, as against the plaintiff.

4. That the plaintiff's pretended claims in and to such lands of the defendants are wholly without right, and cloud defendants title.

5. Defendants adopt and replead paragraphs 7 and 8 of the foregoing Answer and make the same a part hereof by this reference.

WHEREFORE these defendants pray that their title and estate in and to the property described in paragraph 2 hereof be quieted, established and confirmed as an absolute title in fee simple; that the plaintiff and all parties claiming by through or under it, be forever barred and estopped from having or claiming any right, title and interest thereto.

Defendants further pray that if necessary as between the parties to establish and more particularly describe the boundaries of the said lands of the defendants, a commissioner be appointed so to do, and defendants pray for all such other and further equitable relief as the Court may deem just.

(s) *John S. Redd*
John S. Redd
Attorney for Defendants
Address: Sidney, Iowa

STATE OF IOWA :
: SS.
FREMONT COUNTY :

I, John S. Redd, being first duly sworn on oath depose and say that I am the Attorney for the defendants in the above and foregoing Answer to Petition and Counterclaim; that the Counterclaim is plead in two divisions, depending upon the proof, that I have prepared the same and know the contents thereof and that the statements therein contained are true and correct as I verily believe.

(s) *John S. Redd*

Subscribed in my presence and sworn to before me by the said John S. Redd this 18 day of March 1964.

(s) *Olive Van Sant*
Clerk of the District Court in and
for Fremont County.

Exhibit

EXHIBIT "N"

IN THE DISTRICT COURT OF THE STATE OF
IOWA, IN AND FOR FREMONT COUNTY

Equity No. 19765

THE STATE OF IOWA, Plaintiff
VS.

HENRY E. SCHEMMEL et al, GLEN E. MITCHELL
AND ALICE MITCHELL, husband and wife, F. PACE
WOODS AND OLIVE BLACK WOODS, husband and
wife, HAROLD MITCHELL AND VERONA MIT-
CHELL, husband and wife, et al, Defendants.

SEPARATE ANSWER OF F. PACE WOODS, et al
AND COUNTERCLAIM

ANSWER

Come now the Defendants, F. Pace Woods and Olive Black Woods, husband and wife, Glen E. Mitchell and Alice Mitchell, husband and wife, and Harold E. Mitchell and Verona Mitchell, husband and wife and for ANSWER to plaintiff's petition, state to the Court:

1. They specifically deny paragraph I thereof.
2. Answering paragraph 2 thereof, they admit that they make claim to a portion of the real estate described in the caption of the petition, adverse to plaintiff's alleged title, and deny all other allegations thereof.
3. They deny paragraph 3 thereof for lack of information.
4. Answering paragraph 4 thereof, defendants deny that the land described in the caption and in-

volved in this case is a part of the various sections and tracts described therein by reference to government survey and plat, except that the land herein involved may for convenience be located by reference to and extensions of, the Iowa survey, and that the Plat Exhibit I locates and describes the land in controversy, for the purposes of this action.

5. These answering defendants, deny each and every allegation of plaintiff's petition, not herein admitted, deny that the plaintiff has any right title or interest in the said land, except such rights as it may have for navigation, or other appropriate purposes to the portion of the stream within the present stabilized main channel of the Missouri, exclusive of the land formation to the East thereof, and allege that it's pretended claim is wholly without right.

6. Defendants adopt and plead as a part of this Answer, their Counterclaim hereinafter set out.

WHEREFORE, defendants pray the plaintiff's petition be dismissed at plaintiff's cost.

(s) *John S. Redd*
John S. Redd
Attorney for Defendants
Address: Sidney, Iowa

COUNTERCLAIM

Come now the defendants, F. Pace Woods and Olive Black Woods, husband and wife, Glen E. Mitchell and Alice Mitchell, husband and wife, and Harold E. Mitchell and Verona Mitchell, husband and wife, and for Counterclaim against the plaintiff state:

1. Defendants adopt and replead paragraphs 1 to 5, inclusive, of their foregoing Answer and make the same a part hereof by this reference.

Exhibit

2. That these answering defendants are in the aggregate the absolute owners in fee simple of the following described real estate situated in Fremont County, Iowa, to wit:

All that portion of the Southwest Quarter (SW $\frac{1}{4}$), of Section 14, Township 67 North, Range 43, West of the 5th P.M. lying East of the Missouri River, and also, all that part of the West Half (W $\frac{1}{2}$) of Section 23, Township 67 North, Range 43, West of the 5th P.M., lying East of the Missouri River, together with all accretions thereto.

3. That the answering defendants, their grantors and predecessors in interest were at all time material herein the riparian owners of the said highbank land, bordering on the East Bank of the Missouri River, in said Sections 14 and 23, Township 67, Range 43, West of the 5th P.M. in Fremont County, State of Iowa.

4. That the Missouri River formerly ran along and was immediately adjacent on the West to the said high bank land of these defendants. That as the said river receded to the West the land involved in this case was formed and accreted to defendants riparian lands; that the portion thereof which formed and accreted to defendants lands, and between the said lands of the defendants and the present Missouri River, is the property of defendants, and that the defendants are the absolute and unqualified owners thereof, as against the plaintiff.

5. That plaintiffs pretended claims in and to such lands of the defendants are wholly without right, and cloud the title of these defendants.

WHEREFORE, these defendants pray that their title and estate in and to the property described in paragraph

2 hereof be quieted, established and confirmed as an absolute title in fee simple, including all accretions; that the plaintiff and all parties claiming by through or under it, be forever barred and estopped from having or claiming any right, title and interest thereto.

Defendants further pray that if necessary to apportion such accretion and establish more particularly the boundaries of the said lands of these defendants, that a commissioner be appointed so to do, and defendants pray for all such other and further equitable relief as the Court may deem just.

(s) *John S. Redd*
John S. Redd
Attorney for Defendants
Address: Sidney, Iowa

STATE OF IOWA :
: SS.
FREMONT COUNTY :

I, John S. Redd, being first duly sworn on oath depose and say that I am the Attorney for the defendants in the above and foregoing ANSWER to Petition and Counterclaim; that I have prepared the same, and know the contents thereof and that the statements therein contained are true and correct as I verily believe.

Subscribed in my presence and sworn to before me by the said John S. Redd this 18 day of March 1964.

(s) *Olive Van Sant*
Clerk of the District Court in and
for Fremont County, Iowa.

Exhibit

EXHIBIT "O"

IN THE DISTRICT COURT OF THE STATE OF
IOWA IN AND FOR FREMONT COUNTY

STATE OF IOWA, Plaintiff,
VS.

HENRY E. SCHEMMEL, ET AL, Defendants.

REPLY TO ANSWER AND ANSWER TO COUNTER
CLAIM OF HENRY E. SCHEMMEL, ET AL

REPLY

Comes now the plaintiff and for reply to the separate answer of Henry E. Schemmel et al states to the Court the following:

1. For reply to Paragraph 4 of said answer, plaintiff denies that the location of the land in controversy on the Iowa side of the Missouri River was caused or in any manner affected by the Iowa-Nebraska boundary pact of 1943. Plaintiff denies that the land in controversy, or any part thereof, was ever located within the State of Nebraska.

2. For reply to Paragraph 6 of said answer, plaintiff denies that its claim is contrary to or in violation of the Iowa-Nebraska boundary pact of 1943, and hereby alleges that the land in controversy in this case has been located within the State of Iowa continuously since it came into existence, and the Iowa-Nebraska boundary pact of 1943 had no effect and did not change the ownership of said land or the sovereignty of the State of Iowa over it. Plaintiff denies that the defendants or any of them have any right, title or interest or to the land in controversy under Nebraska law, because said land has never been within the State of Nebraska or subject to Nebraska law.

Further replying to Paragraph 6, plaintiff admits for purposes of this case that defendants and their grantors and predecessors in interest are the riparian owners of lands bordering on the main channel of the Missouri River on the west, or Nebraska, side thereof, but plaintiff hereby states and alleges that the ownership of said lands on the west or Nebraska side of said main channel is irrelevant and immaterial to any issue in this case because the land in controversy herein did not form as accretions to said Nebraska lands nor as accretion to that part of the bed of the Missouri River which was in the State of Nebraska at the time of its formation, nor was the land in controversy or any portion thereof any part of the riparian lands or accretions thereto lying on the west or Nebraska side of the river. Plaintiff hereby alleges that the land in controversy formed as an island upon and over that part of the bed of the Missouri River which lay within the State of Iowa at the time of such formation.

Further replying to Paragraph 6, plaintiff admits that under the common law of Nebraska, a riparian landowner owns to the middle or thread of the stream, but plaintiff hereby alleges that said common law of Nebraska is irrelevant and immaterial to any issue of this case.

3. Plaintiff denies Paragraph 7 of said answer.
4. Plaintiff denies each and every allegation made and contained in Paragraph 8 of said answer.
5. Plaintiff denies each and every allegation made and contained in Paragraph 9 of said answer, and for further reply to Paragraph 9, hereby states that the allegations of Paragraph 9 are irrelevant and immaterial to any issue in this case.

Exhibit

WHEREFORE plaintiff prays as in its original petition.

ANSWER TO DIVISION I OF COUNTER CLAIM

Comes now the plaintiff and for answer to the counter claim of Henry E. Schemmel, et al, states to the Court as follows:

1. Plaintiff adopts its foregoing reply as and for its answer to Paragraph I, Division I of said counter claim.

2. Plaintiff denies Paragraph 2, Division I, of said counter claim.

3. Plaintiff denies Paragraph 3, Division I of said counter claim.

4. Plaintiff admits Paragraph 4, Division I, but for further answer states that the allegations of said paragraph are irrelevant and immaterial.

5. Plaintiff admits Paragraph 5, Division I, but for further answer states that the allegations of said paragraph are irrelevant and immaterial.

6. For answer to Paragraph 6 plaintiff states that it has hereinabove admitted that defendants were the riparian owners of the high bank land bordering on the west bank of the Missouri River at all times material herein and that they were the owners of the bed of the Missouri River lying adjacent thereto to the thread or thalweg of the stream, such part of the bed being that part which was situated in the State of Nebraska. If Paragraph 6 is an attempt by defendants to allege and claim any land other than above described, plaintiff to such extent denies Paragraph 6.

7. Plaintiff denies each and every allegation made and contained in Paragraph 7.

ANSWER TO DIVISION II OF COUNTER CLAIM

1. Plaintiff denies Paragraph 1 of Division II.
2. Plaintiff denies Paragraph 2 of Division II.
3. Plaintiff denies each and every allegation made and contained in Paragraph 3 of Division II, and for further answer to said paragraph states and alleges that the land in controversy formed as an island and as accretion to the State-owned bed of the Missouri River.
4. Plaintiff denies Paragraph 4, Division II.
5. For answer to Paragraph 5, plaintiff re-pleads its reply to Paragraphs 7 and 8 of defendants' answer.

WHEREFORE plaintiff prays that defendants' counter claim and each and every part thereof be dismissed and denied at defendants' cost.

EVAN HULTMAN
Attorney General of Iowa

WILLIAM J. YOST
Assistant Attorney General of Iowa

(s) *Michael Murray*
Address: Logan, Iowa
Attorneys for Plaintiff

Exhibit

EXHIBIT "P"

IN THE DISTRICT COURT OF THE STATE OF
IOWA, IN AND FOR FREMONT COUNTY

STATE OF IOWA, Plaintiff,

VS.

HENRY E. SCHEMMEL, ET AL, Defendants.

REPLY TO ANSWER AND ANSWER TO COUNTER
CLAIM OF F. PACE WOODS, ET AL

REPLY

Comes now the plaintiff and for its reply to the answer of F. Pace Woods et al, states to the Court as follows:

1. So far as applicable, plaintiff adopts the following answer to counter claim for its reply to the answer of F. Pace Woods, et al:

WHEREFORE plaintiff prays as in its original petition.

ANSWER TO COUNTER CLAIM

Comes now the plaintiff and for answer to the counter claim of F. Pace Woods, et al, states to the Court as follows:

1. Insofar as it be deemed that said defendants have made any affirmative allegations in Paragraph 1 of said counter claim, plaintiff denies the same.

2. Plaintiff denies Paragraph 2.

3. Plaintiff denies Paragraph 3.

4. Plaintiff denies Paragraph 4, and for further answer to Paragraph 4, states and alleges that the land in controversy in this case formed as an island over and

above the portion of the bed of the Missouri River owned by the State of Iowa.

5. Plaintiff denies Paragraph 5.

WHEREFORE plaintiff prays that the counter claim of F. Pace Woods, et al, be dismissed and denied at the cost of the defendants.

EVAN HULTMAN
Attorney General of Iowa

WILLIAM J. YOST
Assistant Attorney General of Iowa

(s) *Michael Murray*
Address: Logan, Iowa
Attorneys for Plaintiff

EXHIBIT "Q"

RESOLUTIONS

LEGISLATIVE RESOLUTION 47. Re: Nebraska-Iowa Boundary Dispute.

Introduced by William B. Brandt, Legislative District 2.

WHEREAS, the State of Iowa is being most aggressive in asserting ownership of lands lying east of the stabilized channel of the Missouri River, many of which lands are owned by residents of the State of Nebraska; and

WHEREAS, the State of Iowa in pursuit of this policy has initiated action in its own courts against at least one resident of Nebraska, and in statements by its of-

Exhibit

ficers has indicated that further similar actions are contemplated against Nebraska residents and against lands which are a part of the State of Nebraska; and

WHEREAS, in certain instances this aggressive policy by officers of the State of Iowa may be in conflict with the solemn agreement of the State of Iowa on April 15, 1943, to recognize Nebraska titles; and

WHEREAS, individual owners of Nebraska lands and individual Nebraska citizens in defending their ownership of such lands cannot be in a position to match the financial and legal resources available to officers of the State of Iowa in the pursuit of their present policies in attempting to acquire title to the lands involved.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NEBRASKA LEGISLATURE IN SEVENTY-THIRD SESSION ASSEMBLED:

1. That the State of Nebraska is deeply concerned on behalf of its citizens with the aggressive policies pursued by officers of the State of Iowa in the acquisition by that State of certain lands along the Missouri River.

2. That within the limits of appropriations specifically made for that purpose, the Attorney General of the State of Nebraska be directed to employ special counsel or assistant Attorneys General to examine into all such actions initiated or contemplated by the State of Iowa, and where such action appears to be justified to protect the legitimate interests of Nebraska citizens or the titles to Nebraska lands, or to assure compliance by Iowa officials with the 1943 Boundary Compact with the State of Iowa, that he intervene on behalf of the State of Nebraska in any such actions or proceedings

initiated by officials of the State of Iowa, or that he initiate any and all necessary original actions in the Supreme Court of the United States to accomplish the objectives outlined herein.

UNANIMOUS CONSENT—Add Co-introducers

Mr. Brandt requested unanimous consent to add the following names as co-introducers of LR 47: Messrs. Bahensky, Claussen, Syas, Ruhnke, Erlewine, Moulton, E. Rasmussen, R. Rasmussen, Stalder, Wylie, Bridenbaugh, Stryker, Lysinger, Hasebroock, Mahony, Gerdes, Stromer and Burbach. No objections. So ordered.

MOTION—Suspend Rules

Mr. Brandt moved that the rules be suspended and that LR 47 be adopted today. The motion prevailed with 36 ayes, 0 nays, and 7 not voting, and LR 47 was adopted.

Exhibit

PROOF OF SERVICE

I, Clarence A. H. Meyer, Attorney General of the State of Nebraska, and a member of the Bar of the Supreme Court of the United States, hereby certify that on July _____, 1964, I served a copy of the foregoing Motion for Leave to File Bill of Complaint, Statement in support of Motion, and Complaint by depositing same in a United States Post Office, with first class postage prepaid, addressed to:

HONORABLE HAROLD E. HUGHES,
Governor of the State of Iowa
State Capitol
Des Moines, Iowa

HONORABLE EVAN L. HULTMAN
Attorney General of the State of Iowa
State Capitol
Des Moines, Iowa

such being their post office addresses.

Clarence A. H. Meyer
Attorney General,
State of Nebraska
State Capitol Building
Lincoln, Nebraska

