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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1949.

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No. 12, Original.

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UNITED STATES OF AMERICA, *Plaintiff,*

v.

STATE OF LOUISIANA.

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**PETITION FOR REHEARING**

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**TO THE HONORABLE CHIEF JUSTICE AND  
ASSOCIATE JUSTICES OF THE SUPREME  
COURT OF THE UNITED STATES:**

The State of Louisiana, acting pursuant to Rule 33 of the Rules of this Court, hereby petitions the Court for a rehearing of its decision herein rendered on June 5, 1950, this petition being supported by the following grounds:

I.

The Court erroneously assumed jurisdiction of this suit by the United States against the State of Louisiana, an original proceeding, as was pointed out in Defendant's special Objections and Motions on

Jurisdictional grounds, which are now urged again in support of this petition for rehearing.

## II.

The decision is not based on any provision of the Constitution or any laws of the United States, but is violative of the Constitution and of the property rights of the States of the Union secured by treaty, the supreme law of the land.

## III.

The decision violates the rights of Louisiana in that:

(a) Louisiana by the Act of April 8, 1812 was admitted into the United States "on an equal footing with the original States, in all respects whatever;"

(b) It confiscates property rights flowing from the plain terms of the Treaty between the United States and Great Britain on April 11, 1783 whereby there were relinquished to the original States by name "all claims to the government, proprietary and territorial rights of the same, and every part thereof";

(c) Which Treaty was made the "supreme law of the land" (U. S. Constitution, Art. VI, Cl. 2);

(d) And "the people of each State became themselves sovereign; and in that character hold the abso-

lute right to all their navigable waters and the soils under them for their own common use" (*Martin v. Waddell* (1842), 16 Pet. 367);

(e) "There could be no acquisition of territory made by the United States distinct from or independent of some one of the States" (*Harcourt v. Gaillard* (1827), 12 Wheat, 523);

(f) It being the true rule, settled long ago in *Pollard's Lessee v. Hagan* (1845), 3 How. 212, when "by the preceding course of reasoning" the Court "arrived at these general conclusions: first, the shores of navigable waters and the soils under them were not granted by the Constitution to the United States, but were reserved to the States, respectively. Secondly, the new States have the same rights, sovereignty and jurisdiction over this subject as the original States." The same rule in *Shively v. Bowlby* (1893), 152 U. S. 1, having been emphasized by saying "the new States admitted into the Union since the adoption of the Constitution have the same rights as the original States in the tidewaters and in the lands under them within their respective jurisdictions";

(g) And it was recognized in *Pollard's Lessee v. Hagan*, that "this right of eminent domain over the shores and soils under the navigable waters for all

municipal purposes belongs exclusively to the States within their respective territorial jurisdiction and they, and they only, have the constitutional power to exercise it"; and because in that case this Court also recognized that Alabama (and Louisiana has the same right) had "extended all her sovereign power into the sea", . . . "subject to the Constitution of the United States and the laws which shall be made in pursuance thereto."

#### IV.

The decision contravenes the provisions of the Treaty between the French Republic and the United States of America, signed at Paris, on April 30, 1803, in which the territory of Louisiana was ceded to the latter named sovereign. Under that Treaty, as interpreted by the Court in *New Orleans v. United States*, 10 Pet. 662, the United States acquired no property rights except title to vacant lands which it could then sell and convey. To the inhabitants of the territory devolved the ownership of all other non-alienable property of a public nature, including the "rivers, the sea and its shores" (p. 720, *id.*)

#### V.

The decision is confiscatory, in that the State of Louisiana is thereby deprived of sovereign property

rights to lands within its original boundaries and by it held in fee simple title since 1812. The Act of Congress of April 8, 1812, admitting Louisiana into the Union, recited that said state was "bounded by the said gulf (of Mexico) . . . including all islands within three leagues of the coast." By adopting the low-water mark along the coast of Louisiana as the terminus of state-owned property, large areas of sovereign state lands within the original territory of Louisiana are exiled and brought within the sphere of exclusive federal control.

## VI.

Once the Court brushed the question of title aside, no actual justiciable issue was before it. Louisiana admitted the paramount rights, dominion and power of the United States in the area, to the full extent of its powers under the Constitution, laws and treaties of the United States.

## VII.

The decision is erroneous in failing to give weight to *Toomer v. Witsell*, 334 U. S. 385, and in attempting to differentiate the rule in that case by making reference to "conflicting federal policy." That case recognizes the right of a state to control a valuable resource in the marginal sea in the absence of federal legislation. In this case, as in *Toomer v. Witsell*, no federal

legislation existed. The two cases are strikingly parallel. The Court erroneously applied Louisiana's admission as a denial when it said, "The question here is not the power of a state to use the marginal sea or to regulate its use in absence of a conflicting federal policy; it is the power of a state to *deny* the paramount authority which the United States seeks to assert over the area in question." Merely to allege that the paramount rights, dominion and power of the United States in the area are subject to the Constitution, laws and treaties of the United States, is not to deny such paramount authority.

### VIII.

The Court erred in saying that "The United States, acting through its Attorney General . . . has authority to assert claims of this character. . . ." While the Attorney General has authority to appear in court to urge claims on behalf of the Federal Government, he cannot decide what governmental powers will be exercised or asserted, *when assertion of power* can only be made by Congress.

### IX.

The statement made in the Court's opinion that "*United States v. California*, 332 U. S. 19, controls this case," is an insupportable conclusion; for example:



(a) California *denied* the paramount authority of the United States in the area, conceding only that it had regulatory powers there, while Louisiana *admitted* the paramount rights, dominion and power of the Federal Government in the area, to the full extent of its powers under the constitution, laws and treaties of the United States;

(b) While California and Louisiana both asserted fee simple title to the lands, minerals and other things involved in the respective suits, Louisiana did not follow California's course in contending that "the state alone had the jurisdiction to regulate its own property" in the area (California's Brief, p. 104; Appendices to California's Brief, p. 159). Thus the Court indicated in the *California* case that California had sought to "block off" the marginal sea for its own use (332 U. S. 19, p. 32). Nothing in Louisiana's answer, brief and argument can be construed as an intent by this state to exclude the United States from exercising any constitutional right, power, control or authority in the area, provided the same is first asserted by Congress;

(c) Unlike California's claim of ownership, Louisiana's title stems from a treaty of cession, and proprietary rights which the United States never acquired were granted to the inhabitants of the ceded territory

to be vested in the State (Louisiana) to be admitted into the Union under the principles of the Federal Constitution;

(d) Both California and Louisiana pleaded lack of justiciable controversy, but the two pleas were based upon entirely different propositions. As will later be shown in this petition, the Court gave no consideration to Louisiana's plea in that respect.

## X.

Plaintiff has shown no controversy, or right to relief, with respect to the paramount rights, dominion and power of the United States. And plaintiff is not entitled to judgment on the issue of title, for this Court has held, in effect, that the United States does not have title to lands beneath the marginal sea. In the *California* case, plaintiff asserted fee simple title to the marginal sea, but this Court flatly rejected that claim by refusing to include the words "of proprietorship" in its decree. This is clearly pointed out by Mr. Justice Frankfurter's opinion herein. And, as set forth before, the opinion is erroneous in requiring a decree to be rendered that must be based on title while, at the same time, holding that title is not at issue.

## XI.

In refusing Louisiana a trial and holding that the issue "does not turn on title or ownership in the con-

ventional sense", and at the same time appropriating proprietary rights to the United States by virtue of its governmental powers and authority, the effect of the decision is to confiscate property of the State and its citizens in their united sovereignty by judicial decree, all in violation of the Constitution.

## XII.

The issue of title was squarely presented to the Court, and no other justiciable issue was triable. This action, so far as fee simple title is concerned, is, in essence, an action for the recovery of real property, that is, an action in common law ejectment. Under the Common Law of 1776, such an action was triable by jury, and it is triable now by jury under the Seventh Amendment of the Constitution. The Court erred, first, in pretermittting the only real issue involved in the case, namely: title, and second, in refusing to grant a trial by jury.

## XIII.

The decision herein is particularly in error in failing to give any consideration to the defense and argument that there is no law of Congress under which any of the acts being performed by Louisiana could be exercised under federal permit or lease. The Court assumes a controversy to exist, but none does or can

exist, until and unless Congress passes legislation which gives the United States the right to do what the State of Louisiana is authorized to perform by its legislature, and thereafter Louisiana continues to act and federal and state powers come into actual conflict.

#### XIV.

While the complaint in the action relates to lands, minerals and other things of value underlying the Gulf of Mexico, the opinion treats the assertion of federal power as though it were limited to oil. The decision, therefore, presents the shocking result that would follow should the Attorney General rather than Congress be regarded as holding the authority to translate a dormant right into a grant of power to be exercised.

#### XV.

The decision of the Court is wholly illogical, in that a money judgment, through a financial accounting, is required in order that the United States may protect and control the area involved and serve "national interests, national responsibilities, national concerns." The fact that "national rights must therefore be paramount in that area" does not mean that political supremacy is a thing to be measured in terms of dollars and cents.

## XVI.

It is submitted that the decision is not only erroneous but unconscionable, illogical, unenforceable and impossible in requiring a financial accounting. Reasons follow:

(a) An accounting for money received from real property can only be demanded by the owner. The United States was not declared to be the owner of the lands and resources involved in the cause, nor was the State of Louisiana held to be a trespasser.

Fundamentally a financial accounting can be due only to one having a proprietary right or interest. In this respect the opinion and decision are contradictory within themselves as the Court said that "the issue in this class of litigation does not turn on title or ownership in the conventional sense." That statement, of course, is erroneous as the issue does turn on title or ownership when one deals with the right to produce and appropriate to one's own use a valuable natural resource or other bounties of the area involved.

(b) A financial accounting has no relation whatever to the obligations of the United States to protect the area of the marginal sea. There is no legal or logical ground for saying that the State of Louisiana should be required to account to the United States be-

cause of the latter's obligations in the realm of external sovereignty.

(c) According to the opinion, title or ownership is not at issue and, therefore, the United States, not being declared the owner of the soil or minerals therein, can recover nothing from Louisiana for revenues derived therefrom.

(d) If it could or should properly be held that the State of Louisiana must account; if title could be vested in the United States because the State has none, good conscience would require the accounting to be made to those who show financial loss and who paid the State by acting on the decisions of this Court that have been in the books for more than a century supporting State ownership of all lands beneath navigable waters within their respective jurisdictions.

The present decision, by granting the relief prayed for, is contrary to that jurisprudence although there is nothing in the decision upon which the United States can say that a proprietary right in it has been recognized by the Court. The proprietorship is actually the basic question to be decided.

## CONCLUSION

It is earnestly submitted that a rehearing of the Court's decision herein is warranted on the foregoing

grounds. And it is urged that the decision be reversed on said grounds; or that, in the alternative, the petition be granted and the case set for further argument.

Respectfully submitted,

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