No. 12, Original

In the Supreme Court of the United States

OCTOBER TERM, 1950

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

MEMORANDUM IN REGARD TO THE STATE'S OBJECTIONS TO THE DECREE PROPOSED BY THE UNITED STATES

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This memorandum is in response to Louisiana's objections to the decree proposed by the United States and to the memorandum filed in support of those objections.

I

There is clearly no basis for the State's objections numbered 1 and 2 (Objections, pp. 1–2, 5), which are directed to paragraph 1 of the proposed decree. As has been heretofore pointed out (Memorandum in Support of Proposed Decree, p. 4), paragraph 1 is in the same form as paragraph 1 of the decree entered in *United States* v. *California,* 332 U. S. 804, 805, modified to describe the area involved herein. Since

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"*United States* v. *California*, 332 U. S. 19, controls this case" (339 U. S. 699, 704), there is obviously no inconsistency between the proposed paragraph 1, patterned after that in the *California* decree, and the decision of the Court in this cause. It follows, therefore, that there is no necessity for the additional language suggested in objection number 1, even if that language would, in effect, add anything to the decree as proposed. Nor is there any ground for deleting the second sentence of paragraph 1, which would decree that Louisiana has no title to or property interest in the lands here involved, since, as "California is not the owner of the three-mile marginal belt along its coast" (332 U. S. 19, 38), so is Louisiana without proprietary interest in the offshore lands underlying the Gulf of Mexico.

II

Objection number 3 appears to embrace several objections.

1. To the suggestion that the Court's opinion herein does not support or authorize injunctive relief (Objections, pp. 2, 6), it is enough to note that the prayer in the Complaint sought, in part, "that a decree be entered * * * enjoining the State of Louisiana and all persons claiming under it from continuing to trespass upon the area in violation of the rights of the United States" (see Appendix to Proposed Decree, pp. 11–12), and

that the opinion herein concludes as follows: "We hold that the United States is entitled to the relief prayed for." 339 U. S. 699, 706.

2. Louisiana suggests that there is no congressional authority for the exercise by the United States or its lessees of the operations which the decree would enjoin (Objections, pp. 2, 7). It is difficult to see, however, what right the State has to raise that issue. To be sure, it has been held that the Mineral Leasing Act of February 25, 1920, 41 Stat. 437, as amended, does not apply to submerged lands of the type here involved (40 Op. A. G. 540), but it does not follow from that holding that there is no authority for continued production of existing oil and gas wells. On the contrary, it has been heretofore asserted,[1] and we now reiterate, that there is such authority, and that the Secretary of the Interior stands ready, on behalf of the United States, to authorize such continued production. The Secretary of the Interior has full power to make interim arrangements to protect and preserve the lands and resources adjudged to the United States from injury,

[1] See statement of Attorney General Tom C. Clark before Joint Hearings of the Committees on the Judiciary, considering S. 1988 and similar House bills, 80th Congress, Second Session, March 2–3, 1948, pp. 612, 679, and also remarks of Mastin White, Solicitor of the Department of the Interior, at the Hearings before the Senate Committee on Interior and Insular Affairs on S. J. Res. 195, 81st Congress, Second Session, August 14–19, 1950, at p. 31.

deterioration, seepage, drainage, or other harm.[2] This power includes authority to permit continued production, on appropriate terms, from existing wells. Cf. Executive Order No. 9633, 3 C. F. R., 1945 Supp., p. 123; 5 U. S. C. 485 (12); 40 Op. A. G. 41. If the United States asserts its willingness to make such arrangements, as it does, the State of Louisiana can have no standing or interest, in the present suit, to deny its power to do so.

3. The fact that the lessees are not parties to this suit (Objections, pp. 2, 7), does not bar their being named in the injunctive paragraph of the decree. This is not a conventional real property action between private claimants, but a controversy between the United States and one of its constituent States over the boundary between their respective spheres. For over a century it has been settled that in original suits of this type between sovereigns or quasi-sovereigns—as in the comparable case of a suit over water rights in interstate streams—the parties represent their citizens, grantees, and those who claim under them, and the latter are bound by the decree and their private rights are necessarily determined and affected by this Court's decision, whether or

[2] The State itself mentions the loss and detriment which would follow upon stoppage of existing production (Objections, p. 3).

not they have been parties.[3] *Hinderlider* v. *La Plata Co.*, 304 U. S. 92, 106–108; *Poole* v. *Fleeger*, 11 Pet. 185, 209; *Rhode Island* v. *Massachusetts*, 12 Pet. 657, 725, 748; *Wyoming* v. *Colorado*, 286 U. S. 494, 508–9; *Nebraska* v. *Wyoming*, 325 U. S. 589, 627; see also *Hudson Water Co.* v. *McCarter*, 209 U. S. 349, 355–6; *Georgia* v. *Tennessee Copper Co.*, 206 U. S. 230, 237, and the other cases cited in *Wyoming* v. *Colorado*, *supra*, p. 509, fn. 5.

A notable example of a suit between sovereign litigants in which the rights of persons not parties to the proceeding were foreclosed by the decree is the case of *Louisiana* v. *Mississippi*, 202 U. S. 1. That suit involved a dispute over the location of the boundary between the States where it traverses the inland waters of Lake Borgne and the Mississippi Sound, but the controversy was precipitated by the efforts of the respective States to regulate and issue permits for the dredging of oysters from submerged lands in the disputed area. In the decree entered in the case, this Court adjudged the boundary to be that determined in

[3] Although Louisiana moved to dismiss the complaint herein on the ground that the State's lessees were indispensable parties to this cause, which motion, along with certain other motions, was denied (338 U. S. 806), it is significant that no one of the several lessees engaged in offshore oil and gas operations has sought to intervene in the proceedings. Louisiana's assertion at page 7 of its Objections that the United States opposed a motion to make the lessees parties undoubtedly refers to this motion to dismiss.

its opinion and included in its decree the following injunctive relief (202 U. S. 58–59):

> It is further ordered, adjudged and decreed that the State of Mississippi, its officers, agents and *citizens* be and they are hereby enjoined and restrained from disputing the sovereignty and ownership of the State of Louisiana in the land and water territory south and west of said boundary line as laid down on the foregoing map. [Italics supplied.]

Another instance of injunctive relief of this character is to be found in the case of *Wisconsin* v. *Illinois,* the celebrated interstate controversy involving the operation of the Chicago Drainage Canal. In the decree entered in that case on April 21, 1930, 281 U. S. 696, there appears the following:

> * * * the defendants, the State of Illinois and the Sanitary District of Chicago, their employees and agents, and *all persons assuming to act under the authority of either of them,* be and they hereby are enjoined from diverting any of the waters of the Great Lakes-St. Lawrence system or watershed through the Chicago Drainage Canal and its auxiliary channels * * *. [Italics supplied.]

And in *New Jersey* v. *Delaware,* 291 U. S. 361, a boundary proceeding, the decree entered by the

Court contains the following (295 U. S. 694, 698–699):

> The State of Delaware, its officers, agents and representatives, *its citizens and all other persons,* are perpetually enjoined from disputing the sovereignty, jurisdiction and dominion of the State of New Jersey over the territory adjudged to the State of New Jersey by this decree; and the State of New Jersey, its officers, agents and representatives, *its citizens and all other persons* are perpetually enjoined from disputing the sovereignty, jurisdiction and dominion of the State of Delaware over the territory adjudged to the State of Delaware by this decree. [Italics supplied.]

It is clear from these cases that injunctive relief may be granted in suits between sovereigns and may be made effective against persons deriving their rights from one of the sovereign litigants, even when those persons are not joined as parties to the litigation. On principle, the result should be the same. Since Louisiana's lessees have been represented by the State, are bound by the declaration of rights to be entered, and their rights in the designated area are conclusively determined, there is no reason why the injunction should not run against them. Even in private equity cases, an injunction may properly be issued against persons represented by the defendant (*Scott* v. *Donald,* 165 U. S. 107, 117)

and those who are its associates or confederates in performing the prohibited acts (*Chase National Bank* v. *Norwalk,* 291 U. S. 431, 436–7). The oil companies which are the State's lessees fall within both of these classes.

Moreover, in original suits of this character between sovereigns, in which multiplication of parties is highly undesirable and the public nature of the controversy is dominant, there is a special reason for departing from the rules as to persons against whom relief may be granted which may be thought to govern in private controversies. Adequate relief to the prevailing sovereign should not be refused because it is necessary to cover persons through whom the defending sovereign acts and whose interests it purports to serve, but who have properly not been made parties. In thus allowing the public nature of the controversy to control the relief, there is little likelihood that the lessees will be harmed because they have not been made parties. Their general interests in the disputed area have been, and are being, represented by the State. It is very doubtful whether there exist any unique or peculiar circumstances tending to show that relief should not be granted against a particular lessee, but, if there be such substantial reasons, the individual case can be dealt with administratively under the Federal Government's power to authorize operations seaward of the boundary, or, perhaps, by special judicial petition or proceeding.

4. The United States has no intention of stopping the production of oil from existing wells, and the proposed injunction would not have that effect (Objections, pp. 3, 6). The proposed paragraph 2 would enjoin oil and gas operations only if authorization is not first obtained from the United States and, as stated *supra,* pp. 3–4, the Secretary of the Interior stands ready, on behalf of the United States, to authorize continued production from existing wells on proper terms and conditions.

III

Although its Objections do not mention the point, Louisiana's Statement in Support of Objections (pages 8–9) seems to suggest that the injunctive aspects of the proposed decree are premature because of the possibility that questions will arise as to the distinction between areas affected by the decree and those not within it. In the Memorandum in Support of Proposed Decree we recognized (page 5) that it will probably be necessary, as in *United States* v. *California,* presently "to determine with greater definiteness particular segments of the boundary" claimed by the United States, and we indicated the intention of the United States to present a petition for the entry of a supplemental decree, seeking an adjudication and determination of the boundary along those portions of the coast of Louisiana which may require such determination.

But the possibility of supplemental proceedings to determine whether certain areas lie in Federal or State waters furnishes no basis for not entering a decree granting the injunctive relief sought by the United States. The major portion of the present oil and gas operations in offshore waters adjacent to Louisiana is situated in areas with respect to which there cannot, it is believed, be any genuine dispute as to the status of the waters involved. Many of the presently producing wells are situated more than 20 miles from the nearest point on the shore; many others are located offshore from portions of the coast which are relatively straight in configuration, where the boundary is clearly the ordinary low-water mark along the coast.

The State does not attempt to show that any existing operations will be hindered because of substantial doubts as to whether they are seaward or landward of the boundary. If it becomes apparent, after entry of the decree, that there are such border-line operations in areas as to which a reasonable dispute as to status arises, interim arrangements for continued operations pending an adjudication of the boundary at that spot can be made, for example, by means of a stipulation between the parties or by appointment of a receiver.

IV

Louisiana's objection to paragraph 3, the accounting paragraph, of the proposed decree (Objections, pp. 3, 9–10) overlooks entirely the basis for the relief to which the United States has been held to be entitled. The State, without proprietary or other right to do so, has undertaken to authorize its lessees to extract oil and gas in the submerged areas here involved in violation of the rights of the United States and has collected from the lessees rentals, royalties and other revenues for the authorization purportedly granted. The accounting sought by the United States is certainly not unreasonable, since no claim is made for revenues derived prior to June 23, 1947, the date of this Court's opinion in *United States* v. *California,* 332 U. S. 19. As we pointed out in the Memorandum in Support of Proposed Decree (p. 7), the decision in the *California* case gave adequate notice of the rights and powers of the United States in submerged lands situated offshore from the State of Louisiana, as well as those adjacent to other coastal States. This Court's opinion of June 5, 1950 (339 U. S. 699), holds the *California* decision to be controlling with respect to the questions presented in this case, and there is no inequity in requiring Louisiana to account for moneys received since the earlier decision.

CONCLUSION

The objections made by the State to the proposed decree are not sound in any respect.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

NOVEMBER 1950.

U. S. GOVERNMENT PRINTING OFFICE: 1950