Supreme Court of the United States

October Term, 1949.

No. 12, Original.

UNITED STATES OF AMERICA, *Plaintiff*,

v.

STATE OF LOUISIANA.

MEMORANDUM IN OPPOSITION TO PLAINTIFF'S "MOTION FOR JUDGMENT."

BOLIVAR E. KEMP, JR.,
Attorney General, State of Louisiana.

JOHN L. MADDEN,
Assistant Attorney General,
State of Louisiana.

L. H. PEREZ,
New Orleans, La.

BAILEY WALSH,
F. TROWBRIDGE VOM BAUR,
Washington, D. C.
Of Counsel.

Appearing Specially.

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Statement.

On September 1, 1949, the State of Louisiana, Defendant, filed in the office of this Court a Motion to Dismiss the Complaint on jurisdictional grounds; a Conditional Motion to Dismiss for lack of indispensable parties; a further Conditional Motion for Bill of Particulars; and, in the alternative, a Motion for Extension of Time to file Answer or otherwise plead, that Motion making special reference to Rule 12 (a) of the Federal Rules of Civil Procedure deferring the necessity for further answer until the Motions so filed shall have been acted upon by the Court.

Plaintiff has made no offer to meet the issues raised by these Motions, or to dispute the grounds upon which they are based. Instead, it has filed a Motion for Judgment and

a Statement characterizing the first of the Motions filed by the State of Louisiana as being "of an insubstantial character, calculated to delay the adjudication of this case on the merits". But that Statement specifically mentioned only the Motion challenging the jurisdiction of this Court; the other serious Motions now pending being noticed only by the Statement's erroneous charge that the same Motion attempts "to raise other objections".

This memorandum is an answer to the Government's Motion, to point out reasons why it should be rejected, the principal one of which is the unprecedented request that judgment be rendered only on the Complaint, either with or without argument, *in entire disregard of serious, undisputed defenses that are now pending.*

The False Accusation of Delay.

In its "Statement in Respect to Motion", plaintiff attempts to give the impression that Louisiana somehow already has wrongfully delayed the progress of this lawsuit, by filing documents between January and May, 1949. Plaintiff fails to state that, although it filed its motion for leave to file its complaint on December 21, 1948, it did not file its supporting brief until March 10, 1949, one month after defendant filed its previous document on February 9, 1949.

The charge that the State of Louisiana has engaged in "tactics" that are "contrary to the public interest" is unfounded and unjustified. It does not pretend to have the slightest basis in fact. On the contrary, Defendant has filed its Motion specially answering the allegations of the Complaint with the intention of having those Motions presented and decided by the Court in an orderly way. The State of Louisiana is ready and anxious to have those Motions fixed for oral argument.

Louisiana Has Followed Fixed Procedure.

The State of Louisiana has acted in strict conformity with the requirements of the subpoena and the Order of this Court dated June 13, 1949, and with the rules estab-

lishing the procedure in Federal Courts in the exercise of their original jurisdiction.

The subpoena issued to Louisiana on May 17, 1949, "commanded" Louisiana to "be and appear before the Supreme Court, on or before September 1, 1949 * * * to answer unto the complaint * * * you are not to fail at your peril".

The Order of June 13, 1949, directed the State of Louisiana "to answer the allegations of the complaint within the time specified in the subpoena, otherwise the Plaintiff may proceed *ex parte*".

The language of that order is no different from the subpoena served on Louisiana, nor is it any different from the form of summons found in the appendix of forms (Form 1), in the Federal Rules of Civil Procedure adopted by this Court. That form also directs the defendant to "serve upon plaintiff's attorney . . . an answer to the Complaint" within a specified time, and concludes with a statement:

> "If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint".

The form of the subpoena and order did no more than place the State of Louisiana in the position of any other defendant.

Rule 12 (a) of the Federal Rules of Civil Procedure provides:

> "* * * The Service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement the responsive pleading shall be served within 10 days after the service of the more definite statement."

Rule 12 (b) provides:

> "* * * that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdic-

tion over the subject matter, (2) lack of jurisdiction over the person, * * * (7) failure to join an indispensable party. A motion making any of these defenses shall be made before pleading if a further pleading is permitted."

Rule 12 (e) provides that:

"If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just."

Louisiana has filed the very motions provided for in the above quoted Rules, which automatically defer the filing of serving of a responsive pleading, and plaintiff has failed to dispute the grounds upon which these motions are based, or to meet the issues presented by said motions, which justify the dismissal of its complaint. Yet plaintiff asks that this Court refuse to consider these defenses, properly pleaded on the mere assertion of its legal representatives that the defenses are "insubstantial".

A Demurrer or Motion is an Answer in Law to the Allegations of the Complaint According to the Age-Old Rule.

This Court had occasion to adjudicate upon this very question over 100 years ago, in the exercise of its original jurisdiction.

In *New Jersey* v. *New York,* (1831) 5 Peters 283, 291, the Court had entered the following order:

"* * * it is further decreed and ordered, that unless the defendant, being served with a copy of this decree sixty days before the ensuing August term of this court,

> shall appear on the second day of the next January term thereof *and answer the bill of the complainant,* this court will proceed to hear the cause on the part of the complainant and to decree on the matter of the said bill." (Emphasis added)

Defendant, the State of New York, then filed a demurrer within the time specified. Plaintiff urged that New York had failed to appear and answer by the time fixed in the order, and that the case should be put on its merits.

Chief Justice Marshall, for the Court, rejected this contention and held (6 Peters, 323, 327, in 1832) that a demurrer is an answer in law to a complaint, saying:

> "The demurrer, then being admitted as containing an appearance by the State, the court is of opinion that it amounts to a compliance with the order at the last term. In that order the word 'answer' is not used in a technical sense, as an answer to the charges in the bill under oath; but an answer, in a more general sense, to the bill. *A demurrer is an answer in law to the bill,* though not in a techincal sense, an answer according to the common language of practice. (Emphasis added)
>
> The Court, therefore, direct the demurrer to be set down for argument on the first Monday of March of this term, according to the motion of the plaintiffs."

That decision, the rule of the Court, has been followed consistently in Federal and State Courts, ever since.

Defendant's motion to dismiss on the ground of the Court's lack of jurisdiction of subject matter raises a question of jurisdiction which must be met whenever raised. *Ackerman* v. *Case Co.,* D. C. Wis. 1947, 74 F. Supp. 639.

The absence of indispensable parties alone justifies granting defendants' motion to dismiss complaint for lack of jurisdiction. *American Insurance Co.* v. *Bradley Mining Co.,* D. C. Cal. 1944, 57 F. Supp. 545.

In *Bowles* v. *Glick Bros, Lbr. Co.,* 146 F. (2d) 566, followed in 146 F. (2d) 652, certiorari denied, 65 S. Ct. 1554,

325 U. S. 877, 89 L. Ed. 1994, rehearing denied, 66 S. Ct. 12, 326 U. S. 804, 90 L. Ed. 490, it was held that, if defendant needs additional information to enable him to answer or prepare for trial, the proper procedure is by motion for a more definite statement or for a bill of particulars. (Rule 12 (b) (e))

And in *Blanton* v. *Pacific Mutual Life Ins. Co.*, D. C. N. C. 1944, 4 F. R. D. 200, appeal dismissed 146 F. (2d) 725, it was held that when a motion for bill of particulars was made, the effect of it was automatically to extend the time for answering until after the motion was acted upon, making it unnecessary for defendant to accompany his motion for bill of particulars with a motion for further extension of time to answer. To same effect: *Faske* v. *Radbill,* (1947) F. R. D. 234.

Following are State cases holding, as above, that a demurrer or motion is an answer in law to the complaint:

Aker v. *Coleman,* 60 Idaho 118, 88 P. (2d) 869, 873.
Davidson v. *Graham,* 25 Cal. App. 484, 144 P. 147, 148.
Lord v. *Garland,* 27 Cal. (2d) 840, 168 P. (2d) 5, 11.
Evans v. *Superior Court,* 14 Cal. App. (2d) 743, 59 P. (2d), 159, 160.
Southern Pac. Co. v. *Superior Ct.,* 69 Cal. App. 106, 230 P. 952.
Oliphant v. *Whitney,* 34 Cal. 25, 27.
Woods v. *First Nat. Bank of Chicago,* 314 Ill. App. 340, 41 N. E. (2d) 235.
Thomas v. *Sterling Finance Co.* (Mo. App.), 180 S. W. (2d) 788, 790.
Lyman v. *Bechtel,* 55 Iowa 437, 7 N. W. 673, 674.
Stockham v. *Knollenberg,* 133 Md. 337, 105, A, 305, 307.
Viles v. *Green,* 91 Wis. 217, 64 N. W. 856.
Howell v. *Howell,* 15 Wis. 55, 59.
Rider v. *McElroy,* 194 Ark. 1106, 110 S. W. (2d) 492.
Willis v. *Marks,* 29 Or. 493, 45 P. 293, 294.
Esden v. *May,* 36 Nev. 611, 135 P. 1185, 1187.

Furthermore, the rule originally pronounced by the Court through Chief Justice Marshall in 1832, as the rule

for the original jurisdiction of this Court, has now been embodied by the Court in Rule 12 of the Federal Rules of Civil Procedure; and, therefore, it is the same age-old rule which applies to Louisiana, as a defendant in this Court, as to all other defendants before the courts of the land.

The Court's order cannot be taken to mean, as is contended by plaintiff's legal representatives, that Louisiana has been deprived of her legal right to file answers in law, by demurrers or motions to dismiss the complaint, on the grounds (1) that the allegations of the complaint fail to show that this Court has jurisdiction over the defendant or over the subject matter, and (2) that the allegations of the complaint fail to make the State's lessees who are indispensable parties, parties defendant, herein; and (3) that the allegations of the complaint are so vague, general and insufficient that defendant is unable properly to answer thereto, and that therefore a more definite statement should be made by plaintiff and particulars furnished by it, in the several respects pointed out in defendant's motion.

Boiled down, the contention of the Federal Government actually amounts to this, that this Court should discriminate against Louisiana and treat her differently from all other defendants, by precluding her from making the legal defenses which are available to all other defendants by demurrer or motion.

The Defenses Raised by Demurrers or Motion Are Valid.

(1)

Is it an "insubstantial" defense for a defendant to question the jurisdiction of a court in which the defendant is sued?

The issue of jurisdiction has not been set at rest. The Order of this Court overruling the objections to Leave to File a Complaint did not in any sense hold or state that jurisdiction had been assumed over Louisiana as a party to this lawsuit. Indeed, it could not possibly have so held,

for at that time process had not issued and no attempt had been made to subject Louisiana to the effect of the Complaint that was allowed to be filed, or to the jurisdiction of this Court.

The uniform practice of this Court evidences that the jurisdictional question was not foreclosed. Jurisdictional questions in particular usually have been disposed of in cogent opinions after the granting of motions for leave to file a complaint. *Washington* v. *Northern Securities Company,* 185 U. S. 254, *Louisiana* v. *Texas,* 176 U. S. 1. In *Louisiana* v. *Texas,* jurisdictional questions were raised on Motion for Leave to File the Complaint and leave was nonetheless granted, as "of course". But subsequently Defendants demurred, and *the case was then dismissed for lack of jurisdiction.*

The jurisdictional objection is not a matter of indifferent consequence. The issue goes to the very vitals of the relations between the Federal Government and the State; and we do not believe this Court will treat it lightly nor decide for or against Louisiana without stating reasons for its decision, as plaintiff would now have it do.

(2)

Can it be said that Defendant offers an "insubstantial" defense when moving for dismissal of a Complaint because of the lack of indispensable parties?

That traditional defense is one specifically provided for by the Federal Rules of Civil Procedure. It is one that is particularly important here when the Complaint asks for judgment against defendant State's lessees who have substantial property and legal rights placed at issue, without joining them as defendants.

(3)

Can it be said that a defense is "insubstantial" when a defendant's Motion, which meets the strict language of the Rules of Civil Procedure, seeks an order requiring Plain-

tiff to file a Bill of Particulars and sets out in each and every detail in which the Complaint lacks that particularity and definiteness necessary to enable the defendant properly to file responsive pleadings? (See pages 25 and 29 of Defendant's Motion, filed Sept. 1, 1949).

Conclusion.

The defenses urged by the Motions do specially "answer the allegations of the Complaint".

The defenses are sound and undisputed, and when upheld by the Court will not *delay* the case—they will result in its entire dismissal.

And Defendant respectfully submits that there is no basis for the Motion for Judgment filed by the United States, as there is no juistification for this Court to ignore the defenses raised by demurrer and motion, and therefore, the Motion for Judgment should be denied and Defendant's Motions should be fixed for hearing.

BOLIVAR E. KEMP, JR.,
Attorney General, State of Louisiana.

JOHN L. MADDEN,
Assistant Attorney General,
State of Louisiana.

L. H. PEREZ,
New Orleans, La.

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