

WATERS: BOUNDARIES: STATES: State lines, as well as other lines bounded by a river change with the gradual changing of the course of the river, but do not change if the change is sudden and by avulsion.

February 17, 1937

Senator William M. Quinn,
Jefferson City, Missouri.



Dear Senator:

We understand the following to be the situation about which you inquire:

The center of the Des Moines River, as the State of Missouri was originally laid out, is the north line of Missouri, but the channel of the Des Moines River has changed in the not distant past so that now there is quite a considerable tract of land on the south side of the Des Moines River as it now flows that was prior to the change of said river on the north side thereof, and you desire to know the law with reference to determining the present true line between the State of Missouri and the State of Iowa.

The Act of Admission of Missouri into the Union, found on page 54 of the Revised Statutes of Missouri, 1929, establishes the northern line of Missouri in the following language:

" * * * thence east from the point of intersection last aforesaid, along the said parallel of latitude, to the middle of the channel of the main fork of the said river Des Moines; thence down and along the middle of the main channel of the said river Des Moines, to the mouth of the same, where it empties into the Mississippi river; thence due east to the middle of the main channel of the Mississippi river."

This Act of Congress was approved March 6, 1820, and on June 27, 1821, the Missouri Legislature accepted the conditions in the Act of Admission prescribed by the Congress, and on August 10, 1821, the President of the United States issued his proclamation announcing the acceptance by this state of that condition.

The Act of Admission into the Union of the State of Iowa was dated December 28, 1846 (9 Stat. L. 117), and was accepted by the State of Iowa on January 15, 1849.

In United States Statutes at Large, Vol. 5, p. 742, entitled "An Act for the Admission of the States of Iowa and Florida into the Union" and so admitting them, is defined the boundary of the State of Iowa as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the States of Iowa and Florida be, and the same are hereby, declared to be States of the United States of America, and are hereby admitted into the Union on equal footing with the original States, in all respects whatsoever.

"Sec. 2. And be it further enacted, That the following shall be the boundaries of the said State of Iowa, to-wit: Beginning at the mouth of the Des Moines river, at the middle of the Mississippi, thence by the middle of the channel of that river to a parallel of latitude passing through the mouth of the Mankato, or Blue-Earth river, thence west along the said parallel of latitude to a point where it is intersected by a meridian line, seventeen degrees and thirty minutes west of the meridian of Washington city, thence due south to the northern boundary line of the State of Missouri, thence eastwardly following that boundary to the point at which the same intersects the Des Moines river, thence by the middle of the channel of that river to the place of beginning.

"Sec. 3. And be it further enacted, That the said State of Iowa shall have concurrent jurisdiction on the river Mississippi, and every other river bordering on the said State of Iowa, so far as the said rivers

shall form a common boundary to said State, and any other State or States now or hereafter to be formed or bounded by the same: Such rivers to be common to both: And that the said river Mississippi, and the navigable waters leading into the same, shall be common highways, and forever free as well to the inhabitants of said State, as to all other citizens of the United States, without any tax, duty, impost, or toll therefor, imposed by the said State of Iowa."

Said Act shows the south line of the State of Iowa with reference to the matters here under consideration to be as follows:

" * * * thence eastwardly following that boundary to the point at which the same intersects the Des Moines river, thence by the middle of the channel of that river to the place of beginning", the place of beginning being, "Beginning at the mouth of the Des Moines river, at the middle of the Mississippi, thence by the middle of the channel of that river to a parallel of latitude passing through the mouth of the Mankato, or Blue-Earth River, thence west," etc.

United States Statutes at Large, Vol. 9, page 52, approved August 4, 1846, repealed so much of the above Act of Admission of the State of Iowa into the Union as relates to the boundary lines, and prescribes the following as the boundary of the State of Iowa:

"Beginning in the middle of the main channel of the Mississippi River, at a point due east of the middle of the mouth of the main channel of the Des Moines River; thence up the middle of the main channel of the said Des Moines River, to a point on said river where the northern boundary line of the State of Missouri, as established by the constitution of that State, adopted June twelfth, eighteen hundred and twenty, crosses the said middle of the main channel of the said Des Moines River; thence, westwardly, along the said northern boundary line of the State of

Missouri, as established at the time aforesaid, until an extension of said line intersect the middle of the main channel of the Missouri River; thence, up the middle of the main channel of the said Missouri River, to a point opposite the middle of the main channel of the Big Sioux River, according to Nicollet's map; thence, up the main channel of the said Big Sioux River, according to said map, until it is intersected by the parallel of forty-three degrees and thirty minutes north latitude; thence east, along said parallel of forty-three degrees and thirty minutes, until said parallel intersect the middle of the main channel of the Mississippi River; thence, down the middle of the main channel of said Mississippi River, to the place of beginning."

Section 2 of said Act mentions the dispute between the two states respecting the northern line of Missouri, and refers the question to the Supreme Court of the United States, said Section 2 being as follows:

"And be it further enacted, That the question which has heretofore been the subject-matter of controversy and dispute between the State of Missouri and the Territory of Iowa, respecting the precise location of the northern boundary line of the State of Missouri, shall be, and the same is hereby, referred to the Supreme Court of the United States for adjudication and settlement, in accordance with the act of the Legislature of Missouri, approved March twenty-five, eighteen hundred and forty-five, and the memorial of the Council and House of Representatives of the Territory of the Iowa, approved January seventeenth, eighteen hundred and forty-six, by which both parties have agreed to 'the commencement and speedy determination of such suit as may be necessary to procure a final decision by the Supreme Court of the United States upon the true location of the northern boundary of that State;'

and the said Supreme Court is hereby invested with all the power and authority necessary to the performance of the duty imposed by this section."

Pursuant to the directions in said Act, the case of Missouri v. Iowa, 7 Howard l. c. 679, 48 U. S. Rep. l. c. 679, was decided by the United States Supreme Court at the January Term, 1849, in which decree is recited

"that the true and proper northern boundary line of the State of Missouri, and the true southern boundary of the State of Iowa is the line run and marked in 1816 by John C. Sullivan as the Indian boundary, from the northwest corner made by said Sullivan, extending eastwardly, as he run and marked the said line, to the middle of the Des Moines river; and that a line due west from said northwest corner to the middle of the Missouri river is the proper dividing line between said states west of the aforesaid corner; and that the states of Missouri and Iowa are bound to conform their jurisdictions up to said line on their respective sides thereof from the river Des Moines to the river Missouri."

In 1850 the Supreme Court of the United States, in the case of State of Missouri v. State of Iowa, 51 U. S. Rep. 1, 10 Howard. 1, adopted the report of the commissioners, and said, l. c. 48:

"From said reports, it appears that the old northwest corner of the Indian boundary line, made by John C. Sullivan in the year 1816 (and referred to in our former decree), is found to be at forty degrees thirty-four minutes and forty seconds of north latitude, and at about ninety-four degrees thirty minutes of west longitude from Greenwich; that at said 'northwest corner' was planted a large cast-iron monument, weighing between fifteen and sixteen hundred pounds, four feet six inches long, squaring twelve inches at its base,

and eight inches at its top. This monument is deeply and legibly marked with the words (strongly cast into the iron) 'Missouri' on its south side, and 'Iowa' on its north side, and 'State Line' on the east.

"And this court doth adjudge and decree, that said monument doth mark and witness the true northwest corner of the Indian boundary lines, as run by John C. Sullivan, in 1816. And the precise corner is hereby established and declared to be in the centre of the top of said monument."

And further, l. c. 49:

"Sullivan's line, as run and marked in 1816, from said corner east, to the Des Moines River, was found not to be a due east line; but that more or less northing should have been made in the old line. Nor is it a straight line, as sudden deviations amounting to from one to three degrees frequently occur; and it rarely happens that any two consecutive miles pursue the same direction. It also appears, that, if the whole line was reduced throughout to a straight line, its southing would be about two degrees from a due east line."

And further, l. c. 50:

"It is therefore adjudged and decreed, that Sullivan's line is established to run through the wooden mile posts and the cast-iron pillars planted ten miles apart on said line; and that the true and proper dividing line between the States of Missouri and Iowa, east of the monument erected at the 'old northwest corner,' begins at the centre of said monument, and runs eastwardly, (southing about two degrees of a true east line,) through the centre of each wooden post and iron pillar, to the centre of the monument erected on the bank of the Des Moines River. And it is further

adjudged and decreed, that a straight line from one mile post to another, and from a mile post to a pillar; and from the last mile post to the monument on the bank of the Des Moines River, is the true and proper line, and that such straight line shall conclude all other marks. And it is further adjudged and decreed, that a line extended north eighty-seven degrees thirty-eight minutes east, from the centre of the monument erected on the bank of the Des Moines River to the middle of said river, is the true and proper boundary line between the States of Missouri and Iowa west of said monument."

In 1895 the States of Missouri and Iowa had another suit, State of Missouri v. State of Iowa, 160 U. S. 688, in which the true boundary of the states was involved as to a portion about twenty miles long along the north side of Mercer County. The State of Missouri there brought suit alleging that the State of Iowa was encroaching on the former state's sovereignty and usurping the functions of government on certain lands. The opinion (l. c. 691) adjudges

"that the true and proper northern boundary line of the State of Missouri, and the true and proper southern boundary line of the State of Iowa is the line run, located, marked and defined by Hendershott and Miner, commissioners of this court, under the order and decree of this court, as set forth in their report annexed to said decree of January 5, 1851,"

and the Supreme Court appointed commissioners to find and remark said line with proper and durable monuments.

In 1896 the Supreme Court of the United States in the case of State of Missouri v. State of Iowa, 165 U. S. 118, adopted the report of the commissioners in the last case above noted, but as these two cases last mentioned do not immediately affect the matter here under consideration, but concern a portion of the state line west thereof, we do not refer to them more extensively.

The question before us is, where is the state line between the two states immediately north of the town of Alexandria, bearing in mind that originally the line was the center of the Des Moines River, and that the center of the Des Moines River in the past was at a different place than where the center of the Des Moines River now is, there having been a change which affects a considerable quantity of land, and it being uncertain whether said affected land is in the State of Missouri or in the State of Iowa?

The determination of that question involves the law of accretion, reliction and avulsion. At common law, land formed by accretion belongs to the riparian owner against whose bank it is deposited and is governed by the same rights of ownership that pertain to the mainland of such riparian owner.

Benne v. Miller, 149 Mo. 228;
Widdecombe v. Chiles, 173 Mo. 195;
McCormack v. Miller, 239 Mo. 463.

The latter case was in ejectment involving fifteen acres of land on Salt River which formed the northern boundary. The channel of the river moved to the south, forming land on the other side of the river. The fifteen acres were formed over a period of seventeen years. The court said:

"A running stream, forming the boundary line between contiguous lands, continues to be such boundary line, although the channel may change, provided the change is by the gradual erosion and cutting away of its banks and not by a sudden change leaving the old channel and forming an entirely new and different channel. (Cases cited.) In determining whether a riparian owner has title to land in controversy by accretion, the length of time in which it is in course of formation is of no importance. If it is formed by a gradual, imperceptible deposit of alluvion, it is accretion; but if the stream changes its course suddenly and in such manner as not to destroy the integrity of the land in controversy and so that the land can be identified, it is not accretion and the boundary line remains the same as before the change of the channel."

In the case of State of Missouri v. State of Nebraska, and State of Nebraska v. State of Missouri, 196 U. S. 23, the question before the court was the true boundary line between the states of Missouri and Nebraska, the Missouri River, on July 5, 1867, within twenty-four hours and during a time of very high water, having changed its course so that a new channel was made which placed a portion of land on the Missouri side of the thereafter flowing Missouri River. The Supreme Court of the United States held that that, being a sudden change, known in the law as avulsion, did not change the line between the two states, saying 1. c. 34:

"In New Orleans v. United States, 10 Pet. 662, 717, 9 L. ed. 573, 594, argued elaborately by eminent lawyers, Mr. Webster among the number, this court said: 'The question is well settled at common law, that the person whose land is bounded by a stream of water, which changes its course gradually by alluvial formations, shall still hold by the same boundary, including the accumulated soil. No other rule can be applied on just principles. Every proprietor whose land is thus bounded is subject to loss by the same means which may add to his territory; and as he is without remedy for his loss, in this way, he cannot be held accountable for his gain.' It was added-- what is pertinent to the present case-- that 'this rule is no less just when applied to public than to private rights.' The subject was under consideration in Missouri v. Kentucky, 11 Wall. 395, 20 L. ed. 116, and Indiana v. Kentucky, 136 U. S. 479, 34 L. ed. 329, 10 Sup. Ct. Rep. 1051. But it again came under consideration in Nebraska v. Iowa, 143 U. S. 359, 361, 367, 370, 36 L. ed. 186, 187, 190, 191, 12 Sup. Ct. Rep. 396, 398, 400. In the latter case, the court, after referring to the rule announced in New Orleans v. United States, and citing prior cases in which that rule had been recognized, said: 'It is equally well settled that where a stream which is a boundary, from any cause suddenly

abandons its old and seeks a new bed, such change of channel works no change of boundary; and that the boundary remains as it was, in the center of the old channel, although no water may be flowing therein. This sudden and rapid change of channel is termed, in the law, avulsion. In Gould, Waters, sec. 159, it is said: "But if the change is violent and visible, and arises from a known cause, such as a freshet, or a cut through which a new channel is formed, the original thread of the stream continues to mark the limits of the two estates." 2 Bl. Com. 262; Angell, Watercourses, sec. 60; Hopkins Academy v. Dickinson, 9 Cush. 544; Buttenuth v. St. Louis Bridge Co., 123 Ill. 535, 5 Am. St. Rep. 545, 17 N. E. 439; Hagan v. Campbell, 8 Port. (Ala.) 9, 33 Am. Dec. 267; Den ex dem. Murry v. Sermon, 8 N. C. (1 Hawks) 56. These propositions, which are universally recognized as correct where the boundaries of private property touch on streams, are in like manner recognized where the boundaries between states or nations are, by prescription or treaty, found in running water. Accretion, no matter to which side it adds ground, leaves the boundary still the center of the channel. Avulsion has no effect on boundary, but leaves it in the center of the old channel.' Again, in the same case, the court, referring to the very full examination of the authorities to be found in one of the opinions of Attorney General Cushing (8 Ops. Atty. Gen. 175), said: 'The result of these authorities puts it beyond doubt that accretion on an ordinary river would leave the boundary between two states the varying center of the channel, and that avulsion would establish a fixed boundary; to wit, the center of the abandoned channel. It is contended, however, that the doctrine of accretion has no application to the Missouri river, on account of the rapid and great changes constantly going on in respect to its banks; but the contrary has already been decided by this

court in *Jeffries v. East Omaha Land Co.*, 134 U. S. 178, 189, 33 L. ed. 872, 876, 10 Sup. Ct. Rep. 518.' In *Nebraska v. Iowa*, it appeared that the Missouri river near the land there in dispute had pursued a course in the nature of an ox-bow, but it suddenly cut through the neck of the bow and made for itself a new channel. The court said: 'This does not come within the law of accretion, but that of avulsion. By this selection of a new channel the boundary was not changed, and it remained as it was prior to the avulsion,-- the center line of the old channel; and that, unless the waters of the river returned to their former bed, became a fixed and unvarying boundary, no matter what might be the changes of the river in its new channel.'

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."

You do not define in the facts before us the method by which the change in the center of the Des Moines River occurred. If the change from the original line of the river was brought about gradually, that is, by the gradual process of imperceptibly depositing particles of sediment on one side of the river and washing them away from the other side, then the lands are accretions and belong to the riparian owner to whose mainland they attach by this gradual process. If the change occurred by reason of sudden high waters or by the cutting of a ditch which caused the current of the water to run in the new location and the old river bed to be abandoned, and in which change of the river there was a part of the land that had never been washed away and that was located between the old and the new location of the river, then such a change as that would not change the boundary line, but the old location (which was thereupon abandoned) would continue to be, for the purposes of defining the rights of private property owners with reference to the river, the true criterion and boundary line.

By the decision in the case last referred to of Missouri v. Nebraska, the Supreme Court of the United States held that these same rules which apply with reference to private property likewise apply with reference to determining whether the line between states or nations has changed on account of the changed water course.

CONCLUSION

It is our opinion that if the change in the center of the Des Moines River was gradual, that is by the deposit gradually, little by little and bit by bit, of particles of sand, gravel or sediment, by which there has been added to

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the lands that originally constituted the Clark County lands, additional lands, the same would be accretion, and the line between Missouri and Iowa would change and follow the gradual change in the course or center of the river. If the land in controversy was cut off from the mainland to which it formerly attached by sudden high water which left a portion of the disputed land intact, that is not broken up into small particles and washed away, then the true line between the two states would be the line as it was prior to such sudden change.

If this course by which the change occurred is disputed, the one contending that it was a gradual and imperceptible change, and the other contending that it was a sudden and violent change, a question of fact is presented, which may be determined by the trier of the facts.

The Supreme Court of the United States has original jurisdiction of a suit between two states and involving their territorial boundaries. They frequently are memorialized by the Legislature, and, if the facts justify, that court may find and adjudge the true line, or may appoint a commission to assist them in the same.

It occurs to us that the preferable course, in order to eliminate uncertainties and to finally adjudicate and determine controversies such as you speak of, is to file suit in the Supreme Court of the United States between the two states and have a judgment of that court determining finally and authoritatively the controverted question.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General.

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