

SUPREME COURT OF THE UNITED STATES.

 No. 14 Original.—OCTOBER TERM, 1930.

The United States of America, Com-
 plainant,
vs.
 The State of Utah.

[May 18, 1931.]

DECREE

This cause came on to be heard by this Court, upon the exceptions of the parties hereto, to the report of the Special Master.

Now, therefore, for the purpose of carrying into effect the conclusions of the Court, as stated in its opinion, dated April 13, 1931, IT IS ORDERED, ADJUDGED, AND DECREED that:

1. The Bill of Complaint, in so far as it relates to the Green River, is dismissed. The Green River, from a point where the river crosses the township line between townships 23 and 24 South, Range 17 East, Salt Lake Base and Meridian, to the confluence of the Grand (Colorado) River, is now and at all times on and after January 4, 1896, has been, a navigable river, and the title to the bed thereof vested in the State of Utah upon its admission into the Union on January 4, 1896, except so far as the United States of America may theretofore have made grants thereof. The United States of America is forever enjoined from asserting any estate, right, title, or interest in and to said river bed, or any part thereof, adverse to the State of Utah, or its grantees: and from in any manner disturbing or interfering with the possession, use, and enjoyment thereof by the State of Utah, or its grantees.

2. The Bill of Complaint, in so far as it relates to the Grand (Colorado) River is dismissed. The Grand (Colorado) River, from a point located at the mouth of Castle Creek to the conflu-

ence of the Grand (Colorado) River with the Green River, is now and at all times on and after January 4, 1896, has been, a navigable stream, and title to the bed thereof vested in the State of Utah upon its admission into the Union on January 4, 1896, except so far as the United States of America may theretofore have made grants thereof. The United States of America is forever enjoined from asserting any estate, right, title, or interest in and to said river bed, or any part thereof, adverse to the State of Utah or its grantees, and from in any manner disturbing or interfering with the possession, use, and enjoyment thereof by the State of Utah or its grantees.

3. The Bill of Complaint, so far as it relates to the Colorado River, from the confluence of the Green River and the Grand (Colorado) River to Mile 212.15 above Lees Ferry, Arizona, and from Mile 176 above Lees Ferry, Arizona, to the Utah-Arizona Boundary Line, is dismissed. Said stretches of said river and each of them are now and at all times on and after January 4, 1896, have been navigable, and title to the beds of said last-mentioned stretches of river and each of them vested in the State of Utah upon its admission into the Union on January 4, 1896, except so far as the United States of America may theretofore have made grants thereof. The United States of America is forever enjoined from asserting any estate, right, title, or interest in and to said beds of said last-mentioned stretches of river or in or to any portion of said last-mentioned beds, or either of them, adverse to the State of Utah or its grantees, and from in any manner disturbing or interfering with the possession, use, and enjoyment thereof by the State of Utah or its grantees.

4. The Colorado River from Mile 212.15 above Lees Ferry, Arizona, to Mile 176 above Lees Ferry, Arizona, is not a navigable river and the title to the bed of said last-mentioned stretch of river is vested in the United States of America, except as to lands heretofore granted, and the State of Utah is forever enjoined from asserting any estate, right, title, or interest in and to said bed of said last-mentioned stretch of river or in and to any part of said last-mentioned bed, adverse to the United States of America, or its grantees; and from in any manner disturbing or interfering with the possession, use, and enjoyment thereof, by the United States of America, or its grantees.

5. The San Juan River, from the mouth of Chinle Creek to the Confluence of the San Juan and Colorado Rivers, is not a navigable river, and the title to the river bed is vested in the United States of America, except as to lands heretofore granted, and the State of Utah is forever enjoined from asserting any estate, right, title, or interest in and to said river bed, or any part thereof, adverse to the United States of America, or its grantees; and from in any manner disturbing or interfering with the possession, use, and enjoyment thereof, by the United States of America, or its grantees.

6. The United States of America shall in nowise be prevented from taking any such action in relation to said rivers, or any of them, as may be necessary to protect and preserve the navigability of any navigable waters of the United States of America.

7. It is further adjudged and decreed by the Court that each party hereto pay its own costs and that each party hereto pay one-half of the expenses incurred by the Special Master, and also one-half of the amount to be fixed by the Court as the compensation of the Special Master.

A true copy.

Test:

Charles Edward Wesley

Clerk, Supreme Court, U. S.

In the
Supreme Court of the United States

October Term, 1930

No. 14 Original

THE UNITED STATES OF AMERICA, *Complainant,*

v.

THE STATE OF UTAH, *Defendant.*

Defendant's Exceptions to the Report
of the Special Master

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No. 14 Original

THE UNITED STATES OF AMERICA, *Complainant*,
v.
THE STATE OF UTAH, *Defendant*.

Defendant's Exceptions to the Report
of the Special Master

Comes now the State of Utah and files exceptions to the Report of the Special Master filed herein on October 15, 1930, said exceptions being as follows:

I.

The State of Utah excepts to the finding of the Special Master that the "Colorado River south from the confluence of the Green River with the Grand River at Mile 216.5 above Lees Ferry down to the end of Cataract Canyon at Mile 176 above Lees Ferry, was, on January 4, 1896, not capable or susceptible of being used in its natural and ordinary condition as a highway for commerce over which trade and travel might be conducted in the customary mode of trade and travel on water," in so far as said finding affects or relates to that portion of the Colorado River located and extending between the confluence of the Green River and the Grand River at Mile 216.5 above Lees Ferry and the first rapid or so-called cataract encountered by one traveling downstream on said river from said confluence, said first rapid or so-called cataract being located at Mile 212.15 above Lees Ferry. A formal statement of said finding above excepted to appears in subdivision numbered (1) on page 153 of said Report and the substance thereof appears elsewhere in said Report, to-wit,

at page 127 thereof and also in paragraph lettered (a) of subdivision numbered (6) at page 183 thereof.

This exception is based upon the ground that the evidence introduced herein is insufficient to sustain said finding in so far as it affects or relates to that portion of the Colorado River located and extending between said Mile 216.5 above Lees Ferry and said Mile 212.15 above Lees Ferry.

II.

The State of Utah excepts to the finding and conclusion of the Special Master that the "Colorado River, on January 4, 1896, was in fact and in law a non-navigable water of the State of Utah from the confluence of the Green River with the Grand River at Mile 216.5 above Lees Ferry down to the end of Cataract Canyon at Mile 176 above Lees Ferry; and in consequence title to the bed of the river between such points was vested on that date in the United States of America, except so far as the United States of America may have theretofore made grants of said bed," in so far as said finding or conclusion affects or relates to that portion of the Colorado River located and extending between the confluence of the Green River and the Grand River at Mile 216.5 above Lees Ferry and the first rapid or so-called cataract encountered by one traveling downstream on said river from said confluence, said first rapid or so-called cataract being located at Mile 212.15 above Lees Ferry. A formal statement of said last quoted finding and conclusion appears in subdivision numbered (2) on page 153 of said report and the substance thereof also appears in paragraph lettered (b) of subdivision numbered (6) at page 183 thereof.

This exception is based upon the ground that the evidence introduced herein is insufficient to sustain said finding or conclusion last above quoted in so far as said finding or conclusion affects or relates to that portion of the Colorado River located and extending between said Mile 216.5 above Lees Ferry and said Mile 212.15 above Lees Ferry.

III.

The State of Utah excepts and objects to the recommendation of the Special Master, appearing in subdivision numbered (4) on pages 184-185 of said Report, that a decree be entered herein decreeing "that the Colorado River was, on January 4, 1896, a non-navigable water of the State of Utah from the

confluence of the Green River with the Grand River at Mile 216.5 above Lees Ferry down to the end of Cataract Canyon at Mile 176 above Lees Ferry; and that title in and to the bed of the Colorado River between said points was on that date vested in the United States of America, except so far as the United States of America may have theretofore made grants of said bed; and that the State of Utah be forever enjoined from asserting any estate, right, title, or interest in or to said river bed or any part thereof adverse to the United States of America or its grantees and from in any manner disturbing or interfering with the possession, use, and enjoyment thereof by the United States of America or its grantees," in so far as said recommendation affects or relates to that portion of the Colorado River located and extending between the confluence of the Green River and the Grand River at Mile 216.5 above Lees Ferry and the first rapid or so-called cataract encountered by one traveling downstream on said river from said confluence, said first rapid or so-called cataract being located at Mile 212.15 above Lees Ferry.

This exception and objection is based upon the ground that the evidence introduced herein is insufficient to sustain or justify the entry of a decree that said portion of the Colorado River located and extending between said Mile 216.5 above Lees Ferry and said Mile 212.15 above Lees Ferry was on January 4, 1896, non-navigable water of the State of Utah, or that title in and to the bed of said last mentioned portion of said river on January 4, 1896, remained vested in the United States of America, or that the State of Utah be enjoined from asserting title thereto or from exercising and enjoying the possession and use thereof.

IV.

The State of Utah excepts to the failure of the Special Master to find that at the time of its admission into the Union on January 4, 1896, that portion of the Colorado River located and extending between the confluence of the Green River and the Grand River at Mile 216.5 above Lees Ferry and the first rapid or so-called cataract encountered by one traveling downstream on said river from said confluence, said first rapid or so-called cataract being located at Mile 212.15 above Lees Ferry, was capable and susceptible of being used in its natural and ordinary condition as a highway for commerce over which trade and travel might be conducted in the customary modes of trade and travel on water.

This exception is based upon the ground that the evidence introduced herein without contradiction and conclusively establishes that when the State of Utah was admitted into the Union on January 4, 1896, said portion of said Colorado River located and extending between said Mile 216.5 above Lees Ferry and said Mile 212.15 above Lees Ferry was capable and susceptible of being used in its natural and ordinary condition as a highway for commerce over which trade and travel might be conducted in the customary modes of trade and travel on water.

V.

The State of Utah excepts to the failure of the Special Master to make and file herein a conclusion of law that when the State of Utah was admitted into the Union on January 4, 1896, said portion of the Colorado River located and extending between said Mile 216.5 above Lees Ferry and said Mile 212.15 above Lees Ferry was navigable in law and that the title to the bed of said portion of said river then vested and is now vested in the State of Utah.

This exception is based upon the ground that the evidence introduced herein without contradiction and conclusively establishes that when the State of Utah was admitted into the Union on January 4, 1896, said portion of said Colorado River located and extending between said Mile 216.5 above Lees Ferry and said Mile 212.15 above Lees Ferry was capable and susceptible of being used in its natural and ordinary condition as a highway for commerce over which trade and travel might be conducted in the customary modes of trade and travel on water.

VI.

The State of Utah excepts to the failure of the Special Master to recommend that a decree be entered dismissing the Bill of Complaint so far as it relates to that portion of the Colorado River and the bed thereof located and extending between said Mile 216.5 above Lees Ferry and said Mile 212.15 above Lees Ferry, and in this connection further excepts to the failure of the Special Master to recommend that a decree be entered decreeing that when the State of Utah was admitted into the Union on January 4, 1896, said portion of said Colorado River was navigable in law and in fact and that title to the bed of said portion of said river then vested and is now vested in the State of Utah.

This exception is based upon the ground that the evidence introduced herein without contradiction and conclusively establishes that said portion of said Colorado River located and extending between said Mile 216.5 above Lees Ferry and said Mile 212.15 above Lees Ferry was, at the time of the admission of the State of Utah into the Union on January 4, 1896, capable and susceptible of being used in its natural and ordinary condition as a highway for commerce over which trade and travel might be conducted in the customary modes of trade and travel on water, and no evidence has been introduced herein which proves or tends to prove that since the State of Utah was admitted into the Union on January 4, 1896, it has, by grant or otherwise, been divested of its title to said portion of said bed.

VII.

The State of Utah excepts and objects to the recommendation of the Special Master, appearing in subdivision numbered (6) on page 185 of said Report, that a decree be entered herein "providing that the United States of America shall in no wise be prevented from taking any such action in relation to said Rivers or any of them as may be necessary to protect and preserve the navigability of any navigable waters of the United States."

This exception is based upon the ground that it is neither alleged nor proved herein that the State of Utah has done or threatened any act that would or could destroy, injure or affect the navigability of any navigable waters of the United States. It is alleged in the complaint and admitted in the answer that none of the rivers here involved are navigable in interstate commerce and any evidence relative to physical conditions, stream characteristics or navigability of sections of said rivers outside the sections here in controversy was expressly limited to such bearing as it might have on the question of navigability within said sections. The State of Utah made no surveys or investigations of any of the rivers here involved outside the boundaries of Utah and was wholly unprepared and made no attempt to present evidence as to navigability on any sections of the rivers outside its boundaries.

VIII.

The State of Utah excepts to the following statement found on page 147 of the Report: "I find that to navigate upstream successfully requires the use of motor boats."

The statement above quoted follows a discussion of various so-called rapids on that stretch of the Colorado River south of Mile 176 above Lees Ferry. We are in doubt as to its meaning. If the Special Master thereby intended merely to reiterate the thought expressed a few lines above in the same paragraph: "Rowboats going upstream must ordinarily be dragged or poled up through, but to a motorboat going upstream these rapids form little obstacle, except in times of extreme high water," or if he intended merely to express the thought that upstream travel by rowing, poling or towing was arduous work, we have no objection to the statement. If in saying that "to navigate upstream *successfully* requires the use of motorboats" he intended to say that this stretch of river was not capable or susceptible of being used in its natural and ordinary condition as a highway for upstream commerce with boats propelled by man power only or by sailing, we except to the statement upon the ground that the evidence is insufficient to sustain it and because it is contrary to the uncontradicted testimony of the witnesses for both complainant and defendant who detailed years of actual and successful upstream navigation in boats propelled by man power only. Their upstream navigation required the labor incident to taking boats upstream by man power alone, but such upstream navigation was "successful."

A brief of the facts and law pertinent to the foregoing exceptions and making specific references to those portions of the record upon which it relies will be presented and filed herein by the State of Utah pursuant to order of Court made herein on November 3, 1930.

Respectfully submitted,

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