

BOUNDARIES: The Supreme Court of the United States has jurisdiction in a suit between two states to determine boundary line.

September 3, 1936.



Hon. G. R. Breidenstein,
Prosecuting Attorney,
Clark County,
Kahoka, Missouri.

Dear Sir:

We wish to acknowledge your letter of August 31st wherein you state as follows:

"On the Northeast side of Clark County the Des Moines River forms the boundary between this County, and Lee County, Iowa. It seems that at one time many years ago, the Des Moines emptied into the Mississippi some distance South of where it does now, and much nearer to Alexandria than now. During flood stage the river broke over and formed a new channel so that there is a piece of land now south of the Des Moines which was North of the Des Moines before this time. Some of this land is assessed for taxes in Lee County and some in Clark County, Missouri.

"There have been times when an ejectment suit would be instituted in the Circuit Court of Clark County, Missouri, judgment rendered for plaintiff and later an order of the District of Court of Lee County, Iowa, which in substance would nullify the order of the Missouri court.

"The trouble is that we do not know where the boundary line between the two states is. The question I would like to ask is this. What would be the proper procedure for me to take to have this boundary line made known? Could any suit be started in Federal Court which would settle this matter? I do not

think the matter can ever be settled by agreement of any commission.

"I would appreciate very much an opinion from you in regard to this."

59 C. J., Sec. 30, subdivision a, page 63, sets out the proceedings to be followed in a suit between two states to determine the boundary line, thus:

"A question of boundary arising between the United States and one of the states, or between two states is not of a political nature and is susceptible of judicial determination. The United States supreme court has original jurisdiction of suits between two states, or between the United States and a state, to determine a state boundary.

"Nature and conduct of suit. Such suit may be brought by a bill in equity and is to be conducted, as a general rule, according to the rules of pleading and practice of the court of chancery, the court acting, ordinarily, in such disputes in the same manner as in the determination of like matters between private individuals. By reason, however, of the dignity of the parties and the importance of the interests involved, such controversies are not to be decided upon mere technicalities, but the chancery rules should be so molded and applied as to bring the cause to a hearing on its real merits, in the absence of legislation particularly prescribing the procedure to be followed; and thus the court will not be obliged to apply the same rules as to parties, or the time of answering, or the effect of laches or the lapse of time.

"Award or decree fixing boundary. As a mode of settling the respective rights of the parties an issue at law may be directed, or a commission awarded, or, if the court is satisfied without either, it may itself determine the boundary.

"Costs. The costs of the suit will be equally divided between the two states where the matter involved is a governmental question in which each party has a real and vital yet not a litigious interest."

And in 25 C. J., Sec. 192, page 859, we find this statement as to the jurisdiction of the United States Supreme Court to settle disputes as to state boundaries:

"For the supreme court to entertain jurisdiction of a suit on the ground that it is between two states, a controversy must exist in the result of which the states are directly interested. This jurisdiction is most frequently invoked for the settlement of disputes as to state boundaries."

In the case of Virginia v. West Virginia, 78 U. S. 39, 1. c. 53, the Supreme Court of the United States, speaking through Justice Miller, said:

"The first proposition on which counsel insist, in support of the demurrer is, that this court has no jurisdiction of the case, because it involves the consideration of questions purely political; that is to say, that the main question to be decided is the conflicting claims of the two States to the exercise of political jurisdiction and sovereignty over the territory and inhabitants of the two counties which are the subject of dispute.

"This proposition cannot be sustained without reversing the settled course of decision in this court and overturning the principles on which several well-considered cases have been decided. Without entering into the argument by which those decisions are supported, we shall content ourselves with showing what is the established doctrine of the court.

"In the case of Rhode Island v. Massachusetts, 12 Peters, 724, this question was raised, and Chief Justice Taney dissented from the

judgment of the court by which the jurisdiction was affirmed, on the precise ground taken here. The subject is elaborately discussed in the opinion of the court, delivered by Mr. Justice Baldwin, and the jurisdiction, we think, satisfactorily sustained. That case, in all important features, was like this. It involves a question of boundary and of the jurisdiction of the States over the territory and people of the disputed region. The bill of Rhode Island denied that she had ever consented to a line run by certain commissioners. The plea of Massachusetts averred that she had consented. A question of fraudulent representation in obtaining certain action of the State of Rhode Island was also made in the pleadings.

"It is said in that opinion that, 'title, jurisdiction, sovereignty, are (therefore) dependent questions, necessarily settled when boundary is ascertained, which being the line of territory, is the line of power over it, so that great as questions of jurisdiction and sovereignty may be, they depend on facts.' And it is held that as the court has jurisdiction of the question of boundary, the fact that its decision on that subject settles the territorial limits of the jurisdiction of the States, does not defeat the jurisdiction of the court.

"The next reported case, is that of Missouri v. Iowa, 7 Howard, 660, in which the complaint is that the State of Missouri is unjustly ousted of her jurisdiction, and obstructed from governing a part of her territory on her northern boundary, about ten miles wide, by the State of Iowa, which exercises such jurisdiction, contrary to the rights of the State of Missouri, and in defiance of her authority. Although the jurisdictional question is thus broadly stated, no objection on this point was raised, and the opinion which settled the line in dispute, delivered by Judge Catron, declares that it was the unanimous opinion of all the judges of the court. The Chief Justice must, therefore, have abandoned his dissenting doctrine in the previous case.

"That this is so is made still more clear by the opinion of the court delivered by himself in the case of Florida v. Georgia, 17 Id. 478, in which he says that 'it is settled, by repeated decisions, that a question of boundary between States, is within the jurisdiction conferred by the Constitution on this court.' A subsequent expression in that opinion shows that he understood this as including the political question, for he says 'that a question of boundary between States is necessarily a political question to be settled by compact made by the political departments of the government But under our form of government a boundary between two States may become a judicial question to be decided by this court.'

"In the subsequent case of Alabama v. Georgia, 23 Howard, 505, all the judges concurred, and no question of the jurisdiction was raised.

"We consider, therefore, the established doctrine of this court to be, that it has jurisdiction of questions of boundary between two States of this Union, and that this jurisdiction is not defeated, because in deciding that question it becomes necessary to examine into and construe compacts or agreements between those States, or because the decree which the court may render, affects the territorial limits of the political jurisdiction and sovereignty of the States which are parties to the proceeding."

From the foregoing, we are of the opinion that the Supreme Court of the United States has jurisdiction to settle the dispute as to the boundary line between Missouri and Iowa, and that the procedure to be followed is the same as set out in the above citation of authority.

Respectfully submitted,

WM. ORR SAWYERS,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

MW:HR