IN THE

# Supreme Court of the United States

OCTOBER TERM, 1948

No. 14 87, Original

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UNITED STATES OF AMERICA,
Plaintiff

*vs.*

STATE OF TEXAS,
Defendant

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**MOTION FOR LEAVE TO FILE OBJECTIONS AND OBJECTIONS TO MOTION OF UNITED STATES OF AMERICA FOR LEAVE TO FILE COMPLAINT**

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PRICE DANIEL
Attorney General of Texas

JESSE P. LUTON, JR.
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## MOTION FOR LEAVE TO FILE OBJECTIONS

The State of Texas, by its Attorney General, asks leave of the Court to file its objections to the motion filed herein by the United States of America for leave of this Court to file its complaint against the State of Texas submitted therewith.

PRICE DANIEL
Attorney General of Texas

## FIRST OBJECTION

**The Attorney General of the United States seeks to invade the power of Congress and has no authority to bring this suit because the Congress has not in the first instance asserted the rights herein alleged against the State of Texas.**

*Statement in Support of First Objection*

In the Statement In Support of Motion, page 2, the Attorney General of the United States admits that the land in controversy is within the seaward boundaries of the State of Texas. There is no allegation of original title in the United States. On the contrary, it is admitted (p. 3) and this Court judicially knows that the State of Texas was an independent Republic prior to joining the Union. By the annexation agreement it conveyed no land or proprietary rights to the United States which would support the judgment herein prayed for. *See Joint Resolution of Congress, March 1, 1845, 5 Stat. 797.*

This Court judicially knows that there is no law or other action of Congress interpreting the Texas annexation agreement or asserting title to lands in Texas as is done here by the Attorney General. The State recognizes the Federal governmental powers over these lands to be the same as they are over all other waters and lands within the nation. But in this suit property rights are being asserted in the first instance by the Attorney General without a prior assertion by or authority from the Congress.

How does the Attorney General know the Congress will ever assert any proprietary claim or right which

would support this action? Texas denies that such an assertion by Congress could operate to divest it of title to these lands, but this State should not be put to the expense, trouble and loss of revenues which will result from litigating a claim which the Congress may never assert. Whether title or other proprietary rights ever will be asserted by the United States against the State of Texas to lands within its boundaries is a question for the Congress to decide in the first instance and not the Attorney General.[1]

It is well known to this Court that bills to assert such rights and authorize similar suits twice failed of passage in the Congress.[2] The Court judicially knows that the President in his recent message to the present Congress has proposed legislation on this subject. The Court judicially knows that on the day the Government's Motion for Leave was filed herein, there was pending on the Senate calendar a bill already passed by a 257 to 29 vote in the House confirming state ownership and control of at least a portion of the lands herein sued for.[3] A similar Act passed the Congress in

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[1]Here it is interesting to note that even the President's Proclamation of jurisdiction over the continental shelf (No. 2667, Sept. 28, 1945) did not assert ownership thereof against the State, because the Executive Order issued therewith (E.O. 9633, Sept. 28, 1945) said: "Neither this Order nor the aforesaid proclamation shall be deemed to affect the determination by legislation or judicial decree of any issues between the United States and the several states, relating to the ownership or control of the subsoil and sea bed of the continental shelf within or outside of the three-mile limit."

[2]S. J. Res. 208, 75th Cong., 1st Sess. (1938); S. J. Res. 83 and 92, 76th Cong., 1st Sess. (1939).

[3]H. R. 5992, 80th Cong., 2d Sess. (1948); 94 Cong. Rec. 5281 (1948), same as S. 1988, 80th Cong.

1946 but was vetoed by the President.[4]

Several bills now are pending in the 81st Congress, some asserting Federal rights and others recognizing State rights in the property which is the subject of this suit. Until and unless the Congress makes some assertion on behalf of the United States of the rights herein sued for, it is respectfully urged that the Attorney General is invading the province of the Congress and is without authority to bring this action.

That this Court cannot give full and final relief in this case or settle all the equities which may arise without Congressional action was recognized by the Attorney General of the United States in the *California* case. There he advised this Court that if judgment were for the Government, the President would recommend Congressional action which would care for "any equities of the State and those who have operated under it."[5] The same is true of his Memorandum in Support of Judgment (p. 5) in that case, in which it was asked that injunctive relief be withheld until it could be "attuned to anticipated Congressional action."

Even if the Court should not fully agree with us on this point, it is urged that this objection would justify the Court in using its discretion by awaiting action of Congress in this political field before permitting the Attorney General to file this suit as an original action in this Court.

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[4]H. J. Res. 225, 79th Cong., 2d Sess. (1946); 92 Cong. Rec. 9642, 10316 (1946).

[5]Plaintiff's Supplemental Brief, pp. 5-6, U. S. v. California, No. 12, Original, October Term, 1945.

## SECOND OBJECTION

**The interests of convenience, efficiency and justice will be better served by full development of the evidence in a district court, with customary appeal, than before a master in an original proceeding.**

*Statement in Support of Second Objection*

Although this Court has original jurisdiction of "All controversies between the United States and a State," its jurisdiction is not exclusive in such cases. 28 U.S.C. §1251(b). The district courts have concurrent jurisdiction with this Court in cases such as the present one, those courts having "original jurisdiction of all civil actions, suits or proceedings commenced by the United States. . . ." 28 U.S.C. §1345. *United States v. California,* 297 U.S. 175, 187; *United States v. 4,450.72 Acres of Land, Clearwater County, State of Minnesota,* 27 F. Supp. 167, affirmed 125 F. (2d) 636; *United States v. Ladley,* 51 F. (2d) 756.

The exercise of original jurisdiction by this Court in cases covered by Article III, Section 2, Clause 2 of the Constitution of the United States "is not mandatory in every case," and the "Court in its discretion has withheld the exercise of its jurisdiction where there has been no want of another suitable forum to which the cause may be remitted in the interests of convenience, efficiency and justice." *State of Georgia v. Pennsylvania R. Co.,* 324 U.S. 439, 464.

The issues tendered by the bill of complaint present questions which a district court is fully competent to decide.

Contrary to the situation in a similar proceeding against the State of California in which neither party "suggested any necessity for the introduction of evidence,"[6] the State of Texas in this case will suggest the necessity and ask for the right to develop the evidence fully.

In this proceeding the Government already has admitted that the State of Texas entered the Union under circumstances different from those under which California was admitted.[7] In the event of trial Texas will offer a great amount of testimony and written documents supporting its ownership of these lands and minerals by the independent Republic of Texas under Spanish and Mexican Law; its defense and maintenance of its boundaries and ownership for nearly 10 years by the Texas Navy; recognition by the United States and other major nations of the world; and the circumstances leading to the final agreement of annexation by which Texas retained all property within its boundaries not specifically conveyed to the United States. Texas will seek to develop fully the many instances in which this interpretation of the annexation agreement has been made by the United States, and that the filing of this suit is the first time since annexation in 1845 that any official of the United States has placed a different interpretation on the annexation agreement with Texas.

The evidence, documentary and otherwise, can be brought more easily before a proper Federal district court, such court being in proximity to the witnesses and documents. Also, the general rule in our system

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[6]U. S. v. California, 332 U. S. 19, 24.

[7]Government's Motion for Leave to File, p. 3.

of jurisprudence that title suits should be tried in Federal or State courts within the State where the land is located is particularly applicable in this case. Federal and State courts within Texas are already familiar with the law of real property and rules of evidence applicable to the case. This is especially true of Texas since its titles at the time of annexation were based upon Spanish and Mexican law and were specifically preserved as they then existed by the annexation agreement and Texas Constitution approved by the United State Congress.[8]

For these reasons, it is urged that a Federal district court can handle this case and develop the facts more conveniently than could this Court through appointment of a master. The final decision would remain in this Court through proper appeal. We are supported in this view by the dissenting opinion (and the distinguishing reaction thereto by the majority) of Chief Justice Stone, in which he was joined by Mr. Justice Roberts, Mr. Justice Frankfurter and Mr. Justice Jackson, in *State of Georgia v. Pennsylvania R. Co.*, 324 U. S. 439, 470. There it was said:

> ". . . In an orginal suit even when the case is first referred to a master, this Court has the duty of making an independent examination of the evidence, a time consuming process which seriously interferes with the discharge of our ever increasing appellate duties. No reason appears why the present suit may not be as conveniently proceeded with in the district court of the proper venue as in this Court, or why the convenience of the parties and witnesses, as well as of the courts concerned, would be better served by a trial before a master appointed by this Court than by a trial in

[8] 5 Stat. 797; Art. VII, Sec. 20, Const. of Texas, 1845.

> the appropriate district court with the customary appellate review. The case seems preeminently one where this Court may and should, in the exercise of its discretion and in the interest of a more efficient administration of justice, decline to exercise its jurisdiction, and remit the parties to the appropriate district court for a proper disposition of the case there."

The only apparent reason why the Court declined to remit the parties to a district court in that case is that it was not clear that all of the defendants could be found in one judicial district, which reason does not exist in this case. But for this reason the majority of the Court indicated that such procedure as is here requested "would be wholly appropriate."

As said by this Court, in an opinion by Mr. Justice Jackson, in *Kennedy v. Silas Mason Co.*, 334 U. S. 249:

> "The hearing of contentions as to disputed facts, the sorting of documents to select relevant provisions, ascertain their ultimate form and meaning in the case, the practical construction put on them by the parties and reduction of the mass of conflicting contentions as to fact and inference from facts, is a task primarily for a court of one judge, not for a court of nine."

No reason appears why the present suit may not conveniently proceed in the district court of the proper venue or why the convenience of the parties, as well as of the courts, would be better served by a trial before a master appointed by this Court than by a trial in a district court with the customary appellate review.

Without waiving the objection based upon lack of authority of the Attorney General, it is believed that

if a suit is filed at all, the interests of convenience, efficiency and justice will be better served by this Court's denial of the motion of the United States of America for leave to file its complaint against the State of Texas, without prejudice to the maintenance of the suit in an appropriate district court.

## CONCLUSION

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

PRICE DANIEL
Attorney General of Texas

JESSE P. LUTON, JR.
Assistant Attorney General

January 14, 1949