Part II

IN THE

Supreme Court of the United States

October Term, 1950.

No. 12, Original.

UNITED STATES OF AMERICA, *Plaintiff,*

v.

STATE OF LOUISIANA, *Defendant*

PETITION FOR REHEARING FROM DECREE

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.

CULLEN R. LISKOW,
Lake Charles, La.
Of Counsel.

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

Now comes the State of Louisiana and moves the Court for leave to file a petition for rehearing on the decree rendered herein on December 11, 1950.

The ground of the petition is that a rehearing is appropriate because the nature of the decree is contrary to the opinion of the Court rendered on June 5, 1950 and,

in effect, said decree is unconstitutional, null and void for the reasons hereinafter shown.

I.

This Court Assumed Jurisdiction of This Case Without Right or Authority Under the Constitution

The State of Louisiana, Defendant, originally filed a motion to dismiss the complaint of the United States herein on the ground that this Court does not have original jurisdiction of any controversy between the United States and the State of Louisiana, under Article III, Section 2, Clause 2, or under any other provision of the Constitution of the United States.

In support of its objection, Defendant submitted uncontrovertible authority from the record of the 1787 Constitutional Convention, which wrote the U. S. Constitution and created this Court, and also quoted the formal admission of the United States through its Attorney General in this Court, that this Court did not have original jurisdiction of a controversy between the United States and an individual State.

The record of the Constitutional Convention shows that on June 7, on August 20, on August 22 and on August 30, 1787, proposals were submitted to the Convention to grant this Court original jurisdiction of controversies between the United States and an individual State and that no vote or action was taken on these propositions. (H. Doc. 398, 69th Cong., 1st Session, pp 769, 973, 572, 595, 644; 1 Elliott's Debates pp 177, 180; and the Madison Papers, Vol. 3, pp 1366, 1399, 1465, 1466).

However, on August 30, 1787, when the proposition was lastly submitted to the Convention that claims to territory or other property by the United States or any particular State should be examined into and decided upon by the Supreme Court of the United States, this motion was peremptorily rejected by vote of 8 States against and only 2 States for the motion. (H. Doc. 398, p. 645; 1 Elliott's Debates pp 275, 276)

In **Florida** vs **Georgia** (1854), How. 478, the United States through its Attorney General sought to intervene in a boundary action between the two States and, upon objection being urged, the Attorney General for the United States formally and of record admitted to this Court that if the United States entered the suit as a party plaintiff that would be to put an end to the suit according to the constitutional doctrine of parties; and, after reviewing the provisions of Clause 2 of Section 2 of Article III of the Constitution, he said:

> **"The court is not empowered by the Constitution to entertain an original suit between the United States and a state, or the United States and two states."**

He added that that was the settled rule of law on jurisdiction.

Further, the record of the Constitutional Convention shows that the Original States were so jealous to preserve their sovereignty against the risk of a mere decree of the United States Supreme Court in a controversy between the United States and any individual State, that the Convention even denied to the Supreme Court original jurisdiction of any controversies to which the United States

should be a party, because the States had granted this Court original jurisdiction in controversies between themselves, and, therefore, did not want to extend the original jurisdiction of this Court to any controversies to which the United States should be a party, regardless of whom the opposing party might be. See Elliott's Debates, Vol. 1, pp 268, 269.

Furthermore, this Court held that it had only such original jurisdiction as is granted by the Constitution. **Chisholm** vs **Georgia,** 2 U. S. 2 (1793); **Marbury** vs **Madison,** 5 U. S. 1, (1803); **Cohen** vs **Virginia,** 19 U. S. 262, (1821), which decisions have been repeatedly reaffirmed. It will be noted that these decisions were handed down by this Court while the work of the Convention, and the public debates on the adoption of the Constitution were fresh in the mind of the Justices, including Chief Justice Marshall, who handed down these decisions of the Court.

True, after more than 100 years elapsed after adoption of the Constitution, or since 1891, this Court, without objection of defendant states, took original jurisdiction of several suits brought by the United States against individual states.

However, the laches on the part of these states neither served to amend the Constitution or to grant this Court original jurisdiction in such cases.

The objection filed by the State of Louisiana to the jurisdiction of this Court is based on solid constitutional grounds and its denial can only be arbitrary and without authority of law. As a matter of fact, the Court, in this case, overruled Louisiana's objection to its jurisdiction without ever assigning any reasons.

We respectfully submit that any judgment or decree rendered by any Court which assumes jurisdiction without any authority under the law, is a nullity and can have no force of law. 31 American Jurisprudence, 409, and numerous cases cited.

II.

Settled Law That States Own Their Navigable Waters and the Soils and Resources Under Them and That These Were Not Granted to the United States

As repeatedly held by this Court:

> "At common law, the title and the dominion in lands flowed by the tide were in the king for the benefit of the nation. Upon the settlement of the colonies, like rights passed to the grantees in the royal charters, in trust for the communities to be established. Upon the American Revolution, these rights, charged with a like trust, were vested in the original states, within their respective borders." **Shively** v. **Bowlby,** 152 U. S. 1. (Cases cited)

By the Treaty of Independence with the British Crown in April, 1783, the British Crown relinquished to the 13 Original States each by name "all claims to the government, proprietary and territorial rights of the same, and every part thereof"; and fixed the boundary of the coastal states into the Atlantic Ocean, "comprehending all islands within twenty leagues of any part of the shores of the United States."

To secure the rights of the Original States under this Treaty, it was made the supreme law of the land by Article VI, Clause 2 of the Constitution. (69th Congress, 1st

Session; H. D. No. 398, p. 618) and it is our sworn duty to uphold said Treaty as such.

The Articles of Confederation, Article IX provided that,

> "No state shall be deprived of territory for the benefit of the United States."

In **Harcourt** v. **Gaillard,** 12 Wheat. 523 (1827), the U. S. Supreme Court held,

> "There was no territory within the United States that was claimed in any other right than that of some one of the Confederate States; therefore, there could be no acquisition of territory made by the United States distinct from, or independent of some one of the states."

Later, this Court held:

> "When the Revolution took place the people of each State became themselves sovereign; and in that character hold the absolute right to all their navigable waters and the soils under them for their own common use, subject only to the rights since surrendered by the Constitution to the general government." **Martin** v. **Waddell, 16 Peters** (41 U. S.) 367, (1842).

By special Acts of Cession, the larger Original States, including Virginia, New York and Georgia executed Acts of Cession to the United States of their vacant and unappropriated lands to assist the government in raising revenues to pay the Revolutionary War debt, with the stipulation that after liquidation of said debt the remaining lands would be transferred to States later to be created on an equal footing with the Original States.

In **Pollard** v. **Hagan** (1845), 3 How. 212, this Court held that:

> "whenever the United States shall have fully executed these trusts, the municipal sovereignty of the new states will be complete, throughout their respective borders and they, and the original states, will be upon an equal footing in all respects whatever."

And this Court further solemnly held in that case that:

> **"By the preceding course of reasoning we have 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."

And, again, this Court held in **Memford v. Wardwell,** (1867), 6 Wall. 423, 436, that:

> **"Settled rule of law in this Court** is, that the shores of navigable waters and the soils under the same in the original States were not granted by the Constitution to the United States, but were reserved to the several states and that the new States since admitted have the same rights, sovereignty and jurisdiction in that behalf as the original States possess within their respective borders."

And, again, this Court held in **McCready** v. **Virginia,** (1876), 94 U. S. 391, that:

> **"The principle has long been settled in this court,** that each State owns the beds of all tidewaters within its jurisdiction, unless they have been

granted away. In like manner, the States own the tidewaters themselves, and the fish in them, so far as they are capable of ownership while running. For this purpose the State represents its People, and the ownership is that of the People in their united sovereignty. Citing **Martin** vs. **Waddell,** (1842), **supra.** The title thus held is subject to the **paramount right of navigation,** the regulation of which in respect to foreign and interstate commerce, has been granted to the United States. **There has been, however, no such grant of power over the fisheries.** These remain under the exclusive control of the State. . . . **The right which the People of the State thus acquire** comes not from their citizenship alone, but from their citizenship and property combined. It **is in fact, a property right,** and not a mere privilege or immunity of citizenship."

And, again, this Court held in **Illinois Central R. Co.** v. **Illinois,** (1892), 146 U. S. 435; while citing numerous other cases, that:

> **"It is the settled law of this country** that the ownership of and dominion and sovereignty over lands covered by tide waters, within the limits of the several states, belong to the respective states within which they are found with the consequent right to use or dispose of any portion thereof, when that can be done without substantial impairment of the interest of the public in the waters, and subject always to the paramount right of Congress to control their navigation so far as may be necessary for the regulation of commerce with foreign nations and among the states. This doctrine has been often announced by this court, and is not questioned by counsel of any of the parties. **Pollard** v. **Hagan,** 44 U. S. 3 How. 212 (11: 563); **Weber** v. **Board of State Harbor Comrs.,** 85 U. S. 18 Wall. 57 (21:798).

"**The same doctrine is in this country held to be applicable to lands covered by fresh water in the Great Lakes** over which is conducted an extended commerce with different states and foreign nations. These lakes possess all the general characteristics of open seas, except in the freshness of their waters, and in the absence of the ebb and flow of the tide. In other respects they are inland seas, and there is no reason or principle for the assertion of dominion and sovereignty over and ownership by the State of lands covered by tide waters that is not equally applicable to its ownership of and dominion and sovereignty over lands covered by the fresh waters of these lakes."

And in **Scott** v. **Lattig,** 227 U. S. 229, 242-243 (1913), this Court again held:

". . . Besides, **it was settled long ago by this court, upon a consideration of the relative rights and powers of the Federal and state governments under the Constitution,** that lands underlying navigable waters within the several States belong to the respective States in virtue of their sovereignty and may be used and disposed of as they may direct, subject always to the rights of the public in such waters and to the **paramount power** of Congress to control their navigation so far as may be necessary for the regulation of commerce among the States and with foreign nations, and that each new State, upon its admission to the Union, becomes endowed with the same rights and powers in this regard as the older ones.
(citing other cases)

III.

This Court Has No Right or Authority to Attach Powers of Confiscation of Property to Paramount Powers of the United States, Not Even in Issue

As far back as in 1819, this Court, through Chief Justice Marshall, in **McCullough** v. **Maryland,** 4 Wheat, at 403, held that:

> "If any one proposition could command the universal assent of mankind, we might expect it would be this—that the government of the Union, though limited in its powers, is supreme within its sphere of action."

Such Constitutional paramount power and dominion of the government was not questioned by the State of Louisiana. No such issue was involved here, and no decree of the Court was necessary on the question of the "Constitutional" paramount power and dominion of the United States. As the Court stated, it was not questioned in **Illinois Central R. Co.** v **Illinois,** supra, and other cases there cited.

But, for the first time in the history of this country, the foreign ideology of confiscation and nationalization of property traveling hand in hand with the paramount power and dominion of the federal government, is sought to be applied in these tideland cases without regard to the original and constitutional rights of the states, or the people of the states in their collective sovereign capacity to the ownership of their property.

Thus, contrary to the historical facts of record and the settled law of the land, this Court stated in the California decision:

"Neither the English Charters granted to this nation's settlers, nor the Treaty of Peace with England, nor any other document to which we have been referred, showed a purpose to set apart a three-mile ocean belt for colonial or state ownership."

The Court there sought to nullify the Treaty of Independence, the Supreme Law of the Land, and initiated the theory of confiscation and nationalization by stating further that:

"The United States here asserts rights in two capacities transcending those of a **mere property owner.**"

And, again, ignoring the property rights of the original states and all other states of the Union, this Court in this case stated that:

"Louisiana prior to admission had no stronger claim to ownership of the marginal sea than the original 13 colonies or California had."

IV.

Confiscation by Decree Without Trial

So here we see the Court deciding the question of sovereignty ownership against the original 13 states after their undisputed title and peaceful possession since the treaty of 1783 without their being parties to this suit, and without a hearing or trial, just as the Court denied the State of Louisiana a trial on the question of title, all in violation of the fundamental principle of due process of law. In fact the Court said:

"The issue in this class of litigation does not turn on title or ownership in the conventional sense."

Nonetheless, after stating flatly, in its decision on June 5, 1950, that title was not an issue in this case, this Court included the following edict in its decree of December 11, 1950:

> "The State of Louisiana has no title thereto or property interest therein."

Therefore, without a trial and by the arbitrary application of unconstitutional power ideology, the property of the State of Louisiana, and in fact of every other state in the union, will be confiscated and nationalized by said decree. Further, the Court by its very statement that the paramount power and dominion of the United States transcended those of a **mere property owner,** most certainly foreshadowed the doom of private property ownership in these United States, any time those in power in the Federal Government choose to extend nationalization and socialization through unlawful decrees which cannot be resisted ordinarily, but which should be corrected by the Court, itself, while there is yet time to do so.

V.

Court's Order for Accounting Admits Confiscatory Effect of Its Decree

That this Court ordered the State of Louisiana to render an accounting from date of its decision, June, 1950, shows that the alleged confiscatory paramount power, dominion and right of the federal government was created by the Court only as of that time.

It is inescapable that when the Attorney General and Solicitor General for the United States suggested in their

proposed form of decree that the State of Louisiana be required to render an accounting to the United States under the decision of this case from June, 1947, the time of the California decision, that they realized full well that the confiscation and nationalization of state property originated with the decision in the California Case.

Likewise, when this Court rendered its decree ordering the State of Louisiana to render accounting to the United States for all monies collected from mineral leases or from oil royalties, etc. from its tidelands from June, 1950, date of the decision in this case, the Court also manifested its realization that the United States did not have any so-called paramount dominion and right to control the taking of the oil and other minerals from Louisiana's tideland property within her boundaries or to secure the revenues therefrom until this Court purported to create such unlawful paramount dominion and confiscatory right in the United States by its decision.

We submit with all due respect that this Court has no constitutional power or right to create in the United States any such confiscatory or nationalization power and dominion over "mere property owners"—be they a sovereign state or an ordinary private individual.

The Constitution provides for condemnation or expropriation of property **only** upon payment of just compensation.

We, therefore, respectfully submit to this Court that its constitutionally unauthorized assumption of jurisdictional authority in this case be recognized and that its decision and decree creating an unlawful paramount power

and dominion and right of confiscation and nationalization of Louisiana's tideland be recalled and set aside.

Wherefore, the State of Louisiana moves that leave be granted to file this petition for rehearing on the decree rendered herein and that said decree be recalled and set aside, or that the case be restored to the docket for argument, after which this petition be granted, and the decision and decree previously rendered herein be reversed and the complaint dismissed, or that, in the alternative, the case be fixed for trial, in accordance with law and the Constitution, with full opportunity for the State of Louisiana, defendant, to submit its evidence of title, and for judgment as prayed in its motion to dismiss for lack of jurisdiction and in its answer, [redacted], all in accordance with the Constitution and Laws of the United States.

Respectfully submitted,

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.

CULLEN R. LISKOW,
Lake Charles, La.
Of Counsel.

I hereby certify that the within Petition for Rehearing is believed to be meritorious and is well founded in fact and in law, and that it is presented in good faith and not for delay.

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

January 25, 1951.