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IN THE
Supreme Court of the United States

October Term, 1948

No. 12, *original*
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UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF CALIFORNIA.

ANSWER TO MOTION FOR CLARIFICATION
OF SCOPE OF INQUIRY.

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A "Motion for Clarification of Scope of Inquiry" has been filed by the Solicitor General of the United States. In his memorandum in support of this motion the Solicitor General takes exception to the announcement by the Special Master of his plan for proceeding in carrying out the Order of Reference made by this Court on June 21, 1948. (334 U. S. 855, 856.) We believe it is obvious that the Special Master is eminently qualified to interpret and carry out the Order of this Court and that he is proceeding to do this after careful consideration of the entire matter and after affording counsel for both parties every opportunity to present their views and suggestions on the subject. A review of the proceedings to date may be helpful to a consideration of the pending motion.

I.

Summary of Proceedings on the Reference.

(1) In January, 1948, plaintiff herein filed a Petition for Supplemental Decree requesting the fixing of the line of demarcation between the inland waters, ports, bays, harbors and tidewaters on the one hand and the three-mile belt on the other. This line, when fixed, would separate the water areas beneath which the United States was held to have paramount power from those water areas beneath which the lands and resources remain the property of the State, its grantees and lessees. However, the Solicitor General asked to have the line fixed in but three limited segments of his own selection along California's coast. The State of California filed its Answer, requesting the appointment of a Special Master and the ascertainment of the line along its entire coast. On March 25, 1948, plaintiff filed a "Memorandum in Regard to Answer," in which it opposed a reference. California filed a Reply to this memorandum, pointing out what it believes to be critical needs and renewing its request for the appointment of a Master. Briefs or memoranda were also filed by the Cities of Los Angeles and Long Beach, as *amici curiae*, in support of the answer of the State and its request for a reference.

(2) On June 21, 1948, this Court made an Order. While denying California's request "for an ascertainment of its entire coastal boundary at this time," its order provided as follows:

"The Court is in doubt at this time as to what particular segments of the boundary, if any, should now be determined.

“It is therefore of the opinion that a master should be appointed by the Chief Justice to make inquiry into this subject and to hold hearings, if he finds it necessary, in order to make recommendations to this Court at the October, 1948, Term, as to what particular portions of the boundary call for precise determination and adjudication. Should the master conclude that such adjudications should be made, he is also authorized to recommend to this Court an appropriate procedure to be followed in determining the precise boundary of such segments.”

On July 2, 1948, the Chief Justice, pursuant to the foregoing Order, appointed the Honorable D. Lawrence Groner “Special Master in this cause,” vesting authority in him to (a) summon witnesses, (b) issue subpoenas, (c) take such evidence as may be introduced, and (d) call for such evidence as he may deem necessary.

(3) On July 19, 1948, the Special Master addressed a letter jointly to the Solicitor General of the United States and the Attorney General of California requesting that they mutually confer and advise him as to their respective views upon the subject of reference, including the matter of “time requirement” and “the most expeditious and convenient plan of approach to the general subject, with especial reference to the character and nature of proof to be offered and whether verbal or documentary.”

(4) Pursuant to this request counsel for the respective parties met in the office of the Attorney General of the

United States on July 28, 1948. Extended discussion was engaged in, but no agreement upon these matters resulted,—the position of the United States being that all consideration be narrowed and restricted to the three limited segments selected by it, and that no hearings should be held, view of the premises had or evidence received.

(5) Following this the Attorney General of California, on August 6, 1948, sent his reply to the Special Master, setting forth his views and the position of the State of California, and on August 11, 1948 the Solicitor General of the United States submitted his separate views.

(6) On August 27, 1948, the Special Master acknowledged receipt from counsel for each party "of a full and satisfactory letter in answer to my inquiry." He announced that since the Order of this Court requires the Master to make recommendations as to what particular portions of the boundary call for precise determination there is therein specific authorization to report on any separate portion or segment of the entire boundary and that the inquiry to be made would not necessarily be confined to the three specially-mentioned segments but would presumably permit the inclusion and designation of other segments. He stated that he wished to hear counsel, "fully and frankly," before making his conclusion on these matters and requested them to meet him in the Court House of the United States Court of Appeals in Washington, D. C., on September 27, 1948, for such a conference.

(7) This conference was held at the designated time and place. It is documented in 82 pages of transcript on file in this cause. Following the extensive discussion

which was had the Special Master announced that he would review the entire subject and advise counsel as to the course decided upon.

(8) On October 12, 1948, the Special Master addressed a letter to counsel stating that he had re-examined the views expressed at the said conference and had reached the conclusion that under the terms of the Order of Reference the State of California may designate other "segments" located on the California coast in addition to the three segments specifically named, and requested counsel for California on or before October 31st to designate additional segments of coast line which in their opinion may be said to conform to the three specifically designated segments, and to furnish maps and markings which will be useful to him "upon a view of the segments to determine whether the same may be included. . . ." He announced that when this was done his thought was to notify counsel of a date of hearing in California, when the Master would view the several segments and hear witnesses. It was stated that the Court obviously "did not intend that the Master should examine, either as a result of a personal view, or as a result of testimony, the entire coast line."

(9) Pursuant to this letter counsel for California, on October 27, 1948, submitted the requested data to the Special Master. While 104 specific areas along the California coast were listed as being completely in doubt as to status, only six were designated for inclusion in a

recommendation that their lines be ascertained at this time. These are (1) Crescent City Bay, (2) Humboldt and Arcata Bays, (3) Bodega and Tomales Bays, (4) Monterey Bay, (5) San Luis Obispo Bay, and (6) Santa Monica Bay.

(10) In letters addressed to the Special Master on both October 28 and November 18 the Solicitor General expressed "emphatic opposition" to the holding of any hearings and protested the course adopted by the Special Master in the performance of the functions assigned to him.

(11) On November 19, 1948, the Special Master assured the Solicitor General that his objections had received "the most careful consideration" and pointed out that it was his desire not to overstep, in the slightest degree, the limitations imposed upon him by the Supreme Court in the order of his appointment. After again reviewing the subject under discussion he stated his conclusion that for him to make the recommendations to the Supreme Court which he was called upon to make without a personal view and without relevant testimony of witnesses was, in his opinion, wholly out of the question.

(12) In answer to this, the Solicitor General addressed a letter to the Special Master on November 30, 1948, advising him of his preparation of a petition asking this Court to clarify the duties and functions of the Special Master, and that this would be filed as soon as printed. The Motion now pending is the result.

II.

Plaintiff's Motion Does Not Correctly Reflect the Position and Intentions of the Special Master.

The principal ground of the plaintiff's motion is that the Special Master intends to hold hearings on questions "which constitute part of the ultimate issue on the merits."

Counsel for plaintiff have failed to inform the Court that the Special Master has repeatedly stated that he did not intend to take evidence or make any recommendations as to the precise location of the line of demarcation between the "bays, rivers, or other inland waters" and the three-mile belt. That the Special Master knows precisely the scope of his authority and intends to stay within it is set forth in his letter of November 19, 1948, to the Solicitor General (copy of which was furnished to counsel for California), from which we quote:

" . . . I am sure I need not assure you of my desire not to overstep, in the slightest degree, the limitations imposed on me by the Supreme Court in the order of my appointment. That order in specific terms directs the Master 'to make inquiry into this subject and to hold hearings, if he finds it necessary, in order to make recommendations to this court . . . as to what particular portions of the boundary call for precise determination and adjudication.'

"Prior to the entry of the order of reference the United States and California had agreed and represented to the Supreme Court, that there was need of a prompt determination of the boundaries as to three specific segments of the California coast. The state, however, insisted that there was like need for determination of other and additional segments of the coast. . . . I had assumed that it was in

response to this position of the State that the Supreme Court in the order appointing the Master provided that he should report to the court as to the three particular segments and likewise any other segment which he found called for precise determination and adjudication.”

From the above there can be no question but that the Special Master intends to stay within the scope of his authority. What counsel complain of is that they have been unable to persuade the Special Master to base his recommendations wholly on their unsupported statements made in letters and at an informal conference. The Special Master feels, we believe correctly, that he should hold hearings, take evidence and hear argument, as is customary in proceedings of this nature.

Counsel for plaintiff say in their Memorandum in Support of Motion that “The United States has proposed a procedure for making such adjudication” (referring to the questions submitted by the Court to the Master). The fact of the matter is that the only “procedure” proposed by the United States is that the Master recommend to the Court that the Court proceed with the adjudication at this time of only the three segments described in their Petition for the Entry of a Supplemental Decree filed January 1948, and which the Court declined to do without first having a report and the recommendations of a Special Master.

Counsel for plaintiff further base their motion on the assumption that the order appointing a Master is the “substantial equivalent” of counsel’s suggestion that a pre-trial conference be held with one of the members of the Court. (Memorandum in Support of Motion, pp. 4

and 8.) We respectfully submit there is no basis for such an assumption. California, in its Answer to the Petition for the Entry of Supplemental Decree (p. 11), suggested the appointment of a Master "to hold hearings and take evidence and make findings of fact and conclusions of law" as to the three areas referred to by plaintiff and also as to the rest of the coast line. It certainly was never contemplated, and, indeed, would hardly seem necessary, for the Court to appoint a Special Master merely to hold a pre-trial conference.

It is true that the order appointing the Special Master limited his functions to recommendations (a) "as to what particular portions of the boundary call for precise determination and adjudication" at this time and (b) what is "an appropriate procedure to be followed in determining the precise boundary of such segments." As above stated, the Master clearly understands that this is the limit of his authority, but after carefully studying the record and hearing arguments of counsel he has concluded that it will aid him in reaching a conclusion upon which he may make his recommendations *as to these matters* if he views the premises and hears testimony and argument.

For the Court to order him not to hear testimony which he believes necessary in order to reach a conclusion on the precise matters submitted to him by the Court for recommendation would be to deprive him of all discretion and a proper exercise of his judgment. In effect, what counsel ask is that he be ordered to base his recommenda-

tions solely on statements of counsel. To force the Master to do this against his will, when he thinks it necessary to hear evidence in order to be of any assistance to the Court, would be to make him merely a mouthpiece for one or the other of counsel. It is hardly conceivable that a judicial officer of the long experience and high character and ability of the former Chief Justice of the Court of Appeals of the District of Columbia is to be so deprived of all judicial discretion.

The Solicitor General appears to take the position that the Special Master is exceeding his authority and advances his suggestions as to what, and what only, the Special Master can and must do in respect of this reference. He objects to any hearings. He opposes any view by the Special Master. He states that the recommendation of the Special Master "may be appropriately made upon the basis of discussions with counsel and documents submitted by them" (p. 11).

We believe that what the Special Master has done, as well as what he proposes to do, is precisely what he is directed to do in the Order of Reference and the Order of his appointment. In our view, what is sought by the pending Motion would constitute a *new* Order of Reference, dictated by the Solicitor General and circumscribed by such limitations and restrictions as suit his desire and purpose. We deem the Special Master fully qualified to interpret and carry out the Order and direction of this Court and, in our judgment, he is doing just that.

III.

The Issues Submitted to the Master Call for the
Production of Testimony.

The attitude of counsel for plaintiff in this entire matter has been predicated upon the basic fallacy that there is nothing of importance along or adjacent to the California coast line except three oil fields. Counsel argue that because California has not identified any areas which contain oil, in addition to the three described in plaintiff's Petition for Supplemental Decree, it therefore follows that there is no necessity for the present adjudication of the line of demarcation between bays or other inland waters and the three-mile belt.

In the case of *United States of America v. State of California*, the United States is the plaintiff. Its counsel prepared and filed the complaint, and the allegations thereof are its own. It was alleged that the plaintiff

“was and now is the owner in fee simple of or possessed of paramount rights in and powers over, the lands, minerals and other things of value underlying the Pacific Ocean, lying seaward of the ordinary low water mark on the coast of California and outside of the inland waters of the State, extending seaward 3 nautical miles and *bounded on the north and south respectively by the northerly and southerly boundaries of the State of California.*”

Plaintiff's prayer was

“that a decree be entered adjudging and declaring the rights of the United States as against the State

of California *in the area claimed by California*
... .”

This was not an action to declare the rights of the parties in an area less than 30 miles in extent along the 1,100 mile coast line of California. It affected every parcel of property in that State along the coast of the Pacific Ocean, encompassing over 3,000 square miles. It is just as important to determine the status of Crescent City Harbor in the northernmost part of California, where lumber and fishing constitute the chief occupations and resources, as well as that of Humboldt and Arcata Bays, Bodega and Tomales Bays, Monterey Bay, San Luis Obispo Bay, and Santa Monica Bay, not to mention many other areas, as it is to determine the status of the three restricted areas defined in the Petition for Supplemental Decree. It is proper, we believe, and clearly within the scope of the Order of Reference that other similar segments or areas receive consideration as well.

The Solicitor General insists upon restricting all consideration and all recommendations to such areas only in which petroleum is known to exist. From the 1,100 miles of California's coast line three areas encompassing less than 30 miles were selected and all consideration of any other areas in doubt has been persistently opposed by him. While California, in compliance with the request of the Special Master of October 12, 1948, named 104 areas whose status is wholly obscure at this time, only 6 areas from this number were submitted by it for inclusion

as segments to receive consideration in addition to the 3 named in the Plaintiff's Petition for Supplemental Decree.

The obvious truth is that the Court's decree of October 27, 1947, applies with equal force in the entire area lying seaward of the California coast line and outside of inland waters. This decree plainly clouds the title to all land fronting on the coast of California from Oregon to Mexico, and until the line of demarcation is fixed with such accuracy that it can be located on the ground, no one desiring to conduct any operations or deal in any way with real property or property rights along this coast can know where the rights of the State and its grantees end and those of the Federal Government begin. It was for this reason that California urged that the entire line from Mexico to Oregon be fixed in the present proceeding.

It is of course true that on some sections of the coast line there is less activity, with resulting less urgency for adjudication, than on others. This may have been in the Court's mind when it denied California's request for an adjudication of the entire coast line. However, there are segments of the coast line where the need for adjudication is of equally as great urgency as the need in the three segments especially named. As but one example of several that could be cited, we refer to the Motion of the City of Los Angeles for Leave to File a Memorandum as *Amicus Curiae* in Support of California's Answer to the Petition for Supplemental Decree. In this memorandum

(pp. 6 and 12) the City has described the urgent necessity for determining the status and limits of Santa Monica Bay, pointing out that fills and improvements on the submerged lands in Santa Monica Bay are contemplated which will involve the expenditure of several million dollars and that the title to this area is now and will continue to be clouded and left in suspense until the line of demarcation is accurately determined.

The mere fact that the Federal Government has as yet taken no action regarding piers, wharves and similar structures, as alleged by plaintiff on page 7 of its Memorandum in Support of Motion, does not clear the title or settle the question of ownership of this immensely valuable property within the City of Los Angeles or of any other property along the coast.

The Court has asked the Special Master to recommend to it what particular areas or segments of the coast line call for adjudication. There is sharp disagreement between the parties as to this question. This disagreement can be resolved only by hearing evidence, both oral and documentary, as to the necessities which exist in the various areas which are submitted to the Master at his request in the State's letter of October 27, 1948.

IV.

The Inclusion of Other Areas Will Not Cause Delay.

The State disagrees with the view of counsel for plaintiff that the inclusion of other areas or segments of the coast line in the present proceeding will cause protracted, or any, delays. On the contrary, the State believes that it will facilitate the ultimate conclusion of the litigation. Counsel for the United States admit that there are many other areas of the coast line which will at some time in the future require adjudication, but they wish to proceed with only the three areas selected by them at this time. In other words, they wish to litigate the location of the line of demarcation piece by piece—a procedure which obviously would take many years and would, in practical effect, necessitate a multiplicity of legal actions. To take the six or seven areas described in the State's letter to the Master of October 27, 1948, and adjudicate these areas in one proceeding will be a vast saving of the time of the Court, of counsel on both sides and of numerous witnesses.

We do not agree with counsel's statement (p. 7) that "the principles employed in determining the status of the three segments" will necessarily "facilitate the disposition of the problem with respect to the others." No two areas present identical situations. The status of each area must be determined on the basis of its own geographical facts, historical background and other relevant data. There is no general rule or criterion which can be established for all areas.

The statement is made by counsel for plaintiff in their Memorandum (p. 9) that

“Large amounts of petroleum are meanwhile being extracted and drained from the three areas designated by the United States, . . .”

This does not correctly state the situation which exists. It is true that drilling operations to the extent originally authorized under State leases are proceeding in these areas, under a stipulation between the parties which requires that all royalties received by the State be impounded until it shall be determined whether the oil taken from under these leases comes from the area seaward of the low-water mark and outside of inland waters, or not. It is a matter of common knowledge that there is urgent need for the production of this oil for both military and civilian uses, and the highest officials of the United States have urged that this production be continued under the above mentioned stipulation.

Furthermore, this stipulation is a practical necessity and if it did not exist there is great probability that a large number of wells might be shut down, which would not only aggravate the oil shortage but might cause enormous and irreparable loss to all parties through the destruction of the wells. Under the terms of this stipulation this so-called drainage is not causing the United States any loss or damage. Indeed, it is well known that the royalties paid under State leases (and now impounded) are higher than those payable under any presently existing Federal law. And, rather than the alleged effect of operations under the existing Stipulation being to occasion loss or damage to the United States by drainage, the actual effect

is definitely to protect these interests,—to protect them from the drainage of oil beneath the areas in dispute by upland wells on private property which draw from and would deplete the same underground pools.

Furthermore, we desire respectfully to call the Court's attention to the fact that the general decree entered by the Court October 27, 1948, does not actually determine who has control or ownership of any existing oil well which is bottomed beneath the waters along the California coast. The decree, as it stands today, is nothing more than the pronouncement of a general principle which remains wholly inapplicable to any particular land and wholly unenforceable until the precise limits of the area to which this general principle is to be applied are accurately determined. The effect of this general decree, as above stated, places the titles to all lands fronting on the California coast and to all existing oil wells which are bottomed beneath the waters under a cloud and in a state of uncertainty which will not be removed until this line of demarcation is accurately determined.

It must be borne in mind that this area, known as the three-mile belt, which is the subject of the Court's decree, *is within the boundaries of California*. The officers and attorneys of the State therefore believe that the State, as a party to this case, has a right to have this line of demarcation delimiting that portion of the State's territory which is subject to a paramount Federal power from that portion which is not subject to this power fixed, and that the right to have this area defined is not limited to the three small segments which are now known to contain oil, but exists as to the entire area subject to the general decree. If this were not so, the result would be that *as*

to all areas where the line of demarcation is not fixed the Court's decree would amount to nothing more than an abstract or advisory opinion on a general principle, which is of course recognized not to be within the power of the Court to render.

V.

Evidence Is Necessary to Determine the "Appropriate Procedure."

There is a second phase of the Special Master's instructions from the Court; namely, the "appropriate procedure to be followed in determining the precise boundary of such segments." The method to be followed in fixing the seaward limit of the inland waters calls for full and careful consideration of a great many factors as to which the parties are not in agreement. The view of the premises and the testimony which the Master proposes to take will, in our opinion, be of great assistance, if not indispensable, to any recommendation which the Master may desire to make on this question.

We submit, therefore, that on both matters referred by the Court to the Master there is necessity for the taking of evidence, and that the Master should be allowed to exercise his judgment as to what evidence will assist him in making a recommendation which will be helpful to the Court.

We submit, further, that the very fact that there is a dispute between the parties as to which of the various areas call for adjudication first and with the greatest urgency, and that this dispute cannot be resolved by pre-trial conferences, of itself demonstrates that evidence of the necessities is required.

Conclusion.

In conclusion, we submit that the Motion should be denied and the reference proceed in the orderly manner outlined by the Special Master for the performance of his duties and functions. There is no dispute as to that which is to be done,—the protest made goes to the careful and thorough manner in which it is proposed to be done. The Special Master desires to obtain first-hand information upon which to base his recommendations. He believes that without this they might not be of the desired helpfulness to this Court. We deem him fully qualified to follow the Court's order and carry out its reference. We do not share the views of counsel for the plaintiff, nor do we presume to state that the recommendation of the Special Master "may be appropriately made upon the basis of discussions with counsel and documents submitted by them."

Respectfully submitted,

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December 14, 1948.

