

AUG 5 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 TEMPORARY RESTRAINING ORDER
AND AFFIDAVIT AND STATEMENT IN
SUPPORT OF MOTION**

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

Attorneys for Plaintiff

INDEX

	PAGE
MOTION FOR TEMPORARY RESTRAINING ORDER	1
AFFIDAVIT	3
EXHIBIT A—Motion For Continuance, State of Iowa vs. Schemmel, et al	6
EXHIBIT B—Plaintiff's Objections to Motion For Continuance, State of Iowa vs. Schemmel, et al	16
EXHIBIT C—Judge's Entry, District Court Calen- dar, State of Iowa vs. Schemmel, et al	21
STATEMENT IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER	23
PROOF OF SERVICE	27

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 TEMPORARY RESTRAINING ORDER

*To the Honorable Byron R. White, Justice for the
Eighth Judicial Circuit:*

Now comes the Plaintiff in the above entitled matter and respectfully moves the Court and the single Justice to whom this motion is presented that a temporary restraining order be issued directed to the State of Iowa and its officers, agents, and employees, restraining them from further pursuance or prosecution of proceedings in the presently pending litigated cases known and styled as "In the District Court of Iowa in and for Mills County, State of Iowa, Plaintiff, vs. Darwin Meritt Babbitt, et al, Defendants, Equity No 17433" and "In the District Court of Iowa in and for Fremont County, State of Iowa, Plaintiff vs. Henry E. Schemmel, et al, Defendants Equity No. 19765" pending the out-

come of these proceedings or until further order of this Court, and further enjoining the said State of Iowa, its officers, agents and employees from instituting any other such similar proceedings or interfering with the quiet enjoyment of individuals owning or occupying lands ceded to Iowa by the State of Nebraska under the Iowa-Nebraska Boundary Compact of 1943; or, in the alternative, Plaintiff moves for an order staying proceedings in the Iowa courts.

This motion is based upon the Complaint attached to the Motion for Leave to File said Bill of Complaint, and the affidavit attached of John S. Redd, attorney for Henry E. Schemmel, and the Exhibits attached thereto, and is requested pending the Ruling of this Honorable Court on the Motion for leave to file the Bill of Complaint and, should such Motion be granted, until such time as the controversies set forth in said Complaint are decided and the rights of the parties adjudicated.

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

Attorneys for Plaintiff

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

No. 17, Original

STATE OF NEBRASKA, PLAINTIFF,
v.
STATE OF IOWA, DEFENDANT,

AFFIDAVIT

State of Iowa)
) ss.
County of Fremont)

JOHN S. REDD, being first duly sworn, on oath deposes and says:

That he is a resident of Sidney, County of Fremont, State of Iowa, is a member of the bar of the Courts of Iowa and is a duly licensed and practicing attorney in said State;

That he is attorney of record and actively in charge of the defense in the case captioned "In the District Court of Iowa in and for Fremont County, State of Iowa, Plaintiff vs. Henry E. Schemmel, et al., Defendants, Equity No. 19765" presently pending in that court;

That on the 25th day of July, 1964, upon learning of the institution of the proceedings first captioned above the affiant prepared and filed in the Fremont County, Iowa, District Court in the case of Iowa vs. Schemmel a Motion for Continuance, copy of which is attached hereto as *Exhibit A*, setting forth the reasons for such Motion for Continuance;

That thereafter, on the 27th day of July, in the same proceedings the State of Iowa by and through its Attorney General and its counsel of record filed Objections to Motion for Continuance, copy of which is attached hereto marked *Exhibit B*, setting forth the reasons for such objections;

That thereafter, the Motion for Continuance, and Objections thereto were presented to a Judge of said Court, the Honorable R. Kent Martin and said Motion for Continuance was overruled, "at this time with leave retained to re-consider the same after receiving evidence of first witness.";

That the first witness for the Plaintiff State of Iowa was one Raymond Huber a former employee of the U. S. Army Corps of Engineers, and his testimony was taken and heard pursuant to agreement of the parties based on the fact that said witness would be in the State of California for a period of about four months after the first day of August, 1964;

That the agreement to take the testimony of the Plaintiff's first witness was for the purpose of having such testimony before the Court in the event trial was undertaken at a later date but before the return of said witness and was not a waiver of the Motion for Continuance but an aid in the orderly administration of justice;

That attached hereto are the minutes of the Court proceedings showing that the testimony was taken on July 30 and 31, 1964, and that such proceedings continued until 11:35 p. m. on July 31. Such minutes are marked *Exhibit C*;

That upon adjournment on July 31, 1964, the Honorable R. Kent Martin gave indication that the trial of the cause would proceed to the taking of further evidence by other witnesses for the State of Iowa when the Court reconvened on August 4, 1964, and to the date hereof the ruling of the Court in overruling the Motion for Continuance has not been modified:

That Judge Martin further indicated that he had not modified his view that the trial of the cause should proceed without regard to the pending case in the Supreme Court of the United States between the State of Nebraska and the State of Iowa and that he intended to proceed with trial to the conclusion of the case;

That said trial did proceed on August 4th, 1964, and is still in process at the date of this affidavit.

Further affiant saith not.

John S. Redd

Subscribed and sworn to before me this ____ day of August, 1964.

Notary Public

EXHIBIT A

CERTIFICATE OF TRANSCRIPT

THE STATE OF IOWA, Fremont COUNTY, ss.

I, Olive Van Sant , Clerk of the District Court in and for said County, do certify that the foregoing is a full, true and correct copy of

Motion for Continuance

STATE OF IOWA

vs.

HENRY E. SCHEMMEL, ET AL

Case No. 19765

as the same appears of record in my office, and is still in full force and effect.

WITNESS my hand and the seal of said Court hereto affixed, at my office in Sidney, Iowa in said County, on this 3rd day of August, 1964

Olive Van Sant
Clerk

**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 Schemmel, husband and wife, Mary Leah Persons and Robert H. Persons, her husband, et al, and 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, et al,

MOTION FOR CONTINUANCE

Defendants respectfully move the Court for a continuance of the trial of this case over the term, or for such time, or to such time, including a time certain, as the Court may determine to be proper, and as grounds for, and in support of, such motion states:

1. That by reason of the matters hereinafter stated, and the facts stated in the affidavit in support hereof, substantial justice will be more nearly obtained, by such continuance.

2. That the trial of this case was set, for this summer period, by the Court with the consent of the parties, in order that the eventual final and just determination of the cause could be made with reasonable dispatch; that the same was done in good faith, on the part of the defendants, and that this motion is not made for the purpose of hindering or delaying the just and proper determination thereof.

That under the conditions now existing the eventual final and just determination of this cause, will be more effectively obtained by the requested continuance.

3. That on the 20th day of July 1964, there was commenced in the Supreme Court of the United States of America, by the filing of a Motion for Leave to File Bill of Complaint, Statement in Support of Motion, and Complaint, an original action by the State of Nebraska, against the State of Iowa, the plaintiff herein. That filed herewith, Marked Exhibit "A", and by this reference made a part of this motion, is a true printed copy of said Motion, Statement and Complaint.

Exhibit

4. That said Motion, Statement and Complaint, was duly served upon the State of Iowa, the plaintiff herein by the State of Nebraska, by mailing a true printed copy of same, to the Governor of Iowa, and the Attorney General of Iowa, on July 20, 1964.

5. That the said action is pending in the said Supreme Court of the United States.

6. That the State of Iowa, in addition to the within case, has filed or contemplates the filing of numerous actions against many individual owners or claimants to land formed in or near the Missouri River.

That the said case now pending in the Supreme Court of the United States, raises for determination by the highest Court of the land, and the Court of last resort, issues which are common to all cases claimed by the State of Iowa, as to lands, now in Iowa, including the within action.

7. That among these issues, are the alleged violations, on the part of the plaintiff herein, of the Boundary Pact of 1943, between the State of Iowa, and the State of Nebraska, the proper application of the provisions of the said pact to the lands disputed, including particularly the lands which are the subject matter of this case; the proper application of the Nebraska Common law, as contrasted to Iowa law, relating to the ownership of the bed of the stream, and as affects the ownership of lands in disputes arising from the meandering of the stream, and changes of the boundaries between the two states, and the effect to be given to Nebraska titles, payment of taxes, and the extent to which full faith and credit must be given to the Public Acts, Records and Judicial proceedings of the State of Nebraska with reference to the lands in question.

8. That the within action is set out in full, and made an integral part of the action in the Supreme Court, and direct issues raised therein.
9. That among other things the plaintiff, the State of Nebraska prays in the said action:

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 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

Exhibit

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.

10. That the settling by the Supreme Court of the United States of the various issues raised by the said action, will provide guidelines and competent authority for the determination of the same or similar issues of law in the within case. That the action may well deter-

Exhibit

mine and complete adjudicate the issues in the within case, or in any event will be helpful in the proper determination of the same in this Court.

11. That among the objectives of the said suit, is the avoiding of the multicplicity of actions, between the State of Iowa, various individuals, owning or claiming land on the Iowa side of the present Missouri River channel. That in such separate actions, individuals are faced with the vast resources of the State of Iowa, in man power, and in financial resources, in the investigation and determination of disputed facts and difficult disputed questions of applicable law; that the determinations sought, will limit or reduce the issues in such cases, eliminating the difficult questions of fact and law, and enable the private citizens, with limited resources to present their just grievances to the Court, on a more equal basis, as against the sovereign State of Iowa, and its unlimited resources.

12. That what action the Court shall take, and what issues the Court shall consider is the province of the Supreme Court of the United States. That this District Court of Iowa should take cognizance of the said case pending therein, and should voluntarily suspend further proceeding in this case pending further proceedings in the said Supreme Court.

13. That the trial of the within case may well require some three weeks to a month of trial on difficult and complicated issues of fact and law and at great expenses and inconvenience to the defendants—all of which will be lost, in the event the issues are fully determined by the Supreme Court of the United States; or much of which may be rendered unnecessary by the decision in said case, in any event. That any decision

this Court might make upon any issue later adjudicated in the Supreme Court of the United States, will be dependent upon the eventual ruling of that Court.

That the interests of justice will be served by continuing the within case, at least, until it is determined what course the Supreme Court of the United States takes with reference to it.

That the rights of either party will not be prejudiced thereby.

JOHN S. REDD
Attorney for Defendants
Address: Sidney, Iowa

STATE OF IOWA)
) ss.
COUNTY OF FREMONT)

I, John S. Redd, being first duly sworn on oath depose and say, that I am the Attorney for the defendants, and as such Attorney have investigated, and am familiar with the facts recited in the foregoing motion; that I have prepared and read the same and that the statements therein contained are true as I verily believe.

John S. Redd

Subscribed and sworn to before me by the said John S. Redd this 25th day of July A. D. 1964.

(s) *Darlene Younts*
Notary Public in and for
Fremont County.

Exhibit

AFFIDAVIT

STATE OF IOWA,)
) ss.
FREMONT COUNTY,)

I, John S. Redd, being first duly sworn, state that I am the attorney for the defendants in the above entitled action and that this Affidavit is made in support of the Motion for Continuance to which it is attached.

That on July 20, 1964, after wire services had reported the filing of an action in the Supreme Court of the United States between the State of Nebraska, and the State of Iowa, Counsel for the plaintiff, Michael Murray, called me with reference to the possible effect of such case upon the trial of the Schimmel case, which was set for the following Monday. I reported that I was not familiar with the issues raised in the Supreme Court, but understood that it involved the Schemmel case or issues affecting it, and I thought the trial of the Schemmel case probably should be postponed; but that I would contact him further after I was more fully advised; That on Tuesday, July 21, 1964, after I had reviewed a copy of the action in the U. S. Supreme Court, I called Mr. Murray, reporting in some detail, the issues tendered in that case, and proposed that the within case be continued by agreement, at least until such time, as the Supreme Court took some action in the matter. He stated that the matter would be up to the decision of the Attorney General's office, that he doubted they would want to continue the case by agreement, but that he would advise me of the decision.

That on Thursday morning, I called the Court to advise him of the pendency of the Supreme Court case,

Exhibit

it's possible effect upon the Schemmel trial, that discussions between counsel were being had with reference to continuance by agreement, but that in any event, the defendants would move for a continuance, predicated upon the pending case in the Supreme Court and the issues tendered thereby;

That also on Thursday when plaintiff's counsel reported that the plaintiff would not be agreeable to a continuance of the trial by agreement, and I then gave oral notice that a formal motion would be filed, and urged; and that same has been done, with all reasonable dispatch, in view of the absence of my regular secretary due to illness.

John S. Redd

SUBSCRIBED and sworn to before me by the said John S. Redd this 25th day of July A. D. 1964.

(Seal)

(s) *Darlene Younts*
Notary Public in and for
Fremont County.

EXHIBIT B

IN THE DISTRICT COURT OF IOWA IN AND FOR
FREMONT COUNTY

THE STATE OF IOWA, Plaintiff

vs.

HENRY E. SCHEMMEL, et al, Defendants.

**PLAINTIFF'S OBJECTIONS TO MOTION FOR
CONTINUANCE.**

Comes now the Plaintiff, The State of Iowa, and for its objections to Defendants' Motion for Continuance filed herein on or about July 25, 1964, states to the Court the following:

1. That it denies Paragraph 1 of said Motion.
2. That it admits the first paragraph of Paragraph 2; that it denies the second paragraph of Paragraph 2.
3. That it admits Paragraph 3.
4. That it admits Paragraph 4.
5. That it admits Paragraph 5.
6. That it admits the first paragraph of Paragraph 6; that it denies the second paragraph of Paragraph 6.
7. For its objection to Paragraph 7, plaintiff admits that it is the claim of the State of Nebraska before the United States Supreme Court that plaintiff is violating the 1943 Boundary Compact between Iowa and Nebraska; however, plaintiff denies that there is any such issue involved in the case at bar. It is the position of plaintiff in the case at bar that the tract of land and water involved herein was not ceded by Nebraska to Iowa by said Compact because said tract was within the

boundaries of Iowa even before 1943. If this Court determines that plaintiff's position in this respect is supported by a preponderance of evidence and therefore correct, it must necessarily follow that the 1943 compact is not an issue in this case in any manner whatsoever. Plaintiff submits that the correct and proper forum for the determination of the aforementioned question is this Court, it being admitted in the pleadings in this case that the tract in controversy is within the boundaries of the State of Iowa and therefore subject to the jurisdiction of the Courts of the State of Iowa. Also, plaintiff submits that if it be found that the tract in controversy has always been in Iowa, continuously since it came into existence, there can be no question as to any effect to be given to Nebraska titles, taxes paid in Nebraska, or full faith and credit to be given Public Acts, Records and Judicial proceedings of the State of Nebraska.

8. That it admits Paragraph 8, except insofar as said Paragraph may be deemed denied in Paragraph 14 hereafter set forth.

9. That it admits Paragraph 9.

10. That it denies Paragraph 10, excepting only it admits that if the prayer of the State of Nebraska to the United States Supreme Court set forth in Sub-Paragraph VIII of Paragraph 9 were to be granted, then and in that event, a guideline for the case at bar would be provided. However, further objecting to Paragraph 10, plaintiff states that there is no indication or reason to believe that the United States Supreme Court will grant Paragraph VIII of said prayer.

11. That it admits that it may be an objective of the State of Nebraska to avoid multiplicity of actions as

Exhibit

alleged in Paragraph 11. However, plaintiff hereby alleges and submits that no Judgment or Decree of the United States Supreme Court will or can have such effect, because each and all of the pending cases in state courts and in the lower federal courts involve different facts, and the determination of each case is dependent upon its own particular facts.

12. That it admits the first sentence of Paragraph 12; that it denies the second sentence of Paragraph 12.

13. For objections to Paragraph 13, plaintiff states that defendants' statements concerning difficulty, complication, expense and inconvenience are irrelevant, particularly in the face of the necessity for orderly and prompt judicial determination of this case and the other pending case involving similar facts and issues. Plaintiff therefore denies the second paragraph of Paragraph 13.

Also, plaintiff denies the third paragraph of Paragraph 13 for the following specific reasons, to-wit:

(a) The tract in controversy in this case is largely valuable farm land. Whoever is the owner thereof is entitled to the rents and income therefrom. Therefore, if defendants' Motion of Continuance be granted, plaintiff will suffer serious financial loss of such rents and income.

(b) Plaintiff has gone to much expense and has devoted much time and effort for the purpose of preparing for trial of this case at this time. Much of said expense, time and effort will be lost a continuance is granted.

14. For its further objection to said Motion for Continuance, Plaintiff hereby states and alleges that, at the

present time, the United States Supreme Court has not granted the Motion of the State of Nebraska for Leave to file any Bill of Complaint, nor assumed jurisdiction over any issues having any remote or close connection with the issues in the case at bar, nor has said Supreme Court issued any Temporary Injunction or Stay Order which would require any continuance of the case at bar. Plaintiff submits That the Courts of Iowa, including this Court, would be in grievous error to interrupt its orderly and normal judicial processes merely upon the contingency that the United States Supreme Court may, at some future time, allow the filing of a Bill of Complaint in a case which might furnish some guide lines for litigation already pending and ready for trial in state courts.

WHEREFORE, plaintiff respectfully requests that defendants' Motion for Continuance be overruled.

Evan Hultman; Attorney General
of Iowa,

William J. Yost, Assistant Attorney
General of Iowa,

(s) Michael Murray
Michael Murray, Attorney at
Law, Logan, Iowa

Attorneys for the Plaintiff.

Exhibit

CERTIFICATE OF TRANSCRIPT

THE STATE OF IOWA, Fremont COUNTY, ss.

I, Olive Van Sant , Clerk of the District Court
in and for said County, do certify that the foregoing is
a full, true and correct copy of PLAINTIFF'S OBJEC-
TIONS TO MOTION FOR CONTINUANCE.

Case No. 19765

STATE OF IOWA

VS.

HENRY E. SCHEMMEL, et al

as the same appears of record in my office, and is still
in full force and effect.

WITNESS my hand and the seal of said Court
hereto affixed, at my office in Sidney in said
County, on this 3rd day of August, 1964

Olive Van Sant
Clerk

By Lois Y. Lynn
Deputy

EXHIBIT C

District Court Calendar, Fremont County, Iowa

Equity

Docket No. 24 Page No. 265

Case No. 19765

STATE OF IOWA

VS.

HENRY E. SCHEMMEL, et al

Attorney for State of Iowa
Michael Murray,
Logan, Iowa

Attorneys for Henry E. Schemmel, et al
Eaton & Eaton, Nichols & Thornell,
and John S. Redd,

July 27, 1964 Motion for continuance heard and over-
ruled at this time with leave retained to re-consider
the same after receiving evidence of first witness—
Hearing continued to 9:30 A. M. July 30, 1964.

(s) R. Kent Martin, Judge

July 30, 1964 Trial opened at 10:30 A. M.—At 12
noon an adjournment taken to 1 P. M. Court re-
convened at 1 P. M. At 5:30 P. M. an adjournment
taken to 9:30 A. M. July 31, 1964.

(s) R. Kent Martin, Judge

July 31, 1964 Trial resumed at 9:30 A. M. At 12 noon
an adjournment taken to 1 P. M. Court reconvened
at 1 P. M. At 5:20 adjournment taken to 7 P. M.

Exhibit

Court reconvened at 7:00 P. M. At 11:35 P. M.
an adjournment taken to Tuesday Aug. 4, 1964, at
9:30 A. M.

(s) R. Kent Martin, Judge

CERTIFICATE OF TRANSCRIPT

THE STATE OF IOWA, Fremont County, ss.

I, Olive Van Sant, Clerk of the District Court in
and for said County, do certify that the foregoing is a
full, true and correct copy of

JUDGES ENTRY

DISTRICT COURT CALENDAR

Case No. 19765

STATE OF IOWA

VS.

HENRY E. SCHEMMEL, et. al

as the same appears of record in my office, and is still
in full force and effect.

WITNESS my hand and the seal of said Court hereto
affixed, at my office in Sidney in said County, on
this 3rd day of August, 1964

Olive Van Sant
Clerk

By *Lois Y. Lynn*
Deputy

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

No. 17, Original

STATE OF NEBRASKA, PLAINTIFF,

v.

STATE OF IOWA, DEFENDANT,

**STATEMENT IN SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER**

On or about the 20th day of July, 1964, the Plaintiff herein filed its Motion for Leave to File Bill of Complaint, Statement in Support of Motion, and Complaint, together with a Brief in Support of Motion for Leave to File Original Complaint. As stated therein, there are presently two cases pending in Iowa state courts involving lands to which the State of Iowa claims title and it is this claim which forms in part the basis for your Plaintiff's allegations of violation of the Iowa-Nebraska Boundary Compact of 1943.

There was reason to believe that the state officials of Iowa and the Honorable Judges of the Iowa trial courts before which these cases were pending would forego further proceedings pending a determination by

this Court on the question of jurisdiction, and if leave were granted to file Plaintiff's Complaint, that those Iowa cases would remain pending until a final determination in this case could be had, the issues before this Court being considered controlling as to the issues raised in the Iowa state courts.

It now appears that such cases will proceed to determination unless this Court restrain and enjoin further prosecution by Defendant State of Iowa, or in the alternative, stay the pending proceedings.

The Plaintiff, State of Nebraska, is not a party to either of the pending cases referred to above, and it is deemed by the State of Nebraska to be contrary to the intent of Art. III, Sec. 2, Clause 2 of the Constitution of the United States and Title 28, U. S. C. Section 1251 to require the sovereign State of Nebraska to submit to the jurisdiction of the Iowa courts either by intervention in the pending proceedings or by filing an action to restrain and enjoin Iowa or its agents from proceeding further.

Titles to certain lands here involved were quieted in Nebraska Courts prior to the 1943 agreement. These decrees found the land to be within the jurisdiction of Nebraska and under the 1943 treaty, Iowa was bound to the provision that, "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 afforded full force and effect in Iowa". So as to those lands which had been the subject of Nebraska quiet title actions, Iowa was forever barred from asserting any claim. However, present jurisdiction over

those lands has been transferred to Iowa, the Iowa participants in the proceedings are not subject to the Nebraska *in personam* jurisdiction, and consequently the Nebraska Courts have no further power to implement and enforce their own decrees. Jurisdiction can therefore lie only in the Federal Courts by virtue of the necessity of enforcing the 1943 Compact. In aid of its original jurisdiction the United States Supreme Court may enjoin or stay proceedings in the Iowa State Courts.

An examination of Iowa's Objections to Motion for continuance reveals a disregard for the burden placed on the individual defendants and an apparent haste to resolve the individual cases even though no action was taken to assert the "rights" of Iowa until twenty years after the "rights" came into being. Time works only in favor of the State and to the detriment of the individual, for the State of Iowa recognizes no impediment by laches, estoppel or adverse possession. (See paragraph 13 of *Exhibit B.*)

The State of Iowa can afford to fight these lawsuits one at a time. The individual landowner cannot. Though it may appear that individual wealth is represented in the number of valuable acres involved, this Court need not be told the tremendous, immediate cash sums involved in preparing and trying a lawsuit so complex as each of these. The landowner cannot levy a tax to pay his lawyers. He must use funds outside the ordinary expenses of a farming operation and there is no hope of recovery. All he can expect in return is an expensive decree that affirms his rights—or disaster.

The State of Iowa by seeking to take these private lands without compensation is twisting the 1943 Com-

pact to its advantage by invoking the jurisdiction granted the Iowa courts by the provision in the compact establishing the boundary while at the same time ignoring those provisions of the Compact which were inserted to guarantee and safeguard the rights of the individuals claiming ownership under Nebraska law.

Respectfully submitted

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

Attorneys for Plaintiff

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 August _____, 1964, I served a copy of the foregoing Motion for Temporary Restraining Order and Affidavit and Statement in Support of Motion 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

