

FILE COPY

Supreme Court, U. S.  
FILED

NOV 9 1972

MICHAEL RODAK, JR., CLERK

IN THE

# Supreme Court of the United States

October Term, 1964

NO. 17 ORIGINAL

STATE OF NEBRASKA, Plaintiff

v.

STATE OF IOWA, Defendant

RECOMMENDED DECREE BY SPECIAL MASTER

JOSEPH P. WILLSON

Senior District Judge

Special Master



IN THE  
**Supreme Court of the United States**

---

October Term, 1964

---

**NO. 17 ORIGINAL**

---

STATE OF NEBRASKA, Plaintiff

v.

STATE OF IOWA, Defendant

---

**RECOMMENDED DECREE BY SPECIAL MASTER**

---

**PRELIMINARY STATEMENT**

The opinion of the Court was announced April 24, 1972, 406 U. S. 117.

Mr. Justice Brennan in the opinion invited the States to submit a proposed decree. The last sentence of the opinion reads:

“If the States cannot agree, the Special Master is requested, after appropriate hearing, to prepare and submit a recommended decree.”

The States cannot agree on a proposed decree. A hearing has been held. Counsel for each State have been heard. The following decree is recommended:

IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. The Missouri River was the boundary between the States of Iowa and Nebraska which was subject to the general rules of accretion and avulsion until 1943 when the states determined to agree by compact upon a permanent location of the boundary line.

*Preliminary Statement.*

2. By 1943 the shifts of the Missouri River channel had been so numerous and intricate, both in its natural state and as a result of the work of the Corps of Engineers, that it was practically impossible to locate the original boundary line between the states.

3. The Compact between the states effective July 12, 1943 provides in Section 3 as adopted by Iowa:

"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 judgment shall be accorded full force and effect in Iowa."

4. Under Section 2 of the Compact, each state "cedes" to the other state "and relinquishes jurisdiction over" all such lands then located within the compact boundary of the other.

The word "cedes" in Section 2 was meant by the states to describe all areas formed before July 12, 1943, regardless of their location with reference to the original boundary, whose "titles, mortgages and other liens" were, at the date of the Compact, "good in" the ceding state. Under Section 3, the state is bound to recognize such "titles, mortgages and other liens" to be "good in" its state, and not to claim ownership in itself.

5. Sections 2 and 3 are not to be construed as relating only to areas formed before July 12, 1943 that can be proved by clear, satisfactory, and convincing evidence to have been on the Nebraska side of the *original* boundary before the Compact fixed the permanent boundary. Such a construction would require the

*Preliminary Statement.*

claimant who proves title "good in Nebraska" also to shoulder the burden of proving the location of the *original* boundary before 1943, as well as proving that the lands were on the Nebraska side of that boundary which would be placing a burden upon the land owner which the states themselves refused to undertake in 1943 and agreed would not be necessary.

6. The State of Iowa does not own Nottleman Island and Schemmel Island. The proofs sufficed to establish title "good in Nebraska" to Nottleman Island which was the land involved in the case of *State of Iowa, Plaintiff, v. Darwin Merritt Babbitt, et al.*, Equity No. 17433 in the District Court for Mills County, Iowa, and to Schemmel Island which was the land involved in the case of *State of Iowa, Plaintiff, v. Henry E. Schemmel, et al., Defendants*, Equity No. 19765 filed in the District Court of Fremont County, Iowa, on March 26, 1963, and that Nottleman Island and Schemmel Island formed before July 12, 1943.

7. Under Section 3 of the Compact, titles "good in Nebraska" include private titles to riparian lands that under Nebraska law, differing from Iowa law, run to the thread of the contiguous stream.

8. Titles "good in Nebraska" are found to include and embrace titles obtained by ten years' open, notorious and adverse possession under claim of right without any requirement of a record title or of "color of title."

9. As to areas formed before July 12, 1943, Sections 2 and 3 of the Compact limit the State of Iowa to contesting with private litigants in State or Federal Courts the question whether the private claimants can prove title "good in Nebraska" and when private liti-

*Preliminary Statement.*

gants prove such title, Iowa cannot interpose Iowa's doctrine of state ownership as defeating such title.

10. In the presently pending cases of *State of Iowa, Plaintiff v. Darwin Merritt Babbitt, et al.*, Equity No. 17433, (District Court of Mills County, Iowa), and *State of Iowa, Plaintiff v. Henry E. Schemmel, et al.*, Equity No. 19765, (District Court of Fremont County, Iowa), it having been proved that there are titles "good in Nebraska" as to those islands, there is no reason for an injunction against Iowa, its officers, agents and servants, at this stage, unless it be shown that the State of Iowa will not abide by this determination of the issues as embodied in our opinion of April 24, 1972.

11. As to areas which have formed since the Compact date, July 12, 1943, claimants of title to these areas as against Iowa may also have the opportunity to show title "good in Nebraska" on the Compact date.

12. Whether a Nebraska riparian owner has title to accretions that cross the boundary into Iowa is determined by Iowa law.

13. The counterclaim of Iowa is dismissed.

14. The parties having paid their own costs and having contributed equally to a fund for expenses of the Special Master, any amounts remaining in said fund after deduction of all expenses by the Special Master shall be divided equally and returned to each state by the Special Master.

Respectfully submitted,

JOSEPH P. WILLSON

Senior District Judge  
Special Master

---