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Quieting title amid the changing channels of the Mississippi River

by Robert H. Abrams

State of Mississippi, et al.

v.

State of Louisiana, et al.
(Docket No. 91-1158)

Argument Date: November 9, 1992

ISSUE

Primarily, this is a suit to determine where the boundary between Mississippi and Louisiana lies in the Lake Providence, Louisiana, area. More specifically, the line drawing will determine in which state, Mississippi or Louisiana, Stack Island and accreted lands lying along the west bank of the Mississippi River are located. Antecedent to resolving the boundary dispute, the Supreme Court may have to address jurisdictional matters pertaining to the way in which this dispute has been presented to it for adjudication, and procedural matters regarding the review of the trial court's fact-finding.

FACTS

In 1986, a private group of Mississippi and Texas citizens brought an action to quiet title in Stack Island and other land lying along the western edge of the Mississippi River against a group of Louisiana citizens who were the owners of riparian (river front) property in that vicinity. The suit was brought in the United States District Court for the Eastern District of Mississippi, with subject matter jurisdiction founded on diversity of citizenship. A year later, the state of Louisiana and the Lake Providence (Louisiana) Port Commission intervened in the case, seeking a declaration that the disputed land areas lay in Louisiana and were the property of either the state of Louisiana or the Lake Providence Port Commission.

Following intervention, Louisiana filed a third-party complaint against Mississippi seeking a determination of the proper boundary. That same third-party complaint also sought a declaration of rights and title to Stack Island and accreted lands lying along the west bank of the river in

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virtue of an 1812 Act of Congress (50 Stat. 701) admitting Louisiana as a state. Louisiana asserted that there were independent grounds for subject-matter jurisdiction over its third-party complaint, including that the matter was one to be determined by application of federal law. Mississippi answered, alleging that Stack Island had been granted to it pursuant to the Treaty of Peace with Great Britain in 1783 (8 Stat. 80). Both sides also made claims based on the federal legal doctrines that the Court has developed for determining state boundaries where a river marks the original boundary line between two states.

Shortly thereafter, Louisiana sought leave to file a bill of complaint against Mississippi in the United States Supreme Court, attempting to invoke the Court's original jurisdiction over state-versus-state disputes. Apparently persuaded that the pending quiet-title litigation could be used as an appropriate vehicle for litigating the state boundary issue, the Court denied leave to file the original action, effectively remitting Louisiana to the ongoing district court proceedings.

Back in the district court, a separate trial was had on the state boundary issue and thereafter on the quiet title action; Mississippi prevailed on the boundary dispute and the original quiet-title plaintiffs prevailed as well. Louisiana appealed and the United States Circuit Court for the Fifth Circuit reversed the decision below and rendered judgment for Louisiana. *See, Houston v. Thomas*, 937 F.2d 247 (1991). At that point the Supreme Court granted certiorari on three separate questions: (1) the boundary issue, (2) the question of jurisdiction, and (3) the question of whether the circuit court exceeded its authority in disregarding findings of fact made by the trial court. In regard to the fact-finding, Mississippi claimed that the circuit court had reviewed findings that were not "clearly erroneous," in violation of Federal Rule of Civil Procedure (FRCP) 52(a).

As is implicit in the dispute over the appellate treatment of the trial court's fact-finding, there is a heated debate between the parties regarding the facts in this case as well as the proper interpretation and legal import of those facts. The divergence of views is sufficiently great that the circuit court labelled its discussion of the parties' positions, "Two Tales of One River." At least a part of the factual complication seems to stem from the apparent insistence of Mississippi on using the term "Stack Island" to refer to both a 100-plus acre island that is rather well out in the river and a far larger area of accretions that lie adjacent to the western (Louisiana) bank of the river. (See 937 F.2d at 249, n.2.)

BACKGROUND AND SIGNIFICANCE

As is typical of state boundary cases, this one is hotly disputed. Also typically, the points won and lost are unlikely to have substantial precedential significance because the general rules of decision are relatively well-settled and the dispositive issues are ones of fact. By also presenting a jurisdictional wrinkle, having the boundary dispute litigated between the states in United States district court as an adjunct to a privately instituted quiet-title action, this case may signal the creation of a new procedural avenue for obtaining adjudication of state boundary disputes.

Turning first to the merits, this portion of the lower Mississippi River is known for its shifting channels and emerging and receding shoals and islands. The applicable legal doctrines for setting state boundaries under these conditions lay considerable stress on evidence that delineates the channel of the river that is used for navigation. See, *Louisiana v. Mississippi*, 466 U.S. 96 (1984). This channel is called the “thalweg.” Owing to changing patterns of sedimentation, the thalweg may change over time, and with it the state boundary usually changes too.

Compounding the doctrinal difficulty of this case, the thalweg doctrine is not the only boundary-fixing rule that is relevant to the facts presented here. There are also special rules relating to cases where the thalweg shifts from one side of an island to another, doctrines that alter land boundaries in response to natural processes of erosion and accretion but leave them fixed in the event that the changes are sudden (“avulsive”), and equitable doctrines that recognize human factors, such as the acquiescence of one state in the other’s exercise of sovereignty. All of these doctrines have arguable application to this case and make its outcome interesting to aficionados of these kinds of cases, but of somewhat limited application to other cases.

The jurisdictional issue may hold somewhat greater impact for subsequent cases than the rulings that will emerge on the merits of the boundary determination. As to jurisdiction, the Court itself has established prudential rules that allow it to decline to exercise original jurisdiction in state-versus-state controversies, despite the language of 28 U.S.C. § 1251(a) that states such jurisdiction shall be “exclusive” of all other courts. A key proposition in the

doctrine here, is that the Supreme Court will decline its jurisdiction only if there is another forum that can hear the controversy. Prior to this case, boundary disputes had seldom been amenable to prosecution other than as cases brought in the Supreme Court invoking its original jurisdiction. If the Court decides that the interstate boundary dispute can be tacked onto a quiet-title action in the district court, as was attempted here, it seems likely that most boundary cases will be litigated in this fashion in the future.

ARGUMENTS

For State of Mississippi, et al. (Counsel of Record, James W. McCartney; Vinson & Elkins L.L.P., 3201 First City Tower, 1001 Fannin Street, Houston, TX 77002-6760; telephone (713) 758-2324):

1. The island rule that holds the state boundary fixed once an island has been located within one state controls over the thalweg rule that allows the boundary to change with the channel.
2. The earliest post-statehood evidence locating Stack Island places it clearly in Mississippi.
3. Louisiana acquiesced in Mississippi’s dominion over the disputed areas.
4. The circuit court exceeded its authority in reviewing fact-findings made by the district court that were not clearly erroneous.
5. The district court properly assumed jurisdiction over Louisiana’s third-party claim against Mississippi.

For State of Louisiana, et al. (Counsel of Record, Gary Keyser, Assistant Attorney General, State of Louisiana, Post Office Box 94095, Baton Rouge, LA 70804-9095; telephone (504) 342-7900):

1. The thalweg rule does not operate to fix the interstate boundary at the time of statehood; the doctrine and the boundary are dynamic.
2. Louisiana exercised sovereignty over the disputed areas and did not acquiesce in Mississippi’s sovereignty over them.
3. The circuit court did not exceed the proper scope of review under FRCP 52(a).
4. The Mississippi district court lacked power to exercise jurisdiction over land lying in Louisiana.