

The disposition of this contention by the Court of Appeals is quite sufficient, saying:

"The officials who heard her claim were not disqualified because selected by the city. Her claim was not against the city but if allowed was collected by assessment. Officials acting really as an auditing board are not condemned because they have been selected by the municipality or other division against which the claim is made. If it were otherwise a great many bodies passing in a judicial capacity on claims from the Board of Claims down, would be disqualified."

The judgment of the Supreme Court, Appellate Division, First Judicial Department of the State of New York, entered on remittitur from the Court of Appeals is

Affirmed.

STATE OF MINNESOTA v. STATE OF WISCONSIN.

IN EQUITY.

No. 11, Original. Motion for final decree submitted January 30, 1922.—Decree entered February 27, 1922.

Decree reciting report of commissioners heretofore appointed to run, locate and designate the boundary between Minnesota and Wisconsin involved in this case; confirming the report; establishing the boundary as set forth in said report and upon the maps accompanying the same; and allowing the expenses and compensation of said commissioners as part of the costs of the suit to be borne equally by the parties.

See also, *Minnesota v. Wisconsin*, 252 U. S. 273; 254 U. S. 14.

Mr. Clifford L. Hilton, Attorney General of the State of Minnesota, *Mr. W. D. Bailey* and *Mr. H. B. Fryberger* for complainant.

Mr. William J. Morgan, Attorney General of the State of Wisconsin, and *Mr. Ralph M. Hoyt* for defendant.

BY THE COURT:

The State of Minnesota having made a motion before the court for a final decree, confirming the report of the Commissioners appointed by the decree in this cause on the 11th day of October, A. D. 1920, to run, locate and designate the boundary line between the State of Minnesota and the State of Wisconsin, in and through Lower Saint Louis Bay, Upper Saint Louis Bay and the Saint Louis River, from Upper Saint Louis Bay to the falls in said river, which report is in words and figures, as follows:

“To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

We, Samuel S. Gannett, Washington, D. C.; William B. Patton, Duluth, Minn., and John G. D. Mack, Madison, Wisconsin, Commissioners appointed, under decree of the court rendered October 11th, 1920, ‘to run, locate and designate the boundary line between the State of Minnesota and the State of Wisconsin, in and through Lower St. Louis Bay, Upper St. Louis Bay and the St. Louis River, from Upper St. Louis Bay to the “Falls” in the said river,’ have the honor to submit the following report, with accompanying maps, which maps are marked Exhibit No. 1, entitled, Supreme Court of the United States, October Term, 1920, No. 13, Original, *Tracing of Parts of Original Map of St. Louis Bay and St. Louis River, Made under Direction of Captain George G. Meade, T. E. 1861, Showing Boundary Line Between Minnesota and Wisconsin as Surveyed in Accordance with Terms of Above Decree in 1921*, and Exhibit No. 2, entitled, Supreme Court of the United States, October Term, 1920, No. 13, Original, *Map Showing Boundary Line Between Minnesota and Wisconsin Through St. Louis Bay and up St. Louis River to the Falls as Surveyed in Accordance with Terms of Above Decree in 1921*.

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Organization.

The Commissioners held their first meeting on October 29th, 1920, in suite 612, Palladio Building, in the City of Duluth, Minnesota, and organized by electing Samuel S. Gannett, Chairman.

Meade Chart.

In carrying out the decree of the court, that the 'boundary line must be ascertained upon a consideration of the situation existing in 1846, and accurately described by the Meade Chart,' the Commission made a careful study of the Meade Chart, filed as Minnesota's Exhibit No. 1, and found that the scale of said chart, 1: 32000, was too small for practical use in determining a line which could be laid out and properly monumented; and that the triangulation points of the original Meade survey, shown on the original Meade Map (the location of which was absolutely essential in transferring to the ground points determined on the map), were omitted from the chart.

Meade Map.

An attempt was then made to use the photographic copies of the original Meade map, being Wisconsin's Exhibits Nos. 46C and 46D, but it was found that the process of production had caused unequal shrinkage in the several sheets composing the map, and that no accurate scalings could be made therefrom.

Under instructions of the Commission, Mr. S. S. Gannett went to the office of the U. S. Lake Survey, in the City of Detroit, Michigan, the repository of the original Meade map, and under his personal supervision, caused an accurate tracing to be made of so much of the said Meade map, and the soundings and triangulation points shown thereon, as pertains to the case under considera-

tion. An accurate copy of this tracing, showing in addition the boundary line, as fixed on said map by the Commission, is filed herewith as Exhibit No. 1.

Triangulation Points.

The triangulation points, heretofore noted as being platted on the original Meade map by triangles, and shown in red ink on the aforesaid tracing, are located, in the records of the Lake Survey, by rectangular coordinates referred to the primary triangulation station of the U. S. Lake Survey, known as Minnesota Point North Base, drawn in red ink on aforesaid tracing, and described hereinafter in detail under the heading, 'Descriptions and Geographic Positions of Triangulation and Reference Points.' Commissioner Gannett secured an accurate copy of said coordinates from the official records of the U. S. Lake Survey, and they are correctly given in Table No. 1, attached to this report.

The original Meade triangulation points have not been in existence for some years, but the Corps of Engineers, U. S. Army, in later surveys of the St. Louis Bays and River, has established new triangulation points and referred the same by rectangular coordinates to aforesaid 'Minnesota Point North Base.' An accurate copy of the official coordinates of these later triangulation points was also secured by Commissioner Gannett, and a true copy of same is hereto attached and marked Table No. 2.

With these coordinates, it is possible to accurately relocate the original Meade triangulation points, or to show the new ones on the Meade map in their true positions; and the last mentioned points are thus shown on Exhibit No. 1, being marked by triangles in black ink.

Having the existing, or new, triangulation points platted in their true positions on the Meade map, it is possible to 'tie in' by scale any points or lines on said map to these triangulation points, and to transfer said points

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or lines to the ground by similar measurements from said triangulation points.

Office Procedure.

With this information at hand, the Commission laid down on the tracing of the original Meade map, Exhibit No. 1, the boundary line between the States of Minnesota and Wisconsin, in accordance with the decree of the court, namely: 'From a point midway between Rice's Point and Connor's Point, through the middle of Lower St. Louis Bay, to and with the deep channel leading to Upper St. Louis Bay, and to a point therein immediately south of the southern extremity of Grassy Point, thence westward along the most direct course, through water not less than eight feet deep eastward of Fisherman's Island, as indicated by the red trace A-B-C on Minnesota's Exhibit No. 1, approximately one mile to the deep channel and immediately west of the bar therein, thence with such channel north and west of Big Island upstream to the "Falls."'

The center of the pivot pier of the Inter-State Bridge was found to be the point midway between Rice's Point and Connor's Point, and was designated by the Commission as Station No. O. From this point, as a beginning, a series of straight lines was laid out to conform with the decree of the court, special care being taken to have the lines over water not less than eight feet deep as shown by the Meade map, and the angle points between said lines numbered consecutively.

From such of these angle points as were convenient, 'ties' were scaled to the best situated triangulation points on the map, and by means of rectangular coordinates from each angle point on the lines between the 'ties,' to triangulation points, the lengths and angles of deviation of the several lines were calculated, and closed polygons formed. These polygons were then checked as

to closure by the method of latitudes and departures, and any errors found were balanced so as to secure closure. By this means your Commissioners were enabled, with a close approach to accuracy, to determine the lengths and angles of deviation of the several lines composing the projected boundary line.

The lengths and angles thus determined and the 'ties' to the several triangulation points, were used as preliminary field notes by the surveying party employed to 'run out the boundary line and to locate same by proper monuments, courses and distances.'

Boundary Line Above Fond Du Lac.

For that portion of the St. Louis River beyond Fond Du Lac, and extending to the 'Falls,' and which is not shown on the Meade Chart or map, the Commission established the center line of the river, as a medial line between the shore lines, as surveyed by the Commission, and designated said medial line as the boundary line.

The Survey.

As the boundary line, except in a few instances, runs over water from 8 feet to over 20 feet in depth, the most convenient time for surveying it was after ice had formed to a safe thickness. The winter proved to be mild and the ice conditions unfavorable, adding greatly to the danger and difficulty of the work, and increasing the time necessary to finish it.

The surveying party was organized early in January, 1921, and the necessary equipment was rented or purchased. Starting at Station O, heretofore described, the approximate position of the boundary line was laid out on the ice, in the bay and river, from the preliminary field notes, and the 'ties' to the triangulation points, measured. Such discrepancies, due to the curvature of the earth, or to errors in scaling from the map, as were

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shown by measuring the 'ties,' were allowed for and distributed in the angles and distances of all the lines back to the preceding 'tie.' If any important discrepancy was discovered, the lines involved were re-run before any adjustments were made. From the final field notes of the adjusted survey, a description of the boundary line by courses and distances was obtained, and is incorporated herein. This work was completed March 19, 1921.

Detailed Description of Boundary Line.

[Here follow lengthy and detailed descriptions of the boundary line, as determined, the monuments, and of triangulation and reference points, with geographic positions, which are omitted by the Reporter as not being of general interest. Persons interested in these may consult the original decree in the clerk's office, obtain certified copies, or consult the copies forwarded to the Governors of the two States.]

Map of Boundary Line.

The Commission has prepared, and transmits herewith as Exhibit No. 2, a map of St. Louis Bays and River on the scale of 1:24000, showing their present conditions, improvements along the harbor front, the U. S. Government Harbor Lines and channels, and the relative position of the boundary line. There are also shown as sub-maps, on larger scale, improved or partly improved properties which are crossed by the boundary line; also detailed drawings of the concrete monuments as constructed.

Tables.

The rectangular coordinates, referred to Minnesota Point North Base, of all monuments, reference point[s] and line points are shown in Tables Nos. 2, 4 and 5, hereto attached.

The geographic positions of the angle points in the boundary line are shown in Table No. 6.

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Instruments.

The instrument used in making the survey was a Transit Theodolite with 6½-inch circle and reading to 10 seconds of arc. The measurements were made on the surface of the ice with a steel tape 300 feet in length, under a tension of twenty pounds, and corrected to temperature of 62° F.

Personnel.

The Commission employed as assistants the following named persons, namely:

Gordon F. Daggett, Madison, Wisconsin, Consulting Engineer.

Lyonel Ayres, Duluth, Minnesota, Consulting Engineer.

D. W. Van Vleck, Superior, Wisconsin, Consulting Engineer.

Paul Lillard, Madison, Wisconsin, Transit Man, in charge of field party.

Edwin O. Anderson, Duluth, Minn., Chainman.

Frank Kieserling, Duluth, Minn., Chainman.

Frank Suech, Jr., Duluth, Minn., Rodman.

Robert Case, Duluth, Minn., Rodman.

Robert Sansted, Duluth, Minn., Rodman.

Ray Mapp, Duluth, Minn., Draughtsman.

Eusebe J. Blais, Duluth, Minn., Draughtsman.

Finances.

We return herewith a financial statement showing in detail the money actually expended in carrying out the terms of the decree of the court.

Record Books.

All field, computation and record books have been placed in the custody of the chairman of the Commission,

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and filed by him in the office of the Geological Survey, Interior Department, Washington, D. C.

Respectfully submitted.

SAMUEL S. GANNETT,

WILLIAM B. PATTON,

JOHN G. D. MACK,

Commissioners."

June 25th, 1921.

The cause coming on to be heard upon said motion of the said State of Minnesota.

It is hereby ordered, adjudged and decreed, that said report of said Commission, filed in the office of the clerk of this court on August 5, 1921, is in all respects confirmed.

It is further ordered, adjudged and decreed that the line as delineated and set forth in said report and upon the two maps accompanying said report being marked respectively Exhibits 1 and 2 by said Commission and which line has been marked by permanent monuments as stated in said report, be and the same is hereby established, declared and decreed to be the true boundary line between the States of Minnesota and Wisconsin and said maps so marked as aforesaid as Exhibits 1 and 2 are directed to be filed as a part of this decree and it appearing that the expenses and compensation of the Commissioners attendant upon the discharge of their duties amounts to fifteen thousand six hundred twenty-six dollars and six cents (\$15,626.06), it is ordered that the same be allowed and approved as a part of the costs of this suit, to be borne equally by the parties. And that the sum of two thousand five hundred sixty dollars (\$2,560), the expense of printing the record in this case, and the sum of two hundred thirty (\$230) dollars, the expense of printing the report of the Commissioners in this case, amounting in the aggregate to two thousand seven hundred ninety dollars (\$2,790), are allowed and approved as a part of the costs

of this suit to be borne equally by the parties and if one of them has paid more than one-half of such sums, it shall be reimbursed by the other for such excess.

It is further ordered, that the clerk of this court do transmit to the respective governors of the States of Minnesota and Wisconsin copies of this decree, duly authenticated under the seal of this court, omitting from said copies the two maps filed with the report.

STATE OF TEXAS *v.* INTERSTATE COMMERCE
COMMISSION AND RAILROAD LABOR BOARD.

IN EQUITY.

No. 24, Original. Argued on motions to dismiss December 7, 8, 1921.—
Decided March 6, 1922.

1. Regarded as corporate entities created for governmental purposes, the Interstate Commerce Commission and the Railroad Labor Board are not citizens of any State. P. 160.
2. Abstract questions of the power of Congress to enact specified legislation do not present a case or controversy within the judicial power as defined by the Constitution. P. 162.
3. A suit by a State against the Railroad Labor Board and the Interstate Commerce Commission, seeking to annul action taken by them under the Transportation Act of 1920, as an unconstitutional invasion of the rights of the State, injurious to her citizens, *held* not to be entertained by this court in the exercise of its original jurisdiction where the decisions and orders complained of had been put in execution and their annulment would directly and unavoidably affect resulting interests of carriers and carrier employees who were not parties or represented in the litigation. P. 163.
4. That the citizenship of such necessary parties prevents their being joined will not justify proceeding in their absence. P. 163.
5. A suit by a State to set aside orders of the Interstate Commerce Commission must be brought in the District Court and the United States must be made a defendant. P. 164. *North Dakota v. Chicago & Northwestern Ry. Co.*, 257 U. S. 485.

Bill dismissed.