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# Life Along the Mississippi: The "Crookedest River in the World" Yields Yet Another Boundary Dispute?

by William L. Andreen

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"The Mississippi is not a  
commonplace river, but on the  
contrary is in all ways remarkable."  
— From Mark Twain's  
LIFE ON THE MISSISSIPPI

The lower Mississippi River is a  
marvelous example of a river in old  
age, looping and curling around like  
a huge twisted ribbon. This mean-  
dering River — called by Twain the  
"crookedest river in the world" —  
has often changed course, leaving  
behind oxbow lakes, cutoffs, and  
shallow backwaters.

Islands sometimes appear while  
others disappear, and, occasionally,  
an island actually migrates in a  
geographical sense. Although the  
River often causes dramatic erosion,  
there are always shorelines along its  
course that are expanding through a  
process known as accretion. Such a  
dynamic watercourse creates  
winners and losers not only among  
private property owners along the  
shorelines, but also among the  
states which have seen their  
boundary lines expand and contract  
through the movement of Twain's  
remarkable River.

Louisiana commenced this action  
against Mississippi and a group of  
Mississippi private property owners

(collectively, the "Mississippi  
Parties") in an effort to assert juris-  
diction over an elongated tract of  
land now attached to the Louisiana  
bank of the Mississippi River. The  
land is located in an area where a  
great deal of Louisiana shorefront  
land had been lost through erosion.  
The Mississippi Parties counter by  
claiming that this land is merely the  
present-day configuration of Stack  
Island, an island that originally  
formed in Mississippi but "moved"  
west through a process of growth on  
its western side, i.e., the Louisiana  
side, and erosion on its eastern side,  
the Mississippi side, all caused by  
the dynamics of the River.

It is well established that a river  
boundary between states lies along  
the river's deepest, or main, naviga-  
tional channel, known as a thalweg,  
and that this boundary moves as the  
navigational channel migrates  
through the twin processes of ero-  
sion and accretion. See *Louisiana v.  
Mississippi*, 466 U.S. 96 (1984).

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STATE OF LOUISIANA V.  
STATE OF MISSISSIPPI  
NO. 121, ORIGINAL  
JURISDICTION

ARGUMENT DATE:  
OCTOBER 3, 1995

# Case at a Glance

Louisiana invoked the  
original, or trial, jurisdic-  
tion of the Supreme  
Court in a boundary dis-  
pute with Mississippi over  
which State controls a  
2,000-acre tract of land.  
Louisiana claims that the  
land is new and that it  
lies on its side of the  
boundary between the  
two States; Mississippi  
claims that the land is an  
island formation original-  
ly located on the  
Mississippi side of the  
boundary and remains in  
its jurisdiction. Visiting  
an arcane corner of the  
law, the Supreme Court  
decides whose land is it.





There is, however, an exception to this general rule applicable to islands. Whenever a river flows around an island, the boundary, once established on one side of the island, remains the boundary, even though it may shift at some later time to the other side of the island. *See Indiana v. Kentucky*, 136 U.S. 479 (1890). The island exception is intended to preserve a state's jurisdiction over an island, once established, despite possibly repeated shifts in the main navigational channel.

River islands, of course, may migrate, grow, or disappear. But under the island exception, as long as an island maintains a continuous existence, a state's jurisdiction will remain intact, and that jurisdiction will extend to the entire island even as it changes in size or location. *See Hogue v. Stricker Land & Timber Co.*, 69 F.2d 167, 168-69 (5th Cir. 1934), *on reh'g* 70 F.2d 722 (5th Cir.). A state's jurisdiction over an island formation, moreover, will not be disturbed, even if the island eventually becomes attached to the adjoining shoreline.

Both Louisiana and the Mississippi Parties agree that Stack Island was originally located in Mississippi. The question presented, therefore, is whether the present site of the disputed land is the result of the gradual movement of Stack Island from its original location, in which case the island exception would apply and the land lies in Mississippi, or whether the land is new, having been built from a moving mass of Mississippi River deposits, in which case the island exception would not apply and the land lies in Louisiana.

After conducting an evidentiary hearing, viewing the disputed site twice, and reviewing the record made in related litigation between the parties, the special master concluded that the disputed land is in Mississippi and made that recommendation to the Supreme Court. (When parties invoke the Supreme Court's original jurisdiction, the Court functions both as a trial court and a reviewing court. At the trial level, the Court does not try the case but appoints a special master to do so. When it receives the report and recommendation of the special master and any objections, called exceptions, filed by the parties, the Court functions in its more typical capacity as a reviewing court, though it usually does so without hearing oral argument.)

Louisiana objects to the special master's recommendation and argues that Stack Island lacks any real continuity because it disappeared in 1811 and reappeared in 1881; disappeared again in 1883, only to reappear during the 1930s; and finally was swept away for good in 1948. Louisiana contends that all that was left of Stack Island as of 1948 were shifting bars and shoals to which the island exception does not apply, especially because a nontidal island must extend above the mean high water mark to be recognized as a true island. Given these facts, Louisiana concludes that the current navigational channel dictates the proper location of the boundary between Louisiana and Mississippi. The location of that boundary, Louisiana points out, is to the east of the disputed land, which means that the land is on the Louisiana side.

The Mississippi Parties, on the other hand, maintain that the special master correctly concluded from the historical data that Stack Island had not been washed away at any time since 1881, when it was recognized as being on the Mississippi side of the boundary. They contend that Stack Island has maintained its identity in continuous fashion since 1881, although it has been slowly transformed in area and location.

Because the Stack Island formation never ceased to exist, the Mississippi Parties argue that the shifting of the main navigational channel toward the Mississippi bank between 1909 and 1913 is irrelevant. Given the continued existence of Stack Island, they argue that the island exception applies and that the disputed land lies in Mississippi and belongs to its Mississippi private property owners.

The special master accepted the Mississippi Parties' island exception argument and rejected Louisiana's theory that the disputed land is new land located on its side of the boundary marked by the Mississippi River's main navigational channel. Now sitting in its capacity as a reviewing court, the Supreme Court will decide who is right.

## ATTORNEYS OF THE PARTIES

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**For the State of Mississippi**  
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