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No. 13, Original

In the Supreme Court of the United States

OCTOBER TERM, 1949

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF TEXAS

MOTION FOR JUDGMENT AND STATEMENT WITH RESPECT TO MOTION

In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 13, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF TEXAS

MOTION FOR JUDGMENT

Comes now the United States of America, by its Attorney General and its Solicitor General, and, reserving the right to trial on any issues of fact which can not be resolved by judicial notice, moves the Court for judgment as prayed in the Complaint, for the reason that the purported defenses set forth in the answer filed herein by the State of Texas are insufficient in law.

J. HOWARD MCGRATH,
Attorney General.

PHILIP B. PERLMAN,
Solicitor General.

NOVEMBER 1949.

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STATEMENT WITH RESPECT TO MOTION

The State of Texas, in its Answer to the Complaint herein, has denied that this Court has jurisdiction of this cause under Article III of the Constitution; has denied the claim of ownership and paramount rights asserted by the United States over the area in controversy; has admitted that Texas claims rights in the area and that its claims are adverse to those asserted on behalf of the United States; has admitted that the State has, by general law, authorized the leasing of the lands in question for the development of petroleum deposits, that leases for such development have been executed by the State, and that the lessees thereunder have entered upon the lands and have drilled wells, some of which have been producing petroleum substances which the lessees have removed, paying to the State royalties thereon; has admitted that the State has not paid to the United States either the value of or any royalties on the petroleum substances so removed and has denied that the United Staes is entitled to such payment; has admitted that Texas claims full and complete ownership of the lands underlying the area in controversy and that the State will continue to claim such ownership, but has denied that the acts of the State or any of its lessees constitute a trespass upon said lands or a violation of any rights of the United States.

The Answer of the State also contains what is described as an Affirmative Defense of Prescription in which it is alleged that the Republic of Texas, from 1836 to 1845, had open, adverse, and uninterrupted possession of and exercised jurisdiction and control over the lands underlying the Gulf of Mexico within its established boundaries; that this claim was recognized and acquiesced in by the United States and other nations of the world; that under the terms of its annexation Texas' claim to such lands was preserved; that the State of Texas, as successor to the Republic, not having relinquished this claim, has continued to assert its rights thereunder for more than 100 years; and that the United States has recognized and acquiesced in this claim of the State during such period and is thereby precluded from asserting any right or interest adverse to the rights of Texas as so asserted and recognized.

In its Complaint, the United States has asserted its rights with respect to the lands, minerals and other things underlying the area in controversy and has alleged that the State and its lessees are trespassing upon the area in violation of those rights. The State has admitted the activities described in the Complaint, but has denied that such activities are in violation of the rights of the United States. These admissions by the State establish the requisite factual frame-

work for a determination by the Court of the basic legal issues here involved and, like the similar case of the *United States* v. *California,* 332 U. S. 19, the case is now ripe for such a determination on the merits.

The State has also filed a motion for the appointment of a Special Master to conduct pretrial proceedings, take evidence and make findings of fact and conclusions of law in the event that the Court itself is not to perform those functions. In our opinion, no such procedure is required at this stage of the litigation. As above indicated, the allegations and admissions made in the pleadings have framed the basic issues and these issues may be adjudicated by the Court without the taking of evidence.

To be sure, Texas may have certain special defenses growing out of the circumstances of its admission to the Union, although we think that such special defenses are wholly without merit. Such defenses can and should be presented to the Court by means of materials subject to judicial notice.

The basic question in this litigation is whether the rule announced in the *California* case applies to the lands underlying the Gulf of Mexico adjacent to Texas. The validity of the State's claim that the *California* decision does not apply, because of Texas' asserted distinctive status, presents only a question of law which may be heard

and determined by the Court on the basis of legislative materials and other matters subject to judicial notice. Although some of the issues in this case may take somewhat different form from those in the *California* case, the general character of the issues is similar and they may be resolved here on the basis of briefs and oral arguments, as was done in the California case.

In view of the foregoing, the motion of the State for the appointment of a Special Master should be denied and the case should be heard at the earliest convenient time on the Motion for Judgment hereto annexed.

Respectfully submitted.

J. HOWARD MCGRATH,
Attorney General.
PHILIP B. PERLMAN,
Solicitor General.

November 1949.

U. S. GOVERNMENT PRINTING OFFICE: 1949