No. 7, Original

In the Supreme Court of the United States

OCTOBER TERM, 1955

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

MOTION OF DEFENDANT, INTERPOSING PLEA TO THE JURISDICTION AND OPPOSITION TO PLAINTIFF'S MOTION TO MODIFY DECREE, AND BRIEF IN SUPPORT THEREOF.

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MOTION OF DEFENDANT, INTERPOSING PLEA TO THE JURISDICTION AND OPPOSITION TO PLAINTIFF'S MOTION TO MODIFY DECREE.

Comes now the State of Louisiana, through its Attorney General, appearing specially and for the sole purpose of this motion, interposing the following plea to the jurisdiction of this Court and of opposing plaintiff's motion to modify the decree of this Court under date of December 11, 1950.

The State of Louisiana opposes plaintiff's motion to modify this Court's decree entered herein on December 11, 1950 on the ground that this Court has no jurisdiction over the subject matter of said motion in this proceeding, and that the relief prayed for in said motion will not finally settle

and determine the controversy between the United States and the State of Louisiana. In support of this plea and opposition, defendant shows:

1.

The original complaint filed in this action in December, 1948 alleged that plaintiff was and is possessed of paramount rights in and full power and dominion over the lands, minerals and other things underlying the Gulf of Mexico lying seaward of ordinary low water on the coast of Louisiana and outside of the inland waters extending seaward twenty-seven marine miles; that although Louisiana possessed only those powers which it had with respect to the other lands of the United States within its lawful territorial jurisdiction, the State was claiming full ownership thereof and was leasing same, and through its lessees producing petroleum, gas and other hydrocarbons. The prayer of the complaint was for a decree declaring the rights of the United States, as against the State of Louisiana, enjoining Louisiana from further trespass on said lands, and requiring the state to account to the United States for all money received from the area subsequent to June 23, 1947, the date of the decision of this Court in *United States of America* v. *State of California*, 332 U. S. 19, 91 L. ed. 1889, all as will appear in the complaint in the case of *United States of America* v. *State of Louisiana*, 339 U. S. 699, 94 L. ed. 1216.

2.

In accordance with the prayer of the original Complaint this Court rendered its decision on June 5, 1950 and entered its final Judgment and decree on December 11, 1950 declaring the United States to have 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 of 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, enjoining the State of Louisiana from carrying on any activities for the production of petroleum and other minerals, and ordering the defendant to account for all money derived from said lands subsequent to June 5, 1950. Said decree reserved jurisdiction in this Court only for the purpose of giving "full force and effect to this decree." The said opinion and decree accordingly made final disposition of all the issues presented, and since Louisiana has fully complied with the decree and made the accounting, this Court now has no further jurisdiction herein. The decree is reported in *United States of America v. State of Louisiana*, 340 U. S. 899, 95 L. ed. 651.

3.

This Court does not have jurisdiction in this proceeding to modify its decree entered in 1950

by hearing or considering new issues and disputes which are not germane to, or incidental to, the questions and issues presented and finally determined at the prior term of Court.

Realty Acceptance Corp. v. Montgomery 284 U. S. 547, 552, 52 SCt. 25, 76 L.ed. 476, 480

Bronsen v. Schulten 104 U. S. (14 Otto) 410, 26 L.ed. 797.

Burrel v. Tilton 119 U. S. 637, 643, 7 SCt. 332, 30 L.ed. 511.

United States v. Swift & Co., 286 U. S. 106, 52 S. Ct. 460, 76 L. ed. 999

Waterman v. Standard Drug Co. 202 F. 167

Prang Co. v. Am. Crayon Co. 58 F. 2d 715, 717.

4.

Although this Court in its opinion declared that "The matter of State boundaries has no bearing on the present problem", the United States now moves inconsistently to fix such boundaries through a motion to modify said decree. Plaintiff's motion to fix such boundaries is not germane to any issue on which the opinion and decree were based, but, on the contrary, is a separate and independent claim or action at law which can be instituted only by formal complaint filed with leave of Court. In such a proceeding the Defendant is entitled to demand a trial by Jury if it so desires.

U. S. Constitution, Amendment No. VII.

28 USC Rule 38 (a) Rules of Civil Procedure

Security Land & Exploration Co. v. Burns 193 U. S. 167, 183; 24 S. Ct. 425, 48 L.ed. 662, 672

Hipp v. Babin 60 U. S. (19 How.) 271, 278, 15 L.ed. 633, 635

Galloway v. United States, 319 U. S. 372, 399, 63 SCt. 1077, 87 L.ed. 1458, 1475

Georgia v. Brailsford 3 Dall. 1, 1. L.ed. 483

West Va. Pulp & Paper Co. v. Dodrill 221 F. 780

11 C.J.S. 683 and cases cited

9 C.J. 266-7 and cases cited.

5.

Since Congress has full and exclusive power to dispose of and make all needful rules and regulations respecting the property of the United States, and, pursuant to such power, has recognized and confirmed Louisiana's right, title and ownership to submerged lands seaward from its coast and the line marking the seaward limit of its inland waters, not exceeding three marine leagues into the Gulf of Mexico, the injunction heretofore issued by this Court was automatically overridden and rendered ineffective to that extent. This Court takes Judicial notice of the acts of Congress, and it is therefore unnecessary for any further proceedings in this cause to except from the operation of

the injunction lands that Congress has confirmed and recognized as property belonging to the State.

Submerged Lands Act of May 22, 1953, 67 Stat. 29, 43 USC 1301 et seq.

Alabama v. Texas) 347 U. S. 272,
Rhode Island v. Louisiana) 74 S. Ct. 481, 98
) L.ed 689

United States v. California 332 U. S. 19, 91 L.ed. 1889 67 SCt. 1658

Pennsylvania v. The Wheeling & Belmont Bridge Co. 18 How 421, 15 L.ed. 435, 449

Gray v. Chicago, I & N Ry. Co. 77 U. S. (10 Wall) 454, 19 L.ed. 969

Hodges v. Snyder 261 U. S. 600, 43 SCt. 435, 67 L.ed. 819

Prudential Ins. Co. v. Benjamin 328 U. S. 408, 424, 66 SCt. 1142, 90 L.ed. 1342, 1357 164 ALR 476

6.

Plaintiff's motion seeks to modify the decree only for the purpose of determining the width of the marginal belt owned by Louisiana seaward in the Gulf of Mexico by virtue of the Submerged Lands Act of May 22, 1953—(67 Stat. 29, 43 USC 1301 et seq.). Such a determination will be utterly ineffectual without a determination of the location of Louisiana's coast line which latter will require a considerable amount of evidence including the introduction of many maps, charts and documents and oral testimony of Surveyors, Carto-

graphers, Historians, Archivists, and other experts. Such matters can be properly presented only through an original and independent proceeding.

7.

Plaintiff's motion cannot be treated as an original action for the reason that leave of Court for filing said motion has not been obtained as required by Rule 9 of this Court. Nor can the motion be treated as a bill of review for the same reason. *Purcel v. Miner* 4 Wall 519, 18 L. ed. 459.

WHEREFORE, The State of Louisiana prays that Plaintiff's motion be docketed for oral argument, that this opposition and plea to the Jurisdiction be sustained and that Plaintiff's motion to modify the decree of December 11, 1950 be denied and dismissed.

In the alternative, if this plea and opposition be overruled, then Defendant prays that it be granted further delay for answering the merits of said motion.

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August, 1955.

No. 7, Original

In the Supreme Court of the United States

OCTOBER TERM, 1955

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

BRIEF IN SUPPORT OF DEFENDANT'S MOTION, INTERPOSING PLEA TO THE JURISDICTION AND OPPOSITION TO PLAINTIFF'S MOTION TO MODIFY DECREE.

Plaintiff's motion recites that on December 11, 1950, this Court entered its decree declaring the United States to be entitled to submerged lands in the Gulf of Mexico, enjoined the State of Louisiana from interfering therewith, and required the State of Louisiana to account for all sums derived therefrom after June 5, 1950; that the passage by Congress of the Submerged Lands Act of May 22, 1953 relinquishing to the several states submerged lands within their boundaries necessitates a modification of the decree and the injunction now in effect.

Plaintiff avers that Congress in enacting this statute did not intend to adopt any particular location of the boundary of Louisiana in the Gulf of Mexico but contemplated that this Court should determine and locate said boundary. Plaintiff accordingly moves this Court to ascertain the distance of Louisiana's boundary from its coast into the Gulf of Mexico and to modify the decree heretofore rendered on December 11, 1950 so as to exclude from its scope all submerged lands in the Gulf of Mexico lying landward of that boundary.

Plaintiff in its brief states the question now presented to the Court by the motion for modification of the decree as follows:

QUESTION PRESENTED

> "Under the Submerged Lands Act, which relinquished to the several States the lands under navigable waters within their respective boundaries, is the boundary of Louisiana to be considered as located seaward from the coast a distance of three nautical miles, as asserted by the United States, or three leagues, as claimed by Louisiana?"

SUMMARY OF ARGUMENT

The State of Louisiana opposes the motion to modify the prior decree of this Court on the grounds that:

1. This Court does not have jurisdiction to modify its decree entered in 1950 by hearing or

considering an additional claim or demand presenting new issues and disputes which are not germane to or incidental to the questions and issues finally determined at a prior term of Court in 1950.

2. Plaintiff's motion presents a separate and independent claim in the nature of an action at law which can be instituted only by formal complaint filed with leave of Court, and in such a proceeding Defendant is entitled to demand a trial by Jury if it so desires.

3. No necessity exists for the modification of the injunction, since the Submerged Lands Act of Congress automatically overrides and renders ineffective the prior decree of this Court to the extent of all lands, minerals and other things the ownership of which was recognized and confirmed in Louisiana by the terms of the Act.

4. A modification of the decree in accordance with Plaintiff's limited and restricted motion will be ineffectual and will not dispose of the controversy between the parties in view of the necessity for a further determination of the location of Louisiana's coast line.

5. Plaintiff's motion cannot be treated as an original Complaint or proceeding or a bill of review since leave of Court was not obtained for filing the same.

ARGUMENT

1. PLAINTIFF'S MOTION RAISES ISSUES WHICH ARE NOT GERMANE TO THE ISSUES FINALLY DETERMINED BY THE 1950 DECREE.

The prayer of the Complaint filed by the United States originally in this action is described thus in the opinion of this Court rendered on June 5, 1950:

> "The prayer of the complaint is for a decree adjudging and declaring the rights of the United States as against Louisiana in this area, enjoining Louisiana and all persons claiming under it from continuing to trespass upon the area in violation of the right of the United States, and requiring Louisiana to account for the money derived by it from the area subsequent to June 23, 1947."
>
> *United States* v. *State of Louisiana*, 339 U. S. 699, 70 S. Ct. 914, 94 L. ed. 1216.

The Court's opinion concludes with the statement:

> "We hold that the United States is entitled to the relief prayed for."

Pursuant to this opinion the Court rendered its final Judgment and decree on December 11, 1950 declaring the United States to have paramount rights in and full power and dominion over all submerged lands in the Gulf of Mexico twenty-seven miles seaward, enjoining the State from trespassing thereon and ordering it to account for all money derived from said lands subsequent to June 5, 1950.

This decree reserved jurisdiction in this Court only for the purpose of giving "full force and effect to this decree." *United States* v. *Louisiana* 340 U. S. 899, 71 S. Ct. 275, 95 L. ed. 651.

Under the guise of modifying the incidental remedy of injunction contained in the foregoing decree, the Plaintiff now seeks to modify or change the cause of action itself. The primary cause of action, which had been finally disposed of by this Court at its prior term, related to the paramount rights of the United States in the submerged lands and an alleged wrongful trespass thereon by the State of Louisiana. Incidental to and secondary to this primary cause of action is the remedy by way of injunction and the order of Court for an accounting. In a proper case this Court may, of course, under its equity powers issue orders to prevent further trespass or to compel a proper accounting. But this is not such a proceeding. There is no complaint here that the State of Louisiana has failed in any respect to comply with this Court's decree or that it threatens any invasion of the Plaintiff's rights or any trespass upon United States property. There is therefore no basis or necessity for further action by this Court in this proceeding. The United States has obtained all the relief it prayed for in the original hearing, the accounting has been made, and the State of Louisiana is not seeking any change in the decree. There is no present controversy between parties relative

to the meaning or purpose of the original decree.

There is a well defined distinction between a right of action and the remedy afforded therefor.[1] As stated in *Mikkelson* v. *Pacific S. S. Co.;* 48 F. 2d 124, 125:

> "Right is a legal consequence which applies to certain facts. . . . Remedy is a procedure prescribed by law to enforce a right . . ."

Remedy or action is merely the form in which the cause of action is presented, while of the latter phrase, it has been said that:

> "In its simplest analysis the term 'cause of action' is synonymous with 'the right to bring a suit,' and that right is based upon the ground or grounds on which an action may be maintained." *Payne* v. *New York, etc., R. R. Co.,* 201 N.Y. at page 440, 95 N. E. at page 21.

The remedy afforded by conservatory writs such as writs of injunction, attachment and the like has always been recognized as incidental to or subsidiary to the primary right of action asserted by a litigant.[2]

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[1] *Knapp Stout & Co.* v. *McCaffrey,* 177 U.S. 638, 644, 20 S. Ct. 824, 44 L. ed. 921, 924; *United States* v. *Standard Oil Co. of California,* 21 F. Supp. 645, 660.

[2] *Exparte Des Moines* v. *Miss. R. R. Co.,* 103, U. S. (13 Otto) 794, 796, 26 L. ed. 461; *Laborde* v. *Ubarri* 214 U. S. 173, 53 L. ed. 955.

2. PLAINTIFF'S MOTION PRESENTS A SEPARATE AND INDEPENDENT CLAIM OR DEMAND.

The motion to modify the decree presents a new and distinct claim or demand that is in no way germane to the original complaint. It is an action of boundary pure and simple whereas the original complaint was an action for trespass and injunction. Plaintiff's brief in support of its motion for Judgment on the original complaint stated (p. 8):

> "No question is here raised as to the boundary of Louisiana."

And this Court in its original opinion (339 U. S. 705, 94 L. ed. 1220) said:

> "The matter of State boundaries has no bearing on the present problem."

The original complaint set forth an equitable cause of action as stated in your Honor's original opinion (339 U. S. 706, 94 L. ed. 1220):

> "This is an equity action for an injunction and accounting."

However a proceeding to fix and establish boundaries is an action at law.[3] In such a case either party may demand a trial by Jury.[4]

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[3] "It is simply a question of boundary, and it is a legal defense." *Security Land Co.* v. *Burns* 193 U. S. 167, 183, 48 L. ed. 662, 672; *West Va. Pulp & Paper Co.* v. *Dodrill* 221 F. 780; 11 C.J.S. 683 and cases cited; 9 C.J. 266-7 and cases cited.

[4] Amendment VII U. S. Constitution; 28 U.S.C. Rule 38 (a) Rules of Civil Procedure.

The original complaint set forth a tort action for trespass. The present motion to modify the decree involves statutory rights recognized and confirmed by the Submerged Lands Act.

The demands are not the same. They involve different issues, different remedies and different evidentiary facts and findings.

These differences between the original proceeding and the present motion point up the fact that this motion, under the cloak of modifying the original decree, in reality seeks to tag on a separate and independent claim or demand. Orderly and lawful procedure requires that this be done by formal complaint in a separate and independent suit.

In the case of *Hipp* v. *Babin*, 60 U. S. (19 How) 271, 278, 15 L. ed. 633, 635, this Court held:

> "Whenever a court of law is competent to take cognizance of a right, and has power to proceed to a judgment which affords a plain, adequate and complete remedy, without the aid of a court of equity, the plaintiff must proceed at law, because the defendant has a constitutional right to a trial by jury."
>
> . . . . . .
>
> "Nor can the Court retain the bill, under an impression that a court of chancery is better adapted for the adjustment of the account for rents, profits and improvements."

The right to trial by a Jury exists even in cases that are heard by this Court in the exercise of its original jurisdiction. Mr. Justice Black in the case

of *Galloway* v. *United States* 319 U. S. 372, 399, 63 S. Ct. 1077, 1091, 87 L. ed. 1458, 1475 called attention to this fact:

> "Less than three years after the ratification of the Seventh Amendment this Court called a Jury in a Civil case brought under our original jurisdiction."

The case referred to is that of *Georgia* v. *Brailsford*, 3 Dall. 1, 1 L. ed. 483.

Since the original opinion and decree of this Court made full and final disposition of all the issues presented and granted to the Plaintiff all the relief that it prayed for, this Court does not have any jurisdiction at this subsequent term of Court to modify the decree which was entered in 1950.[5]

Prang Company v. *American Crayon Company* (CA3) 58 F. 2d 715, 717 involved an application by the Appellant to modify an injunction which had been issued at a prior term of Court. The Court denied the motion saying:

> "The Prang Company in its motion for a supplemental decree contends that the main decree should be altered, amended, or changed

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[5] *Bronsen* v. *Schulten*, 104 U. S. (14 Otto) 410, 26 L. ed. 797; *Burrell* v. *Tilton*, 119 U. S. 637, 643, 7 S. Ct. 332, 30 L. ed. 511; *United States* v. *Swift & Co.* 286 U. S. 106, 52 S. Ct. 460, 76 L. ed. 999; *Waterman* v. *Standard Drug Co.*, 202 F. 167; *Prang Co.* v. *American Crayon Co.* 58 F. 2d 715, 717; *Realty Acceptance Corp.* v. *Montgomery*, 284 U. S. 547, 552, 52 S. Ct. 25, 76 L. ed. 476, 480.

by supplemental provisions in order to bring these alleged acts within its proper terms and within the spirit of the mandate of this Court. The trial court entered an order denying the motion and from that order alone the Prang Company has taken this appeal.

. . . . . .

"This order is right on any one of several grounds according to the theory on which the motion was made. If made to correct errors in the decree, not merely clerical, another remedy was available; if made to reconstruct the decree and thereby procure a new decree, the court was without jurisdiction in view of the passing of the term, *Bronson* v. *Schulten*, 104 U. S. 410, 26 L. ed. 7971; *Realty Acceptance Corporation* v. *Montgomery*, 284 U. S. 547, 52 S. Ct. 215, 76 L. ed. — —; if made to expand the decree so as to make it cover new post-decree practices, the procedure is not recognized in this circuit, *Minerals Separation, Ltd.*, v. *Miami Copper Co.* (C.C.A.) 269 F. 265."

The rule is thus stated in *Bronson* v. *Schulten* 104 U. S. (14 Otto) 410, 26 L. ed. 797:

"But it is a rule equally well established, that after the Term has ended, all final judgments and decrees of the court pass beyond its control, unless steps be taken during that Term, by motion or otherwise, to set aside, modify or correct them, and if errors exist they can only be corrected by such proceeding by a writ of error or appeal as may be allowed in a court which, by law, can review the de-

> cision. So strongly has this principle been upheld by this court, that while realizing that there is no court which can review its decisions, it has invariably refused all applications for rehearing made after the adjournment of the court for the Term at which the judgment was rendered. And this is placed upon the ground that the case has passed beyond the control of the Court."

In *Barrel* v. *Tilton*, 119 U. S. 637, 643, 7 S Ct. 332, 30 L. ed. 511, 512, this Court held that an addition or supplement to an original decree can be made by the Court only during the term in which that decree was rendered and that the Court would have no jurisdiction to thus modify the decree at a subsequent term of Court.

It is therefore apparent that Plaintiff is now endeavoring to use the decree of the Court in 1950 as a vehicle for determining the extent of the rights recognized and confirmed in Louisiana three years later by the Submerged Lands Act. This it cannot do.

Even if the Court should conclude that the motion here can be considered as one to modify the existing injunction, the rule against modification at a subsequent term of Court would still apply because of the particular facts in the case. This Court has made a distinction between injunctions which involve supervision by the Court over conduct of individuals under changing conditions, and injunctions granted for the protection to rights

that have fully accrued, as in the present case. Your Honors made this distinction in the case of *United States* v. *Swift and Co.* 286 U. S. 106, 114, 52 S. Ct. 460, 76 L. ed. 999, 1095:

> "The distinction is between restraints that give protection to rights fully accrued upon facts so nearly permanent as to be substantially impervious to change, and those that involve the supervision of changing conduct or conditions and are thus provisional and tentative" *(Ladner* v. *Siegel Co.* 298 Pa. 487, 68 A.L.R. 1172, 148 ATl. 699, supra).

There is thus a distinction between the amendment of a decree that involves anti-trust actions regulating the conduct of the defendant under various and complicated conditions, and a decree like that in the present suit which is based upon facts regarding paramount rights in lands, which rights are based upon unchanging facts.

3. NO NECESSITY EXISTS FOR MODIFICATION OF 1950 DECREE.

The sole and only reason offered by Plaintiff for a modification of the decree is a change in Statutory law. But this does not justify another excursion into the final decree in this case to develop some new questions or primary rights of action that may grow out of the Submerged Lands Act itself. The act creates no necessity for the modification of the decree because that results automati-

cally, and is not conditioned on any order of this Court.

In the cases of *Alabama* v. *Texas* and *Rhode Island* v. *Louisiana*, 347 U. S. 272, 74 S. Ct. 481, 98 L. ed. 689, Your Honors sustained the validity and constitutionality of the Submerged Lands Act and quoted several prior decisions holding that:

> "The power of Congress to dispose of any kind of property belonging to the United States 'is vested in Congress without limitation' . . .
>
> "And it is not for the Courts to say how that trust shall be administered."[6]

Since Congress has recognized and confirmed Louisiana's title and ownership in the Submerged Lands along its coast, the injunction heretofore existing is ipso facto modified and rendered ineffective to that extent.[7]

In the case of *Pennsylvania* v. *The Wheeling & Belmont Bridge Co.*, 18 How. 421, 15 L. ed. 435, the defendant had been enjoined from constructing

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[6] Art. IV Sec. 3 Cl. 2 U. S. Constitution; *United States* v. *Gratiot*, 15 Pet. 336, 537, 10 L. ed. 573, 578; *United States* v. *Midwest Oil Co.*, 236 U. S. 459, 474, 35 S. Ct. 309, 59 L. ed. 673, 681; *United States* v. *San Francisco*, 310 U. S. 16, 29, 30, 60 S. Ct. 749, 84 L. ed. 1040, 1059; *United States* v. *California*, 332 U. S. 19, 27, 67 S. Ct. 1658, 91 L. ed. 1889, 1893.

[7] *Pa.* v. *The Wheeling & Belmont Bridge Co.*, 18 How. 421, 15 L. ed. 435, 449; *Gray v. Chicago I & N Rwy. Co.*, 77 U. S. (10 Wall) 454 19 L. ed. 969; *Hodges* v. *Snyder* 261 U. S. 600, 43 S. Ct. 435, 67 L. ed. 819.

a bridge across the Ohio River. Thereafter Congress passed an act declaring the bridge to be a lawful structure. After the passage of the Act of Congress the defendant proceeded with the construction which had been enjoined. No modification of the injunction decree has been sought or made. The defendant was cited for contempt of Court. The Court held that the Act of Congress in and of itself nullified the injunction saying:

> "Since however, the rendition of this decree, the Acts of Congress, already referred to, have been passed, by which the bridge is made a post road for the passage of the mails of the United States, and the defendants are authorized to have and maintain it at its present site and elevation, and requiring all persons navigating the river to regulate such navigation so as not to interfere with it. . . .
>
> "So far, therefore, as this bridge created an obstruction to the free navigation of the river, in view of the previous Acts of Congress, they are to be regarded and modified in this subsequent legislation; and although it still may be an obstruction in fact, is not so in the contemplation of law." . . .

Mr. Justice Daniel in a concurring opinion in the above case said:

> "In what has been done by Congress, I can have no doubt that they have acted wisely, justly, and strictly within their constitutional competency. By their action they have completely overthrown every foundation upon

> which the decrees of this court, the order of the circuit judge, and every motion purporting to be based upon these or either of them, could rest." . . .
>
> 18 How. 458, 15 L. ed. 449

Similar decisions have been rendered by this Court in the cases cited in the footnote.

4. REQUESTED MODIFICATION OF DECREE WILL BE INEFFECTUAL AND WILL NOT DISPOSE OF CONTROVERSY.

Plaintiff's motion in this case attempts in piecemeal fashion to dispose of the controversies between the United States and the State of Louisiana over the submerged lands and resources within the boundaries of Louisiana.

The motion of the United States asks this Court to determine only whether the outer boundary of Louisiana recognized by the Submerged Lands Act, is located three miles or three leagues outwardly from Louisiana's coast line. That is asking this Court to do a vain and useless thing.

The locality of the area belonging to Louisiana cannot be fixed without determining both lines, which constitute respectively the inner and the outer boundaries of the marginal belt. The judicial action sought by the motion would waste the time of this Court in a partial and piecemeal and wholly inconclusive determination, that would leave still wholly controverted and unsettled the major essential factor in the location of the area in ques-

tion. A determination either that the marginal belt extends three leagues from the coast line, or that such area extends three miles from the coast line, does not locate even the outer boundary of the area in the absence of a determination of the location of the coast line itself.

In fact, the motion itself suggests the probability of further dispute. In the Appendix to the motion at page 52 appears a copy of Louisiana Act 33 of 1954 which in accordance with the Submerged Lands Act delineates the coast line of Louisiana as the line of demarcation between the inland waters and the open sea as fixed pursuant to the Act of Congress of February 19, 1895, 28 Stat. 672 33 USC 151. The motion to modify the decree does not indicate whether or not this coast line is acceptable to the United States. As a matter of fact some contentions have been made by the officials of the Interior Department to the effect that the coast line follows the shores of the State of Louisiana and of the various indentations that mark its mainland. In any case a determination either of the width or the location of the coast line, or both, will require the taking of evidence and the introduction of maps, charts, official and historical documents. It will also require the testimony of surveyors, historians, and other experts. These matters cannot be properly presented to the Court except through an original and independent proceeding.

5. MOTION TO MODIFY 1950 DECREE CANNOT BE TREATED AS AN ORIGINAL COMPLAINT OR BILL OF REVIEW.

Finally, we direct the Court's attention to the fact that leave of Court has not been obtained for the filing of plaintiff's motion. Plaintiff's motion to modify the decree cannot therefore be considered as an independent, original proceeding. If it were so intended, it would run foul of the requirements of Rule 9 of this Court.

CONCLUSION

The defendant respectfully submits that this matter be fixed for oral argument, that defendant's motion, opposition and plea to the jurisdiction be sustained, and that plaintiff's motion for modification of the original decree in this case should be denied and dismissed.

In the alternative, if defendant's motion, opposition and plea be overruled, then the State of Louisiana should be granted further delay for answering to the merits of plaintiff's motion.

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PROOF OF SERVICE

I, _____, one of the attorneys for the State of Louisiana, defendant herein, and a member of the Bar of the Supreme Court of the United States, certify that on the _____ day of August, 1955, I served copies of the foregoing Motion of Defendant, Interposing Plea to the Jurisdiction and Opposition to Plaintiff's Motion to Modify Decree, and Brief in support thereof, by leaving copies thereof at the offices of the Attorney General and of the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C.

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