

MAR 30 1965

JOHN E. DAVIS, CLERK

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**In The**  
**Supreme Court of the United States**

**October Term, 1964**

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**No. 17, Original**

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**STATE OF NEBRASKA, PLAINTIFF,**

**v.**

**STATE OF IOWA, DEFENDANT,**

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**ANSWER OF DEFENDANT, STATE OF IOWA,  
TO COMPLAINT OF PLAINTIFF,  
STATE OF NEBRASKA**

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**LAWRENCE F. SCALISE**

Attorney General of Iowa

State Capitol

Des Moines, Iowa

**ROBERT B. SCISM**

Assistant Attorney General of Iowa

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Des Moines, Iowa

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Attorneys for Defendant

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The State of Iowa, by Lawrence F. Scalise, Attorney General, makes answer to the Complaint of the State of Nebraska, as follows:

I. Admitted by decision of this Court, entered the 1st day of February, 1965.

II. Admitted.

III. Admitted.

IV. Admitted as concerns the area involved in *Nebraska v. Iowa*, No. 4, Original, 143 U. S. 359, 12 S. Ct. 396, 36 L. Ed. 186 (1892).

V. The State of Iowa admits the statements and averments contained in paragraph V with the exception of the concluding averment, "and it became almost impossible to determine the exact boundary between Iowa and Nebraska in many places at any given time in the past", which averment is specifically denied and proof of such averment is demanded.

VI. Admitted.

VII. Admitted. This averment demonstrates that the Iowa-Nebraska boundary has been validly established and that further definition of same is not required. Nor would any other definition be competent in the absence of an averment and finding that the Iowa-Nebraska Boundary Compact of 1943 is invalid. No averment of invalidity has been made.

VIII. Denied. The averments of paragraph VIII of Plaintiff's complaint contain conclusions of law to which no answer is required, but to the extent that they are relevant and material, the State of Iowa demands proof thereof.

IX. Denied, and the State of Iowa demands proof thereof. The State of Iowa admits that for several years it has been quieting title to Missouri River ri-

parian lands involving Iowa citizens in the Iowa courts and, on occasion, Nebraska citizens in Iowa courts. None of these actions brought by the State of Iowa has violated either the provisions or the spirit of the Iowa-Nebraska Boundary Compact of 1943, since they represent only efforts to determine ownership of lands. The primary questions to be resolved involve the manner in which disputed land formed, where it formed, when it formed, and the location of the boundary line between the states at various times. Material to these questions is whether the boundary line prior to the 1943 compact followed the changes in the course of the Missouri river or was left permanently in place at certain locations because of an avulsion.

X. Admitted except that the averment, "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 fact surrounding the formation and occupancy or control over said land.", which averment is specifically denied and strict proof demanded thereof.

The State of Iowa answers further that the averments contained in Paragraph X of Plaintiff's complaint palpably demonstrate that this is a proceeding by a state on behalf of its citizens and not in the interest of the state itself.

XI. Admitted.

XII. Denied. The State of Iowa further answers that the averments are irrelevant and immaterial for the reason that determinations as to "residence" do

not determine ownership rights in real property. Nor does defining the boundary line which delimits each state's jurisdiction operate to diminish, modify, convey or destroy ownership rights in real property. Nor is the payment of taxes determinative of sovereignty. Nor is sovereignty determinative of what individuals or entities own land. Nor has the State of Nebraska "possessed" any of the lands in an ownership sense.

XIII. Denied. Proof of the relevant and material averments is demanded.

XIV. Denied. Proof of the averments is demanded.

XV. Admitted except that the averments, "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 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 constructions 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.", which averments are denied and strict proof demanded.

XVI. Denied. Proof of the averments is demanded. The State of Iowa further answers that the State of Iowa 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, the State of Iowa acquired title to all beds which the river occupied from time to time within the State. Ownership in the State never ceased. This ownership continued after the land in question arose above ordinary high water mark because the land formed as an accretion to the state owned bed of the river. The State of Iowa further answers that if any taxes have been paid to the State of Iowa on the lands in question, they have been infinitesimal.

XVII. Denied. Proof of the relevant and material averments is demanded. The State of Iowa further answers paragraph XVII of Plaintiff's complaint by answering that it is already the owner of lands about which the Plaintiff specifically complains, and the individuals asserting claims to said lands are wrongfully, without authority and unlawfully converting the natural resources thereon to their own use and benefit. That the State of Iowa has been injured by the removal of timber, other natural resources and the use of land which it holds in trust for the benefit of all its citizens. That the encroachments are without the authority or permission of the State of Iowa.

XVIII. Denied. Strict proof of the averments is demanded.

XIX. Denied. Strict proof of the averments is demanded.

XX. Denied. Strict proof of the averments is demanded.

XXI. Denied. Strict proof of the averments is demanded. The averments further contain conclusions of law to which no answer is required, but to the extent to which they are relevant and material, the State of Iowa demands proof thereof.

WHEREFORE, Defendant, State of Iowa, prays:

I.

THAT THE COURT ADJUDGE AND DECREE that the Iowa-Nebraska Boundary Compact of 1943 is valid, and settled the boundary line between the respective states for the purpose of jurisdiction, and that any issues of private ownership of said lands between the State of Iowa and private citizens be resolved by the Courts of competent jurisdiction of the respective states or the proper federal forum exclusive of this Honorable Court.

II.

THAT THE COURT ADJUDGE AND DECREE that the State of Iowa is only required to recognize those valid titles, mortgages and other liens that are good in Nebraska, and that the asserted titles to the specific lands in question are not "good" in Nebraska or of the nature to be recognized as valid under section three of the Iowa-Nebraska Boundary Compact of 1943.

III.

THAT THE COURT ADJUDGE AND DECREE that the State of Iowa is the owner of the lands about which the Plaintiff specifically complains, and further adjudge and decree that the actions of the State of Iowa in protecting its natural resources in the cases of *State of Iowa v. Schemmel* and *State of Iowa v. Babbitt* do not constitute an abrogation of Iowa-

Nebraska Boundary Compact of 1943 nor a violation of Article IV, Section 1 of the Constitution of the United States.

IV.

THAT THE COURT ADJUDGE AND DECREE that this is merely a proceeding by the State of Nebraska on behalf of a few of its citizens and not assertive of any interests of the State itself, and that no adjudication of ownership claims in land asserted by individuals not parties to this action is possible, their presence being indispensable.

V.

THAT THE COURT ADJUDGE AND DECREE that the Iowa-Nebraska Boundary Compact of 1943 and particularly Section 3 thereof did not purport to create, alter, convey or determine ownership rights in land along or in proximity to the Missouri River and its abandoned river channels.

VI.

THAT THE COURT ADJUDGE AND DECREE that the prayer for an injunction restraining the State of Iowa, its officers, agents and servants be denied and that the State of Iowa be permitted to continue exercising its rights and performing duties in protecting its natural resources and regulating its state owned lands, and that the court affirm its faith in the Iowa Courts to do justice to all parties regardless of their state of residence.

VII.

THAT THE COURT ADJUDGE AND DECREE that the Bill of Complaint filed by the State of Nebraska be dismissed and that the Court make such



further orders as may be necessary to enforce its decrees; and that the Defendant may have such other and further relief as to which in equity and good conscience it may be entitled.

LAWRENCE F. SCALISE  
Attorney General of Iowa

ROBERT B. SCISM  
Assistant Attorney General of Iowa

WILLIAM J. YOST  
Special Assistant Attorney General of Iowa

## PROOF OF SERVICE

I, William J. Yost, Special Assistant Attorney General of the State of Iowa and member of the Bar of the Supreme Court of the United States, hereby certify that on March . . . ., 1965, I served a copy of the foregoing Answer of Defendant, State of Iowa, to Plaintiff's Bill of Complaint, by depositing the same in a United States Post Office, with first class postage prepaid, addressed to:

HONORABLE FRANK B. MORRISON  
Governor of the State of Nebraska  
State Capitol  
Lincoln, Nebraska

HONORABLE CLARENCE A. H. MEYER  
Attorney General of Nebraska  
State Capitol  
Lincoln, Nebraska  
such being their post office addresses.

WILLIAM J. YOST  
Special Assistant Attorney General  
State of Iowa  
State Capitol  
Des Moines, Iowa



