

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

NEW JERSEY v. NEW YORK

ON EXCEPTIONS TO REPORT OF SPECIAL MASTER

No. 120, Orig. Argued January 12, 1998— Decided May 26, 1998

An 1834 compact between New York and New Jersey, approved by Congress pursuant to the Compact Clause, set the boundary line between the States as the middle of the Hudson River, Article First; provided that Ellis Island, then three acres, was part of New York, despite its location on the New Jersey side of the river, Article Second; and provided that New York had exclusive jurisdiction of submerged lands and waters between the two States to the low-water mark on the New Jersey shore, subject to certain exceptions, including New Jersey's right to submerged lands on its side of the boundary, Article Third. The States agree that Article Second gave New York sovereign authority over the Island, and this Court has determined, *inter alia*, that New Jersey has retained ultimate sovereign rights over submerged lands on its side, *Central R. Co. of N. J. v. Jersey City*, 209 U. S. 473, 478–479. After 1891, when the United States decided to use the Island to receive immigrants, the National Government began filling around the Island's shoreline and over the next 42 years added some 24.5 acres to the original Island. In 1954, immigration was diverted from the Island. Since then, the Island has been developed as a national historic site, but New York and New Jersey have asserted rival claims of sovereign authority over its filled land. In 1993, New Jersey invoked this Court's original jurisdiction to try the dispute. After a trial, the Special Master concluded that Article First marks the line of sovereignty between the two States; that although Article Second accords New York some sovereign jurisdiction over the Island as it existed in 1834, the Compact does not address the issue of sovereign authority over the Island's filled portions; and that the filled portions fall under the sovereign authority of New Jersey under the common-law doctrine of avulsion. He rejected New York's affirmative defense of having obtained sovereign

Syllabus

authority over the filled portions by prescription and acquiescence and its defense of laches. He pegged the Island's exact dimensions to the mean low-water mark of the original Island, although he recommended that the area covered by a pier extending from the shore at the time of the Compact should be treated as part of the original Island. Finally, he recommended, for reasons of practicality, convenience, and fairness, that this Court adjust the Island boundary line between the States, placing the main immigration building and the land immediately surrounding it within New York. Both States have filed exceptions.

Held: New Jersey has sovereign authority over the filled land added to the original Island. New Jersey's exception to that portion of the Special Master's report concerning the Court's authority to adjust the original boundary line between the two States is sustained. The other exceptions of New Jersey and New York are overruled. Pp. 11–45.

(a) Article Second did not give New York jurisdiction over the Island's filled land. The absence of any description of the Island in metes and bounds merely shows that in 1834 everybody knew what the Island was. The Compact's failure to address the consequences of landfilling does not support New York's argument that such filling in New York Harbor was so common a practice in 1834 as to render it unnecessary to mention it in Article Second. Rather, under that era's common law, such filling was "avulsion," which has no effect on boundary, *Nebraska v. Iowa*, 143 U. S. 359, 361. This rule fills the Compact's silence and leads to the conclusion that the lands surrounding the original Island remained New Jersey's sovereign property when the United States added landfill to them. Neither intuition nor history supports New York's additional argument that the parties would hardly have wanted to divide the Island between the States because any such division would frustrate the Compact's purpose of giving New York control over navigation and commerce in the harbor. Pp. 11–17.

(b) New York has not obtained sovereignty over the filled land through its exercise of prescriptive acts and New Jersey's acquiescence in that exercise. As this is an affirmative defense, New York has a plaintiff's burden of showing by a preponderance of the evidence, *Illinois v. Kentucky*, 500 U. S. 380, 384, that it exercised dominion over the made land with New Jersey's consent from 1890, when the United States began to add landfill to the original Island, to 1954, when New Jersey vigorously asserted its sovereignty claim. This task is made difficult by two facts: that New Jersey must be supposed to know that, when New York referred to the Island in its official dealings, it meant something other than the original, conced-

Syllabus

edly New York territory; and that the United States's occupation of the land affected New York's opportunity to act in support of its claim— e.g., by establishing towns, roads, or public buildings— as well as the degree of attention that New Jersey may reasonably have paid to whatever acts New York claims to have performed in asserting its jurisdiction. New York's evidence— the recording of vital statistics of people on the Island; the inclusion of the Island in New York voting districts, together with voting registration lists with names of people living on filled portions; personal impressions that the filled portions belong to New York; and the United States' understanding of the Island's sovereignty— is too slight to support any finding of prescription. New York's official acts occurred off the Island and were either equivocal in their territorial references or ill-calculated to give notice to New Jersey; and they did not leave officials of the Island's actual occupants, the United States, with a settled or consistent understanding that the filled land might be subject to New York's sovereignty. Pp. 17–38.

(c) New Jersey is not chargeable with laches through its delay in bringing this action. Even if New York is correct that there would have been more and better evidence to support its affirmative defense of prescription and acquiescence had New Jersey brought its suit years earlier, it cannot use the defense of laches to relieve it of the plaintiff's burden of proof on its affirmative defense. Pp. 38–40.

(d) New Jersey is sovereign over the filled portions of the Island to the mean low-water line, not, as it argues, the mean high-water line. The Court assumes from the Compact's silence that the parties were well aware of the general rule, recognized by this Court, that the low-water mark is the most appropriate boundary between sovereigns, see, e.g., *Handly's Lessee v. Anthony*, 5 Wheat. 374, 383, and would have explicitly provided for a high-water mark boundary if that is what they intended. It would be unsound to infer from Article Third's specification of a low-water mark as a jurisdictional boundary on the New Jersey shore that the high-water line was intended elsewhere. Pp. 40–42.

(e) This Court agrees with the Special Master's conclusion that the land covered by the pier in 1834 falls within New York's authority. An 1819 map of the Island, on which the Special Master relied, appears to show a filled area around the pier's location, and New York's expert credibly testified that the use of pilings to create piers was still uncommon by the mid-1800's and that it would have been much easier to add landfill to the shallow waters around the Island than build piers. Pp. 42–43.

(f) This Court lacks the authority to adjust the original boundary line between the two States to address considerations of practicality

Syllabus

and convenience. Congressional approval “transforms an interstate compact within [the Compact] Clause into a law of the United States,” *Cuyler v. Adams*, 449 U. S. 433, 438. Unless the compact is unconstitutional, no court may order relief inconsistent with its express terms. *Texas v. New Mexico*, 462 U. S. 554, 564. The difficulties created by a boundary line that divides not just an island but some of its buildings are the price of New Jersey’s success in litigating under a compact whose fair construction calls for a line so definite. Pp. 43–44.

Exceptions overruled in part and sustained in part, and case recommitted to Special Master.

SOUTER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O’CONNOR, KENNEDY, GINSBURG, and BREYER, JJ., joined. BREYER, J., filed a concurring opinion, in which GINSBURG, J., joined. STEVENS, J., filed a dissenting opinion. SCALIA, J., filed a dissenting opinion, in which THOMAS, J., joined.