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CHARLES ELMORE CRO
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No. —, Original

In the Supreme Court of the United States

OCTOBER TERM, 1948

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF TEXAS

MOTION FOR LEAVE TO FILE COMPLAINT AND COMPLAINT

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. —, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF TEXAS

MOTION FOR LEAVE TO FILE COMPLAINT

The United States of America, by its Attorney General and its Solicitor General, asks leave of the Court to file its complaint against the State of Texas submitted herewith.

TOM C. CLARK,
Attorney General.

PHILIP B. PERLMAN,
Solicitor General.

DECEMBER 1948.

STATEMENT IN SUPPORT OF MOTION

The United States seeks to bring this suit against the State of Texas under the authority of Article III, Section 2, Clause 2 of the Constitution of the United States. The purpose of the litigation is to establish the rights of the United States to the lands, minerals and other things un-

(1)

derlying the Gulf of Mexico adjacent to the coast of Texas, seaward of low-water mark along the coast and outside the bays, rivers, lagoons and other inland waters. The seaward limit of the area described in the complaint filed herewith is specified as the outer edge of the continental shelf, this being the seaward boundary of the State of Texas as described by Act of its legislature (Act of May 23, 1947, General Laws 1947, page 451), within which the State asserts "full and complete ownership" of the bed of the Gulf of Mexico (Act of May 16, 1941, General Laws 1941, page 454).¹

The rights of the United States in the lands underlying the Pacific Ocean adjacent to the State of California were established by this Court in *United States v. California*, 332 U. S. 19. It is the position of the United States that the rule there announced is equally applicable to the sea bed and subsoil of the Gulf of Mexico adjacent to Texas.

¹ Prior to 1941, the seaward boundary of the State of Texas was described as a line "three leagues from land" (Act of December 19, 1836, 1 Houston Laws of the Republic of Texas (1838), p. 133). The act of the legislature of May 16, 1941 (General Laws, 1941, page 454) purported to fix and declare the gulfward boundary of the State as "a line located in the Gulf of Mexico parallel to the three (3) mile limit * * * located twenty-four (24) marine miles further out in the Gulf of Mexico than the said three (3) mile limit." By the act of May 23, 1947 (General Laws, 1947, page 451) the 1941 act was amended so as to move the purported gulfward boundary of the State to the "farthermost edge of the continental shelf from the Gulf Shore line."

The circumstances under which the State of Texas entered the Union are in certain respects different from those under which the State of California was admitted. But to the extent that any of those differences are relevant at all, they point even more clearly to paramount rights in the United States. The territory occupied by the State was not acquired by the United States by conquest or purchase but was held by the independent Republic of Texas. By the Joint Resolution of March 1, 1845, 5 Stat. 797, the Congress consented "that the territory properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new State * * * in order that the same may be admitted as one of the States of this Union". This consent was made subject to certain specified conditions, among them being the adjustment by the United States of all questions of boundary that might arise with other governments, the cession to the United States by Texas of "all public edifices, fortifications, barracks, ports and harbors, navy and navy-yards, docks, magazines, arms, armaments, and all other property and means pertaining to the public defence belonging to said Republic of Texas" after which the State should retain "all the public funds, debts, taxes, and dues of every kind, * * * and * * * all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities of said Republic of Texas * * *". In the Joint Resolution approved

December 29, 1845, 9 Stat. 108, the Congress noted that the conditions specified in the Joint Resolution of March 1, 1845, had been complied with and declared that the State of Texas was "admitted into the Union on an equal footing with the original States in all respects whatever."

Since 1919, Texas has, by statute (Act of July 23, 1919, General Laws, 2d Called Session, 1919, page 51, as amended) undertaken to provide for the leasing of lands underlying the Gulf of Mexico for the exploitation of mineral resources. Under the provisions of the legislation referred to, Texas has executed various leases covering lands underlying the open waters of the Gulf of Mexico and lessees thereunder have entered upon said lands for the purposes of exploration and drilling and have extracted from such lands quantities of petroleum and other minerals.

It is reported that certain leases covering lands underlying the Gulf of Mexico have been entered into by the State of Texas and its lessees subsequent to June 23, 1947, the date of the decision of this Court in the *California* case. Officials of the State of Texas have openly stated that they do not regard the rule announced in the *California* case as applicable to lands underlying the Gulf of Mexico adjacent to Texas and that they contemplate a continuation of the various activities of the State in connection with the development of oil and gas in those lands, in violation of the rights of the United States. Accordingly, it is believed that the

rights of the United States can be protected only by a decree of this Court granting the relief prayed for in the complaint.

It is respectfully submitted that the motion for leave to file the complaint should be granted.

TOM C. CLARK,
Attorney General.

PHILIP B. PERLMAN,
Solicitor General.

In the Supreme Court of the United States

OCTOBER TERM 1948

No. —, ORIGINAL

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF TEXAS

COMPLAINT

The United States of America, by its Attorney General and its Solicitor General, brings this suit against the defendant, the State of Texas, and for its cause of action states:

I

The jurisdiction of this Court is invoked under Article III, Section 2, Clause 2 of the Constitution of the United States.

II

At all times herein material, plaintiff 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 ordi-

nary low-water mark on the coast of Texas and outside of the inland waters, extending seaward to the outer edge of the continental shelf and bounded on the east and southwest, respectively, by the eastern boundary of the State of Texas and the boundary between the United States and Mexico.

III

The State of Texas claims some right, title or interest in said lands, minerals and other things adverse to the United States.

IV

In the exercise of the rights claimed by it, the State of Texas has, by general law, Act of July 23, 1919 (General Laws, 2d Called Session, 1919, page 51), as amended, authorized the leasing of lands underlying the Gulf of Mexico for the exploitation of petroleum, gas and other mineral deposits in the area herein described.

V

Pursuant to that law, the State of Texas has negotiated and executed such leases with various persons and corporations, and those persons and corporations have, in violation of the rights of the United States, paid to the State substantial sums of money, entered upon said lands and drilled wells for the recovery of petroleum, gas and other hydrocarbon substances. Such wells have been producing quantities of petroleum, gas

and other hydrocarbon substances which the lessees of the State have taken and converted to their own uses and for which the lessees have paid to the State substantial sums of money in bonuses, rents and royalties reserved under the leases, but neither the State nor its lessees have recognized the rights of the United States nor have they paid to the United States either the value of the petroleum and other things taken from the area, or any royalties thereon.

VI

The State of Texas has no title to or interest in any of the lands in the area herein described, but possesses only those governmental powers which it has with respect to other lands of the United States within the lawful territorial jurisdiction of the State.

VII

The State has frequently and publicly denied the rights and powers of the United States in the area herein described and has claimed full and complete ownership of the area for itself and, unless the rights of the United States are established and declared by this Court, the State will continue to claim such ownership for itself and to exercise the rights incident to such ownership through its officers, agents, and employees, and will continue to aid, abet and encourage others, as its lessees, to trespass upon and to take and use the minerals and other things of value in the area,

in violation of the rights of the United States, from which the United States will suffer irreparable injury, and for which it has no adequate remedy except by this action.

Whereof, plaintiff prays that a decree be entered adjudging and declaring the rights of the United States as against the State of Texas in the area herein described, enjoining the State of Texas 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 of Texas to account to the United States for all sums of money derived by it from the area herein described subsequent to June 23, 1947.

TOM C. CLARK,
Attorney General.
PHILIP B. PERLMAN,
Solicitor General.

DECEMBER 1948.

