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No. 12, Original

In the Supreme Court of the United States

OCTOBER TERM, 1949

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

BRIEF FOR THE UNITED STATES IN SUPPORT OF
MOTION FOR JUDGMENT

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JURISDICTION

The jurisdiction of this Court rests upon Article III, sec. 2, cl. 2, of the Constitution.

QUESTION PRESENTED

Whether, as against the State of Louisiana, the United States has paramount rights in, dominion over, and ownership of the lands, minerals and other things underlying that portion of the Gulf of Mexico which is seaward of the ordinary low-water mark along the coast of Louisiana and outside of the inland waters of the State.

STATEMENT

This suit was instituted for the purpose of establishing the rights of the United States, as against the State of Louisiana, in that portion of the bed of the Gulf of Mexico adjacent to the coast of the State of Louisiana which lies outside the inland waters of the State and which extends seaward for twenty-seven marine miles from the low-water mark on the open coast.¹ The United States filed its motion for leave to file the complaint on December 21, 1948.

Louisiana opposed the Government's motion for leave to file its complaint on the ground that the State could not be sued without its consent. This Court overruled the State's objection and granted leave to file the complaint. 337 U. S. 902. It was ordered that process issue, returnable September 1, 1949. The State's petition for rehearing was denied on June 13, 1949, and it was "directed to answer the allegations of the complaint within the time specified in the subpoena, otherwise the plaintiff may proceed *ex parte*." 337 U. S. 928. Instead of filing an answer to the complaint on the return date, Louisiana filed (i) a "demurrer or motion to dismiss on jurisdictional grounds," and (ii) "conditional motions" to dis-

¹ No claim is here made to any lands under inland waters or to so-called tidelands, *i. e.*, those lying between the ordinary high- and low-water marks.

miss for lack of indispensable parties and for a more definite statement and a bill of particulars. The United States thereupon moved for judgment as prayed in the complaint. On October 10, 1949, the Court denied both sets of motions, and Louisiana was allowed thirty days from October 10 within which to file an answer to the complaint. The answer was filed on November 9, 1949. On November 29, 1949, the United States moved for judgment on the ground that the State's purported defenses were insufficient in law. On December 5, 1949, the Court ordered the case set down for argument on that motion. Supreme Court Journal, 1949 Term, p. 85.

1. It is alleged in the complaint that the United States owns in fee simple, or possesses paramount rights in, and full dominion and power over, these submerged lands; that Louisiana claims some right, title or interest in these lands and has by statute (Act 30 of 1915 (Louisiana Acts, 1915, p. 62), as superseded by Act 93 of 1936 (Louisiana Acts, 1936, p. 276, as amended) undertaken to provide for the leasing of these lands for the exploitation of petroleum, gas and other mineral deposits; that under that law the State has executed leases to various persons and corporations; and that such lessees have drilled wells upon the lands, producing and converting to their own uses quantities of petroleum, gas and other hydro-

carbon substances for which they have paid to the State substantial sums of money (pp. 4-6). The Government asks for a decree declaring the rights of the United States as against the State of Louisiana in the area in question and enjoining the State and all persons claiming under it from continuing to trespass upon the area in violation of the rights of the United States, and requiring the State to account to the United States for money derived by it from the area subsequent to June 23, 1947 (p. 7).²

Louisiana's answer consists of four purported defenses, two of which appear to be directed to the allegations of the complaint, and two of which are described as affirmative defenses:

As a *First Defense*, the State suggests that there is no case or controversy between the parties, that the Court has no jurisdiction in equity over the matter, and that the complaint fails to state a claim upon which relief can be granted.

As a *Second Defense*, it is admitted that the State claims to be the owner in fee simple of the lands described in the complaint; that it has, by general law, authorized the leasing of said lands; that it has negotiated and executed leases for the development of petroleum products located

² June 23, 1947, is the date of this Court's decision in *United States v. California*, 332 U. S. 19, declaring the paramount rights of the United States in lands underlying the open sea below low-water mark.

therein; that wells which are producing petroleum substances have been drilled in such lands; and that neither the State nor any of its lessees has paid to the United States the value of such petroleum products or any royalties thereon. The State denies, however, that its claim of title and the activities of its lessees constitute an interference with the powers of the United States over the area in question.

As a *First Affirmative Defense*, it is alleged that by virtue of its admission to the Union by the Act of April 8, 1812, 2 Stat. 701, on an equal footing with the original states, the State of Louisiana became vested with and now holds fee simple title to all lands under all navigable waters within its territorial limits.

As a *Second Affirmative Defense*, Louisiana presents what appears to be an allegation of adverse possession with respect to the lands, minerals and other things underlying the Gulf of Mexico within the area described in the complaint.

2. The basic historical facts in the background of the controversy are as follows: The territory out of which the State of Louisiana was created was purchased by the United States from France under the Treaty of April 30, 1803, 8 Stat. 200. The only proprietary rights excepted from the transfer were those belonging to inhabitants of the ceded territory, none of which is involved

here (Article III).³ In consideration of the cession the United States undertook to pay France the sum of \$15,000,000.00 (8 Stat. 206, 208). By the Act of March 26, 1804, 2 Stat. 283, the territory thus acquired was divided into two territories, the area south of the Mississippi Territory, and south of the thirty-third degree of north latitude west of the Mississippi River, being designated as the Territory of Orleans. The Act also made provision for the temporary government of the territory thus constituted.

By the Enabling Act of February 20, 1811, 2 Stat. 641 (App. *infra*, pp. 18-21), the inhabitants of the Territory of Orleans, within certain boundaries, were authorized to form a constitution and state government, and by the Act of April 8, 1812, 2 Stat. 701, 703 (App. *infra*, pp. 22-25), the State of Louisiana was admitted to the Union "on an equal footing with the original states, in all respects whatever."

The original boundaries of the State at the time of its admission to the Union are described in almost identical language in the Enabling Act

³ Article III provided (8 Stat. at 202) :

"The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

(2 Stat. 641), the Act of Admission (2 Stat. 701), and the State Constitution of 1812 (Dart, *Louisiana Constitutions* (1932), p. 499 (App. *infra*, pp. 25-26)), and so far as the southern boundary is concerned, the State is described in all three as "bounded by the said gulf [of Mexico] * * * including all islands within three leagues of the coast." *

Louisiana did not by statute undertake to declare a different southern boundary for 126 years,

* It may be noted that the present eastern boundary of the State differs from that prescribed at the time of the State's admission. By the Act of April 14, 1812, 2 Stat. 708, the eastern boundary, south of the thirty-first degree of north latitude was extended eastward to the Pearl River. The exact location of this boundary between the mouth of the Pearl River (which empties into Lake Borgne) and the Gulf proper was not finally resolved until this Court's decree in *Louisiana v. Mississippi*, 202 U. S. 58, in which the Court determined that the eastern boundary passed between Cat Island and Isle à Pitre to the Gulf of Mexico. The western boundary was fixed in the Enabling Act, the Act of Admission, and the State Constitution of 1812 as the middle of the Sabine River.

The words "including all islands within three leagues of the coast" in Louisiana's original boundary description do not mean that all water areas within that distance were within the State's boundaries, and there is nothing in the case of *Louisiana v. Mississippi*, 202 U. S. 1, which so holds. As above indicated, that litigation involved a dispute as to the location of the boundary between those states through the inland waters of Lake Borgne and the Mississippi Sound. Indeed, the Court expressly stated that "questions as to the breadth of the maritime belt" were not before it in that case (202 U. S. at 52). See *United States v. California*, 332 U. S. 19, 37.

and as recently as 1934 that boundary was recognized by the State as being the Gulf of Mexico (Opinions and Reports of the Attorney General of Louisiana, 1934-1936, p. 685). However, by Act 55 of 1938, approved June 30, 1938 (Louisiana Acts, 1938, p. 169; App. *infra*, pp. 26-29) the State declared its southern boundary to be twenty-seven marine miles from the shore line.⁵

SUMMARY OF ARGUMENT

I

The United States has, as against Louisiana, paramount rights in the marginal sea, and as an incident thereto complete dominion over the resources of the bed of that sea. That was the holding of this Court, as against California, in *United States v. California*, 332 U. S. 19. Louisiana, like California, was admitted to the Union "on an equal footing with the original states," and is in exactly the same position as to the marginal sea off its shore. Louisiana, in claiming the bed of that sea and its resources, is simply asserting, without attempting to show that it stands on any different basis, that it is on a better footing than

⁵ No question is here raised as to the *boundary* of Louisiana, although a very serious question may exist as to whether the State may have a boundary that is farther seaward than the 3-mile limit. See *infra*, pp. 16-17. The issue here relates to rights in the submerged lands seaward of the ordinary low water mark, whether they be within or without the State's boundary.

California. So far as rights in the marginal sea are concerned, Louisiana's history is no more favorable to its claim than that of California. The territories from which both States were formed were ceded to the United States by other countries; both were federal territory before their admission to the Union; the pertinent terms of their admission were identical; and their post-admission histories have been similar. If anything, Louisiana is in a worse position than California because until 1938 its boundary ended at the Gulf, while California has from its beginning put its boundary three English miles out to sea.

II

Louisiana has recently sought to extend its boundary, and its title to the submerged offshore lands, to twenty-seven miles from the coast. But it is clear that, regardless of the validity of the attempted extension of the State's *boundary*, the United States has, as against the State, at least the same paramount rights in, and dominion over, the lands underlying the Gulf of Mexico outside the marginal sea, as it has with respect to that belt.

Texas has also recently passed comparable boundary-extension statutes, and the Court is respectfully referred to Point III of the Government's brief in No. 13, Original, for a discussion of the issues raised by this Texas and Louisiana ~~of the issues raised by this Texas and Louisiana~~ *legislation.*

ARGUMENT

I

UNITED STATES v. CALIFORNIA SQUARELY GOVERNS
THIS CASE

Louisiana presents no substantial defenses which were not raised by California, and *United States v. California*, 332 U. S. 19, squarely rules the present suit. There, California asserted ownership of submerged lands and the resources thereof lying between low-water mark on its coast and a boundary claimed by the State as three English miles from shore. Here, as there, “the point of difference is as to who owns, or has paramount rights in and power over * * * land under the ocean off the coast” and “involves the conflicting claims * * * as to which government, state or federal, has a superior right to take or authorize the taking of the vast quantities of oil and gas underneath that land” (332 U. S. at pp. 24-25).

A. In resolving the California dispute, the Court held that (a) the thirteen original colonies did not acquire ownership of the marginal sea, or the underlying soil; and the “equal footing” clause of her admission statute gave California no greater rights (332 U. S. at 30-33, 38-39) (see also *Toomer v. Witsell*, 334 U. S. 385, 402); (b) the United States has asserted and has acquired national dominion and control over the

marginal sea (332 U. S. at 33-34); (c) protection of the three-mile belt has been and is a function of national external sovereignty, because of the belt's close relationship to national defense and the conduct of foreign affairs, which are federal powers and responsibilities (332 U. S. at 34-36); and (d) for these reasons, a State may exercise local police power functions in the part of the marginal sea properly within its declared boundaries, but the United States has paramount rights in and power over the area, including full dominion over the resources of the underlying soil (332 U. S. at 36-37, 38-39).

These principles are universal in their formulation and application, not limited to the test suit against California and its individual facts, and they control the cases of the original thirteen and all the remaining States—unless a particular State can show special reason for different treatment.

B. Louisiana makes no real attempt to differentiate its case from that of California, and it could not well do so, since the pre-admission history of both States, the circumstances of their admission, and their post-admission history, are substantially the same. Both States were formed out of federal territory previously acquired from a foreign country (Mexico in California's case and France in Louisiana's); and, in both cases, the treaty of cession saved only the title to property

which was privately owned (*supra*, pp. 5-6).⁶ It is not, and cannot be, denied that, in both instances, after the territory became American and before the new States were admitted, whatever rights or claims there then were in the lands beneath the marginal sea belonged solely to the United States.

In all respects pertinent to this case, except one, the California and Louisiana admission or enabling statutes had similar provisions.⁷ Both contained the usual "equal footing" clause:

⁶ In the case of Louisiana, Article II of the Treaty of 1803 with France provided, in part (8 Stat. at 202) :

"In the cession made by the preceding article are included the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices which are not private property. * * *"

⁷ A preliminary enabling act (Act of February 20, 1811, 2 Stat. 641, *infra*, p. 18-21), authorized the inhabitants of Louisiana to form a State government and adopt a constitution; this was done, and after approval of the constitution by Congress, the new State was admitted by the Act of April 8, 1812, 2 Stat. 701, *infra*, p. 22-25. In California's case, the proposed State constitution was drawn up, in 1849, without authorization by Congress, but with the support of the Governor appointed by the Secretary of War; thereafter the constitution was submitted to Congress, and the new State was admitted by the Act of September 9, 1850, 9 Stat. 452. See Brief for the United States, Oct. Term 1946, No. 12, Original, pp. 60-62. There is no suggestion that anything turns on this procedural difference in the way California and Louisiana joined the Union.

Similarly, nothing can turn on the fact that Louisiana was an organized territory prior to its admission, and California an unorganized territory.

“That the said state shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever * * *” (2 Stat. at 703, *infra*, p. 23;⁸ 9 Stat. 452 (California statute)). There are no other relevant clauses, except that, in both cases, the new State was required to agree to disclaim all right, title or interest in the public lands within the State. The Louisiana term of admission provides for an irrevocable ordinance

that the people inhabiting the said territory do agree and declare, that they for ever disclaim all right or title to the waste or unappropriated lands, lying within the said territory; and that the same shall be and remain at the sole and entire disposition of the United States. * * * [2 Stat. at 642, *infra*, p. 20].

The California statute spoke of the “public lands within its limits.” 9 Stat. 452.

The one difference in admission terms—and it is unfavorable to Louisiana’s claim—is that the boundaries of California, at the time of its admission, extended three English miles into the sea,

⁸ The Louisiana enabling Act of February 20, 1811, provided for the admission of the new State “upon the *same* footing with the original states” (italics supplied) (2 Stat. at 643, *infra*, p. 21), but its title referred to the “admission of such state into the Union, on an *equal* footing with the original states * * *” (italics supplied) (2 Stat. 641, *infra*, p. 18).

while Louisiana's stated boundary, at the time of its admission and for over a century thereafter, apparently ended at the Gulf of Mexico. See *supra*, pp. 6-8.

There is likewise no material difference, favorable to Louisiana, in the post-admission history of the two States, with respect to the marginal sea, and Louisiana's answer alleges no effective difference.

C. In these circumstances, there can hardly be any denial that the *California* decision squarely governs. Louisiana's "equal footing" clause did not endow it with any greater title or right to the submerged lands than that held by the original states or by California, and it is now settled that these States never acquired ownership of the marginal sea. *United States v. California*, 332 U. S. at 30-33, 38-39; *Toomer v. Witsell*, 334 U. S. 385, 402.⁹ Unlike Texas, there is no other clause in its admission terms to which Louisiana points, and its prior history is the same as that of California.¹⁰ And unlike California (332 U. S. at 39), Louisiana's answer does not even allege that the Fed-

⁹ Louisiana's First Affirmative Defense apparently rests wholly on the "equal footing" clause, in direct conflict with this Court's two recent holdings.

¹⁰ The decision in the *California* case was not based on the "public lands" clause of the California admission act (*supra*, p. 13), and we do not find it necessary to contend that Louisiana gave up potential claims to offshore lands by virtue of the "waste or unappropriated lands" clause of her enabling statute (*supra*, p. 13).

eral Government's paramount right had been lost by reason of the post-admission conduct of its agents.¹¹ If that defense were raised here, it would, of course, be subject to precisely the same answer as the Court gave to California (332 U. S. at 39-40).

It must follow that Louisiana stands on no better footing than California, so far as the three-mile belt is concerned, and the United States is entitled to prevail under the holding in the earlier case.

II

THE UNITED STATES HAS, AS AGAINST LOUISIANA, AT LEAST THE SAME PARAMOUNT RIGHTS IN, AND DOMINION OVER, THE LANDS UNDERLYING THE GULF OF MEXICO OUTSIDE THE MARGINAL SEA, AS IT HAS WITH RESPECT TO THE MARGINAL SEA

The case does vary from that of California to this extent:—while California claimed a seaward boundary only three English miles from its shore line, and therefore asserted ownership of lands lying wholly within the marginal sea as recognized in international law and by the United

¹¹ The Second Affirmative Defense merely asserts that the State has long been in possession, without challenge, of the disputed area. This Defense appears to be one of adverse possession or prescription, though it is not so labeled, and, as such, must fall for the reasons given in the *California* decision, 332 U. S. at 39-40. See also Brief of the United States in Support of the Motion for Judgment in *United States v. Texas*, this Term, No. 13, Original, at pp. 63-65 (discussion of Texas' explicit defense of prescription).

States, Louisiana claims a boundary twenty-seven marine miles from its shore, and claims to own the submerged lands within those limits. *Supra*, p. 8. The Government's complaint asserts that the United States "was and now is the owner in fee simple of, or possessed of paramount rights in, and full dominion and power over, the lands, minerals, and other things underlying the Gulf of Mexico, lying seaward of the ordinary low-water mark on the coast of Louisiana and outside of the inland waters, *extending seaward twenty-seven marine miles* and bounded on the east and west, respectively, by the eastern and western boundaries of the State of Louisiana" (Complaint, par. II, italics supplied).

The State of Texas has also attempted to extend its boundaries beyond the marginal sea, and has also asserted ownership in the bed of the Gulf within the area so extended. In our Brief in Support of the Motion for Judgment in *United States of America v. State of Texas*, this Term, No. 13, Original, pp. 69–80, we discuss the effect of these boundary-extension statutes, and urge that, regardless of a State's constitutional power to extend its *boundaries*, the United States has, as against the State, at least the same paramount rights in, and dominion over, the lands beneath the ocean outside of the marginal sea, as it has with respect to that belt (pp. 69–72). Although such issues need not be determined in these

actions, we also point out the grave constitutional questions raised by the Texas and Louisiana boundary-extension statutes (pp. 72-75).

This discussion and argument in Point III of the *Texas* brief is equally applicable to the instant case, and we respectfully refer the Court to that brief for a consideration of the rights of the United States, as against Louisiana, in the area beyond the marginal sea which Louisiana now claims.

CONCLUSION

The motion for judgment should be granted.
Respectfully submitted.

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APPENDIX

1. Act of February 20, 1811, 2 Stat. 641:

CHAP. XXI.—*An Act to enable the people of the Territory of Orleans to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states, and for other purposes*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the inhabitants of all that part of the territory or country ceded under the name of Louisiana, by the treaty made at Paris on the thirtieth day of April, one thousand eight hundred and three, between the United States and France, contained within the following limits, that is to say: beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of the said river, including all islands to the thirty-second degree of latitude; thence due north, to the northernmost part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the river Mississippi; thence down the said river to the river Iberville; and from thence along the middle of the said river and lakes Maurepas and Ponchartrain, to the gulf of Mexico; thence bounded by the said gulf to the place of beginning; including all islands within three leagues of the coast, be, and they are hereby authorized to form for themselves a constitution and state government, and to assume such name as they may

deem proper, under the provisions and upon the conditions herein after mentioned.

SEC. 2. *And be it further enacted*, That all free white male citizens of the United States, who shall have arrived at the age of twenty-one years, and resided within the said territory, at least one year previous to the day of election, and shall have paid a territorial, county, district or parish tax: and all persons having in other respects the legal qualifications to vote for representatives in the general assembly of the said territory, be, and they are hereby authorized to choose representatives to form a convention, who shall be apportioned amongst the several counties, districts and parishes, within the said territory of Orleans, in such manner as the legislature of the said territory shall by law direct. The number of representatives shall not exceed sixty; and the elections for the representatives aforesaid shall take place on the third Monday in September next, and shall be conducted in the same manner as is now provided by the laws of the said territory for electing members for the House of Representatives.

SEC. 3. *And be it further enacted*, That the members of the convention, when duly elected, be, and they are hereby authorized to meet at the city of New Orleans, on the first Monday of November next, which convention, when met, shall first determine, by a majority of the whole number elected, whether it be expedient or not, at that time, to form a constitution and state government, for the people within the said territory, and if it be determined to be expedient, then the convention shall in like manner declare, in behalf of the people of the said territory, that it adopts the constitution of the United States; where-

upon the said convention shall be, and hereby is authorized to form a constitution and state government, for the people of the said territory: *Provided*, the constitution to be formed, in virtue of the authority herein given, shall be republican, and consistent with the constitution of the United States; that it shall contain the fundamental principles of civil and religious liberty; that it shall secure to the citizen the trial by jury in all criminal cases, and the privilege of the writ of *habeas corpus*, conformably to the provisions of the constitution of the United States; and that after the admission of the said territory of Orleans as a state into the Union, the laws which such state may pass shall be promulgated, and its records of every description shall be preserved, and its judicial and legislative written proceedings conducted, in the language in which the laws and the judicial and legislative written proceedings of the United States are now published and conducted: *And provided also*, that the said convention shall provide by an ordinance, irrevocable without the consent of the United States, that the people inhabiting the said territory do agree and declare, that they forever disclaim all right or title to the waste or unappropriated lands, lying within the said territory; and that the same shall be and remain at the sole and entire disposition of the United States; and, moreover, that each and every tract of land, sold by Congress, shall be and remain exempt from any tax, laid by the order or under the authority of the state, whether for state, county, township, parish or any other purpose whatever, for the term of five years from and after the respective days of the sales thereof; and that the lands, belonging to citizens of the United

States, residing without the said state, shall never be taxed higher than the lands belonging to persons residing therein; and that no taxes shall be imposed on lands the property of the United States; and that the river Mississippi and the navigable rivers and waters leading into the same or into the gulf of Mexico, shall be common highways and for ever free, as well to the inhabitants of the said state as to other citizens of the United States, without any tax, duty, impost or toll therefor, imposed by the said state.

SEC. 4. *And be it further enacted*, That in case the convention shall declare its assent, in behalf of the people of the said territory, to the adoption of the constitution of the United States, and shall form a constitution and state government for the people of the said territory of Orleans, the said convention, as soon thereafter as may be, is hereby required to cause to be transmitted to Congress the instrument, by which its assent to the constitution is thus given and declared, and also a true and attested copy of such constitution or frame of state government, as shall be formed and provided by said convention, and if the same shall not be disapproved by Congress, at their next session after the receipt thereof, the said state shall be admitted into the Union, upon the same footing with the original states.

SEC. 5. *And be it further enacted*, That five per centum of the net proceeds of the sales of the lands of the United States, after the first day of January, shall be applied to laying out and constructing public roads and levees in the said state, as the legislature thereof may direct.

Approved, February 20, 1811.

2. Act of April 8, 1812, 2 Stat. 701:

CHAP. L.—*An Act for the admission of the State of Louisiana into the Union, and to extend the laws of the United States to the said state*

Whereas, the representatives of the people of all that part of the territory or country ceded, under the name of "Louisiana," by the treaty made at Paris, on the thirtieth day of April, one thousand eight hundred and three, between the United States and France, contained within the following limits, that is to say: beginning at the mouth of the river Sabine; thence, by a line to be drawn along the middle of said river, including all islands to the thirty-second degree of latitude; thence, due north, to the northernmost part of the thirty-third degree of north latitude; thence, along the said parallel of latitude, to the river Mississippi; thence, down the said river, to the river Iberville; and from thence, along the middle of the said river, and lakes Maurepas and Ponchartrain, to the gulf of Mexico; thence, bounded by the said gulf, to the place of beginning, including all islands within three leagues of the coast; did, on the twenty-second day of January, one thousand eight hundred and twelve, form for themselves a constitution and state government, and give to the said state the name of the state of Louisiana, in pursuance of an act of Congress, entitled "An act to enable the people of the territory of Orleans to form a constitution and state government, and for the admission of the said state into the Union, on an equal footing with the original states, and for other purposes:" And the said constitution having been transmitted to Congress, and by them being hereby approved; therefore

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the said state shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever, by the name and title of the state of Louisiana: *Provided*, that it shall be taken as a condition upon which the said state is incorporated in the Union, that the river Mississippi, and the navigable rivers and waters leading into the same, and into the gulf of Mexico, shall be common highways, and for ever free, as well to the inhabitants of the said state as to the inhabitants of other states and the territories of the United States, without any tax, duty, impost or toll therefor, imposed by the said state; and that the above condition, and also all the other conditions and terms contained in the third section of the act, the title whereof is herein before recited, shall be considered, deemed, and taken, fundamental conditions and terms, upon which the said state is incorporated in the Union.

SEC. 2. *And be it further enacted*, That until the next general census and apportionment of representatives, the said state shall be entitled to one representative in the House of Representatives of the United States; and that all the laws of the United States, not locally inapplicable, shall be extended to the said state, and shall have the same force and effect within the same, as elsewhere within the United States.

SEC. 3. *And be it further enacted*, That the said state, together with the residue of that portion of country which was comprehended within the territory of Orleans, as constituted

by the act, entitled "An act erecting Louisiana into two territories, and providing for the temporary government thereof," shall be one district, and be called the Louisiana district; and there shall be established in the said district, a district court, to consist of one judge, who shall reside therein, and be called the district judge; and there shall be, annually, four stated sessions of the said court held at the city of Orleans; the first to commence on the third Monday in July next, and the three other sessions progressively, on the third Monday of every third calendar month thereafter. The said judge shall, in all things, have and exercise the same jurisdiction and powers which, by the act, the title whereof is in this section recited, were given to the district judge of the territory of Orleans; and he shall be allowed an annual compensation of three thousand dollars, to be paid quarter yearly at the treasury of the United States. The said judge shall appoint a clerk of the said court, who shall reside, and keep the records of the court, in the city of Orleans, and shall receive for the services performed by him, the same fees heretofore allowed to the clerk of the Orleans territory.

SEC. 4. *And be it further enacted*, That there shall be appointed in the said district, a person learned in the law, to act as attorney for the United States, who shall, in addition to his stated fees, be paid six hundred dollars, annually, as a full compensation for all extra services. There shall also be appointed a marshal for the said district, who shall perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees to which marshals in other districts are entitled for similar services; and shall, moreover, be paid two hundred dollars,

annually, as a compensation for all extra services.

SEC. 5. *And be it further enacted*, That nothing in this act shall be construed to repeal the fourth section of an act, entitled, "An act for laying and collecting duties on imports and tonnage within the territories ceded to the United States, by the treaty of the thirtieth of April, one thousand eight hundred and three, between the United States and the French republic; and for other purposes;" and that the collection district shall be and remain as thereby established.

SEC. 6. *And be it further enacted*, That this act shall commence and be in force from and after the thirtieth day of April, eighteen hundred and twelve.

Approved, April 8, 1812.

3. The preamble of the **Louisiana Constitution of 1812** provides as follows:

We, the Representatives of the People of all that part of the Territory or country ceded under the name of Louisiana, by the treaty made at Paris, on the 30th day of April, 1803, between the United States and France, contained in the following limits, to wit: beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of said river, including all its islands, to the thirty second degree of latitude—thence due north to the Northernmost part of the thirty third degree of north latitude—thence along the said parallel of latitude to the river Mississippi—thence down the said river to the river Iberville, and from thence along the middle of the said river and lakes Maurepas and Pontchartrain to the Gulf of Mexico—thence bounded by the said Gulf to the place of beginning, including all

Islands within three leagues of the coast—in Convention Assembled by virtue of an act of Congress, entitled “an act to enable the people of the Territory of Orleans to form a constitution and State government and for the admission of said State into the Union on an equal footing with the original States, and for other purpose;” In order to secure to all the citizens thereof the enjoyment of the right of life, liberty and property, do ordain and establish the following constitution or form of government, and do mutually agree with each other to form ourselves into a free and independent State, by the name of the State of Louisiana.

4. Act 55 of 1938, approved June 30, 1938, Louisiana Acts 1938, p. 169, 6 Dart, Louisiana General Statutes (1939) sections 9311.1–9311.4:

AN ACT

To declare the sovereignty of Louisiana along its seacoast and to fix its present seacoast boundary and ownership.

Whereas dominion, with its consequent use, ownership and jurisdiction, over its marginal waters by a State has found support because it is the duty of a State to protect its citizens whose livelihood depends on fishing, or taking from said marginal waters the natural products they are capable of yielding; also, has found support in that sufficient security must exist for the lives and property of the citizens of the State;

Whereas, according to the ancient principles of international law it was generally recognized by the nations of the world that the boundary of each sovereign State along the seacoast was located three marine miles

distant in the sea, from low water mark along its coast on the open sea;

Whereas, the seaward boundary of each sovereign State as so fixed is generally known as the three-mile limit of such State;

Whereas, the said three-mile limit was so recognized as the seaward boundary of each sovereign State, because at the time it became so fixed, three marine miles was the distance of a cannon shot and was considered the distance at which a State could make its authority effective on the sea by the use of artillery located on the shore;

Whereas, since the said three-mile limit was so established as the seaward boundary of each sovereign State, modern cannon have been improved to such an extent that now many cannon shoot twenty-seven marine miles and more and by the use of artillery located on its shore a State can now make its authority effective at least twenty-seven marine miles out to sea from low water mark;

Whereas, by the Act of Congress of February 20th, 1811, by which the State of Louisiana was admitted to the United States as a State, the southern boundary of Louisiana was fixed as follows: "thence bounded by the said gulf to the place of beginning, including all islands within three leagues of the coast;"

Whereas, therefore, the gulfward boundary of Louisiana is already located in the Gulf of Mexico three leagues distant from the shore, a width of marginal area made greater, by the above Act and agreement, than the well-accepted and inherent three-mile limit;

Whereas, a State can define its limits on the sea;

Whereas, the State of Louisiana owns the waters of the sea and the waters of the arms of the sea and the bed of the sea, the bed of the arms of the sea, and the seashore and the shores of all arms of the sea as far inland as the high water mark within the territory of the State of Louisiana; and

Whereas, the State of Louisiana, including all parts thereof and all territory that may be added thereto, forms a part of the United States of America, over which the said United States is authorized to exercise and exercises such powers and jurisdiction as the said United States is authorized by the Constitution of the United States to exercise thereover;

Section 1. Be it enacted by the Legislature of Louisiana, That the gulfward boundary of the State of Louisiana, is hereby fixed and declared to be a line located in the Gulf of Mexico parallel to the three-mile limit as determined according to said ancient principles of international law, which gulfward boundary is located twenty-four marine miles further out in the Gulf of Mexico than the said three-mile limit.

Section 2. That, subject to the right of the government of the United States to regulate foreign and interstate commerce under Section 8 of Article 1 of the Constitution of the United States, and to the power of the government of the United States over cases of admiralty and maritime jurisdiction under Section 2 of Article 3 of the Constitution of the United States, the State of Louisiana has full sovereignty over all of the waters of the Gulf of Mexico and of the arms of the Gulf of Mexico within the boundaries of Louisiana, as herein fixed, and over the beds and shores of the Gulf of Mexico and all

arms of the said Gulf within the boundaries of Louisiana, as herein fixed.

Section 3. That the State of Louisiana owns in full and complete ownership the waters of the Gulf of Mexico and of the arms of the said Gulf and the beds and shores of the Gulf of Mexico and the arms of the Gulf of Mexico, including all lands that are covered by the waters of the said Gulf and its arms either at low tide or high tide, within the boundaries of Louisiana, as herein fixed.

Section 4. That this Act shall never be construed as containing a relinquishment by the State of Louisiana of any dominion sovereignty, territory, property, or rights that the State of Louisiana already had before the passage of this Act.

