IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 12—Original

UNITED STATES OF AMERICA, *Plaintiff*,

v.

STATE OF CALIFORNIA.

PETITION OF ROBERT E. LEE JORDAN AS AMICUS CURIAE TO SUBMIT FOR THE CONSIDERATION OF THE COURT, CERTAIN ADDITIONS TO THE FINAL DECREE ENTERED IN THE ABOVE ENTITLED ACTION.

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Robert E. Lee Jordan, as Amicus Curiae, asks leave to submit for the consideration of this Honorable Court, for the purpose of carrying into effect the conclusions of this Court as stated in its opinion of June 23, 1947, certain additions to the final decree which will clarify the decree and prevent almost certain litigation.

It is respectfully suggested, that in Paragraph 1. of the final decree, that in the second line of the said paragraph, and after the words "and has been at all times pertinent hereto," the words "the ownership of and" be added, which will make this portion of the decree read as follows:

> "The United States of America is now, and has been at all times pertinent hereto, the owner of and possessed of paramount rights in, * * *"

It is also respectfully suggested that there be added to the final decree, the following Paragraphs, Nos. 4 and 5:

Paragraph 4.

4. This title and these rights of the United States in these lands were acquired at the time of and through the Treaty of Guadaloupe Hidalgo with Mexico in 1848, and thereafter said lands were, and now are, subject to the general and special laws adopted by the Congress of the United States for the purpose of providing a method by which the United States through its citizens could utilize and protect the mineral resources in land owned by the United States.

Paragraph 5.

5. For the purpose of demarcation of the boundary line between the three-mile marginal belt and the ordinary low-water mark on the coast of California, the boundary is established in conformity with the official maps and charts prepared by the United States' Surveyor General, together with the field notes thereof, during the years 1857 and continuing to and including the year 1874, as said maps, charts, and field notes, appear in the records and Archives of the United States.

Amicus Curiae believes the foregoing paragraphs will dispose of many vexing questions regarding the submerged lands, the minerals in them, and the rights of the Government, and that in the interests of an early adjustment of the points in dispute, the foregoing additions to the decree would settle most of the points which have arisen since the issuance of said final decree.

JAMES E. WATSON,
ORIN DEMOTTE WALKER,
Counsel for Petitioner,
ROBERT E. LEE JORDAN.

Copies of the attached petition have been delivered to Counsel for the Government and the State of California.

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MEMORANDUM BRIEF OF ROBERT E. LEE JORDAN, AS AMICUS CURIAE, IN SUPPORT OF PETITION.

Your petitioner respectfully submits for the consideration of this Court, the foregoing proposed additions to the decree issued in this case on October 27, 1947, upon the grounds that "jurisdiction is reserved by this Court to enter such further orders and to issue such writs as may from time to time be deemed advisable or necessary to give full force and effect to this decree."

The proposed addition to Paragraph 1. of the decree would constitute a positive declaration of title in the United States.

While such ownership is implied in the language of the decree, controversies are already arising between the interested parties as to whether or not there is a limitation on the ownership of the surface of the three-mile strip covered by the decree. The value of the minerals would be

greatly reduced to some areas and totally destroyed if a cloud remains on the title to the surface.

Despite the technical developments in the proces of slant-drilling, only a small part of these lands can be developed for oil and gas production without ownership of the surface. Even where slant-drilling is possible, the United States and its citizens would be at the mercy of the abutting landowners in the production, storage and transportation of the oil and gas. For this and other reasons a multiplicity of lawsuits would arise to the great detriment of the United States.

In some areas the building up of small islands, where the water is shallow, will prove to be the most feasible method of oil operations. In such cases, surface ownership must vest in the owner of the minerals.

Ownership is also implied by the terms of the decree by virtue of the injunctive relief granted, which presupposes that unless there is title in the property, no such relief could be granted, and the additions suggested would fully set out the absolute rights of the Government in accordance with the conclusions of the Court.

The decree asserts "The State of California has no title thereto or property interests therein." The title must therefore rest in the United States, unless some claim of international ownership is recognized by this Court. The character of this property, and vitally important circumstances, connected therewith are too well known to the Court to require comment, but they do make it imperative that the ownership be stated with the utmost clarity and beyond room for controversy from any source.

We respectfully contend that it is of the utmost importance that this proposed Paragraph 4. be added by way of clarification to the decree. Unless such a provision is included in the decree, the United States will be in the possession of a tremendously valuable property and without any method by which its vast resources can be protected from the present rapid depletion by adverse parties. The nation, itself, is not equipped to engage in oil production.

After years of consideration and much vigorous discussion of other proposed methods of disposing of or otherwise utilizing the mineral resources of the nation, the Congress adopted the original Mining Laws. These Laws were predicated on the accepted theory that the best results could be obtained by permitting the individual citizen to enter said lands under the terms contained in the Mining Laws, and thereafter developing said mineral resources for his own use. It was anticipated, and later proved to be correct, that this method would hasten the development of the Western Territories and resulted in the building of camps, towns, and cities, and ultimately the inauguration of new States. The growth of the West, which can be directly attributed to these Mining Laws, is one of the great epics of American History.

The adoption, by Congress, of the Oil and Gas Leasing Law in 1920, was but an extension, with certain limitations, of the original Mining Laws. The fundamentals remained, including the right of the qualified citizen who was first in time in making his application to enter and develop mineral lands owned by the United States. Entries had theretofore been made on potential oil lands as Placer Claims under the Mining Law, but strict compliance with the law was impossible, as the law called for a discovery of mineral before filing. This was impossible in the case of oil or gas, but even so, the Courts held that the citizens who filed the first applications had a right of possession as against all other claimants. Serious and often violent conflicts arose between conflicting claimants and development of potential oil lands was greatly delayed.

Oilmen and other citizens who were familiar with the conditions appealed to Congress to adopt legislation to remedy the situation. The Oil and Gas Leasing Act was the outcome. (U. S. C. A. Title 30 § 181 et seq.)

The only important modification of the original Mining Law was the retention by the United States of a substantial royalty in all oil and gas produced in leases issued to

the applicants. The Congress had no intention or desire to inject the nation into prospecting for oil or other minerals and assume the hazards thereof. It still has no such intentions.

These laws are in full force and effect, and applicable to all land owned by the United States, except those areas expressly exempted therefrom by provisions of the Oil and Gas Leasing Law. These exemptions do not extend to the three-mile marginal strip off the coast of California.

It seems presumptious to the point of impertinence for the Attorney General and the Secretary of the Interior to suggest to this Court that it delay the effectiveness of its decree until the Congress has time enough to presumably give away this tremendously valuable property. In the meantime, the pillaging of the property continues. Neither have they any right to assume that the Congress is going to enact legislation to deprive all of the citizens of the United States of their property.

Apparently these officials are laboring under the illusion that Congress has power to enact some retroactive laws which will deprive citizens of rights acquired in the past under existing laws.

It is a matter of common knowledge, of which this Court should take judicial notice, that the initiation of this action which resulted in the opinion of June 23, 1947, was due to thirteen years of persistent efforts by qualified citizens of the United States to have their rights as such citizens recognized by the Department of the Interior and the Department of Justice. The fact is abundantly established in the official records of those Departments. Under the laws of the United States, these citizens were entitled to enter the undeveloped oil lands owned by the United States.

Every trespasser on the lands covered by this case entered said lands with full knowledge of the recorded claims of these citizens who filed their location notices thereon and claimed the right to develop the same for themselves and for the United States. There was, and there still is, no other method authorized by the Congress of the United

States by which the said lands could be developed and the United States derive therefrom the oil royalties to which it was entitled.

The loss suffered by the United States through the stubborn persistence of executive officers in refusing to protect its rights by granting the permits and leases applied for, amounts to many millions of dollars. Unlawful slant-drilling of oil wells from adjacent uplands, some of which were started on lands as much as a half-mile distance from the three-mile strip, is conceded even by the defendants in this case and to have thus extracted from this strip more than one hundred million barrels of oil, and the United States received none of the royalties to which it was entitled.

The amazing stipulations recently entered into by the Attorney General and the Secretary of the Interior, and which the Attorney General asks this Honorable Court to condone and approve, and which he publicly asserts are still in effect, despite the Court's rejection thereof, are designed to permit and encourage the continuance of this wholly unlawful extraction of oil from the property of the United States. More than once this Court has stated in its decisions that it is the duty of executive and ministerial officers of the United States to protect the interests of the Government and its property, and that there is no active duty devolving on such officers to expend their efforts on behalf of any State or other claimants against the Government. See *West* v. *Standard Oil Co.*, 278 U. S. 200; *Shaw* v. *Kellogg*, 170 U. S. 312, 337-338.

Your petitioner is not unmindful of the fact that in your decree you suggest action in the District Court as a procedure by which the rights and equities of aggrieved parties can be determined. We very respectfully assert that there are two insurmountable objections to that course: 1. That the relief sought by these proposed amendments is beyond the power of the District Court to grant; 2. That the delays incident to such a procedure will result in the dissipation and exhaustion of the estate which is the subject of the liti-

gation and a verdict for the plaintiffs would be but an empty victory.

Powerful financial entities whose interest herein are adverse to those of the United States can and will exhaust every effort to prolong any action in the District Court. We are well aware that in the unlawful stipulation which purports to authorize the continued trespass by these parties on these premises, there is a provision for impounding oil royalties which may later be paid to the United States. At best, such a provision is only a fractional protection to the United States. There will be no recovery of the great incidental values which the trespassers will derive, and of which the United States will be deprived by reason of this stipulation. There is a further reason why these stipulations should be immediately voided. It is a matter of general knowledge in California and throughout all oil producing States that in addition to the financially responsible major oil companies which have been producing from these lands, millions of barrels of oil have been withdrawn therefrom by parties who slant-drilled under these lands without a shadow of legal right, or even under an alleged lease from the State.

We cannot too urgently impress upon the Court the fact that unless the Decree authorizes the United States and its citizens to proceed under the only method available to it and them, to-wit, the Oil and Gas Leasing Law, this tremendously valuable estate will be dissipated and lost while litigation still pends.

Proposed Paragraph 4. is the simple, effective, and conclusive answer.

It will not cause one day's delay in the production of oil from these lands, as at all times the applicants of Federal permits and leases have been ready and willing to arrange with present operators for the continued flow of the wells.

The proposed Paragraph 5. will greatly simplify the establishment of the landward boundary of the marginal three-mile strip as well as determine the vexing question of inland waters. There can be no argument but what that

boundry is the one which existed at the time these lands were acquired by the Treaty with Mexico. Subsequent man-made changes by the construction of harbors, fills over tide and submerged lands in the mean lowtide line, cannot affect the ownership status of these lands. In the records of the Surveyor General's Office, and of the U. S. Geodetic Survey, and in the Archives of the nation, the proof is readily available. *Patton* v. *City of Los Angeles,* 169 Cal. 521.

In the oilfields on this strip, which are already in production, the establishment of this lowtide line is already well known or can be quickly determined.

The major oil companies, knowing that the title of the grantee in their leases was doubtful at best, naturally would have their engineers chart the location of this line. Agencies of the Federal and State Governments have also charted this lowtide line.

It is in these producing oilfields that urgency for action exists. In other areas, the time element is not so important.

The inclusion of Paragraph 5. in the decree will settle many issues which would otherwise result in endless litigation.

Respectfully submitted,

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November, 1947.