

AUG 11 1965

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.

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

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The State of Iowa, by Lawrence F. Scalise, Attorney General, substitutes this amended answer for its previous answer to the complaint of the State of Nebraska, with the written consent of the adverse party as permitted by Rule 15(a), Rules of Civil Procedure, 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. Admitted.

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 riparian lands it

owns in Iowa along the Missouri River, in actions involving Iowa citizens in Iowa courts and, on occasion, Nebraska citizens in Iowa courts. No action of the State of Iowa has violated either the provisions or the spirit of the Iowa-Nebraska Boundary Compact of 1943, since: (1) No action has been taken or claim of ownership asserted in respect to any lands ceded by Nebraska to Iowa by the compact; (2) No action has been taken or claim of ownership asserted in respect to lands that ever were within the State of Nebraska; (3) Some of the land in respect to which the State of Iowa has brought a quiet title action or has asserted informally a claim of ownership was not in existence in 1943, but formed within the State of Iowa by reason of the Missouri River's convolutions subsequent to that time, becoming, on the facts of its formation and applicable law, the property of the State of Iowa.

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.

XI. Admitted.

XII. Denied. The State of Iowa further answers that the averments are irrelevant and immaterial for the reason that all of the lands in respect to which the State of Nebraska alleges an exercise of sovereignty always have been within the State of Iowa; and that

exercises of sovereignty, even if proved, are probative neither of title to lands nor of the jurisdiction in which they lie. The State of Iowa specifically denies that the State of Nebraska ever has possessed any of the lands in dispute in *State of Iowa v. Babbitt*, or that the State of Iowa has acquiesced in the alleged possession. For further answer, the State of Iowa alleges that it has exercised jurisdiction and sovereignty over the land.

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 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.", 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, for the reason that the lands in dispute in *State of Iowa v. Babbit* and in *State of Iowa v. Schemmel* are not lands which were ceded by Ne-

braska to Iowa by the 1943 compact, these lands never having been within the State of Nebraska at any time, and for the reason that actions by the State of Iowa in respect to these lands are not in any sense attempts to "obtain" title but are actions solely to quiet title to lands before and since the 1943 compact owned by the State of Iowa.

XIX. The State of Iowa denies that prior to and at the time of the adoption of the Iowa-Nebraska Compact the boundary line between Iowa and Nebraska had not been determined. It alleges, on the contrary, that the boundary line had been determined in law and in fact, and that it was the thalweg of the Missouri River except where the river had moved by avulsion. Defendant admits that, in many locations, the pre-compact boundary line has not been established by survey or monumented, but defendant denies that it is "almost impossible" to do so and alleges, on the contrary, that it was and is entirely possible to do so, and to do so at a cost not disproportionate to the value of lands, the determination of whose ownership might be aided thereby. Defendant admits that the Boundary Compact of 1943 provided no unique procedure for identifying specific parcels of land ceded by one state to the other or for placing their descriptions on record in the state to which they were ceded, but denies that existent "machinery" was inadequate to accomplish these ends. Defendant admits that the purpose of the Iowa-Nebraska Boundary Compact of 1943 was to establish the boundary line between the states as the center of the stabilized channel of the Missouri River, but denies that Sections 3 and 4 of the compact were meant solely to protect titles of individual citizens of Iowa and Nebraska. Defendant answers further that the compact was meant to protect all titles, without respect to the citizenship of the titleholder, and without respect to whether the titleholder

was an individual or a governmental body. Defendant denies that the compact was meant to preclude inquiry into whether titles to lands ceded were good in the ceding state, or that it was meant to vest good title in those who invoked indicia of title in one state as to lands never before or after the 1943 compact within their state or as to lands that came into being subsequent to 1943 not within their state. The State of Iowa further denies that it has unilaterally abrogated or is unilaterally abrogating the Iowa-Nebraska Boundary Compact, or that it has violated the provisions of Article IV, Section 1, of the Constitution of the United States.

XX. Denied. The first three sentences are immaterial and irrelevant. The State of Iowa further answers that the Iowa-Nebraska Boundary can be accurately located from the alluvial plain maps (Scale 1" equals 2,640') referred to in the Iowa-Nebraska Boundary Compact, and that it is informed and believes that United States Army Corps of Engineers construction maps (Scale 1" equals 400'), which show the river alignment in conformance with the alignment on the alluvial plain maps, are available.

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 3 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. Babbit* do not constitute an abrogation of the Iowa-Nebraska Boundary Compact of 1943 or 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.

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Attorneys for Defendant

We do hereby consent to the filing of the foregoing
Amended Answer in the above entitled cause.

STATE OF NEBRASKA, Plaintiff

By:

JOSEPH R. MOORE

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of Nebraska

1028 City National Bank Building
Omaha, Nebraska

PROOF OF SERVICE

I, Sewell E. Allen, 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 August. . . ., 1965, I served a copy of the foregoing Amended 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.

SEWELL E. ALLEN
Special Assistant Attorney General
State of Iowa

