No. 6, Original

In the Supreme Court of the United States

OCTOBER TERM, 1946

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF CALIFORNIA

MEMORANDUM IN OPPOSITION TO MOTION OF ROBERT E. LEE JORDAN FOR LEAVE TO INTERVENE

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UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF CALIFORNIA

MEMORANDUM IN OPPOSITION TO MOTION OF ROBERT E. LEE JORDAN FOR LEAVE TO INTERVENE

Robert E. Lee Jordan, an individual citizen, has moved for leave to intervene as a party plaintiff in this proceeding, which is an original suit brought by the United States against the State of California to settle the question of rights in the bed of the marginal sea off the coast of California. Mr. Jordan is an applicant for oil and gas leases covering certain submerged lands in that vicinity, his applications having been filed with the Secretary of the Interior in 1937 under the provisions of the Mineral Leasing Act of February 20, 1920, 41 Stat. 437, as amended, 30 U. S. C. 181 ff. It would appear from the motion and the statement in support thereof that Mr. Jordan is of the opinion that he has a vested interest in the subject matter of this proceeding

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by virtue of his position as a citizen of the United States and a registered applicant for leases under the above mentioned Act, and that he seeks to enlarge the scope of the present proceeding.

The United States opposes the granting of this motion for the following reasons:

1. An application for leave to intervene must be predicated on an adequate interest in the subject matter of the suit and "it is well settled that the only interest which will entitle a person to the right of intervention in a case is a legal interest as distinguished from interests of a general and indefinite character which do not give rise to definite legal rights." *Radford Iron Co.* v. *Appalachian Electric Power Co.,* 62 F. 2d 940, 942 (C. C. A. 4), certiorari denied, 289 U. S. 748. Thus, it has been held that a grantor executing a warranty deed may not intervene as a party defendant in a suit to quiet title brought against his grantee, the interest of the grantor not being "the direct and immediate interest" necessary to support an intervention. *Smith* v. *Gale,* 144 U. S. 509, 519. Similarly, persons engaged in the business of selling leaf tobacco to manufacturers of tobacco products were denied leave to intervene in proceedings involving the dissolution of the American Tobacco Company, their interest being held to be of a "merely general nature and character". *Ex parte Leaf Tobacco Board of Trade,* 222 U. S. 578, 581. And the City of New York, asserting its

rights as a subscriber, was held not to have the requisite interest to intervene in a suit brought by a telephone company to enjoin enforcement of certain orders of a state commission respecting telephone rates. *New York City* v. *N. Y. Tel. Co.*, 261 U. S. 312, 315.

In requesting permission to intervene in this proceeding, Mr. Jordan has shown no direct and immediate interest in the subject matter which would justify admitting him as a party. He refers to Rule 24 of the Federal Rules of Civil Procedure[1] (Statement in Support of Motion, p. 2) and employs language (Motion, p. 1) almost identical with that appearing in Rule 24 by asserting that "the representation of his interest by the original plaintiff is or may be inadequate; that he will be bound by a judgment in the action, that his interest and the main action have questions of law and fact in common, and that his intervention will not to any extent delay or prejudice the adjudication of the rights of the original party." However, this faithful recitation of some of the grounds for intervention set forth in Rule 24 (which covers both Intervention of Right and Permissive Intervention) can serve the applicant no useful purpose if his interest in the subject matter is not such as would warrant intervention.

[1] The Federal Rules are not necessarily controlling here, but they do furnish a sound guide to be followed in the absence of rules to the contrary.

Mr. Jordan contends that he has a vested interest in and a right to leases in lands involved in this proceeding by virtue of his applications for oil and gas leases filed under the provisions of the Mineral Leasing Act, *supra,* as amended.[2] Passing the question whether the Act was intended to embrace offshore oil deposits, it is clear that it did not grant to persons making application thereunder an absolute right to a lease of the lands covered by their applications. On the contrary, it went "no further than to empower the Secretary to execute leases which, exercising a reasonable discretion, he may think would promote the

[2] Section 13 of the Mineral Leasing Act of 1920 (41 Stat. 441, 30 U. S. C. 221) authorized the issuance of "prospecting permits" covering lands "not within any known geological structure of a producing oil and gas field," which under Section 14 (41 Stat. 442, 30 U. S. C. 223) could be exchanged for a lease of a portion of the lands involved upon discovery of oil or gas. Section 17 (41 Stat. 443, 30 U. S. C. 226) authorized the Secretary to lease to the highest responsible bidder any unappropriated deposits of oil and gas within the known geologic structure of a producing field. By the amendatory Act of August 21, 1935 (49 Stat. 674) the prospecting permit system was abolished and, in lieu thereof, provision was made for the issuance of exploratory leases, with the first applicant for a lease of any lands not within any known geologic structure being given "a preference right over others to a lease of such lands without competitive bidding" (49 Stat. 677). To protect certain pending applications, the Secretary was directed to grant to any qualified applicant a prospecting permit, provided the application therefor had been filed ninety days prior to the date of the amendatory Act (49 Stat. 674). Mr. Jordan's applications were filed on April 6, 1937.

public welfare." *United States* v. *Wilbur,* 283 U. S. 414, 419. Indeed, the nature of Mr. Jordan's interest in this regard has already been determined in a mandamus proceeding brought by him to compel the Secretary of the Interior to issue the oil and gas leases for which he has made application. In that case mandamus was denied, the court holding that the granting of the leases applied for is a matter within the discretion of the Secretary of the Interior and that the plaintiff has "no vested right to a lease or leases." *United States ex rel. Jordan* v. *Ickes,* 55 F. Supp. 875, 876 (D. D. C.), affirmed, 143 F. 2d 152 (App. D. C.), certiorari denied, 320 U. S. 801, 323 U. S. 759. Since he has no vested right to a lease or leases therein, it follows that the applicant has no vested interest in the lands here involved. His right under the statute is, at most, merely a preference right over other individuals to a lease of the lands covered by his applications, if and when it is determined that they shall be made subject to lease. Certainly, then, he has no definite and immediate legal interest in the subject matter of the suit. His interest is, in essence, no more direct than that of the approximately 200 persons who have similar applications now pending before the Department of the Interior. See Hearings before the Senate Committee on the Judiciary on S. J. Res. 48 and H. J. Res. 225, 79th Cong., 2d Sess., p. 4. Such an interest is hardly more than "that of the citizens and taxpayers, generally"

of the United States, an interest which in this suit the United States "fully represents." Cf. *Kentucky* v. *Indiana,* 281 U. S. 163, 174.

2. The Government's complaint was filed with the Court in October 1945, and the applicant could have informed himself, at that time, of the nature of the claim asserted by the United States. Now, more than a year later, after the parties to the controversy have completed all procedural preliminaries and the Court has set the cause for argument on the pleadings, the applicant seeks to intervene and have the complaint rewritten to include certain matters which he considers appropriate. Bearing in mind that he cannot, by the device of intervention, enlarge the scope of the litigation framed by the original parties (*Chandler Co.* v. *Brandtjen, Inc.,* 296 U. S. 53, 58), and that his interest in the suit is highly remote, Mr. Jordan's intervention at this stage of the proceeding should not be permitted.

3. Finally, there is grave doubt that the claim asserted by Mr. Jordan is within the original jurisdiction of this Court. The applicant is a citizen of the State of California [3] who seeks to be

[3] In paragraph one of the petition filed by Mr. Jordan in the case of *United States ex rel. Jordan* v. *Ickes*, 55 F. Supp. 875 (D. D. C.), affirmed, 143 F. 2d 152 (App. D. C.), certiorari denied, 320 U. S. 801, 323 U. S. 759, it was alleged "That he is a native citizen of the United States and resides at 3717 Grand Avenue, Huntington Park, Los Angeles, State of California." This petition was, of course, made a part of the record when Mr. Jordan sought review of the case by

made an adverse party in an original proceeding to which California is also a party. But it has long been settled that the original jurisdiction of this Court does not extend to a case in which a State and one of its own citizens are adverse original parties. *Pennsylvania* v. *Quicksilver Company,* 10 Wall. 533, 556; *California* v. *Southern Pacific Co.,* 157 U. S. 229, 261–262; *Minnesota* v. *Northern Securities Co.,* 184 U. S. 199, 246–247; *New Mexico* v. *Lane,* 243 U. S. 52, 58; *Louisiana* v. *Cummins,* 314 U. S. 577; *Georgia* v. *Pennsylvania R. Co.,* 324 U. S. 439, 463. See also *Duhne* v. *New Jersey,* 251 U. S. 311, 313–314; cf. *Monaco* v. *Mississippi,* 292 U. S. 313, 322, 329–330. Whether, in the light of this rule, this Court has power to grant an application for leave to intervene in an original proceeding, when that right is sought by one who could not have been made a party at the outset, presents a question upon which there exists considerable doubt. Cf. *Florida* v. *Georgia,* 17 How. 478.

In view of the foregoing, it is respectfully submitted that the motion should be denied.

GEORGE T. WASHINGTON,
Acting Solicitor General.

DECEMBER 1946.

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this Court on writ of certiorari. No. 423, October Term, 1944.

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