

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

February 5, 1970

Re: No. 33 Original - Arkansas v. Tennessee

MEMORANDUM TO THE CONFERENCE:

On consulting the "precedents" I find the acceptance of Reports of Masters in State Boundary cases are more than a perfunctory 8 or 10 lines. Hence, the enclosed ^{P.C.} for your considerations, suggestions, etc.


W.E.B.

This original action was commenced on October 13, 1967, by the State of Arkansas to settle a boundary dispute with the State of Tennessee. The disputed area extends six miles laterally along the west (Arkansas side) bank of the Mississippi River and encompasses some five thousand acres. This Court's jurisdiction arises under Article III, Section 2, of the Constitution of the United States. On January 15, 1968, we appointed, 389 U.S. 1026 (1968), Honorable Gunnar H. Nordbye, Senior United States Judge of the District of Minnesota, as Special Master to determine the state line in the disputed area known as Cow Island Bend in the Mississippi River located between Crittenden County, Arkansas, and Shelby County, Tennessee. After conducting an evidentiary hearing and viewing the area, the Master filed his Report with this Court recommending that all of the disputed area be declared part of the State of Tennessee. We affirm the Master's Report.

The parties agree that the state line is the thalweg, that is, the steamboat channel of the Mississippi River as it flows west and southward between these States. The master heard evidence and was presented exhibits and maps which showed that the migration of the Mississippi River northward and west continued until about 1912. About this time an avulsion occurred leaving Tennessee lands on the

To: Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall

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From: The Chief Justice

SUPREME COURT OF THE UNITED STATES

Resubmitted: _____

No. 33, Orig.—OCTOBER TERM, 1969

Recirculated: *2/10/70*

State of Arkansas, Plaintiff,
v.
State of Tennessee

Bill of Complaint.

[February —, 1970]

PER CURIAM.

This original action was commenced on October 13, 1967, by the State of Arkansas to settle a boundary dispute with the State of Tennessee. The disputed area extends six miles laterally along the west (Arkansas side) bank of the Mississippi River and encompasses some five thousand acres. This Court's jurisdiction arises under Art. III, § 2, of the Constitution of the United States. On January 15, 1968, we appointed, 389 U. S. 1026 (1968), Hon. Gunnar H. Nordbye, Senior United States Judge of the District of Minnesota, as Special Master to determine the state line in the disputed area known as Cow Island Bend in the Mississippi River located between Crittenden County, Arkansas, and Shelby County, Tennessee. After conducting an evidentiary hearing and viewing the area, the Master filed his Report with this Court recommending that all of the disputed area be declared part of the State of Tennessee. We affirm the Master's Report.

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FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

February 17, 1970

Re: No. 33 Orig. - Arkansas v. Tennessee

MEMORANDUM TO THE CONFERENCE:

The attached circulation is identical to the decree attached to the per curiam circulated February 10. The heading and maps have been added.

[Signature]
For the Chief Justice

NOT RECORDED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

SUPREME COURT OF THE UNITED STATES

No. 33, Orig.—OCTOBER TERM, 1969

State of Arkansas, Plaintiff,
v.
State of Tennessee. } Bill of Complaint.

[February —, 1970]

DECREE

1. It is ordered, adjudged, and decreed that the boundary line between the States of Arkansas and Tennessee in the area in controversy shall be fixed in the middle of the old abandoned Cow Island Bendway Channel as partially reflected in the 1953 survey of one R. L. Cooper (Defendant's Exhibit 42, attached to the decree in *Brown v. Brakensiek*, in the Chancery Court of Shelby County, Tennessee), said abandoned channel extending from its upper or up-river end to the lower or down-river end of Ike Chute as far as that survey goes, thence downstream in a southerly direction passing down the middle of a water drain or creek now running between the lower end of Ike Chute and the upper end of 96 Chute, thence continuing downstream in a southerly direction down the middle of 96 Chute and coming out of 96 Chute on a continuing straight line to the point where it joins the present navigation channel of the Mississippi River, all as indicated by a broken line marked "State Line" on the annexed reduced copy of the 1965 aerial photograph of the area in controversy, Joint Exhibit A, marked Appendix A-1, and also as reflected by a broken line marked "State Line" on a reduced copy of Defendant's Exhibit 39, the 1937 map of the United States engineers and hereto annexed as Appendix A-II.

February 6, 1970

Dear Chief,

Re: No. 33-Orig. - Arkansas v.
Tennessee

I agree.

Sincerely,

H. L. B.

The Chief Justice

cc: Members of the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

January 3, 1970

Dear Mr. Justice:

I have just received your letter of the 29th and am glad to hear that you are well. In the past few years of the past, you have been very busy with the Master's work and I am sure that you will continue to be so for many years to come.

J. R. H.

The Chief Justice

CC: The Conference

February 10, 1870

Dear Chief

I agree with the proposed decree circumscribed
consequently to your opinion.

Sincerely,

J. M. H.

The Chief Justice

CC: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 6, 1970

RE: No. 33 Orig. - Arkansas v. Tennessee

Dear Chief:

I agree with your proposed Per Curiam, but I have one suggestion.

I think the usual practice is to direct the entry of a decree, preferably that proposed by the Special Master. See, for example, Texas Boundary Case, 394 U.S. 1, 6. I note at page 13 of Judge Nordbye's Report that he proposed the entry of a judgment and decree in a form prepared by him. Should not the next to the last paragraph at page 3 of your Per Curiam expressly direct the entry of his proposed decree?

Sincerely,

Bill
W. J. B. Jr.

The Chief Justice

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

February 9, 1970

Re: No. 33 Original, Arkansas v. Tennessee

Dear Chief,

I agree with your proposed Per Curiam,
and also with Bill Brennan's and Byron's suggestions.

Sincerely yours,

P.S.
/

The Chief Justice

Copies to the Conference

Dear Sirs:

I enclose with your 2000
in this case although I suggest that
you expressly override the objections
filed by Arkansas. I also think Bill

Brennan's suggestion is a good one.

Sincerely,

D.R.W.

The Chief Justice

cc: The Conference

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 6, 1970

Re: No. 33, Orig. - Arkansas v. Tennessee

Dear Chief:

Please join me.

Sincerely,


T.M.

The Chief Justice

cc: The Conference

The map referred to in the concluding paragraph of the decree is not presently available in legible form. Legible copies will be available at a later date.

NO. 88, Original. ~~COPIED FROM~~

ARKANSAS v. TENNESSEE

DECREE

Entered June 23, 1970

This Court on February 25, 1970, 397 U. S. 88, 91, having entered a decree and appointed a Boundary Commissioner to survey the boundary between Arkansas and Tennessee and pursuant to that decree the said Commissioner having filed a "Report on Commission to Survey" in which he sets forth the General Location and Specific Location of such boundary to which the parties have approved and consented,

IT IS ORDERED, ADJUDGED, AND DECREED that such boundary shall be fixed as follows:

GENERAL LOCATION

The state boundary line involved herein is located between Crittenden County, Arkansas, and Shelby County, Tennessee, in an area formerly known as Cow Island Bend, and more recently called Scanlan Chute, Frog Chute, Ike Chute or Lake, and 96 Chute; and is generally within a rectangle between latitudes $35^{\circ} 00'$ and $35^{\circ} 03'$, and longitudes $90^{\circ} 15'$ and $90^{\circ} 19'$, and is more particularly described as follows:

SPECIFIC LOCATION

Beginning at a point, designated as Station No. 1, which point is, S $6^{\circ} 34' E$, at 1,359.0 feet from, Mississippi River Commission Permanent Bench Mark "Scanlan," whose coordinates are, latitude $35^{\circ} 02'$ plus 1,555.76 feet, and longitude $90^{\circ} 15'$ plus 1,014.42 feet. (Reference for PBM "Scanlan," see page 118 of Permanent Marks, Volume One of Mississippi River Commission.)

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 33, Orig.—OCTOBER TERM, 1969

State of Arkansas, Plaintiff,

v.

State of Tennessee.

Bill of Complaint.

[February 25, 1970]

PER CURIAM.

This original action was commenced on October 13, 1967, by the State of Arkansas to settle a boundary dispute with the State of Tennessee. The disputed area extends six miles laterally along the west (Arkansas side) bank of the Mississippi River and encompasses some five thousand acres. This Court's jurisdiction arises under Art. III, § 2, of the Constitution of the United States. On January 15, 1968, we appointed, 389 U. S. 1026 (1968), Hon. Gunnar H. Nordbye, Senior United States Judge of the District of Minnesota, as Special Master to determine the state line in the disputed area known as Cow Island Bend in the Mississippi River located between Crittenden County, Arkansas, and Shelby County, Tennessee. After conducting an evidentiary hearing and viewing the area, the Master filed his Report with this Court recommending that all of the disputed area be declared part of the State of Tennessee. We affirm the Master's Report.

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