

Government did not present facts to refute the challenge and the Court made the change in the point of differentiation, subject to precise determination of the point where it became nonnavigable.

**Oklahoma v. Texas**, No. 20 Original; 258 U.S. 574 (1922)



Figure 8-52. Vicinity map.

A series of cases of the Supreme Court resulting in 19 opinions and 33 decrees address the boundary between Texas and Oklahoma along the bed of the Red River. The segment of the bed of the Red River from the 100<sup>th</sup> to the 96<sup>th</sup> meridian is the most thoroughly surveyed and litigated riverbed in the history of the United States. The Court found that the Red River bed was a braided stream that ranged in width from 3 to 15 miles. Eventually it was decided that the boundary between Texas and Oklahoma was along the right bank of the Red River when it is full but not in flood. The Court undertook the determination of navigability under the Property Clause and all of the facts in the bed of the river and its history that border on that answer.

A very important point made by the Court was that the river must be suitable for commercial navigation for a majority of the year. Seasonal rises in the river due to spring and fall rains that lasted only a few weeks were not sufficient to make a river navigable under the Property Clause even though commercial navigation sometimes occurred during those temporary rises.

The Court found the Red River to be nonnavigable; therefore, Oklahoma and its riparian owners only

owned half of the riverbed extending from the left bank. Since Texas could have no ownership outside its boundary, the United States owned the half of the bed measured from the right bank, i.e., unsurveyed public domain land.

### Avulsion and Boundaries (Case Studies)

**8-57(n) through 8-107(n).** The following case studies illustrate some of the various legal settings in which avulsion is an issue. Surveyors need to be aware of these situations, which may affect their resurvey work.

**Nebraska v. Iowa**, No.4 Original; 143 U.S. 359 (1892)



Figure 8-53. Vicinity map.

The State of Nebraska claimed that the soil along the Missouri River was so sandy, and avulsive changes in

channel occurred so often, that the common law rule of avulsion should not apply. Immediately above Omaha, Nebraska, an oxbow bend was created rapidly by the river and then cut through by an avulsion; Nebraska claimed Iowa should not get to keep the island left behind (figure 8-54).

This case is among those of the most important to surveyors because here the U.S. Supreme Court distinguished between rapid erosion and an avulsion. The Court determined that rapid erosion and accretion was not the legal equivalent of avulsion. The Court also defined an avulsion in clearly understandable terms, especially where areas of river bank have been alleged to cave off into the river during flood.

The U.S. Supreme Court quoted at length from international legal authorities that universally applied the avulsion concept between sovereigns. Significantly, the Court defined an avulsion as “where a stream, which is a boundary, from any cause suddenly abandons its old and seeks a new bed, such change of channel [termed avulsion] works no change of boundary; and that the boundary remains as it was, in the center of the old channel, although no water may be flowing therein.” (p. 360.)

Nebraska contended that in the normal course of events along the Missouri River, great slabs of soil and trees would fall into the river during high water