IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 13, Original

UNITED STATES OF AMERICA,
Plaintiff

v.

STATE OF TEXAS,
Defendant

FIRST AMENDED ANSWER OF THE STATE OF TEXAS

PRICE DANIEL
Attorney General of Texas

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UNITED STATES OF AMERICA,
Plaintiff

v.

STATE OF TEXAS,
Defendant

MOTION FOR LEAVE TO FILE

The State of Texas, by its Attorney General, asks leave of the Court to file its first amended answer to the complaint filed herein by the United States of America.

Statement With Reference to Motion

The amended answer which the State of Texas now requests leave to file presents with additional clarity the grounds relied upon by the State of Texas in defense to the claim of the United States. It is necessary to a full and complete presentation of the issues that this amended answer be filed prior to considera-

tion of plaintiff's motion for judgment on the pleadings. The request has been made promptly in order to occasion no delay in the proceedings.

This Court at a very early date gave effect to the practice of permitting the amendment of pleadings in original proceedings. In *Rhode Island v. Massachusetts*, 12 Pet. 657, 759 (1838), the Court permitted the parties to amend their pleadings six years after the original bill was filed. The view of this Court on permitting amendments in original actions was expressed in that case as follows:

> "In ordinary cases between individuals, the court of chancery has always exercised an equitable discretion in relation to its rules of pleadings, whenever it has been found necessary to do so for the purposes of justice. And in a case like the present, the most liberal principles of practice and pleading ought unquestionably to be adopted, in order to enable both parties to present their respective claims in their full strength." (14 Pet. 210, 257.)

In accord with this policy, leave to amend has since been granted by the Court in a number of orginal actions.

This liberal policy toward amendments appears also in the Federal Rules of Civil Procedure, which are applicable by analogy in original proceedings in this Court. Rule 15(a) provides in part:

> "Otherwise a party may amend his pleadings only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires."

The federal courts have consistently shown "a strong liberality . . . in allowing amendments under 15(a)." *Tahir Erk v. Glenn L. Martin Co.*, 116 F. 2d 865 (C.C.A. 4th, 1941). This is particularly true where the opposing party will not be unduly prejudiced or the trial of the issues unduly delayed.

It is apparent from the nature of the changes made by the amended answer that the amendment will not result in any changes in the plan of presentation and argument of the plaintiff to its prejudice. Nor will the hearing of the issues be delayed by the granting of leave to amend.

FIRST AMENDED ANSWER

Now comes the State of Texas, by its Attorney General, and says in its amended answer to the complaint herein:

I

Answering paragraph I of the complaint, defendant denies that this Court has jurisdiction of this cause under Article III, Section 2, Clause 2, of the Constitution of the United States, because the complaint presents no case or controversy within the meaning of this article.

II

Answering paragraph II of the complaint, defendant denies:

1. That plaintiff now is, or ever has been, the owner of the lands, minerals, or other things underlying the Gulf of Mexico within the area described in the complaint, except such specifically described tracts or parcels thereof as have been acquired by plaintiff from defendant by deeds of conveyance or condemnation. Except as to such tracts or parcels of land, defendant specifically denies that plaintiff now has, or ever has had, any character of proprietary right or title in any of the lands, minerals, or other things in the area described in the complaint.

2. That plaintiff now is, or ever has been, possessed of paramount rights in, or full dominion or power over, the lands, minerals, or other things

underlying the Gulf of Mexico within the area described in the complaint, except the paramount power to control, improve, and regulate navigation which, under the commerce clause of the Constitution of the United States, plaintiff has over lands beneath all navigable waters within the United States, whether inland or coastal, and except the same dominion and paramount power which, under the Constitution of the United States, plaintiff has over uplands within the United States, whether privately or State owned. Defendant denies that these or any other paramount powers, rights, or dominion of the United States include ownership or the right to take, develop, or authorize the taking or developing of petroleum, gas, or other minerals lying beneath the land described in the complaint without compensation to the State of Texas. Defendant denies that these or any other paramount powers, rights, or dominion of the United States include the right to control or to prevent the taking or developing of such minerals by defendant or its lessees except when necessary in the exercise of the paramount Federal powers as above recognized by defendant and when duly authorized by appropriate congressional action.

III

Answering paragraph III of the complaint, defendant admits that it claims rights, title, and interests in said lands, minerals, and other things, and says that its rights include ownership and the right to take, use, lease, and develop the minerals

and other resources therein, subject to the dominion and paramount powers of the United States as recognized in section 2, paragraph II above. Except as to those specific tracts or parcels acquired by plaintiff from defendant by deeds of conveyance or condemnation, defendant admits that its title and rights are adverse to the claim of ownership which the Attorney General seeks to assert on behalf of the United States. Defendant admits that its claims are adverse to any other rights which the Attorney General claims for the United States in excess of the dominion and paramount powers of the United States as recognized in section 2, paragraph II above. Defendant denies that its claims are adverse to, or that they have been held or exercised adversely to, the aforesaid constitutional rights, dominion, or power of the United States. On the contrary, defendant says that its title and rights have been held and exercised subject to, and without any interference with, any paramount constitutional power possessed, exercised, or properly sought to be exercised, by the United States. Defendant further says that the United States has not sought, and does not seek now, to acquire said lands, minerals, or other things or any rights therein in accordance with the requirements of the Fifth Amendment to the Constitution of the United States. Neither has it sought, nor does it seek now, to prevent the taking or development of the minerals by defendant and its lessees because of any interference with the exercise, or attempted exercise of, any of the paramount Federal powers recognized in section 2, paragraph II above.

IV

Defendant admits the allegations contained in paragraph IV of the complaint.

V

Answering paragraph V of the complaint, defendant admits that it has negotiated and executed leases with various persons and corporations covering certain lands and minerals in the area described in the complaint. Defendant admits that these lessees have paid to the State substantial sums of money, entered upon said lands, and drilled wells for the recovery of such minerals, but denies that these acts, or any of them, were in violation of any rights of the United States. Defendant admits that some, but denies that all, of the wells drilled on these lands have been producing petroleum, gas, or other hydrocarbon substances, which the lessees of defendant have removed, taken, and used, paying defendant the royalties and other considerations as specified in the respective leases. Defendant denies that any of such acts of these lessees constituted a conversion of such petroleum, gas, or other hydrocarbon substances. As fully set forth in paragraph III hereof, defendant denies that the State has not recognized the constitutional rights of the United States. Defendant admits that the State has not paid to the United States either the value of, or any royalties on, any petroleum or other things taken from such lands. Defendant denies that the United States is entitled to the value of, or any royalties on, any petroleum or

other things taken from such lands, or to any other monies derived by the State from the area. Defendant denies that it has knowledge or information sufficient to form a belief as to the truth of the averments that its lessees have not recognized the rights of the United States and that these lessees, or any of them, have not paid to the United States either the value of, or any royalties on, any petroleum or other things taken from the lands described in the complaint.

VI

Defendant denies each and every allegation contained in paragraph VI of the complaint.

VII

Answering paragraph VII of the complaint, defendant admits that the State of Texas has claimed, and does now claim, title and full and complete ownership of the lands, minerals, and other things underlying the Gulf of Mexico within the boundaries of the State of Texas, except such specifically described tracts or parcels thereof as have been acquired by plaintiff from defendant by deeds of conveyance or condemnation, and that this claim is subject to the dominion and paramount powers of the United States as recognized in section 2, paragraph II above. Defendant admits that the State of Texas will continue to claim such title and ownership for itself and to exercise all the rights incident thereto. Defendant denies that any of the acts of the State or of any

of its lessees or of any other person acting under or pursuant to State authority constituted, or will constitute, a trespass upon the lands alleged to be in controversy, or any part thereof. Defendant denies that it or any of its lessees or anyone acting under authority of the State of Texas will be in violation of any rights of the United States in taking or using the minerals or other things from, in, or under the lands alleged to be in controversy. Defendant denies that the United States will suffer irreparable, or any, injury and that there is no adequate remedy except by this action.

VIII

Defendant denies each and every allegation in the complaint not herein admitted, controverted, or specifically denied.

First Affirmative Defense

Under its claim of title, of ownership, and of sovereign rights as an independent nation, the Republic of Texas, from March 2, 1836, to December 29, 1845, had open, adverse, exclusive, and uninterrupted possession and exercised jurisdiction and control over the lands, minerals, and other things underlying that part of the Gulf of Mexico within its boundaries, established at three marine leagues from shore by Act of its First Congress on December 19, 1836. This claim and the rights so exercised were recognized and acquiesced in by the United States and other major nations of the world.

Thereafter, the terms of the annexation agreement between the United States and Texas recognized and preserved Texas' claim and its rights thereunder. The State of Texas, as successor to the Republic of Texas, not having ceded, transferred, or relinquished its claim, its title, or its rights to the United States, has continued to assert and exercise them, subject to and without interference with the dominion and paramount powers of the United States as recognized in section 2, paragraph II above. During this period of more than 100 years, the State of Texas, subject to and in full recognition of the aforesaid constitutional powers of the Federal Government, has continued to hold open, adverse, exclusive, and uninterrupted possession, jurisdiction, and control of the lands, minerals, and other things lying beneath the Gulf of Mexico within the original boundaries of the State under its claim of title, ownership, and governmental rights, without dispute, challenge, or objection by the United States or any other nation. On the contrary, the United States, both in international agreements and in its domestic affairs, has recognized, and acquiesced in, this claim and these rights. The United States is thereby precluded from asserting or claiming any right, title, or interest adverse to the ownership and rights of the State of Texas as thus recognized and acquiesced in by the United States and other nations both while Texas was an independent nation and since it has been a member of the Union.

Therefore, in addition to its other defenses, defendant says that the State of Texas, under the doctrine of prescription, has established such title, own-

ership, and sovereign rights in the area as preclude the granting of the relief prayed for by the Federal Government in this case.

Second Affirmative Defense

On March 2, 1836, Texas declared its independence from Mexico, and, by the decisive battle of San Jacinto on April 21, 1836, effectively established this independence and thus became a sovereign nation. On December 19, 1836, the first Congress of the Republic of Texas passed an act providing:

> "Be it enacted by the senate and house of representatives of the republic of Texas, in congress assembled, That from and after the passage of this act, the civil and political jurisdiction of this republic be, and is hereby declared to extend to the following boundaries, to wit: beginning at the mouth of the Sabine river, and running west along the Gulf of Mexico three leagues from land, to the mouth of the Rio Grande, thence up the principal stream of said river to its source, thence due north to the forty-second degree of north latitude, thence along the boundary line as defined in the treaty between the United States and Spain, to the beginning . . . ."

Thereafter, the United States, France, Great Britain, and The Netherlands, with knowledge of these declared boundaries, formally recognized the Republic of Texas as a sovereign nation.

By Joint Resolution of the Senate and House of Representatives of the United States of America, in

Congress assembled, the Congress resolved on March 1, 1845:

> "That Congress doth consent that the territory properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new state, to be called the state of Texas, . . . in order that the same may be admitted as one of the States of this Union."

And further resolved:

> "That the foregoing consent of Congress is given upon the following conditions, and with the following guarantees, to-wit: *First*—said state to be formed, subject to the adjustment by this government of all questions of boundary that may arise with other governments. . . . *Second*—said state, when admitted into the Union, after ceding to the United States 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, shall retain all the public funds, debts, taxes, and dues of every kind which may belong to or be due and owing said republic; and shall also retain all the vacant and unappropriated lands lying within its limits. . . .".

On June 23, 1845, the Senate and House of Representatives of the Republic of Texas, in Congress assembled, passed a joint resolution which, after reciting in its preamble the specific terms of the offer of statehood contained in the Joint Resolution of the Congress of the United States, resolved:

"That, the Government of Texas doth consent, that the People and Territory of the Republic of Texas, may be erected into a new State, to be called the State of Texas, with a Republican form of Government, to be adopted by the people of said Republic, by Deputies in Convention assembled, in order that the same may be admitted as one of the States of the American Union, and said consent is given on the terms, guarantees and conditions set forth in the Preamble to this Joint Resolution."

By an ordinance adopted July 4, 1845, the Convention of Texas, called for the purpose of adopting a Constitution for the State of Texas, assented to and accepted "the proposals, conditions and guarantees contained in the first and second sections of the Resolution of the Congress of the United States aforesaid."

This Constitution of the State of Texas, adopted in 1845 "in accordance with the provisions of the Joint Resolution for annexing Texas to the United States" and accepted by the Congress of the United States, contained the following provisions:

"The rights of property and of action which have been acquired under the Constitution and laws of the Republic of Texas, shall not be divested; . . . but the same shall remain precisely in the situation which they were before the adoption of this Constitution." (Article VII, Section 20.)

"All laws and parts of laws now in force in the Republic of Texas, which are not repugnant to the Constitution of the United States. the

> Joint resolutions for annexing Texas to the United States, or to the provisions of this Constitution, shall continue and remain in force as the laws of this State, until they expire by their own limitation, or shall be altered or repealed by the Legislature thereof." (Article XIII, Section 2.)

Thereafter, the Congress of the United States on December 9, 1845, passed a joint resolution as follows:

> "Whereas, the Congress of the United States, by a Joint Resolution approved March the first, eighteen hundred and forty-five, did consent that the territory properly included within, and rightfully belonging to the Republic of Texas, might be erected into a new state, to be called *The State of Texas*, . . . in order that the same might be admitted as one of the states of the Union; which consent of Congress was given upon certain conditions specified in the first and second sections of said Joint Resolution: And whereas, the people of the said Republic of Texas, by deputies in Convention assembled, with the consent of the existing government, did adopt a Constitution and erect a new state, with a republican form of governnment, and in the name of the people of Texas, and by their authority, did ordain and declare, that they assented to and accepted the proposals, conditions, and guarantees contained in said first and second sections of said resolution: And whereas the said Constitution, with the proper evidence of its adoption by the people of the Republic of Texas, has been transmitted to the President of the United States, and laid before

Congress, in conformity to the provisions of said Joint Resolution:

"Therefore

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the state of Texas shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever."

By these acts on the part of the United States and the Republic of Texas, when construed, as they must be, in the light of the intention of the contracting parties, there was a binding agreement between the two independent sovereigns that upon annexation Texas would not cede to the United States any, but that the newly created State would retain all, of the lands, minerals, and other things lying beneath that part of the Gulf of Mexico within the original boundaries of the Republic, as well as the right to take, use, and develop the lands and minerals, subject only to the dominion and paramount powers of the United States as recognized in section 2, paragraph II above.

Therefore, in addition to its other defenses, defendant says that the Republic of Texas having fully complied with the terms and conditions of the annexation agreement by which it entered and was admitted into the Union, the United States, having received and accepted the full benefits of this compliance, is now estopped to claim or to exercise any title or rights inconsistent with or in derogation of the terms, conditions, and guarantees of this binding agreement between two equal sovereign nations.

Third Affirmative Defense

The boundaries of the State of Texas as declared, established, and maintained by the Republic of Texas were confirmed by the United States in the Treaty of Guadalupe Hidalgo, proclaimed by the United States and Mexico on July 4, 1848, Article V of which provides:

> "The Boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte . . . ."

Later by the Gadsden Treaty, proclaimed by the United States and Mexico on June 30, 1854, these boundaries of the State of Texas were further confirmed by the United States. Article I of this treaty provides:

> ". . . the limits between the Two Republics shall be as follows: Beginning in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande as provided in the fifth article of the treaty of Guadalupe Hidalgo. . . ."

A convention concluded between the United States and Mexico, proclaimed September 14, 1886, contained the following stipulation in Article I:

> "The dividing line [between the United States and Mexico] shall forever be that described in the aforesaid Treaty [of Guadalupe Hidalgo] . . . ."

This stipulation was reaffirmed in a convention concluded between these same nations, proclaimed June 5, 1907.

Therefore, in addition to its other defenses, defendant says that by these acts and treaties and these conventions, the United States acknowledged and confirmed the three-league boundary of the State of Texas in the Gulf of Mexico as declared, established, and maintained by the Republic of Texas and as retained by the State of Texas under the annexation agreement. By the same token, the United States acknowledged and confirmed to the State of Texas the rights to the lands, minerals, and other things within this boundary which were retained by the State upon annexation to the United States. The United States is, therefore, estopped from now claiming title to any lands, minerals, or other things within the boundaries of Texas as thus acknowledged and confirmed, except those specifically described tracts or parcels thereof that have been acquired by plaintiff from defendant by condemnation or deeds of conveyance, and is further estopped from asserting or exercising any "paramount rights in or dominion and power over," any lands, minerals, or other things within these boundaries, except the dominion and paramount rights of the United States as recognized in section 2, paragraph II above.

Wherefore, the defendant prays that the plaintiff take nothing by its complaint herein, that plaintiff's suit be dismissed with prejudice, and that defendant recover its costs and expenses herein incurred.

PRICE DANIEL
Attorney General of Texas

December 16, 1949.