

Missouri Vs. Kansas

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Appeal No. : 213 U.S. 78

Appellant : Missouri

Respondent : Kansas

Judgement :

Missouri v. Kansas - 213 U.S. 78 (1909)

U.S. Supreme Court Missouri v. Kansas, 213 U.S. 78 (1909)

Missouri v. Kansas

No. 6, Original

Argued February 23, 1909

Decided March 22, 1909

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I N E Q U I T Y

SYLLABUS

The boundary line between Missouri and Kansas is and remains, notwithstanding its shifting position by erosion, the middle of the Missouri River from a point opposite the middle of the mouth of the Kansas or Kaw River.

The Act of June 7, 1836, c. 86, 5 Stat. 34, altering the western boundary of Missouri, is to be construed in the light of extrinsic facts; and, as so construed, its object was not to add territory to the state, but to substitute the Missouri River as a practical boundary, so far as possible, instead of an ideal line along a meridian.

The result of this decision is that an island in the Missouri River west of the center of its main channel, as that channel now exists, belongs to Kansas, notwithstanding such island is east of the original boundary line of Missouri.

The facts are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a bill to establish the western boundary of the State of Missouri for a short distance above Kansas City in that state. The object of Missouri is to maintain title to an island of about 400 acres in the Missouri River, now lying close to Kansas City, Missouri, and Kansas City, Kansas. The State of Kansas claims the same island by answer and what it terms a cross-bill. A few words will explain the issue between the parties. When Missouri was admitted to the Union, its western boundary at this point was a meridian running due north. There was land between a part of this line and the Missouri River. By treaty with the Indians and act

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of Congress on the petition of Missouri, that state was granted jurisdiction over such land, and its boundary was extended to the Missouri River. Since that time, the river has been moving eastward by gradual erosion, and, at the place in controversy, has passed to the east of the original line. The land in question lies to the east of the line, and the claim of Missouri is that, whatever the change in the

river, its jurisdiction remains to that line.

Missouri fortifies its claim by an allegation that the line at the place in controversy never was changed. According to the bill, the line as surveyed began at a point on the left bank of the Missouri River, opposite the mouth of the Kansas or Kaw, for two miles and a half "practically conformed with the left bank of the Missouri," and, by the shifting of the stream, was in the river when the act of Congress was passed, so that there was no land to be added there, and the original boundary remained. Kansas denies that the original line conformed to the left bank of the river, and says that, even if Missouri is right with regard to the the Missouri River, the boundary between the the Missouri river the boundary between the states from the north to the point where the Missouri and the Kansas meet.

To decide the case it is necessary to construe the laws by which the boundary of Missouri was changed. The first step to that end was a memorial of the General Assembly of Missouri to Congress, dated January 15, 1831. The sum of it is this: many inconveniences have arisen from the improvident manner in which parts of the boundaries have been designated. When the state government was formed, the whole country on the west and north was a wilderness, and its geography unwritten. The precise position of that part of the line passing through the middle of the mouth of the Kansas River, which lies north of the Missouri, is unknown, but it is believed to run almost parallel with the course of the stream, so as to leave a narrow strip of land, varying in breadth from 15 to 30 miles. Great calamities are to be feared from the Indians on

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the frontier. Therefore it is necessary to interpose, "whenever it is possible, some visible boundary and natural barrier between the Indians and the whites." The Missouri River will afford this barrier

"by extending the north boundary of this state in a straight line westward until it strikes the Missouri, so as to include within this state the small district of country between that line and the river."

There is more, but the main point of the memorial is to secure a natural barrier between Indians and whites, and, in addition, easier access to "the only great road to market." A few square miles, more or less, of savage territory were of no account, but the object was to get the river for a bound.

There was a report to the Senate on April 8, 1834, which adopted the foregoing reasons, and recommended making the Missouri River "the western boundary to the mouth of the Kansas River." Senate Doc. No. 263, 23d Cong. 1st Sess. On February 12, 1836, there was a report to the House of Representatives on the same subject. It referred to a bill that had been reported, authorizing the President to run the boundary line, and mentioned that the bill has been amended by directing the line to be run from the mouth of the Kansas River up the Missouri River, etc. It stated that the Indian title to the lands in question might be extinguished and ought to be, because those lands ought to form part of the State of Missouri. As a reason, it mentioned that, when Missouri was admitted into the Union, it was expected that other states would be formed on the west, in which case the use of the Missouri would have been equally convenient whether it was the border line or not; since then, however, the Indians had been located on the frontier, thus hampering access to the river. As a final argument, it added that to make the river the boundary would be for the advantage of both the Indians and the whites. In conclusion, "to carry into effect the ultimate object of the resolution," it reported "A Bill to Extend the Western Boundary of the Missouri to the Missouri River." H.R. No. 379, 24th Cong. 1st.Sess. This bill was passed, and became the act of Congress

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on which this controversy turns. It provides that,

"when the Indian title to all the lands lying between the State of Missouri and the Missouri River shall be extinguished, the jurisdiction over said lands shall be hereby ceded to the State of Missouri, and the western boundary of said state shall be then extended to the Missouri River."

These are the only material words. Act of June 7, 1836, c. 86. 5 Stat. 34.

In anticipation of the action of Congress, the Constitution of Missouri was amended as follows:

"That the boundary of the state be so altered and extended as to include all that tract of land lying on the north side of the Missouri River, and west of the present boundary of this state, so that the same shall be bounded on the south by the middle of the main channel of the Missouri River, and on the north by the present northern boundary line of the state, as established by the Constitution, when the same is continued in a right line to the west, or to include so much of said tract of land as Congress may assent."

Amendment ratified at the Session of 1834-1835, Art. II, § 4. Mo.Rev.Sts. 1856, p. 91. Then, on December 16, 1836, the state assented to the act of Congress by "An Act to Express the Assent of the Missouri to the Extension of the Western Boundary Line of the state." Laws 1st Sess. 9th Genl. Assembly, p. 28; and, on January 17, 1837, a copy was transmitted to Congress by the President. Meantime, on September 17, 1836, a treaty was made with the Indians in which they expressed their belief in the advantage of a natural boundary between them and the whites, and released their claims. Indian affairs. Laws and Treaties. Compiled by Kappler, 1904, p. 468. On March 28, 1837, the President, by proclamation, declared that the Indian title to lands had been extinguished in pursuance of the condition in the act of Congress, and the act went into full effect. 5 Stat. 802. Appendix No. 1.

Whatever might be the interpretation of the act, taken by itself and applied between two long-settled communities, we think that the circumstances and the history of the steps that led to it show that the object throughout was that expressed

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by the memorial, as we have said, not to gain some square miles of wilderness, but to substitute the Missouri River for an ideal line as the western boundary of the

state, so far as possible -- that is, from the northern boundary to the mouth of the Kaw. That this was understood by Missouri to be the effect of the act is shown by a succession of statutes declaring the boundaries of the river counties in this part. They all adopted the middle of the main channel of the river; beginning with the act that organized the County of Platte, approved December 31, 1838, Mo.Laws, 1838, pp. 23-25, and going on through the Revised Statutes of 1855, p. 459 § 12 (Clay), p. 466, § 33 (Platte), p. 478, § 65 (Jackson), etc., to 2 Rev.Stat. 1879, c. 94, §§ 5177, 5198, and 5237. The construction is contemporaneous and long continued, and we regard it as clear. It is confirmed by the cases of *Cooley v. Golden*, 52 Mo.App. 229, and *St. Joseph & G. I. R. Co. v. Devereux*, 41 F. 14, both of which cases notice that the act extended the boundary to the river, and not merely to the bank.

It follows upon our interpretation that it is unnecessary to consider the evidence as to precisely where the line, as surveyed, ran from opposite the mouth of the Kansas or Kaw. If the understanding both of the United States and the state had not been a wholesale adoption of the river as a boundary, without any niceties, still, as the cession "to the river" extended to the center of the stream, it might be argued that even on Missouri's evidence, there probably was a strip ceded at the place in dispute. But, from the view that we take, such refinements are out of place. The act has to be read with reference to extrinsic facts, because it fixes no limits except by implication. We are of opinion that the limit implied is a point in the middle of the Missouri opposite the middle of the mouth of the Kaw.

Decree for the defendant.