10

No. ~~15~~, Original

IN THE

Supreme Court of the United States

OCTOBER TERM, ~~1955~~ 1958

UNITED STATES OF AMERICA, *Plaintiff*

v.

STATE OF LOUISIANA

MOTION TO DISMISS, AND DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR INJUNCTION, WITH SUPPORTING BRIEF

JACK P. F. GREMILLION
Attorney General
State of Louisiana
Baton Rouge, Louisiana

EDWARD M. CARMOUCHE
Special Assistant Attorney General
State of Louisiana
Kirby Building
Lake Charles, Louisiana

JOHN L. MADDEN
Special Assistant Attorney General
State of Louisiana
Baton Rouge, Louisiana

W. SCOTT WILKINSON
Special Counsel
State of Louisiana
1708 Beck Building
Shreveport, Louisiana

George — Memphis, Tenn. 8-5800

BAILEY WALSH
Special Counsel
State of Louisiana
1025 Connecticut Avenue, N. W.
Washington, D. C.

Nat. 8-8954

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX

CITATIONS

STATUTES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 15, Original

UNITED STATES OF AMERICA, *Plaintiff*

v.

STATE OF LOUISIANA

MOTION TO DISMISS, AND DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR INJUNCTION

Now comes the State of Louisiana, defendant herein, through its Attorney General, without abandoning but re-asserting and reserving all rights under its objections to the filing of the complaint herein and reserving its right to move to dismiss the entire proceeding on jurisdictional grounds; and without in any manner consenting to be sued, or submitting itself voluntarily to the jurisdiction of this Court, moves the Court to dismiss plaintiff's motion for an injunction for the reason that the plaintiff has failed to comply with the provisions of Rule 31 of the Supreme Court Rules, in that no motion for leave to file this proceeding has been obtained from the Court.

In the event that this motion to dismiss be overruled, defendant opposes plaintiff's motion for an injunction herein on the following grounds:

First Defense

Defendant denies each and every allegation in the motion for injunction except as may be hereinafter admitted:

I

It is admitted that a decree was entered on December 11, 1950, in the case of *United States* v. *Louisiana*, 340 U.S. 899, by this Court, which decree speaks for itself, but defendant shows that the effect of said decree has been nullified and the decree has been superseded by the provisions of Public Law 31 of the 83rd Congress, known as the Submerged Lands Act, enacted May 22, 1953, 67 Stat. 29, 43 USC 1301, et seq.

II

Paragraph II of the complaint is denied as written, and the defendant avers that in the Submerged Lands Act Congress recognized the fact that the United States had no right, title or interest in the lands, minerals and other things underlying the Gulf of Mexico, and in Section 3 of said Act (67 Stat. 30, 43 USC 1311) released and relinquished "all right, title and interest of the United States, *if any it has,* in and to said lands, improvements, and natural resources."

The legislative history of the Submerged Lands Act and the reports of the Committees of Congress relating thereto specifically state that throughout the history of this Nation the respective States have been recognized and acknowledged to be the sovereign owners

of the land beneath navigable waters within their boundaries, including the marginal seas, and of the natural resources within such lands and waters (US Congressional & Administrative News, 83rd Congress, 1st Session, 1953, Vol. 2, pp. 1398-9, 1409-10, 1417, 1419, 1428-30, 1481, 1507-8, 1517-19).

III

Paragraph III as written is denied and defendant shows that the State of Louisiana claims that the Submerged Lands Act has recognized Louisiana's historical title to submerged lands lying three leagues seaward from its coast. On December 19, 1955, the United States applied to this Court for leave to file its complaint as against the State of Louisiana "declaring its rights in lands, minerals and other things underlying the Gulf of Mexico lying more than three geographic miles seaward from the ordinary low water mark and from the outer limit of inland waters on the coast of Louisiana and extending seaward to the edge of the Continental Shelf" as will more fully appear from the complaint filed herein. It is admitted that on March 26, 1956 the Court granted leave to file said complaint and required defendant to respond thereto within thirty days.

IV

Paragraph IV is admitted except that defendant shows that it has an extension of time within which to plead or respond to said complaint until June 25, 1956.

V

Paragraph V as written is denied, and defendant avers that officials of the Interior Department, acting

beyond and in violation of statutory authority have issued oil and gas leases on submerged lands lying three miles off shore as well as on submerged lands lying within three marine leagues of Louisiana's coast, said lands having been leased against the protest of the defendant. In making said leases, the said officers and agents of the Interior Department have acted without any statutory authority and in violation of the positive enactments of Congress and of the legal rights of the plaintiff, and have invaded and trespassed upon property and property rights belonging to the State of Louisiana, which said actions the State of Louisiana has restrained by order of Court, as hereinafter shown.

VI

It is admitted that the State of Louisiana has filed suit in the Fourteenth Judicial District Court against Edward Woozley and Sidney Groom as alleged in this paragraph, the allegations of said petition being copied in Appendix A of plaintiff's motion and brief, but defendant avers that said petition was amended by omitting from the prayer thereof any request for a declaration as to the title of the State of Louisiana for the properties involved. Defendant shows that the said petition in the State Court as amended sets forth a cause of action between different parties, involving a different cause of action, and a different prayer for relief from that sought by the United States in its original complaint herein; that the parties and causes of action are not the same and there is no inconsistency in the State Court or United States District Court for the Western District of Louisiana to which said proceeding has been removed, from proceeding to a final determination of the issues involved. The latter state-

ment is made without admission on the part of the State of Louisiana that its suit in the District Court of Calcasieu Parish, Louisiana has been properly removed to the United States District Court.

VII

This paragraph is denied as written. It is admitted that the United States has attempted to remove the cause pending in the State Court to the United States District Court for the Western District of Louisiana, that the latter Court has ordered a partial remand to the State Court insofar as the defendants Edward Woozley and Sidney Groom are concerned, and that United States has petitioned for a rehearing on this order which matter is now pending the United States District Court. In this connection defendant shows that the position of the United States here is utterly inconsistent with the averments of the petition to remove the State suit to the United States District Court. The allegations made there that the said Court has original jurisdiction over, and should hear said cause, are contradictory to the claim now made that an injunction is necessary to preserve the jurisdiction of this Court. Further answering, defendant shows that on May 14, 1956, the United States filed a petition in the United States District Court for the Western District of Louisiana for an injunction to restrain the State of Louisiana from proceeding further with its said Suit #38780 on the Docket of the 14th Judicial District Court of Calcasieu, said petition setting forth the grounds now urged in this Court, and said proceeding was dismissed and the relief prayed for denied by Judgment of the United States District Court on May 14, 1956. Defendant now pleads said Judgment as res adjudicata of the issues here presented.

VIII

The allegations of paragraph VIII are denied. The defendant denies that it is attempting to circumvent the jurisdiction of this Court and avers that the proceeding in the State Court does not involve the same questions, is not based on the same laws and does not seek the same relief which is being sought in this Court. Defendant shows that the State Court does not interfere with the conduct of the said officials of the United States in the performance of their duties, but seeks to restrain and enjoin them from conspiring to trespass upon and slander the title and disturb the possession of the State of Louisiana to properties which are in its possession under the claim of ownership, and have been so possessed by the State from time immemorial. The defendant shows that the said restraint and injunctive process will not work any irreparable injury to the United States, but will maintain the status quo until the issues presented by the original complaint in this proceeding have been finally adjudicated and determined.

Second Defense

If the Plaintiff's motion for injunction is made for the purpose of approving or ratifying the tortious and unlawful acts of officers and agents in trespassing on lands possessed by the State of Louisiana under claim of title, then plaintiffs comes into a court of equity with unclean hands and should be denied relief. Plaintiff cannot in good faith petition this Court to declare its rights and title in the submerged lands off the coast of Louisiana, and then proceed through its officers and agents to trespass upon and lease for mineral development the very lands concerning which it has requested this Court's adjudication.

Third Defense

The rule of comity between Courts prevents this Court from interfering with the proceedings of the Courts of the State, and this rule is a principle of fundamental right and law based upon necessity, whether the plaintiff be sovereign or citizen. In the absence of a seizure of these properties or custody thereof by this Court there is no valid reason for restraint against proceedings in the State Court relating to the same subject matter.

Fourth Defense

There is no inconsistency between the action of boundary filed by the Government in this Court, and the possessory action filed pursuant to State Statutes in the Louisiana Court, and the restraining order and injunction sought in the State Court can in no way prejudice the rights of the United States in the final determination of its boundary suit. Maintenance of the status quo by State Court injunction can in no way interfere with the jurisdiction of this Court, but will on the contrary be consistent therewith.

Fifth Defense

Plaintiff can suffer no injury by refraining to lease the lands in dispute for mineral development. There is no allegation on the part of plaintiff that such lands are being leased by the State of Louisiana nor is there any claim that the minerals thereunder are being taken or drained from said lands by State lessees or anyone else. Said minerals have been on deposit for millions of years and will stay where they are until the dispute as to their ownership is finally determined.

WHEREFORE the State of Louisiana prays that this opposition to plaintiff's motion for injunction be maintained and that plaintiff's motion be rejected and denied.

JACK P. F. GREMILLION
Attorney General
State of Louisiana

EDWARD M. CARMOUCHE
Special Assistant Attorney General
State of Louisiana

JOHN L. MADDEN
Special Assistant Attorney General
State of Louisiana

W. SCOTT WILKINSON
Special Counsel
State of Louisiana

BAILEY WALSH
Special Counsel
State of Louisiana

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

UNITED STATES OF AMERICA, *Plaintiff*

v.

STATE OF LOUISIANA

BRIEF OF THE STATE OF LOUISIANA IN OPPOSITION TO MOTION FOR INJUNCTION

Preliminary Statement

The original complaint in this case was brought by the United States for the purpose of securing a declaration as to its rights against the State of Louisiana in lands, minerals, and other things underlying the Gulf of Mexico lying more than three geographical miles seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Louisiana. The complaint alleges that a dispute exists between the United States and the State of Louisiana as to the boundaries between the submerged lands off the cost of Louisiana belonging to the State, and those claimed by the United States under the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U.S.C. (Supp. II) 1331-1343. The original complaint also seeks an injunction against the State

of Louisiana from interfering with the rights of the United States in the properties to which its title might be recognized, and for an accounting of all sums of money received by the State from submerged lands belonging to the United States. The principal demand in the original complaint is, therefore, one for the determination of boundaries, and this is coupled with an incidental demand for an injunction and an accounting.

None of the properties in question have been seized by any process issued by this court. This court, therefore, does not have possession of the *res*. The original complaint was served upon the State of Louisiana through its Attorney General.

After having thus tendered to this court the question as to the boundaries between the State of Louisiana and the United States, officials of the federal government proceeded to disregard the complaint and to decide the issue administratively. Officers and agents of the Department of the Interior have, notwithstanding the dispute submitted to this court, proceeded to lease and to offer for lease offshore lands both within and beyond the area lying within three miles of Louisiana's mainland shores. By reason of this lack of good faith on the part of the federal officials, and their utter disregard of the property rights of the State of Louisiana, the latter brought suit in the Fourteenth Judicial District Court of Calcasieu Parish, Louisiana, alleging that these federal officials, while knowing Louisiana's claim to, and possession of these lands from time immemorial, and over the written protest of the State of Louisiana have proceeded to lease and to advertise lands for lease which belong to and are in the possession of the State of

Louisiana. The State alleges that these officials have unlawfully combined and conspired with the officers and agents of various oil companies to slander the title of the State and to trespass upon lands in its possession to its irreparable damage and injury. It is also alleged that the said federal officials, without any statutory authority whatever and in violation of the positive enactments of Congress and of the legal rights of the State of Louisiana are seeking to invade and take property and property rights and natural resources belonging to the State and in its possession, said properties lying inside the historic boundaries of the State, three leagues from the coast in the Gulf of Mexico. The original petition of the State of Louisiana is copied in Appendix A to the government's motion and brief, and the restraining order issued by the State judge against Edward Woozley and Sidney Groom, individual defendants, is set forth in Appendix B to the government's motion for injunction and brief in support thereof.

While the original petition in the State court prayed for a declaration as to Louisiana's title and rights in said lands, an amended petition was filed on May 21, 1956, in the State court and in the United States District Court eliminating any question as to title to said lands. A copy of the amended petition is contained in the appendix to this brief.

The differences between the original complaint in this court and the petition in the State court are obvious. The complaint in the Federal court is brought by the United States whereas the defendants in the State court are individuals. The United States is not a party to the State's suit, and is not a necessary party as will be hereinafter shown.

The complaint in this court seeks a declaration as to boundaries and is essentially a boundary action. The petition in the State court is an action sounding in tort, and no question as to boundary or title is involved.

The complaint in this court is based upon certain acts of the United States Congress—the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. (Supp. II), 1301-1315, and the Outer Continental Shelf Lands Act, supra. The State proceeding is a possessory action in which Louisiania seeks to protect its possession of the properties in question, it is based upon the following articles of the Code of Practice of Louisiana:

> 46. "*Basis of action.*—The possessory action, which is a branch of real actions, may be brought by any possessor of a real estate, or of a real right, who is disturbed either in the possession of the estate or in the enjoyment of the right, against him who causes the disturbance, in order to be maintained in, or restored to the possession, whether he has been evicted or disturbed; provided his possession be accompanied by the qualifications hereafter required.
>
> 50. *Kinds of disturbance.* — The disturbance which gives rise to the possessory action may be of two kinds; disturbance in fact, or disturbance in law.
>
> 51. '*Disturbance in fact' defined.*—Disturbance in fact occurs when one, by any act, prevents the possessor of a real estate, or of a right growing from such an estate from enjoying the same quietly, or throws any obstacle in the way of that enjoyment, or evicts him through violence, or otherwise.
>
> 52. '*Disturbance in law' defined — Demand insufficient.*—Disturbance in law takes place when

one, pretending to be the possessor of a real estate, says that he is disturbed by the real possessor, and brings against the latter the possessory action; for in such a case the true possessor is disturbed by this action, and may also bring a possessory action, in order to be quieted in his possession.'

53. *Proof of possession and disturbance thereof.* —The plaintiff in a possessory action needs only, in order to make out his case, to prove that he was in possession of the property in question, in the manner required by this Code, and that he has been either disturbed or evicted within the year previous to his suit."

In a possessory action against trespassers, under the Louisiana Code, one who has had quiet possession as owner for a year or more is entitled to be quieted in such possession, and the question of title is in no way involved.

Siegel v. *Hellis,* 186 La. 506, 172 So. 768;
Ware v. *Baucum,* 221 La. 259, 59 So. 2d 182;
Grant Timber & Mfg. Co. v. *Gray,* 131 La. 865, 60 So. 374;
Smith v. *Grant Timber & Mfg. Co.,* 130 La. 471, 58 So. 153;
Producers Oil Co. v. *Hanszen,* 132 La. 691, 61 So. 754;
Moran v. *New Orleans,* 170 La. 499, 128 So. 290.

It therefore follows that the action pending in this court does not involve the same parties, the same issues, or the same relief, and neither action is inconsistent with the other. Both are actions in personam, and neither this court nor the State court has custody or possession of the property in dispute.

State Proceeding is Not a Suit Against the United States

Two officials of the United States Government are defendants in the State court. They are Edward Woozley, Director of the Bureau of Land Management of the Department of the Interior, residing in Washington, D. C., and Sidney Groom, who is the District Manager of the Bureau of Land Management, and resides in New Orleans. A suit of this kind against these officials to enjoin them from exceeding their authority and committing a tort against the State of Louisiana is not a suit against the United States. The following text of 91 C.J.S. 409 is applicable to this situation.

> "The sovereign immunity of the United States from suit without its consent does not extend to its officers or agents; an action against an official or agency of the United States is not necessarily a suit against the United States. Where defendant's conduct is such as to create a personal liability, the fact that defendant is an officer of the United States does not forbid a court from taking jurisdiction of a suit against him. The exemption of the United States from suit does not protect its officers and agents from injunctive process to prohibit a threatened wrongful invasion of property rights."

Numerous decisions of the Supreme Court and of the Federal Courts in support of the foregoing text are found in the notes and will be quoted from hereafter. The text then goes on to say:

> * * *"Where the officer's powers are limited, his actions beyond those limitations are considered individual and not sovereign actions, and a suit for specific relief with respect to such actions is not necessarily a suit against the United States." (91 C.J.S. 412)

In the case of *Land* v. *Dollar,* 67 S. Ct. 1009, 330 U.S. 731, 91 L. Ed. 1209, the Supreme Court held that in a suit against the officers of the United States where the right to possession or enjoyment to property under general law is in issue, the fact that defendants claim as officers or agents of the United States does not make the action one against the Federal Government. In that case the Court said:

> "If respondents are right in these contentions, their claim rests on their right under general law to recover possession of specific property wrongfully withheld. * * *
>
> If viewed in that posture, the case is very close to United States v. Lee, 106 U.S. 196, 27 L. Ed. 171, 1 S. Ct. 240. * * * That rule is applicable here although we assume that record title to the shares is in the Commission. In United States v. Lee, 106 U.S. 196, 27 L. Ed. 171, 1 S. Ct. 240, supra, record title of the land was in the United States and its officers were in possession. The force of the decree in that case was to grant possession to the private claimant. Though the judgment was not res judicata against the United States, p. 222, it settled as between the parties the controversy over possession. Precisely the same will be true here, if we assume the allegations of the complaint are proved. For if we view the case in its posture before the District Court, petitioners, being members of the Commission were in position to restore possession of the shares which they unlawfully held.
>
> * * * But public officials may become tortfeasors by exceeding the limits of their authority, and where they unlawfully seize or hold a citizen's realty or chattels, recoverable by appropriate action at law or in equity, he is not relegated to the Court of Claims to recover a money judgment. The dominant interest of the

> sovereign is then on the side of the victim who may bring his possessory action to reclaim that which is wrongfully withheld."

The foregoing case makes a distinction between those cases where plaintiff seeks to be decreed as owner of title to the property and the case where he seeks to be quieted in his possession thereof.

The case of *Philadelphia Co.* v. *Stimson,* 32 S. Ct. 340, 223 U.S. 605, 56 L. Ed. 570, is also applicable to the situation presented here. In that case Mr. Justice Hughes, as the organ of the Court, said:

> "If the conduct of the defendant constitutes an unwarrantable interference with property of the complainant, its resort to equity for protection is not to be defeated upon the ground that the suit is one against the United States. The exemption of the United States from suit does not protect its officers from personal liability to persons whose rights of property they have wrongfully invaded. Little v. Barreme, 2 Cranch, 170, 2 L. Ed. 243; United States v. Lee, 106 US 196, 220, 221, 27 L. Ed. 171, 181, 182, 1 Sup. Ct. Rep. 240; Belknap v. Schild, 161 US 10, 18, 40 L. Ed. 599, 601, 16 Sup. Ct. Rep. 443; Tindal v. Wesley, 167 US 204, 42 L. Ed. 137, 17 Sup. Ct. Rep. 770; Scranton v. Wheeler, 179 US 141, 152, 45 L. Ed. 126, 133, 21 Sup. Ct. Rep. 48. And in case of an injury threatened by his illegal action, the officer cannot claim immunity from injunction process. The principle has frequently been applied with respect to state officers seeking to enforce unconstitutional enactments. Osborn v. Bank of United States, 9 Wheat. 738, 843, 868, 6 L. Ed. 204, 229, 235; Davis v. Gray, 16 Wall. 203, 21 L. Ed. 447; Pennoyer v. McConnaughy, 140 US 1, 10, 35 L. Ed. 363, 365, 11 Sup. Ct. Rep. 699; Scott v. Donald, 165 US 107, 112, 41 L. Ed. 648,

653, 17 Sup. Ct. Rep. 262; Smyth v. Ames, 169 US 466, 42 L. Ed. 819, 18 Sup. Ct. Rep. 418; Ex parte Young, 209 US 123, 159, 160, 52 L. Ed. 714, 728, 729, 13 L.R.A. (N.S.) 932, 28 Sup. Ct. Rep. 441, 14 A. & E. Ann. Cas. 764; Ludwig v. Western U. Teleg. Co., 216 US 146, 54 L. Ed. 423, 30 Sup. Ct. Rep. 280; Herndon v. Chicago, R.I. & P.R. Co., 218 US 135, 155, 54 L. Ed. 970, 976, 30 Sup. Ct. Rep. 633; Hopkins v. Clemson Agri. College, 221, US 636, 643-645, 55 L. Ed. 890, 894, 895, 35 L.R.A. (N.S.) 243, 31 Sup. Ct. Rep. 654. And it is equally applicable to a Federal officer acting in excess of his authority or under an authority not validly conferred. Noble v. Union River Logging R. Co., 147 US 165, 171, 172, 37 L. Ed. 123, 125, 126, 13 Sup. Ct. Rep. 271; American School v. McAnnulty, 187 US 94, 47 L. Ed. 90, 23 Sup. Ct. Rep. 33."

The case of *Ickes* v. *Fox,* 57 S. Ct. 412, 300 US 82, 81 L. Ed. 525 is conclusive of the questions which might be raised in the present proceeding regarding the jurisdiction of the Courts of Louisiana and is determinative of a case of this kind. The Supreme Court there said:

* * * "Petitioner's contention that the United States is an indispensable party defendant and, as it cannot be sued, the suits should have been dismissed, is based upon the propositions, as we understand them, that the United States is the owner of the water-rights; that respondent's claims rest entirely upon executory contracts; and that the relief sought is the substantial equivalent of specific performance of these contracts.

The fallacy of the contention is apparent, because, the thus-far undenied allegations of the bill, as already appears, demonstrates that respondents have fully discharged all their con-

tractual obligations; that their water-rights have become vested; and that ownership is in them and not in the United States. The motion to dismiss concedes the truth of these allegations; but even if they were denied, we should still be obliged to indulge the presumption, in favor of the jurisdiction of the trial court, that respondents might be able to prove them. United States v. Lee, 106 US 196, 218, 219, 27 L. Ed. 171, 181, 1 S. Ct. 240; cf Tindal v. Wesley, 167 US 204, 213, et seq., 42 L. Ed. 137, 142, 17 S. Ct. 770.

The suits do not seek specific performance of any contract. They are brought to enjoin the Secretary of the Interior from enforcing an order, the wrongful effect of which will be to deprive respondents of vested property rights and not only acquired under Congressional acts, state laws and government contracts, but settled and determined by his predecessors in office. That such suits may be maintained without the presence of the United States has been established by many decisions of this court, of which the following are examples: Noble v. Union River Logging R. Co., 147 US 165, 171, 172, 176, 37 L. Ed. 123, 125-127, 13 S. Ct. 271; Philadelphia Co. v. Stimson, 223 US 605, 619, 56 L. Ed. 570, 576, 32 S. Ct. 340; Goltra v. Weeks, 271 US 536, 544, 70 L. Ed. 1074, 1078, 46 S. Ct. 613; Work v. Louisiana, 269 US 250, 254, 70 L. Ed. 259, 262, 46 S. Ct. 92; Payne v. Central P. R. Co., 255 US 228, 238, 65 L. Ed. 598, 603, 41 S. Ct. 314."

See also:

Blondet v. *Hadley,* 144 F. 2d 370;
Noce v. *Edward E. Morgan Co.,* 106 F. 2d 746;
Berger v. *Ohlson,* 120 F. 2d 56;
Correa v. *Barbour,* 71 F. 2d 9;
Sawyer v. *Dollar,* 190 F. 2d 623, 640.

The case of *Blondet* v. *Hadley,* 144 F. 2d 370, was one where plaintiff sought to enjoin the defendant from trespassing upon property of which plaintiff was in possession under a claim of ownership. Although the defendant claimed that the property belonged to the United States, the Court nevertheless sustained jurisdiction on the ground that the defendant officer was alleged to be exceeding his authority, and the suit was therefore in effect a personal action against him individually.

A case that illustrates the difference between a suit in which the title of the United States is put in issue, and a suit where the sovereign title is incidental or secondary, is that of *Berger* v. *Ohlson,* (9CA) 120 F. 2d 56, where plaintiff sought to enjoin alleged tortious misconduct of government officials, and even though the action involved the question as to whether the United States owned certain property, nevertheless the Court held that the United States would not be bound by the decree and that the suit was not a suit against the Federal Government.

In the case of *Correa* v. *Barbour,* 71 F. 2d 9, plaintiff sought to recover possession of land which was in the possession of the defendant as a forest supervisor for the United States, and the defendant resisted the suit on the grounds that the suit was in effect a suit against the United States because the defendant was exercising dominion and control over it as a government officer, but the Court rejected this defense, saying that the action was not one against the United States and that the United States was not an indispensable party thereto.

The State's suit is in all respects governed by the law of the foregoing decisions. The State suit alleges

that the defendants have tortiously conspired to deprive the plaintiff of its possession and enjoyment of lands and minerals which it possesses as owner, that they threaten to trespass on said lands, and have actually slandered plaintiff's title thereto. Conspiracy, trespass, and slander of title are not privileges or prerogatives conferred on them by the United States. Such tortious conduct is not part or parcel of their official duties, and they are not acting for the government in that respect. As tort-feasors they are in fact exceeding their authority and should be enjoined from doing so.

The petition in the State court sets forth a personal action against the defendants. As for the government agents, they have incurred a personal liability because of their tortious conduct, and cannot claim immunity from suit.

The suit is not one against the United States in any respect.

Injunctive Relief Against Trial in State Court Not Appropriate or Necessary

Plaintiff states on page 11 of its brief that this is not the kind of case which can be carried on in two courts at once, as is possible with actions *in personam.* Counsel then argues that the original proceeding in this Court is an action *in rem* and that the rule that the Court first acquiring jurisdiction shall proceed without interference from another Court applies. If the plaintiff's main premise is true, if the original proceeding in this Court is an action *in rem,* then a conflict in jurisdiction would exist and the State Court should proceed no further. However, the main premise is untrue and this proceeding is not an action

in rem. As pointed out hereinabove plaintiff's original complaint is one for a declaration as to the boundaries between the State and the Federal Government with an incidental demand for an injunction and an accounting based on the Court's decision on the principal demand. The property involved is not in the custody of this Court. There has been no seizure or attachment or other process whereby this Court has seized the res.

This Court has definitely held that an action *in rem* is a proceeding against property alone and that the Court acquires jurisdiction over the property by its seizure, and that an action to determine the title to property where the defendant is brought into Court by ordinary citation is not an action *in rem.* In the case of *Freeman* v. *Alderson,* 119 U.S. 185, 30 L. Ed. 372, this Court said:

> "Actions *in rem,* strictly considered, are proceedings against property alone, treated as responsible for the claims asserted by the libelants or plaintiffs. The property itself is in such actions the defendant * * * The court acquires jurisdiction over the property in such cases by its seizure, and of the subsequent proceedings by public citation to the world, of which the owner is at liberty to avail himself by appearing as a claimant in the case.
>
> There is, however, a large class of cases which are not strictly actions *in rem,* but are frequently spoken of as actions *quasi in rem,* because, though brought against persons, they only seek to subject certain property of those persons to the discharge of the claims asserted. Such are actions in which property of nonresidents is attached and held for the discharge of debts due by them to citizens of the State, and actions for the enforcement of

mortgages and other liens. Indeed, all proceedings having for their sole object the sale or other disposition of the property of the defendant, to satisfy the demands of the plaintiff, are in a general way thus designated. * * *

The action was to recover an undivided interest in the property, and then to obtain a partition of it, and have that interest set apart in severalty to the plaintiffs—a sort of mixed action to try the title of the plaintiffs to the undivided half of the property, and to obtain a partition of that half. Such action, though dealing entirely with the realty, is not an action *in rem* in the strict sense of the term; it is an action against the parties named, and, though the recovery and partition of real estate are sought, that does not change its character as a personal action; the judgment therein binds only the parties in their relation to the property." * * *

In the later case of *Overby* v. *Gordon,* 177 U.S. 214, 44 L. Ed. 741, this Court held:

"Jurisdiction is the right to hear and decide, and it must be exercised, speaking in a broad sense, in one of two modes — either *in rem* or *in personam.*

An essential characteristic, however, of a proceeding *in rem* is that there must be a *res* or subject-matter upon which the court is to exercise its jurisdiction. In cases purely *in rem,* as in admiralty and revenue cases for the condemnation or forfeiture of specific property, a preliminary seizure of the property is necessary to the power of the court to adjudicate at all." * * *

See also:

Cooper v. *Reynolds' Lessee,* 10 Wall. 308 (U.S. 77), 19 L. Ed. 931;

Harnischfeger Sales Corp. v. *National Life Insurance Co.,* 72 Fed. 2d 921;
Beck v. *Otero Irr. Dist,* 50 F. 2d 951;
Stewart Land Co. v. *Arthur,* 267 F. 184;
Barber Asphalt Paving Co. v. *Morris,* 132 F. 945, 947-8.

In *Hart* v. *Sansom,* 110 U.S. 151, 3 S. Ct. 586, 28 L. Ed. 101, this Court said:

> "Generally, if not universally, equity jurisdiction is exercised in personam, and not in rem, and depends upon the control of the Court over the parties, by reason of their presence or residences, and not upon the place where the land lies in regard to which relief is sought."

The plaintiff's original complaint seeks an injunction and an accounting which are equitable remedies *in personam.* In no sense therefore can this original proceeding be considered as a proceeding *in rem.*

On page 12 of the plaintiff's brief citation is directed to the cases of *Kline* v. *Burke Construction Co.,* 260 U.S. 226, 43 S. Ct. 79, 67 L. Ed. 226, and *Toucey* v. *New York Life Insurance Co.,* 314 U.S. 118, 62 S. Ct. 139, 86 L. Ed. 100. The decisions in these cases definitely support the position of the State of Louisiana here. In those cases the Court held that the rule which would support an injunction against a Court exercising conflicting jurisdiction does not exist in actions *in personam* and applies only to actions *in rem.*

However, as pointed out above, there is no conflict in jurisdiction between this Court and the State Court. The rule which would permit the Court which first takes jurisdiction over a dispute to retain it without interference from another Court is applicable only

where the parties to, the subject matter of, and the relief sought in the two suits are the same, so that if the first suit had already been disposed of, the judgment then should be treated in bar as a former adjudication.

This Court has recognized the proposition that the rule that would permit a Federal Court to enjoin proceedings in a State Court is confined in its operation in instances where both suits are the same, where there is substantial identity of the parties, issues, and the relief sought. In the case of *Pacific Live Stock Co.* v. *Lewis,* 36 Sup. Ct. 637, 241 U.S. 440, 447, 60 L. Ed. 1084, 1096, your Honors held:

> "The rule that where the same matter is brought before courts of concurrent jurisdiction, the one first obtaining jurisdiction will retain it until the controversy is determined, to the entire exclusion of the other, and will maintain and protect its jurisdiction by an appropriate injunction, is confined in its operation to instances where both suits are substantially the same; that is to say, where there is substantial identity in the interests represented, in the rights asserted, and in the purposes sought. Buck v. Colbath, 3 Wall. 334, 345, 18 L. Ed. 257, 261; Watson v. Jones, 13 Wall. 679, 715, 20 L. Ed. 666, 671; Rickey Land & Cattle Co. v. Miller & Lux, 218 US 258, 262, 54 L. Ed. 1032, 1038, 31 S. Ct. Rep. 11. This is not such an instance. The proceeding sought to be enjoined, although in some respects resembling the prior suits, is essentially different from them. They are merely private suits brought to restrain alleged encroachments upon the plaintiff's water right, and, while requiring an ascertainment of the rights of the parties in the waters of the river, as between themselves, it is certain that they do not require any other or further determination respecting those waters."

The facts and the law recited in the foregoing decision of the Supreme Court are surely applicable to the issue raised in the case at bar.

See also:

Boynton v. *Moffat Tunnel Improvement Dist.*, 57 F. 2d 772, 778, 779, 780;
Newberry v. *Davison Chem. Co.*, 65 F. 2d 724-728.

On page 13 of its brief plaintiff argues that the dispute between the United States and Louisiana should not be tried in a State Court because "this case involves very delicate problems of international law and foreign relations, since it turns mainly on a determination of the external boundary of the United States." This is an inaccurate statement of the case because the question presented to this Court in the original complaint is one to determine the *internal* boundary of the United States on the Continental Shelf. Such a question is not raised in the State Court. The only question raised in the State Court is a question of possession and the right of the State to maintain that possession until the questions of boundary or title have been determined. This right to possession and to enjoin trespass involves no question of international law or foreign relations. It is based entirely on State statutes and State jurisprudence, and it in no way infringes upon the jurisdiction of this Court.

As we pointed out in the State's brief in opposition to the motion for leave to file the original complaint, pages 31-34, the dispute pending in this Court does not involve any delicate problems of international law and foreign relations. If it did involve the foreign policy of the United States it would not be a matter

for judicial action since such questions are political questions which belong to the executive department of the Government. In any event, the United States has never pointed out any problem or any question that has arisen in our foreign policy regarding Louisiana's claim to submerged lands. No protest has ever been made by any foreign Government, although Louisiana has exercised dominion, possession and jurisdiction over these lands from time immemorial. No protest was made in 1870 when the Legislature of Louisiana enacted Act No. 18 of 1870 which forbade aliens to fish or to remove oysters and shells from the waters of the Gulf of Mexico adjacent to the shores of Louisiana. No protest was made in 1915 when the Legislature of Louisiana authorized the leasing of these lands for mineral development and production. No protest was voiced in 1938 when the Legislature of Louisiana enacted Act No. 55 to extend the boundaries of the State to 27 miles from the coast. No question was raised by any foreign power when the President of the United States on September 28, 1945, issued a proclamation whereby the United States asserted the right to explore and develop the entire Continental Shelf in the Gulf of Mexico for the production of minerals. No delicate question or problem of international law and foreign relations had ever been raised until counsel for plaintiff suggested these problems and questions in his brief.

Plaintiff's suggestion that the injunction against the State issued by this Court in the original case of *United States* v. *Louisiana,* 340 U.S. 899, is outstanding and that further proceedings by the State Court would conflict with this injunction is also without merit. Injunction issued by this Court in the original

Louisiana case was based on the finding of this Court that the State of Louisiana had no title or property interest in lands lying seaward of the ordinary low water mark. See decree *United States* v. *State of Louisiana,* 340 U.S. 899, 71 S. Ct. 275, 95 L. Ed. 651. The United States Congress found otherwise in the Submerged Lands Act wherein it disclaimed any interest whatever in lands lying seaward of the coast of Louisiana within three leagues therefrom. These are the lands involved in the State Court suit.

Injunction Against Proceeding in the State Court Forbidden By 28 USC 2283

Counsel for plaintiff realizes that provisions made by 28 U.S.C. 2283 forbidding a Court of the United States to enjoin or stay proceedings in the State Court except as authorized by Act of Congress or where necessary in aid of its jurisdiction, would by its terms forbid the injunction sought here unless this case is an exception to the rule. Plaintiff offers two reasons why this case should be excepted from the rule: First, that an injunction is necessary in aid of this Court's jurisdiction and second, this rule of law is inapplicable to the United States.

The first proposition has already been discussed and will only be discussed further in the light of the decisions cited on pages 14 and 15 of the plaintiff's brief. Plaintiff's argument here is based upon the assertion that this is a proceeding *in rem.* That argument has already been disposed of in the foregoing section of this brief.

In the case of *Covell* v. *Heyman,* 111 U.S. 176, 28 L. Ed. 390, cited by plaintiff, the property involved was in the custody of the Court having been seized

under an execution issued upon a Judgment of a Circuit Court of the United States. The proceeding was *in rem* and the Court very properly enjoined proceedings in a State Court to recover possession of the property.

The *Kline* and *Toucey* cases have already been discussed above. They are inapplicable here because this Court sustained the proposition that an injunction would not be issued against the State Court proceedings in the absence of custody of the property involved by the Federal Court. As shown hereinabove, these decisions support the defendant's position here. Similarly, the case of *B. & O. Railroad Co.* v. *Wabash Railroad Co.,* 119 F. 678, sustains the defendant's contention that an injunction to stay State Court proceedings will not be issued by a Federal Court where the property involved is not in actual possession of the Court.

Counsel for plaintiff also refers to the case of *Amalgamated Clothing W. of A.* v. *Richman Bros. Co.,* 348 U.S. 511, 75 S. Ct. 452, 99 L. Ed. 600. That case is so much in line with the defendant's position that we will quote appropriate paragraphs of the Court's opinion, as follows:

> "We need not re-examine the series of decisions, prior to the enactment of Title 28 of the United States Code in 1948, which appeared to recognize implied exceptions to the historic prohibition against federal interference with state judicial proceedings. See Toucey v. New York Life Ins. Co., 314 US 118, 86 L. Ed. 100, 62 S. Ct. 139, 137 ALR 967. By that enactment, Congress made clear beyond cavil that the prohibition is not to be whittled away by judicial improvisation.

> In the face of this carefully considered enactment, we cannot accept the argument of petitioner and the Board, as amicus curiae, that § 2283 does not apply whenever the moving party in the District Court alleges that the state court is 'wholly without jurisdiction over the subject matter, having invaded a field preempted by Congress.' No such exception had been established by judicial decision under former § 265. In any event, Congress has left no justification for its recognition now. This is not a statute conveying a broad general policy for appropriate ad hoc application. Legislative policy is here expressed in a clear-cut prohibition qualified only by specifically defined exceptions."

The foregoing decision is an answer to the argument by plaintiff beginning at the bottom of page 14 and continuing through page 15. In any event, the authorities cited by plaintiff in this portion of its brief are inapplicable. In the cases there listed the property was in the possession of the Federal Government, its officers and agents and the purposes of the suits in the State Courts were to dispossess the United States. Such is not the situation here. The State of Louisiana is in the possession of the properties involved and is seeking to protect that possession against trespass until the boundary and title questions are decided by this Court.

The second proposition urged by plaintiff under this heading is that provisions of 28 U.S.C. 2283 are inapplicable where the United States is a party to the suit. The decisions of this Court cited on page 16 of the brief in support of this theory are inapplicable because these cases only involve the question as to the right to sue the United States without its consent. No attempt has been made by the State of Louisiana to

sue the United States and no question of consent of the sovereign to be sued is involved here.

The decision in *United States* v. *Taylor's Oak Ridge Corp.,* 89 F. Supp. 28, decided by District Court for the Eastern District of Tennessee does state that the rule of comity stated in 28 U.S.C. 2283 is not applicable to the United States because the sovereign is not included within its terms. That statement by the District Judge is pure obiter dicta, and is not supported by the authorities cited. In any event, it conflicts with the rule stated by the Court in the *Amalgamated Clothing Workers* case quoted above wherein your Honors stated that Congress made clear beyond cavil that the prohibition is not to be whittled away by judicial improvisation. It also conflicts with many prior rulings of this Court to the effect that the rule against interference with the proceedings of State Courts "is not only one of comity, to prevent unseemly conflicts between Courts whose jurisdiction embraces the same subject and persons, but between State Courts and those of the United States it is something more. 'It is a principle of right and law and therefore of necessity.' It leaves nothing to discretion or mere convenience."

Kline v. *Burke Construction Co.,* 260 U.S. 226, 231, 67 L. Ed. 226, 231;
Toucey v. *New York Life Ins. Co.,* 314 U.S. 118, 135, 86 L. Ed. 100, 106;
Covell v. *Heyman,* 111 U.S. 176, 4 S. Ct. 355, 28 L. Ed. 390.

28 U.S.C. does not "divest pre-existing rights or privileges" of the United States. It simply gives statutory recognition to a rule of comity that has always existed, and should always exist between

Federal and State courts under a republican form of government.

In *United States* v. *United Mine Workers,* 330 U.S. 258, 67 S. Ct. 677, 91 L. Ed. 884, this Court held that the provisions divesting the Federal Courts of jurisdiction to issue injunctions in labor disputes did not apply to the United States because the definition of "employer" contained in the Act specifically negatived the idea that this Act applied to the government. The Court did refer to the "old and well known rule that statutes which in general terms divest pre-existing rights and privileges will not be applied to the Sovereign without express words to that effect", but this was not the basis for the Court's decision. This clearly appears from the statement, "But we need not place entire reliance in this exclusionary rule", 330 U.S. 273, 91 L. Ed. 902.

It is therefore respectfully submitted that plaintiff's motion for injunction should be denied.

JACK P. F. GREMILLION
Attorney General

EDWARD M. CARMOUCHE
Special Assistant Attorney General

JOHN L. MADDEN
Special Assistant Attorney General

W. SCOTT WILKINSON
Special Counsel

BAILEY WALSH
Special Counsel

APPENDIX

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

Civil Action No. 5489

SUIT NO. 38,780 IN THE
FOURTEENTH JUDICIAL DISTRICT COURT

PARISH OF CALCASIEU, STATE OF LOUISIANA

STATE OF LOUISIANA

V.

ANDERSON-PRICHARD OIL CORPORATION, et al.

Amended Petition

Now comes the State of Louisiana, plaintiff in the above numbered and entitled cause, and shows unto the Court that no answer or other pleading has been filed herein, and that the plaintiff desires to amend its petition in the following respects:

1.

Plaintiff adopts and reiterates all of the allegations of fact contained in its original petition herein filed.

2.

The Prayer of the petition is amended to read as follows:

> "Wherefore, plaintiff prays that a temporary restraining order issue herein immediately, and before a hearing, enjoining, restraining and prohibiting the defendants named in the foregoing

petition, and any and all persons acting by, through or under them, or any of them from disturbing plaintiff's possession, enjoyment and administration of the submerged lands and natural resources and property rights described in this petition, or slandering plaintiff's title thereto, and conspiring with one another for such purposes and restraining and prohibiting the individual defendants from offering for lease said submerged lands and natural resources within Louisiana's historic boundary three leagues from coast in the Gulf of Mexico or from receiving, accepting, opening, or awarding bids for leasing same for the development and production of minerals, and from further threatening plaintiff's lessees from going upon said submerged lands and operating to develop the same, and from conspiring with one another and with the corporate defendants or any other parties for such purposes, and enjoining and prohibiting the said corporate defendants from bidding or offering bids for, and from entering into any purported mineral leasing contracts with said personal defendants as purported agents acting in violation of law, and also from entering upon the said lands within the boundary of the State of Louisiana for purported mineral leasing or for the purposes therein contemplated, or for any other related and unauthorized purposes, except with the permission and agreement of plaintiff, the State of Louisiana, as owner of said submerged lands and mineral resources.

Plaintiff further prays that the said defendants be ordered to show cause on a day to be fixed by this Honorable Court why a preliminary injunction should not issue herein, enjoining, restraining and prohibiting them and any and all persons acting by, through or under them from doing any of the acts and things described and set forth in the preceding paragraph.

Plaintiff further prays that after due proceedings had a permanent injunction be issued herein restraining and enjoining the said defendants, their officers, agents, servants and employees from trespassing on, or slandering the title to, or interfering in any manner with the plaintiff's right of ownership, possession, administration and jurisdiction of the submerged lands and natural resources and property rights described herein, and from leasing or offering to lease the same for development and production of minerals, and from conspiring with one another or with any other persons or corporations for such purposes.

Plaintiff further prays for all orders and decrees necessary and for full, general and equitable relief."

WHEREFORE, plaintiff prays that in due course Judgment be rendered in favor of the plaintiff and against the defendants as prayed for in the original petition as amended herein; for all orders and decrees necessary, for costs and for full and general and equitable relief.

/s/ JACK P. F. GREMILLION
Jack F. F. Gremillion
Attorney General
State of Louisiana

EDWARD M. CARMOUCHE
Assistant Attorney General

JOHN L. MADDEN
Assistant Attorney General

W. SCOTT WILKINSON
Special Counsel

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 ....., 1956, I served copies of the foregoing Motion to Dismiss and Defendant's Opposition to Plaintiff's Motion For Injunction, With Supporting Brief, 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.

.....