No. 10 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, ~~1956~~ 1958

UNITED STATES OF AMERICA, PLAINTIFF
v.
STATE OF LOUISIANA

Brief of the State of Louisiana in Opposition to Motion for Judgment by the United States

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

W. SCOTT WILKINSON
Special Assistant Attorney General
17th Floor Beck Building
Shreveport, Louisiana

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

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

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

HUGH M. WILKINSON
VICTOR A. SACHSE
MORRIS WRIGHT
JAMES R. FULLER
MARC DUPUY, JR.
Of Counsel

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STATEMENT OF THE CASE

The United States alleges that it is entitled to exclusive possession of, and full dominion and power over the 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, extending seaward to the edge of the continental shelf, and is entitled to an accounting for all sums of money derived by the State of Louisiana from the said area since June 5, 1950. (Complaint Par. VI).

It is further alleged that in the case of *United States vs. Louisiana*, 340 U.S. 899, this Court entered its decree enjoining the State of Louisiana from taking or removing mineral products from this area and di-

rected the state to account to the United States for all sums derived therefrom after June 5, 1950. (Complaint Par. III).

In answer to the Complaint, Louisiana denies generally every allegation made by the plaintiff and avers that the United States has never had any title to or possession of the submerged lands in the Continental Shelf of the Gulf of Mexico, and has never had possession thereof except to hold the same in trust, as a part of the Louisiana territory, for the State of Louisiana to be thereafter formed and admitted to the union as required by the Treaty of Paris of April 30, 1803, (8 Statute 200).

Defendant further states that the only dominion and control possessed by the plaintiff over the waters and submerged lands of the Gulf of Mexico relate to the regulation and control of the use of the same for purposes of interstate and foreign commerce, navigation, and the national defense. (Ans. Par. II).

Louisiana admits that a decree was entered in the case of the *United States vs. Louisiana*, 340 U.S. 899, which decree speaks for itself, but shows that the theory upon which said decree was based has been modified and superseded by the provisions of the Submerged Lands Act of May 22, 1953 (43 U. S. C. 1301) and by the Outer Continental Shelf Lands Act of August 7, 1953 (43 U. S. C. 1331).

Defendant avers that the Submerged Lands Act recognizes and acknowledges the coastal states to be the sovereign owners of all lands beneath navi-

gable waters within their boundaries, including the marginal seas and submerged lands therein, and confirms their titles thereto; that the legislative history of this act shows that throughout the history of this nation the states have been recognized to be the sovereign owners of such lands and waters. (Ans. Par. IV).

The state also alleges that the Outer Continental Shelf Lands Act extended the boundary of the United States to the edge of the continental shelf, and that the Constitution of the United States, as construed by numerous decisions of this court, declares that the boundaries of the separate sovereign states are co-extensive with and co-terminous with the boundaries of the United States, and that any provision in the Submerged Lands Act which might limit the boundaries of the state at a line short of the national boundary, and any provision of the Outer Continental Shelf Lands Act which may grant to the federal government exclusive possession, or proprietary rights in the lands and resources of the continental shelf are unconstitutional and of no effect. In this connection the state avers that in so far as the said acts permit the Federal Government to exercise property rights in said area they are violative of the Treaty of Cession entered into by the United States with France on April 30, 1803, which said Treaty under Article 6 of the Constitution is the Supreme Law of the land, and vests rights in the State of Louisiana which the Federal Government can not divest without violating the 5th

Amendment to the Constitution; that said acts if so construed, would violate Article IV Sections 3 and 4, of the United States Constitution to the extent that they would permit the Federal Government to invade property and property rights guaranteed to the State of Louisiana and would unlawfully change the boundaries of the state without its consent; and that said acts in so far as they recognize property rights in the United States or restrict the boundaries of the state, exceed the powers granted to the Federal Government by the constitution, and would therefore conflict with the 9th Amendment thereto, and with the 10th Amendment which reserves to the states all powers and rights not specially granted to the United States. (Ans. Par. IV).

Louisiana therefore claims that its boundaries are co-extensive with the boundaries of the United States and extend to the edge of the continental shelf, and that within such area the Federal Government can only exercise powers granted to it by the constitution or necessarily implied in the powers expressly granted.

In the alternative, the state claims that its seaward boundaries extend at least three marine leagues into the Gulf of Mexico; that the United States has at all times prior to the aforesaid acts of Congress passed in 1953 recognized the fact that states bordering on the Gulf of Mexico own the marginal seas and subsoil thereof to a distance of at least three leagues, and

has never heretofore asserted that state ownership consists of anything less.

Further in the alternative, Louisiana shows that the Submerged Lands Act recognizes the boundaries of any and all States bordering the Gulf of Mexico to be three leagues from coast if it was so provided by the Constitution or laws of any such State at the time, or prior to the time such State became a member of the Union; that Louisiana's boundary was fixed at three leagues from coast in its Constitution and in the Act of Congress admitting the State to the Union; and that any other interpretation of Louisiana's Constitution and Act of Admission would result in discrimination against this State as to the extent of its sovereignty, and would violate the "equal footing" clause in the Act of Admission, since other Gulf Coast States such as Texas and Florida have boundaries recognized as extending three leagues from coast into the Gulf of Mexico.

Further answering Louisiana says that it has effectively occupied the continental shelf over such a long period of time that a conclusive presumption of sovereignty, title and ownership results therefrom. (Ans. Page 24-28). In support of these allegations of effective occupancy and possession Louisiana has filed a motion to take the depositions of 14 witnesses and to file documentary evidence of which this Court will not take judicial notice.

The United States has opposed Louisiana's Motion to take depositions and has filed a Motion for

Judgment which brings before the court the merits of the claims of both parties as reflected by the pleadings and by facts of which this court will take judicial notice.

Although not an issue in the case, and solely for the convenience of the Court, Louisiana makes the following additional statement, relating to the agreement between the United States and the State of Louisiana:

On June 11, 1956, following proceedings initiated in the State courts by the State of Louisiana to enjoin officials of the United States and prospective bidders from further leasing and operations in the disputed tidelands area, this Court entered an order which provided, in part, (351 U.S. 978):

> "that the State of Louisiana and the United States of America are enjoined from leasing or beginning the drilling of new wells in the disputed tidelands area pending further order of this court unless by agreement of the parties filed here."

On October 12, 1956, an agreement between the United States and the State of Louisiana, effective on the same date, was filed in these proceedings pursuant to that order. Without prejudice to the respective rights, claims and demands of the parties, the agreement defines the disputed tidelands area within which further drilling was consented to, subject to the execution by lessees of agreements with the State and

the United States on stipulated forms. Further agreement is made for the impoundment of all bonuses, royalties and rentals received from leases in the disputed area and for such funds to be held in escrow pending the termination of this litigation. Each of the parties upon receipt of the impounded funds and subject to compliance by the lessees with the requisite agreements, agrees to validate and give recognition to leases affecting an area with respect to which it is the ultimately successful party.

QUESTIONS PRESENTED

1. Does the United States have the right to dispossess the State of Louisiana from submerged lands and resources on the Continental Shelf in the Gulf of Mexico which have been effectively possessed and occupied by the State over a long period of time, with the acquiescence of the federal government, and without protest from any foreign nation?

2. Do the boundaries of the United States extend to the full limit of the Continental Shelf in the Gulf of Mexico, and if so, is it not true that the boundaries of the State of Louisiana are coextensive with the national boundaries in the said Gulf?

3. To the extent that the Submerged Lands Act (43 U. S. C. 1301) or the Outer Continental Shelf Lands Act (43 U. S. C. 1331) may restrict or limit the boundaries of Louisiana in the Gulf of Mexico, are these Acts constitutional in view of Article IV, Sections 3 and 4 of the Constitution and the 5th, 9th and 10th Amendments thereto?

4. In the alternative, if the Court should find that the State boundaries do not extend to the full limit of the Continental Shelf, then is it not a fact that by reason of the Treaty of Cession, the Act of Admission, and the Submerged Lands Act itself, the state boundaries are three leagues seaward of the Louisiana Coast?

5. Since Louisiana has had physical possession and has exercised exclusive jurisdiction over the Continental Shelf from time immemorial, and such pos-

session and jurisdiction are a basis of title in international law, does not the State have the right to produce oral and documentary evidence as to the nature and extent of such jurisdiction and possession, either as a basis for its claim of ownership to the entire Continental Shelf, or, in the alternative, as evidence to interpret the description of Louisiana's boundaries in the Act of Admission of the State to the Union in 1812?

SUMMARY OF ARGUMENT

1. When this Court decided the cases of *United States v. California*, 332 U.S. 19, *United States v. Louisiana*, 339 *U.S.* 699 and *United States v. Texas*, 339 U.S. 707, it did not have the benefit of a political determination by Congress as to extent of the National and State boundaries in the sea, and as to the ownership of submerged lands and resources therein. Congress has, after these decisions were rendered, stated the national policy on this subject in the Submerged Lands Act (43 U.S.C. 1301) and the Outer Continental Shelf Lands Act (43 U.S.C. 1331), and has approved and adopted, as a rule of property law, the jurisprudence of this Court that the States have always owned the soil under navigable waters, whether inland or not.

2. The theory and effect of the courts' decisions in the three cases above mentioned have been changed and modified to such an extent that a reconsideration of the entire subject as to the relative rights of the State and the federal government in the submerged lands and resources of the Continental Shelf is appropriate and necessary at this time.

3. The Submerged Lands Act did not grant or transfer to the coastal States any title to or ownership of the submerged lands and resources, but recognized and confirmed a title which these States already possessed.

4. The Submerged Lands Act refers to State's historic boundaries. Louisiana's historic boundaries

extend to the 27th parallel of latitude which includes the entire Continental Shelf in the Gulf of Mexico. This was the southern limit of the Louisiana Territory ceded by France to the United States on April 30, 1803, and by virtue of the Treaty of Cession the United States obligated itself to hold this territory in trust for future States to be formed out of this territory.

5. When Congress admitted the State of Louisiana into the Union by Act of April 8, 1812, the United States reserved no part of the submerged lands in the Gulf of Mexico, and such lands passed to the State as an attribute of sovereignty, and in accordance with the obligations assumed by the United States in the Treaty of Cession with France in 1803.

6. The boundaries of the States of the Union and of the United States are coextensive under the American system of dual sovereignty. Since the Outer Continental Shelf Lands Act has declared the national boundary to extend to the edge of the Continental Shelf, Louisiana's boundary in the Gulf of Mexico is coterminous with that of the United States. Within this boundary the United States has no lawful claim of proprietorship and can exercise no powers, and claim no rights except those expressly conferred on it by the Constitution, or necessarily implied in the powers so conferred.

7. Louisiana's claim to the sea-bed, sub-soil and natural resources of the Continental Shelf is in ac-

cord with accepted principles of international law which recognize that exclusive and long continued possession of such submerged lands is a legal and valid basis of title thereto.

The United States can claim no right in international law to exercise federal jurisdiction over the Continental Shelf in the Gulf of Mexico except through, and by virtue of the effective occupation thereof by the State of Louisiana over a long period of time. Such occupation and possession gives to the coastal State ownership and territorial rights in said lands and resources, and justifies an extension of the boundaries of the State and the Nation to include the sub-soil, sea-bed, and natural resources of the Continental Shelf.

8. The United States has not acquired any title to the sea-bed, sub-soil and natural resources of the Continental Shelf by any method enumerated or implied in the Constitution and has no lawful right to dispossess the State of such submerged lands and resources which the State has possessed from time immemorial. To the extent that either the Submerged Lands Act or the Outer Continental Shelf Lands Act permit the federal government to exercise proprietary rights in said area they are violative of Treaty obligations made in Louisiana's behalf in the Treaty of Paris in 1803, which rights of the State are protected by the Fifth and Sixth Amendments to the Constitution. To the extent that said Acts of Congress may limit Louisiana's boundary in the Gulf of Mexico to three miles or

three leagues said Act violates the fifth, sixth, ninth and tenth amendments of the Constitution, and are also in conflict with Article IV section 4 of the Constitution.

9. In the alternative, and only if the Court should deny Louisiana's title and claims set forth above, then Louisiana shows that Act 33 of 1954 of the Legislature of Louisiana correctly designates the States coast line which has been fixed by the Department of Commerce in accordance with Acts of Congress, and which designates and defines "the line dividing the high seas from rivers, harbors and inland waters." (33 U.S.C. 151) Louisiana's boundary extends three leagues seaward from that line under the terms of its Act of Admission in 1812 which fixed the State's boundary in the Gulf of Mexico three leagues from coast.

10. The United States has consistently approved State ownership of a three-league belt in the Gulf of Mexico and has never asserted that the marginal belt in the Gulf was less than three leagues. Since the provisions of the Submerged Lands Act, and other Acts of Congress long prior thereto, recognize the boundaries of Texas and of Florida as extending three leagues into the said Gulf, any contrary interpretation of the Act of Admission of Louisiana would deprive this State of the benefits of the "equal footing" clause of the Constitution.

11. At the time when Louisiana was admitted to the Union in 1812, and long prior thereto, the United

States had always contended that its marginal belt and territorial waters extended at least three leagues off-shore, and it was not the intention of Congress in the Act of Admission to limit Louisiana to a smaller area. The United States has never asserted or assented to a marginal belt less than three leagues distance off-shore in the Gulf of Mexico.

12. Louisana since her admission to the Union has at all times, and with the acquiescence of the United States, exercised governmental and proprietary rights in the Continental Shelf. Such possession gives to the State a title by prescription and gives rise to a conclusive presumption of title to the Continental Shelf. In the alternative these facts of possession and exercise of jurisdiction afford evidence of a contemporary interpretation by the State and the nation that the boundaries of Louisiana described in its Act of Admission extended three leagues from coast in the Gulf of Mexico.

ARGUMENT

A. THE COASTAL STATES HAVE TITLE TO THE CONTINENTAL SHELF SUBJECT TO CONSTITUTIONAL POWERS OF THE UNITED STATES. THE PARAMOUNT RIGHTS OF THE LATTER CONFER ON IT NO TITLE OR OWNERSHIP.

1. Plaintiffs Position Is Based On Jurisprudence Which No Longer Applies to the Issues Involved in This Action.

The claim advanced by the Attorney General on behalf of the United States to all that portion of the Continental Shelf lying more than three miles seaward from the shores of Louisiana in the Gulf of Mexico is based upon the three decisions of this Court in the California, Louisiana and Texas Tidelands cases[1] and, paradoxically enough, on two acts of Congress that were passed after these three decisions were rendered, namely; the Submerged Lands Act of May 22, 1953 and the Outer Continental Shelf Lands Act of

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[1]United States v. California, 332 U.S. 19, 67 S.Ct. 1658, 91 L.Ed. 1889;

United States v. Louisiana, 339 U.S. 699, 70 S.Ct. 914, 94 L.Ed. 1216;

United States v. Texas, 339 U.S. 707, 70 S.Ct. 918, 94 L.Ed. 1221.

August 7, 1953[2], which acts made a political determination and established a rule of property law which modifies the theory and changes the effect of those decisions.[3]

It appears to be the Attorney General's position that the State of Louisiana has never had the ownership of the submerged lands along its shores in the Gulf of Mexico, and these lands never belonged to the states. This Court did not hold that the lands "belong" to the United States but held only that the United States had "paramount rights". The Court then allowed "imperium" to confer the benefits of "dominion" but did not hold these concepts to be equivalents. This makes all the more incongruous the statement of the Attorney General in Paragraph IV of the Compliant that the United States *granted* the title to and ownership of these submerged lands on May 22, 1953 when Congress enacted the Submerged Lands Act, for if the United States lacked title, it had nothing to grant.

We distinguish between the Attorney General and the United States because it will be found that in the declaration of the territorial extent of the United States, the word of Congress must be accepted, and that word is greatly at variance with the present contentions of the present Attorney General.

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[2]67 Stat. 29, 43 U.S.C. 1301,
67 Stat. 462, 43 U.S.C. 1331.
[3]Superior Oil Co. v. Fontenot, 213 F.2d 565, 569,
Cert. Den. 348 U.S. 837, 99 L.Ed. 660.

2. Political Determination of National Boundary Made By Acts of Congress in 1953 Modify Effect of Recent Decisions of This Court.

When the United States and the State of California contested the right to take oil from submerged lands off the California coast, this Court did not undertake to pass upon the matter of title. The Court was then without the benefit of a declaration by Congress as to the extent of American territorial jurisdiction. As that is a political and not a juridical question, the Court did not then seek to supply the answer to it but chose rather to consider that a claim to the area might present problems international in character, and that in such an area the powers of the federal government were paramount and exclusive.

The decision in the California case was followed without deviation in theory or result in the Louisiana and Texas cases.

Since these three decisions were rendered Congress has declared the extent of American territorial jurisdiction. No longer are we concerned with the international arena or of the comparison of power or rights of the United States with those of an individual state in such an arena. The issue is now purely one of title.

The Attorney General of the United States recognizes that. He treats this as an action to fix boundary. Such an action between proprietors presupposes

separate but adjoining ownerships. The action suggests that Louisiana owns a certain distance into the Gulf of Mexico, three miles or three leagues or some other distance, and measured from the coast line or from the shore line—but that beyond that measure lies federal territory out to the edge of the continental shelf.

Louisiana's position is plain;

1. The seaward boundaries of our state are coextensive with the seaward boundaries of the nation. There is not any federally owned belt of submerged land seaward of the state owned submerged land. While the Congress alone can declare the extent of American territory, and has done so, the "ownership" of that territory as distinguished from "imperium" respecting it, necessarily is vested in the States pursuant to our constitutional system.

2. Alternatively, and only if the Court should hold that Congress can legally appropriate for the federal government a belt of land seaward of the submerged land belonging to and occupied by the States, Louisiana claims that its historic boundaries within the meaning of Congressional Acts extend seaward three leagues and not just three miles from its coast.

3. If a state limit is set short of the limit of national territory, the measurement determining the state limit necessarily commences from the coastline (not the shore line) and the coastline has been de-

clared by Congress to be where inland waters meet the open sea.

The claim of the Attorney General on behalf of the United States is based on the odd position that Louisiana has never had the ownership of the submerged lands along its shores in the Gulf of Mexico. His position is utterly untenable. He cannot rely upon the three previous cases because they did not involve title as the present case does. He cannot rely upon the Submerged Lands Act because it specifically recognizes and confirms the title of Louisiana to the submerged lands extending at least three miles seaward from its *coastline.* And he cannot validly say that such was an initial grant by Congress for two specific reasons:

(a) Congress itself called its action one of restitution and not of grant, and

(b) Even more important, Congress recognized the right of the State to three leagues, not three miles, if the State could show that its historic boundaries extended so far, a present recognition of a previously existing title.

We are not the first to note the great change in the problem resulting from the enactment of the Submerged Lands Act, and when the Congress asserted in the Outer Continental Shelf Lands Act that the submerged lands to the edge of the outer continental shelf appertained to the United States, so far as Louisiana, the Attorney General and this Court are con-

cerned, those lands necessarily became American territory subject to the same rules of public and private ownership which are applicable to the rivers, lakes, bays, inland seas which are within and around our part of the continent and subject to the same rules which are applicable to the land itself. The Fifth Circuit Court recognized this in *The Superior Oil Company v. Fontenot*, 213 F. 2d 565, Cert. Den. 348 U.S. 837, 99 L.Ed. 660.

Moreover, when Alabama attacked the Submerged Lands Act, this Court rejected the attack in recognition of the power of Congress to declare the extent of American territorial jurisdiction and, to confirm to Louisiana its title to the submerged lands[4].

We are not unaware of what at first blush may seem to some to be an inconsistency in Louisiana's position. For we firmly assert that the Submerged Lands Act and the Outer Continental Shelf Lands Act firmly and finally settle favorably to Louisiana that all of the area under consideration in this case is American territory, while we object to the maximum limits set for Louisiana in those very acts. We urge, however, that the two concepts are different.

1. That Congress may, consistent with constitutional limitations, declare the territorial limits of the United States without question from State or Court is acknowledged.

2. That Congress can carve out this area a

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[4]347 U.S. 272, 74 S.Ct. 481, 98 L.Ed. 698.

federally **owned** belt from which the states are excluded, is denied.

This second point has not been dealt with in any of the tideland cases thus far. But this Court is not without precedents of its own, all favorable to Louisiana, on this point.

Everyone must concede that when in ratifying our Constitution the states surrendered to the federal government the right to raise and support armies and navies and to make war and peace, the states left the family of nations and the union became a member thereof. But this did not involve the surrender of *ownership* of a square inch of land, whether or not covered by water, to which the original thirteen states had claim, and, as will be shown, other states entering the Union were accorded equal rights to those of the original states.

3. The Submerged Lands Act Nullified the Theory of National Dominion Over a Marginal Belt of Submerged Lands.

When the three "Tidelands Cases" were decided by this Court in 1947 and 1950 Congress had made no declaration of national policy or determination as to the ownership of submerged lands lying seaward of the coastal States. However Congress did make such a determination in the Submerged Lands Act, and such a determination must, of necessity, replace any contrary ruling of the Courts since Article IV

Sec. 2, Cl. 2 of the Constitution gives to Congress the power to "make all needful Rules and Regulations respecting the Territory or other property belonging to the United States"—but without prejudice to any claims of any particular state. The theory of the Tidelands Cases that "paramount rights" of the United States in the marginal belt can be translated into federal ownership conflicts with the subsequent Acts of Congress. Therefore the latter must control the decision of the case at bar.

This Court in *U. S. v. Louisiana*, 339 U. S. 699, 704, 94 L.Ed. 1216, 1219, stated the theory on which the California and Texas cases on the same subject, were decided, as follows:

> ". . . The marginal sea is a national, not a state concern. National interests, national responsibilities, national concerns are involved. The problems of commerce, national defense, relations with other powers, war and peace focus there. National rights must therefore be paramount in that area.
>
> That is the rationale of United States vs. California . . . "

The foregoing decision in the Louisiana case became the basis of a suit to recover State severance taxes exacted by Louisiana for the period between June 5, 1950—the date of the decision—and May 22, 1953—the date of the Submerged Lands Act (Public Law No. 31). In upholding the right of the State to collect these taxes the Fifth Circuit Court of Appeals in the Case of *The Superior Oil Co. v. Fontenot*, 213 F. 2d 565, 569, said:

"So here, when the long and heated struggle

over the title and right to possession of the land, which had been waged between the government and the state, came to an end in Public Law 31, the state and appellants, as its lessees, found themselves in one of two positions equally favorable in law. By virtue of the act which nullified the theory on which the opinion and decree of the Supreme Court had been based, they must be held, notwithstanding the opinion of the Supreme Court to have always and at all times had the title and right of possession, or, if the passage of Public Law 31, which brought the long struggle to an end, is to be regarded as then conferring title on them, this title, by the very terms of the Act declaring and establishing it, related back so as to confirm and maintain the possession and title of State and lessee as good from the beginning."

In the foregoing case plaintiff and Appellant filed a petition for writs of certiorari in the Supreme Court of the United States but the Court denied the writs in a memorandum decision reported in 348 U.S. 837, 99 L. Ed. 660. It may therefore be inferred that the Supreme Court did not disagree with the foregoing statement made by Judge Hutcheson that the Submerged Lands Act nullified the theory on which the California case and other tidelands cases were decided.

This Court in *Helvering v. Griffiths*, 318 U.S. 371, 400, 401, 87 L.Ed. 843, 862 makes the following comment regarding its duties to re-examine its previous judgments when Congress has enacted legislation conflicting therewith:

". . . There is no reason to doubt that this Court may fall into error as may other branches of the Government. Nothing in the history or at-

titude of this Court should give rise to legislative embarrassment if in the performance of its duty a legislative body feels impelled to enact laws which may require the Court to re-examine its previous judgments or doctrine."

The statement of Judge Hutcheson in The Superior Oil Company case is supported by the language of the Submerged Lands Act, and by the Legislative history of that Act. Section 3 of the Act provides (43 U.S.C. 1311):

> "(a) It is determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective states, and the natural resources within such lands and waters **** be, and they are, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective grantees, lessees, or successors in interest thereof;
>
> (b) (1) The United States releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title and interest of the United States, *if any it has*, in and to all said lands, improvements, and natural resources; ****" (Emphasis supplied)

The legislative history of the Submerged Lands Act appears in House Report No. 215 and Senate Report No. 133 of the 83rd Congress, 1st Session, excerpts from same appearing at length in Defendant's Appendix A. We wish to emphasize this legislative history because Congress in adopting the Submerged Lands Act has restated a rule of property law long

established by the jurisprudence of this Court.

House Report No. 215 makes the following statement on page 34 regarding the unchallenged ownership of the States of the Union during the 160 years of the Nation's history:

"One Hundred And Sixty Years of Unchallenged Ownership by the States.

> Throughout our Nation's history the States have been in possession of and exercising all the rights and attributes of ownership in the lands and resources beneath the navigable waters within their boundaries. During a period of more than 150 years of American jurisprudence the Supreme Court, in the words of Mr. Justice Black, had 'used language strong enough to indicate that the Court then believed that the States also owned territorial jurisdiction, whether inland or not.'
>
> That same belief was expressed in scores of Supreme Court opinions and in hundreds of lower Federal courts' and State courts' opinions. Similar beliefs were expressed in rulings by Attorneys General of the United States, the Department of the Interior, the War Department, and the Navy Department. Lawyers, legal publicists, and those holding under State authority accepted this principle as the well-settled law of the land. * * * "

The House Report after discussing the decision in the *California case* then makes the following statement on page 46:

> "The repeated assertions by our highest Court for a period of more than a century of the doctrine of State ownership of all navigable waters, whether inland or not, and the universal

belief that such was the settled law, have for all practical purposes established a principle which the committee believes should as a matter of policy be recognized and confirmed by Congress as a rule of property law."

With respect to the claim that the enactment of the Submerged Lands Act would constitute a gift of property belonging to the United States to the coastal states, the Congressional Committee says: (page 47)

> " * * * The committee cannot agree that the relinquishment by the Federal Government of something it never believed it had, and the confirmation of rights in the States which they always believed they did have and which they have always exercised, can be properly classified as a 'gift,' but rather a mere confirmation of titles asserted under what was long believed and accepted to be the law. * * * "

Senate Report No. 133 makes similar statements which need not be repeated here. See Defendant's Appendix A for an enlargement of this committee report. However, attention may be directed to the following criticism by the Senate Committee of the Court's holding in the *California Case* that the obligation of the United States to defend the marginal seas from foreign attack gives it paramount rights other than ownership over the submerged lands adjoining our shores. Answering this statement the Senate Committee said: (Page 58-59)

> "If the Court in making the statement had reference to the military power of a foreign nation to dispute the rights of the States to take oil under submerged lands within their boundaries, then the same statement could correctly be made about oil

under uplands, providing of course, the foreign nation possessed a military force strong enough to compel a settlement by the United States. *However if the statement was made because the Congress had never legislatively asserted on behalf of the United States or the State's title to the submerged lands within their boundaries, then we think that is all the more reason why the Congress should now remove all doubt about the title by ratifying and confirming the titles long asserted by the various States, subject always, of course, to the paramount powers of the Federal Government under the Constitution, which titles have never been disputed by any foreign nation. (emphasis supplied)* * * * *

* * * It is beyond doubt that the Federal Government cannot assert any lawful control over lands or resources that are not located within the borders of the several States or the Territories, or which has not been committed to it by treaty or other international negotiations."

In *Massachusetts v. Manchester*, 139 U. S. 240, the Supreme Court said:

"'There is no belt of land under the sea adjacent to the coast which is the property of the United States and not the property of the States."

The foregoing statement is an endorsement by the Congress of Mr. Justice Reed's dissent in the California case, wherein he said: (332 US 42-3)

"This ownership in California would not interfere in any way with the needs or rights of the United States in war or peace. The power of the United States is plenary over these undersea lands

precisely as it is over every river, farm, mine, and factory of the nation. While no square ruling of this Court has determined the ownership of those marginal lands, to me the tone of the decisions dealing with similar problems indicates that, without discussion, state ownership has been assumed. Pollard v. Hagan, 3 How (US) 212, 11 L.Ed. 565, supra; Louisiana v. Mississippi, 202 US 1, 52, 50 L.Ed. 913, 931, 26 S. Ct. 408, 571; The Abby Dodge, 223 US 166, 56 L.Ed. 390, 32 S. Ct. 310; New Jersey v. Delaware, 291 US 361, 78 L.Ed. 847, 54 S. Ct. 407; 295 US 694, 79 L.Ed. 1659, 55 S. Ct. 907."

It also constitutes approval of Mr. Justice Frankfurter's answer to the question of title (332 U.S. 43):

" * * * Of course the United States has 'paramount rights' in the sea belt of California—the rights that are implied by the power to regulate interstate and foreign commerce, the power of condemnation, the treaty-making power, the war power. We have not now before us the validity of the exercise of any of these paramount rights. Rights of ownership are here asserted—and rights of ownership are something else. Ownership implies acquisition in the various ways in which land is acquired—by conquest, by discovery and claim, by cession, by prescription, by purchase, by condemnation. When and how did the United States acquire this land?

To declare that the Government has 'national dominion' is merely a way of saying that vis-a-vis all other nations the Government is the sovereign.

If that is what the Court's decree means, it needs no pronouncement by this Court to confer or declare such sovereignty. If it means more than that, it implies that the Government has some proprietary interest. That has not been remotely established except by sliding from absence of ownership by California to ownership by the United States."

The following statements of Senate Joint Resolution No. 13, which became the Submerged Lands Act, regarding the purpose of the bill and the effect of its enactment are quoted. The purpose of the bill is thus stated on page 5 of the Senate Report:

"*Purpose of Bill*

Senate Joint Resolution 13, as amended, determines and declares that it is in the public interest that title and ownership of lands beneath navigable waters within the boundaries of the respective States, and of the resources therein, be established and vested in the respective States. Insofar as the Federal Government has any proprietary rights in such lands and waters, that interest is relinquished or 'quitclaimed' to the individual States. * * * "

The conclusion of the Senate Committee is stated on page 24:

"*IX Conclusion*

The committee submits that the enactment of Senate Joint Resolution 13, as amended, is an act of simple justice to each of the 48 states in that it re-establishes in them as a matter of law that

possession and control of the lands beneath navigable waters inside their boundaries which have existed in fact since the beginning of our Nation. It is not a gift; it is a restitution. By this joint resolution the Federal Government is itself doing the equity it expects of its citizens.

The committee recommends enactment of Senate Joint Resolution 13."

The actions of Congress outlined above very strongly suggest that the Court should reaffirm "as a rule of property law" its repeated assertions "for a period of more than a century of the doctrine of State ownership of all navigable waters, whether inland or not." It should, by the same token, renounce the theory that national responsibility or national interest in the submerged lands and territorial waters adjoining our nation's shores gives to the federal government any title to or ownership of such lands and waters. The conclusion to be reached from the Submerged Lands Act and its legislative history is that external national sovereignty pertains only to matters of national defense, interstate and foreign commerce, and other international relationships. It would therefore follow that the jurisprudence of 160 years establishing these principles should be applied to the case at bar. In the light of this jurisprudence Congress has correctly declared that submerged lands belong to and are a part of the individual coastal state which they adjoin. As will be hereinafter shown the Submerged Lands Act, and the Outer Continental Shelf Lands Act, insofar as they recognize exclusive national ownership of the

Outer Continental Shelf, and insofar as they would limit the States' boundaries to three miles or three leagues, are unconstitutional and should be considered as not written.

4. The States Have Always Owned Territorial Waters And Submerged Lands Adjoining Their Shores.

Prior to the Revolutionary War the King of England held the title and dominion over the thirteen American Colonies and the seas adjoining their shores. The Supreme Court has repeatedly held that these colonies succeeded to all of the rights of the Crown when they gained their independence and thereby became the owners of such lands and waters subject only to the rights surrendered to the National Government by the Constitution of the United States. States subsequently admitted to the Union came in on the same footing. This Court has never held that the federal government ever succeeded to the rights of the Crown or that it ever acquired ownership of territorial waters and submerged lands from the English King, or by cession from the individual States, or even from the Constitution of the United States.

The source of the title of the coastal states of the Union is set out in detail in quite a number of early cases which are reviewed in *Shively v. Bowlby*, 152 U. S. 1, 14-15, 26-27, 38 L.Ed. 331, 336-7, 341. The following excerpts from that opinion are pertinent:

> "The English possessions in America were claimed by subjects of the King of England, and

covered by subjects of the King of England, and taken possession of in his name, by his authority or with his assent, they were held by the King as the representative of and in trust for the nation; and all vacant lands, and the exclusive power to grant them, were vested in him. * * And upon the American Revolution all the rights of the Crown and of Parliament vested in the several states, subject to the rights surrendered to the national government by the Constitution of the United States. Johnson v. McIntosh, 21 US 8 Wheat, 543, 595 (5:681, 694); Martin v. Waddell, 41 US 16 Pet. 367, 408-410, 414 (10:997, 1012-14); Com. v. Roxbury, 9 Gray, 451, 478-481; Stevens v. Paterson & N. R. Co., 34 N. J. 532, 3 Am. Rep. 269; People v. New York & S. I. Ferry Co. 68 N. Y. 71. * *"

The Court then goes on to say (152 U. S. 26-27):

"The new states admitted into the Union since the adoption of the Constitution have the same rights as the original states in the tide waters, and in the lands below the high water mark, within their respective jurisdictions.* *

In Pollard v. Hagan (1844) this Court upon full consideration adjudged that upon the admission of the State of Alabama into the Union the title in the lands below high water mark of navigable waters passed to the state, and could not afterwards be granted away by the Congress of the United States. Mr. Justice McKinley, delivering the opinion of the court (Mr. Justice Catron dissenting) said: 'We think a proper examination of this subject will show that the United States

never held any municipal sovereignty, jurisdiction, or right of soil, in and to the territory of which Alabama or any of the new states were formed; except for temporary purposes, and to execute the trusts created by the acts of the Virginia and Georgia legislatures, and the deeds of cession executed by them to the United States, *and the trust created by the treaty with the French Republic of the* 30*th of April*, 1803, *ceding Louisiana.'*

"When the United States accepted the cession of the territory, they took upon themselves the trust to hold the municipal eminent domain for the new states, and to invest them with it to the same extent, in all respects, that it was held by the states ceding the territories.' 44 U. S., 3 How. 221-3, (11:579-1)." (Emphasis supplied)

The earlier case of *Harcourt v. Gaillard*, (1827) 12 Wheat. 524, 6 L.Ed. 716 refutes the idea that the United States when the Union was formed became possessed of any property whatever except through one of the original states. The Court in that case said:

> "There was no territory within the United States that was claimed in any other right than that of some one of the confederate states; therefore, there could be no acquisition of territory made by the United States distinct from, or independent of some one of the states.[5]

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[5]See also: Report No. 133, 83rd Cong. 1st Sess. 1953 p. 58-9 Commonwealth v. Manchester, 152 Mass. 230, 25 N.E. 116, aff'd Manchester v. Mass. 139 U.S. 240, 35 L.Ed. 159 Brown v. Grant, 116 U.S. 207, 212, 29 L.Ed. 598.

We are, then, referred to the belligerent rights of South Carolina and Georgia; and it is immaterial to the question here, to which of those states the territory appertained. Each declared itself sovereign and independent, according to the limits of its 31st parallel of north latitude.

This limit was claimed and asserted by both of those states in the declaration of independence, and the right to it was established by the most solemn of all international acts—the treaty of peace. It has never been admitted by the United States, that they acquired anything by way of cession from Great Britain by that treaty."

Not only did the federal government acquire nothing in the way of property from the English Crown, but the Constitution gave it no right to acquire any territory to be held and governed permanently as such. The Supreme Court has accordingly said that the national government cannot enlarge its territorial limits bordering the United States in any way except by the admission of new states. Thus in *Dred Scott v. Sanford*, 19 How. 393, 446-8, 15 L.Ed. 691, 718:

" * * * There is certainly no power given by the Constitution to the Federal Government to establish or maintain colonies bordering on the United States or at a distance, to be ruled and governed at its own pleasure; nor to enlarge its territorial limits in any way, except by the admission of new states. * * * No power is given to

acquire a territory to be held and governed permanently in that character. * * *

We do not mean, however, to question the power of Congress in this respect. The power to expand the territory of the United States by the admission of new States is plainly given; and in the construction of this power by all the departments of the government, it has been held to authorize the acquisition of territory, not fit for admission at the time, but to be admitted as soon as its population and situation would entitle it to admission. It is acquired to become a State, and not to be held as a colony and governed by Congress with absolute authority; and as the propriety of admitting a new State is committed to the sound discretion of Congress, the power to acquire territory for that purpose, to be held by the United States until it is in a suitable condition to become a state upon an equal footing with the other States, must rest upon the same discretion. * * *

* * * The principle upon which our governments rest, and upon which alone they continue to exist, is the union of States, sovereign, and independent within their own limits in their international and domestic concerns, and bound together as one people by a general government, possessing certain enumerated and restricted powers, delegated to it by the people of the several States, and exercising supreme authority within the scope of the powers granted to it, throughout the dominion of the United States. A power, therefore, in the general government to obtain and hold colonies and dependent territories, over which

> they might legislate without restriction, would be inconsistent with its own existence in its present form. Whatever it acquires, it acquires for the benefit of the people of the several States who created it. It is their trustee acting for them, and charged with the duty of promoting the interests of the whole people of the Union in the exercise of the powers specifically granted. * * *"

The principles of law set forth in these cases are in accord with the dissenting opinions in the California, Texas and Louisiana cases. Since Congress has supplied the lack of a declaration of territory, and thus made the issue only one of property or title, and not a question of power, these dissenting opinions are now authoritative precedents along with the earlier cases which are cited and quoted herein. *Pollard v. Hagan*, 3 How. (US) 212; *Weber v. Harbor Commissioners*, 18 Wall. (US) 57; *Shively v. Bowlby*, 152 U. S. 1; *Manchester v. Massachusetts*, 139 U. S. 240, and other cases cited in this brief, enunciate principles which apply equally to rivers, bays, tidelands and coastal submerged lands under the sea, and correctly state the law of the land at this time.

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[6]See Senate Report 133, 83rd Cong. 1st Sess. 1953, p. 58-9

B. LOUISIANA HAS TITLE TO THE CONTINENTAL SHELF

1. The President's Proclamation Effectively Supports Louisiana's Claim

Louisiana's claim to the entire Continental Shelf is supported by the Continental Shelf Proclamation No. 2667 issued by President Truman on September 28, 1945, (10 FR 12303) in which he asserted the jurisdiction of the United States over the natural resources of the Continental Shelf under the high seas and contiguous to the coasts of the United States and its territories. In this Proclamation the President stated that "the Continental Shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it." He further stated that the effectiveness of measures to utilize or conserve the minerals and other natural resources on and under the Continental Shelf would be contingent upon cooperation and protection from the shore" and that "since these resources frequently form a seaward extension of a pool or deposit lying within the territory" of the nation "self protection compels the coastal nation to keep close watch over activities off its shores which are of the nature necessary for utilization of these resources." This Proclamation also states that "the Government of the United States regards the natural resources of the subsoil and sea-bed of the Continental Shelf beneath the high seas but continguous to the coasts of the United States as appertaining to the

United States, subject to its jurisdiction and control."

The entirety of the Proclamation appears in Defendants Appendix A.

This Proclamation of the President was given legislative sanction by the Congress in 1953 by passage of the Outer Continental Shelf Lands Act. This Act is valid and legal insofar as it declares the location of the National Boundaries to be the edge of the Continental Shelf, and confers jurisdiction on the federal government within its constitutional powers governing national defense, interstate and foreign commerce, and navigation. These latter provisions are separate from and independent of the provisions of the act which unconstitutionally seek to establish a federally owned belt of land. Section 17 of the Act makes all of its provisions severable.

2. The Boundaries of the States Are Coextensive With Those of the United States.

Since this Court has always held that the boundaries of the States are co-extensive with those of the United States, that the United States does not and cannot hold property as a monarch may for private or personal purposes, and that territories acquired by the United States are held in trust for the States to be formed out of such territories, it would follow that an extension of the boundaries of the United States into the sea would carry with it an extension of the boundaries of the adjoining State. Therefore, the Presidential Proclamation which declared that the subsoil

of the Gulf of Mexico was a mere extension of the land-mass of the coastal state, and the acts of Congress to the same purpose, would have the effect of declaring that the boundaries of the State of Louisiana extended to the limit of the Continental Shelf.

In *Commonwealth v. Manchester*, 152 Mass. 230, 241, 25 N.E. 113, 116, 9 L.R.A. 236, affirmed 139 U. S. 240, 35 L. Ed. 159, Mr. Justice Holmes stated the opinion of the Supreme Judicial Court of Massachusetts:

> "There is no belt of land under the sea adjacent to the Coast which is the property of the United States and not the property of the States."

In Senate Report No. 133, page 59, the Congressional Committee states:

> "It is beyond doubt that the Federal Government cannot assert any lawful control over lands and resources that are not located within the borders of the several states or the Territories, or which has not been committed to it by treaty or other international negotiations."

The Court pointedly stated that the United States cannot maintain at its pleasure territory bordering that of the several states in *Dred Scott v. Sanford*, 19 How. 393, 446, 15 L.Ed. 691, 718:

> "There is certainly no power given to the Federal Government to establish or maintain colonies bordering on the United States—to be governed or ruled at its pleasure."[7].

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[7]See Also:
Harcourt v. Gaillard, 12 Wheat 523, 6 L.Ed. 716
Brown v. Grant, 116 U.S. 207, 29 L.Ed. 598
Commonwealth v. Manchester, 152 Mass. 230, 25 N.E. 113, 116, affirmed 139 U.S. 240, 35 L.Ed. 159.

Plaintiff's counsel states that the boundary of Louisiana extends no further than the national boundary, but says the latter extends only three miles from the coast of Louisiana.[8] If this be true then the United States proposes to exploit lands, and take all minerals and natural resources from lands to which it has no title or right of possession or control. But the right to use and claim the fruits of ownership implies, of necessity, some sort of title, and when applied to realty such right or title is limited to boundaries which are particularly described.

The Outer Continental Shelf Lands Act particularly describes the Outer Continental Shelf and in Section 3 declares that the subsoil and seabed of the Outer Continental Shelf "appertain to the United States and are subject to its jurisdiction, control, and the power of disposition" (43 U.S.C. 1332).

Section 4 of the Act declares that "the Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the Outer Continental Shelf". This same section gives to United States District Courts original jurisdiction over this area, and provides that the Longshoremen's and Harbor Workers Compensation Act and the National Labor Relations Act shall be effective in this territory. The head of the Department in which the Coast Guard is operating is granted authority to make regulations for the promotion of safety of life and property and the Secretary of the Army is granted the power to prevent obstruction to navigation. The

[8]Statement with Respect to Motion for Judgment p. 3-4. Memorandum for the United States in Opposition to Motion by the State of Louisiana to Take Depositions p. 2.

Secretary of Interior is granted authority to execute mineral leases under the Act.

The powers of jurisdiction, control and disposition referred to above could hardly be exercised in territory which was not included within the boundaries of the United States. It would be pertinent to ask whether or not the United States would permit a Lessee from the Republic of Mexico or from one of the South American Republics to enter this area and develop it for mineral purposes, and on what basis the United States would claim its exclusive right to the natural resources of the Continental Shelf? Unless the Federal Government can assert that this territory belongs to the coastal State and is a part of the United States it would have no basis to resist the trespass of a foreign lessee. This Court has always held that jurisdiction, territory and ownership are co-extensive.[9]

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[9]New York v. Connecticut, 4 Dall. 4, note (b), (1799), 1 L.Ed. 715

United States v. Bevans, 3 Wheat 336, 385, 388 (1818), 4 L.Ed. 404, 416

Rhode Island v. Massachusetts, 12 Pet. 657, 733 (1838), 9 L.Ed. 1233, 1264

Martin v. Waddell, 16 Pet. 367, 411-12 (1842), 10 L.Ed. 997, 1013

Pollard's Lessee v. Hagan, 3 How. 212, 228 (1845), 11 L.Ed. 565

Smith v. Maryland, 18 How. 71, 74 (1855), 15 L.Ed. 269, 271

McCready v. Virginia, 94 U.S. 391, 394 (1876), 24 L. Ed. 248

Manchester v. Massachusetts, 139 U.S. 240, 261, 263-4, 35 L.Ed. 159

There is no legal and factual basis for Government Counsel's assertion that the boundaries of the United States extend only three miles offshore into the Gulf of Mexico, nor is there any basis for his assertion that the boundaries of Louisiana are limited to that extent.

3. Louisiana's Effective Occupation and Long Possession of the Continental Shelf Is a Basis of Its Title

The basis of any claim in International law to possession and control of the Continental Shelf rests on effective occupation with the acquiescence of the family of nations, and such possession and occupation ripens with the passage of time into a *title of ownership.* The sea-bed, sub-soil and resources then become a part of the territory of the coastal State.

Westlake in his work on International Law, Part 1, Page 190-191 states:

> "The case of the pearl fishery is peculiar, the pearls being obtained from the sea-bottom by divers, so that it has a physical connection with the stable element of the locality which is wanting to the pursuit of fish swimming in the water. When carried on under state protection, as that off the British Island of Ceylon, or that in the Persian Gulf which is protected by British ships in pursuance of treaties with certain chiefs of the Arabian mainland, it may be regarded as an occupation of the bed of the sea. In that character the pearl fishery will be territorial even though the shallowness of the water may allow

it to be practised beyond the limit which the state in question generally fixes for the littoral sea . . . and the territorial nature of the industry will carry with it, as being necessary for its protection, the territorial character of the sea at the spot".

To the same effect are:

Sir Cecil Hurst, *"Whose is the Bed of the Sea?"*, *British Year Book of International Law*, 1923-1924.

Mouton, *"The Continental Shelf,"* p. 306-7.

Colombos, *"International Law of the Sea,"* 3rd Ed. p. 306-7.

Vattel's *"Law of Nations"* (Chitty Ed) p. 127.

Hackworth's *"Digest of International Law,"* Vol. II, p. 674-679.

A clear statement of International law on this subject is contained in *Hackworth's Digest of International Law*, Vol. II, page 674-675, as follows:

> " . . . Wherever it can be shown that particular oyster beds, pearl banks, chank fisheries, sponge fisheries or whatever may be the particular form of sedentary fishery in question outside the three-mile limit have always been kept in occupation by the Sovereign of the adjacent land, ownership of the soil of the bed of the sea where the fishery was situated may be presumed, and th exclusive right to the produce to be obtained from these fisheries may be based on their being a produce of the soil. Ownership of the soil by the Sovereign of the country under such circum-

stances must carry with it the right to legislate for the soil so owned and for the protection of the wealth to be derived from it, and no doubt need be felt as to the binding force of the various enactments which have been issued for the protection of these sedentary fisheries outside the three-mile limit. . . .

The maintenance of a State's property rights in special areas outside the three-mile limit when more extensive general claims to sovereignty, jurisdiction and property were abandoned is in no way inconsistent with the principles laid down by Oppenheim, that the sub-soil beneath the bed of the open sea outside the marginal belt of territorial waters is a no man's land, property in which can be acquired on the part of the littoral State through occupation starting from the sub-soil beneath the bed of the territorial maritime belt. Tunnelling in the sub-soil for purposes of mining or communications seems to be the only aspect of the problem which Oppenheim had in mind, but the principles he lays down are in no way inconsistent with the recognition of a right of exclusive ownership arising from long and undisputed occupation of sedentary fisheries lying on the surface of the bed of the sea."

Quotations from the works of the aforementioned and other authors are set forth in greater detail in Defendants Appendix B.

Louisiana's long possession of the sub-soil and sea-bed in the Gulf of Mexico far beyond three-miles offshore is a basis of Louisiana title, and this effective occupation of the sea-bed by the State is the only

basis in international law whereby the United States may exercise its Federal jurisdiction over this area. The United States can only claim its rights through the State of Louisiana, and the property on which Federal jurisdiction is claimed is property which it acquired from France to be held in trust for the State. The claim of the State ownership, and the assertion of Federal jurisdiction by the United States are in effect a claim to territory, and the boundaries of the State and the nation must of necessity include such territory.

Territories acquired by the United States by treaty or cession must be held in trust by it for the States to be thereafter formed out of such territories, particularly where there is an express obligation to that effect. Among the decisions of the Court on this subject is the case of *Weber v. Harbor Commissioners*, (1873) 18 Wall. (85 U.S.) 57, 65, 21 L.Ed. 798, 802:

> "* * * Although the title to the soil under the tide waters of the bay was acquired by the United States by cession from Mexico, equally with the title to the upland, they held it only in trust for the future state. Upon the admission of California into the Union upon equal footing with the original states, absolute property in and dominion and sovereignty over all soils under the tide-waters within her limits passed to the state, with the consequent right to dispose of the title to any part of said soils in such manner as she might deem proper, subject only to the paramount right of navigation over the waters, so far as such navigation might be required by the necessities

of commerce with foreign nations or among the several states the regulation of which was vested in the general government. *Pollard v. Hagen*, 3 How. 212; *Mumford v. Wardwell*, 6 Wall. 436, 18 L.Ed. 761."

See Also:

Shively v. Bowlby, 152 U.S. 1, 38 L.Ed. 331

Knight v. United Land Assn., 142 U.S. 161, 35 L.Ed. 974

Pollard v. Hagan, 3 How. 212, 11 L.Ed. 565

Borax Consolidated v. Los Angeles, 296 U.S. 10, 56 S. Ct. 23, 80 L.Ed. 9

Van Brocklin v. Anderson, 117 U.S. 151, 158, 29 L.Ed. 845, 847, makes the statement:

"The United States do not and cannot hold property, as a monarch may, for private or personal purposes."

The coastal states of the Union have the right to define their boundaries into the sea to the limit permitted by international law and co-extensive with the boundaries of the Federal Government, and within such boundaries the principle of dual sovereignty is applied just as it is anywhere else in the domain of the state. Thus the Court held in *Manchester v. Commonwealth of Massachusetts*, (1890) 139 U.S. 240, 264, 35 L.Ed. 159, 166:

"The extent of the territorial jurisdiction of

> Massachusetts over the sea adjacent to its coast is that of an independent nation; and, except so far as any right of control over this territory has been granted to the United States, this control remains with the State. * * * Within what are generally recognized as the territorial limits of States by the law of nations, a State can define its boundaries on the sea and the boundaries of its counties * * * * *"*

The only conclusion to be drawn from the foregoing authorities is that Louisiana's boundaries are at the edge of the Continental Shelf where the United States has declared the national boundary to be; that the United States within these boundaries can only exercise the powers conferred on it by the Constitution; and that anything provided to the contrary in the Submerged Lands Act and the Outer Continental Shelf Lands Act is illegal and unconstitutional.

C. THE SUBMERGED LANDS ACT AND THE OUTER CONTINENTAL SHELF LANDS ACT ARE VALID PROVIDED THEY DO NOT VIOLATE FUNDAMENTAL LAW AND TREATIES.

1. Congress May Not Extend the National Boundary Without Extending State Boundaries Co-Extensively.

Although Congress has the right to extend the boundaries of the nation seaward to the full limit permitted by international law, such an extension of

boundaries can in no way deny that the boundaries of the states are the same as those of the nation.[10] Nor is there any reason why the dual sovereignty principle inherent in our republican form of government and guaranteed by the Constitution, should not apply to the area in the sea thus included in the boundaries of the United States and the individual coastal states. Such an extension of the national and the state domains must in any event be made in accordance with treaty obligations and must follow constitutional limitations. Accordingly the Submerged Lands Act and the Outer Continental Shelf Lands Act are valid only insofar as they do not violate provisions of the fundamental law and treaties made pursuant thereto.

However these Acts of Congress do transgress the limitations of the Constitution and the agreement made with France in the Treaty of Paris regarding the Louisiana Territory. In Paragraph IV of its Answer (p. 4-7) Louisiana avers that these Acts are unconstitutional, null, and void in the following respects:

> 1. To the extent that said acts permit the federal government to exercise proprietary rights in said submerged lands and resources, they are violative of the Treaty of Paris entered into by the United States with France on April 30, 1803 for the cession of Louisiana to the United States, whereby the latter obligated itself to incorporate the purchased territory of Louisiana into the Union according to the principles of the federal

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[10]Manchester v. Mass., 139 U.S. 240, 35 L.Ed. 159.

constitution, and to maintain the inhabitants of Louisiana in their property in the territory with all its rights and appurtenances in the same manner as they had been acquired by the French Republic, and to the same extent as when this territory was in the hands of Spain, and that it had when France possessed it. (8 Stat. 200). Congress was bound by the Treaty of Paris to hold the Louisiana Territory in trust for the states to be formed from it, and could not, and did not attempt to retain any federal domain southward from Louisiana in the Gulf of Mexico when it established the State of Louisiana in 1812. The declarations of the executive in 1945, and of the Congress in 1953, that the southern boundary of the United States extended further seaward than it had been previously recognized could not legally create a new and separate federal domain.

2. Said acts, to the extent that they may recognize federal ownership of said lands and resources, are violative of Article IV Section 3 and 4 of the United States Constitution. To such extent said acts would unlawfully permit the federal government to exercise the prerogatives of the crown in a monarchial form of government, would permit it to invade property and property rights guaranteed to the State of Louisiana, and would unlawfully change and restrict the title and boundaries of the State without its consent.

3. Insofar as said acts confer or recognize title and property rights in the United States and limit or restrict the boundaries or the title of Louisiana in said submerged lands and mineral resources of the Continental Shelf, they exceed

and go beyond the powers of the federal government enumerated in the United States Constitution and are therefore in conflict with the Ninth Amendment thereto.

4. Said acts insofar as they attempt to grant to the United States title and ownership of the subsoil and mineral resources of the Continental Shelf violates the Tenth Amendment of the United States Constitution which reserves to the States all powers and rights not specifically granted to the United States. Louisiana has not relinquished to the federal government any title to, or ownership or right of possession of the seabed, subsoil and mineral resources of the Continental Shelf within its boundaries.

The constitutionality of these acts was considered and approved by this Court in the case of *Alabama v. Texas*, 347 U.S. 272, 74 S. Ct. 481, 98 L.Ed. 689. However in that case the only objection raised by the plaintiff was that Congress had no right whatever to dispose of the federal government's "paramount rights" with respect to the submerged lands, since the "paramount rights" of the United States do not constitute "property" which Congress may dispose of within the meaning of Article IV, Section 3 of the Constitution. The pleas of unconstitutionality made by Louisiana here were obviously not involved in the cited case.

2. Our Fundamental Law Prescribes the Only Methods By Which the United States May Acquire Ownership of New Territory

In *U.S. v. California*, 332 U.S. 19, 67 S.Ct. 1658, 91 L.Ed. 1889 Justice Frankfurter in his dissenting opinion after propounding the above question as to the source of title claimed by the United States said (332 U.S. 44-5):

> " . . . Ownership implies acquisition in the various ways in which land is acquired—by conquest, by discovery and claim, by cession, by prescription, by purchase, by condemnation. When and how did the United States acquire this land?
>
> . . . That has not been remotely established except by sliding from absence of ownership by California to ownership by the United States."

Our fundamental law which enumerates all the powers granted by the States to the Federal Government outlines the only methods by which the latter may acquire new territory.

The first method is set forth in Section 8, Clause 11 of Article I which gives Congress the power to declare and wage war. An incident to war is the conquering of territory. The nation may therefore acquire territory by conquest.

The second method whereby the United States may acquire territory is found in Section 2 of Article II which gives the President, with the concurrence of the

Senate the power to enter into treaties and compacts with foreign nations. So the national government may by treaty with foreign nations acquire new territories.

A third method whereby the central authority may acquire lands and properties is set forth in Section 8, Clause 17 of Article I of the Constitution. This clause of the Constitution gives the Congress the right to purchase property by the consent of the Legislature of the State in which such property may be located, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.

The United States did not acquire the bed of the Gulf of Mexico to the edge of the Continental Shelf by conquest, nor did it obtain title by discovery and possession. Nor did the United States acquire these submerged lands by any provision of the Constitution or by any act of purchase or cession from the coastal states.

If the central government acquired it by purchase or cession from a foreign nation, then it must rely on the terms of the Louisiana Purchase and the Treaty with France. But that treaty obligated it to hold these lands in trust, and in trust only, for the States to be formed out of the lands and seas included in the cession. Even without this express obligation, the principles of our republican form of government would require the Federal Government to hold these

lands and seas in trust for the future states to be formed.[11]

The Submerged Lands Act states that the Federal Government has no title to submerged lands within the historic boundaries of the States. This lack of title is implicit in the language of Section 3 of the act that the title to these lands and their resources are *recognized* and *confirmed* in the respective states and that the United States thereby "releases and relinquishes all right, title and interest of the United States, *if any it has*, in and to all said lands—and resources."

If the United States has no title to, or ownership in, the marginal belt lying three leagues from coast in the Gulf or three miles from coast in the two oceans, how and when did it manage to leap frog this belt and claim territory further at sea which had long been occupied and possessed by the coastal States? If the theory of paramount rights and external sovereignty cannot and does not apply within three leagues of the coast by what theory does it apply ten, twenty, thirty or forty leagues from Coast?

The answer to these questions is that paramount rights and external sovereignty have nothing to do with

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[11]New Orleans v. U.S. 10 Pet. 662, 737, 9 L.Ed. 573, 602
Pollard v. Hagan, 3 How. 212, 11 L.Ed. 565
Dred Scott v. Sanford, 19 How. 393, 446-8, 15 L.Ed. 691, 718
Knight v. U.S. Land Assn., 142 U.S. 161, 183, 12 S.Ct. 264, 35 L.Ed. 974, 982
Borax Consolidated v. Los Angeles, 296 U.S. 10, 15, 80 L.Ed. 9, 14

property rights. Paramount rights relate to the prior right of Congress to regulate navigation and commerce and provide for the national defense. External sovereignty gives the national government the exclusive right to handle the affairs of this nation with other countries, to make treaties and international agreements. The theory of the California, Texas and Louisiana cases that such rights can be translated into ownership by executive or judicial decree was, as stated in *The Superior Oil Co. v. Fontenot*, Supra, nullified by Congress when it passed the Submerged Lands Act.

At the time of the adoption of the Constitution the framers were certainly of the opinion that the Federal Government owned no land within the jurisdiction and territory of any State. If title to lands had passed didectly from the Crown to the Union in 1776 the writers of our fundamental law were not aware of it. They undoubtedly viewed the United States as being composed solely of the territory of the original thirteen States.

When the Confederation was formed before the Constitution was adopted the Confederated States owned no land either within or without the jurisdiction or territory of the thirteen States. In fact the Articles of the Confederation (Art. IX) specifically provided:

> "No State shall be deprived of territory for the benefit of the United States."

The foregoing language of the Articles of Confederation was not embodied in the Constitution itself but it is apparent that the same principle pervaded the fundamental law because the Constitution enumerated the manner in which the United States might acquire territory, as has been shown hereinabove. Since the Central Government is one of limited powers, it can only acquire territory in the manner specified by the Constitution. None of these powers form the basis for any title in the Gulf of Mexico, or the Continental Shelf adjoining Louisiana.

No sound argument can be made that these submerged lands are unclaimed lands which Congress can add to the national domain; first, because they constitute a part of the Louisiana Purchase which was held in trust for the State; and second, because they have been claimed and physically possessed by the State since its admission to the Union; and finally because the Constitutional guarantee of sovereignty under our republican form of government, guaranteed by the 9th and 10th Amendments, does not permit the United States thus to colonize or appropriate lands bordering on the individual States:

In *New Orleans v. The United States*, 10 Pet. 662, 723-4, 9 L.Ed. 573, 596, this Court ruled:

> "The power of appropriating private property to public purposes is an incident of sovereignty. And it may be, that by the exercise of this power, under extraordinary emergencies, property which had been dedicated to public use, by the enjoy-

ment of which was principally limited to a local community, might be taken for higher and national purposes, and disposed of on the same principles which subject private property to be taken.

In a government of limited and specified powers like ours, such a power can be exercised only at the mode provided by law; but in an arbitrary government, the will of the sovereign supersedes all rule on the subject."

It is therefore apparent that lands so long possessed as public property by the State cannot be appropriated by the Federal Government except for a necessary national purpose, and by following the procedures required by law of eminent domain.

3. Obligations Assumed by the United States in the Treaty of Cession of Louisiana Are Protected By Article VI and by the Fifth Amendment to the Constitution.

Since the Treaty of Paris of 1803 required the United States to hold the Louisiana Territory in trust for the States to be formed from it, and that treaty is by Article VI of the Constitution the Supreme Law of the Land, the United States cannot violate that trust at this time.

If the Court should find that these Acts of Congress do limit and restrict Louisiana's historic boundaries to three miles or three leagues offshore then they are unconstitutional and illegal to that extent. This is so because the Treaty of Cession made the United

States a trustee for Louisiana and vested in the State to be formed the title to Louisiana to the same extent that it had "in the hands of Spain, and that it had when France possessed it." The Treaty also guaranteed to the inhabitants of the territory protection in the "free enjoyment of their property: and this protection extended to the territory "with all its rights and appurtenances, as fully and in the same manner as they had been acquired by the French Republic. Pertinent portions of this treaty are contained in Defendant's Appendix D. Such treaties combine the elements of legislation, contract, and grant and are interpreted with extreme liberality to effectuate the manifest purposes and objects sought to be achieved.

Sutherland on Statutory Construction (3rd Ed.) Sec. 6507, Vol. 3, p. 262

Tucker v. Alexandroff, 183 U.S. 424, 46 L.Ed. 264,

Sullivan v. Kidd, 254 U.S. 433, 65 L.Ed. 344,

Hauenstein v. Lynham, 100 U.S. 483, 25 L. Ed. 628

Since the Treaty of Cession is a contract in which the United States assumes obligations toward Louisiana and vests in the State certain property rights these vested rights cannot be divested by any provision contained in the Acts of Congress of 1953.

Pacific Mail S.S. Co. v. Joliffe, 2 Wall. 450, 17 L.Ed. 805,

Santovincenzo v. Egan, 284 U.S. 30, 76 L.Ed. 151,

Chae Chan Ping v. U. S., 130 U.S. 581, 32 L. Ed. 1068,

Chirac v. Chirac, 2 Wheat. 259, 4 L.Ed. 234,

Carneal v. Banks, 10 Wheat. 181, 6 L.Ed. 297.

Even if the Congress were to undertake to abrogate the treaty by which this territory was acquired, and it has not remotely suggested an intent to do so, such an abrogation would not operate to deprive Louisiana of rights vested in it 145 years ago, and of territory occupied by the State ever since.

The Treaty of Cession in guaranteeing the property rights of the people of the Louisiana territory used the word property in its broadest sense. Chief Justice Marshall in *Soulard v. U.S.*, 4 Pet. 511, 7 L.Ed. 938, said:

> "In the treaty by which Louisiana was acquired, the United States stipulated that the inhabitants of the ceded territory should be protected in the free enjoyment of their property . . . .
>
> The term 'property', as applied to lands, comprehends every species of title, inchoate or complete. It is supposed to embrace those rights which lie in contract—those which are executory as well as those which are executed. In this respect the relation of the inhabitants to their government is not changed. *The new government takes the*

place of that which has passed away." (Emphasis added)

This decision has been approved and followed in many succeeding cases, including:

Strother v. Lucas, 12 Pet. 419, 435-6, 9 L.Ed. 1137, 1147,

Carpenter v. Rannels, 19 Wall. 138, 141, 22 L.Ed. 77, 78,

Bryan v. Kennett, 113 U.S. 179, 192, 28 L.Ed. 908, 912,

Knight v. United Land Assn., 142 U.S. 161, 183, 35 L.Ed. 974, 982

The property rights referred to in the Treaty of Cession apply to public as well as private property rights.

New Orleans v. U. S., 10 Pet. 662, 723, 9 L.Ed. 573, 597

Furthermore these contract obligations and property rights secured to Louisiana in this Treaty with France are protected by the 5th Amendment to the Constitution. Although a treaty may be subsequently abrogated by a statute, vested rights cannot be divested without violating this amendment, which is a specific limitation on the powers of the United States.

Lynch v. U. S., 292 U.S. 571, 78 L.Ed. 1434.

The Submerged Lands Act and the Outer Continental Shelf Lands Act cannot therefore be construed to restrict Louisiana's historic boundaries without vio-

lating Article VI and the Fifth Amendment to the Constitution.

4. Louisiana's Rights in the Submerged Lands Are Protected by Article IV Sec. 3, and the 9th and 10th Amendments to the Constitution

Other reasons why the United States may not seize for its own use property held in trust for Louisiana are found in Article IV Sections 3 and 4 of the Constitution.

Section 3 of Article IV provides for the creation of new States, and this provision has been construed to prohibit any change in a State's boundary without the consent of its legislature.

> *Shively v. Bowlby*, 152 U.S. 1, 27, 38, 38 L.Ed. 331, 341,
>
> *Louisiana v. Miss.*, 202 U.S. 1, 40, 50 L.Ed. 913, 927,
>
> *New Mexico v. Colorado*, 267 U.S. 30, 69 L. Ed. 499.

This same section gives to Congress the power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States, *but without prejudice to the rights and claims of any particular State.* Louisiana has an historic claim secured by treaty and contract to all submerged lands adjoining its shores to the 27th parallel of latitude and the United States cannot do anything

respecting this territory to prejudice Louisiana's rights and claims, whether such rights be "inchoate or complete".

The provisions of Section 3, Article IV of the Constitution prohibit the United States from appropriating to itself property which would pass to Louisiana as a necessary incident to its sovereignty and which it obligated itself to hold in trust for the State without the consent of the latter.

Section 4 of Article IV of the Constitution reads in part:

> "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them from Invasion."

The obligation of the United States to protect each State from invasion was not written into the Constitution as a protection against foreign invasion alone. The words foreign invasion appeared in the original draft of the Constitutionl Convention of 1787, but "foreign" was stricken from the final draft. (Elliotts Debates vol 5 p 381, 497, 564). This requirement therefore includes, of necessity, a prohibition against an invasion by the federal government into the domain of any State. Since the Submerged lands adjoining the coast of Louisiana became the property of the State as an attribute of sovereignty and in fulfilment of the trust imposed by the Louisiana Purchase Treaty, the federal government cannot appropriate

these lands and resources to its own use without running counter to this prohibition of the Constitution.

Nor would the guarantee of a Republican Form of Government mean anything if the United States exercised the prerogatives of a monarch and by misapplication of its superior power in certain fields seized this property of the State of Louisiana. The maintenance of the independent existence of the States is as much the concern of the Constitution as the preservation of the Union. As this Court said in *Texas v. White*, 74 U.S. (7Wall) 700, 725, 19 L.Ed. 227, 237:

> "But the perpetuity and indissolubility of the Union by no means implies the loss of distinct and individual existence, or of the right of self government by the States. Under the Articles of Confederation each State retained its sovereignty, freedom and independence, and every power, jurisdiction and right not expressly delegated to the United States. Under the Constitution, though the powers of the States were much restricted, still all powers not delegated to the United States, nor prohibited to the States, are reserved to the States respectively, or to the people. And we have already had occasion to remark at this term, that 'the people of each State compose a State, having its own government, and endowed with all the functions essential to separate and independent existence,' and that 'without the States in union, there could be no such political body as the United States.' Lane Co. v. Oregon, infra, 101. Not only, therefore, can there be no loss of separate and independent autonomy to the States, through their

union under the Constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National Government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States.

When therefore, Texas became one of the United States, she entered into an indisoluble relation. All the obligations of perpetual union, and all the guaranties of republican government in the Union, attached at once to the State. . . "

The following statement taken from the opinion rendered In Re Heff, 197 U.S. 488, 505, 49 L.Ed. 848, 855, is most appropriate here:

"In this Republic there is a dual system of government, national and state. Each within its own domain is supreme, and one of the chief functions of this Court is to preserve the balance between them, protecting each in the power it posesses, and preventing any trespass thereon by the other."

Louisiana in this case asks this Court to preserve its right to property which is an attribute of State sovereignty, and to protect the State from trespass by the United States[12] Under our dual system of sover-

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[12]Parker v. Brown, 317 U.S. 341, 87 L.Ed. 315;
Skiriotes v. Florida, 313 U.S. 69, 77, 85 L.Ed. 1193, 1200;
Osborn v. Ozlin, 310 U.S. 53, 62, 84 L.Ed. 1074, 1078;
Ashton v. Cameron County Co., 298 U.S. 513, 531, 80 L.Ed. 1309, 1314;
Florida v. U.S., 282 U.S. 194, 211-12, 75 L.Ed. 291, 302;
Mayor of N. Y. v. Miln, 11 Pet. 102, 139, 9 L.Ed. 648, 662.

eignty, guaranteed by the 9th and 10th Amendments to the Constitution, the Court must preserve the balance between the State and the nation in this respect.

D. LOUISIANA'S HISTORIC BOUNDARIES EXTEND TO THE 27TH PARALLEL OF LATITUDE

A determination of Louisiana's historic boundaries is one of the requirements of Section 4 of the Submerged Lands Act, (43 U.S.C. 1312), which reads, in part, as follows:

> "Nothing in this Section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographic miles if it were so provided by its constitution or laws prior to or at the time such State became a member of the Union." (67 Stat. 31, 43 U.S.C. 1312)

The above quoted provision is also in accord with the treaty obligations assumed by the United States in the Louisiana Purchase. However, those provisions which seek to limit boundaries of the State three leagues or three miles from coast are contrary to and in conflict with the treaty whereby the United States purchased the Louisiana territory.

A determination of Louisiana's historic boundaries, among other things, involves an interpretation and application of the provisions of the Treaty of Paris between France and the United States on April 30 in

1803 whereby the territory of Louisiana was ceded to the United States.[13] To properly interpret this treaty recourse must be had to certain prior treaties between France and Spain, i. e., the Treaty of St. Ildefonso dated September 15, 1880 and the Treaty of Fontainbleau dated November 3, 1762. These treaties and various proclamations and edicts of the Kings of France and Spain furnish evidence concerning the historic boundaries of Louisiana and must be considered in interpreting the Act of Congress creating the Territory of Orleans, [14] and the Acts of Congress admitting the State of Louisiana into the Union.[15] Excerpts from these and other treaties appear in Defendants Appendix, Sections D. and E.

The Acts of Congress creating the Territory of Orleans, and thereafter forming this territory into the State of Louisiana, were undoubtedly passed for the purpose of carrying out the obligations of the United States assumed in the Treaty of Paris whereby this territory was acquired from France. The first Article of this treaty reads, in part.[16]

> ". . . The French Republic . . . doth hereby cede to the said United States, in the name of the French Republic, for ever and in full sovereignty,

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[13]8 Stat. 200, 2 Miller's Treaties 498.

[14]2 Stat. 283, approved March 26, 1804.

[15]2 Stat. 701, approved April 8, 1812
2 Stat. 708, approved April 14, 1812

[16]Miller's Treaties, Vol. 1, Page 498, 8 Stat. 200.

the said territory, *with all its rights and appurtenances*, as fully and in the same manner as they had been acquired by the French Republic." (Emphasis supplied)

This paragraph in the Treaty of Paris, is prefaced by a recital taken from the Treaty of St. Ildefonso of September 15, 1800 which is also quoted, in part:

> "His Catholic Majesty (Spain) promises and engages, on his part, to retrocede to the French Republic . . . the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other States."

Article 3 of the Treaty of Paris concerning the cession of the Louisiana territory to the United States, provides:

> "The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion they profess."

The Articles of the Louisiana cession thus obligated the United States to incorporate Louisiana into the Union according to the principles of the Federal Con-

stitution, and to maintain the inhabitants of Louisiana in their property in the territory with all its rights and appurtenances in the same manner as they had been acquired by the French Republic, and to the same extent as when this territory was in the hands of Spain, and that it had when France possessed it. In other words, the United States agreed that the people of Louisiana would be guaranteed in their ownership of the territory within its historic boundaries when the State should be formed and admitted to the Union. It is therefore important to determine the extent of the Louisiana territory and its boundaries when it was successively occupied by Spain and France. We are here concerned, of course, with only that portion of the territory of Louisiana bordering on and in the Gulf of Mexico, which was incorporated into the State in 1812.

1. Ownership of Submerged Lands Passed to the State As an Attribute of Sovereignty, and Is Implied in the Act of Admission Describing Louisiana's Boundaries

The Act of April 8, 1812 describes Louisiana boundaries in part as follows:

> ". . . Beginning at the mouth of the River Sabine; thence by a line to be drawn along the middle of said river, including all islands, to the thirty-second degree of latitude; thence due north to the northern-most part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the River Mississippi; thence

down the said river to the River Iberville; and from thence along the middle of the said river and Lakes Maurepas and Pontchartrain to the Gulf of Mexico; thence bounded by the said gulf to the place of beginning, including all islands within three leagues of the coast."

The Attorney General of the United States contends that the words "bounded by the said Gulf including all islands within three leagues of the Coast" mean that Louisiana's southern boundary is a land boundary and that its dominion stopped at the shore line of the Gulf of Mexico.

No one has yet suggested why Congress in 1812 should think that islands three leagues distant from coast should be a part of the territory belonging to Louisiana but the submerged land connecting the islands with the mainland should not.

If the southern boundary is a land boundary, as claimed by government counsel, then by implication the transfer of sovereignty over this portion of the Louisiana territory carries with it sovereignty over the submerged lands and territorial waters to the full extent of Louisiana's historic boundaries.

In the early case of *Martin v. the Lessee of Waddell.* (1842), 16 Pet. 367, 413-17, 10 L.Ed. 997, 1014-15, this Court held that the lands under waters adjoining the shores of a state pass to the transferee on a transfer of sovereignty, as one of the royalties incident to the powers of government, and are to be held in the

same manner and for the same purposes that the navigable waters of England and the soils under them are held by the Crown; and it would require plain language in the act transferring sovereignty over the territory in question to persuade the Court that the State's interest in such waters and submerged lands were retained by the transferror. The following excerpts are taken from the opinion of Mr. Chief Justice Taney in that case:

> " . . . The estate and rights of the king passed to the duke in the same condition in which they had been held by the crown, and upon the same trusts. Whatever was held by the king was a prerogative right passed to the duke in the same character. * * * And in the judgment of the court, the land under the navigable waters passed to the grantee as one of the royalties incident to the powers of government; and were to be held by him in the same manner, and for the same purposes that the navigable waters of England, and the soils under them, are held by the crown.
>
> This opinion is confirmed by referring to similar grants for other tracts of country upon this continent, made about the same period of time. * * * In all of them from the time of the settlement to the present day, the previous habits and usages of the colonists have been respected, and they have been accustomed to enjoy, in common, the benefits and advantages of the navigable waters for the same purposes, and to the same extent that they have been used and enjoyed for centuries in England. Indeed, it could not well have

been otherwise. * * * And it would require very plain language in these letters patent to persuade us that the public and common right of fishery in navigable waters, which has been so long and so carefully guarded in England, and which was preserved in every colony founded on the Atlantic borders, was intended, in this one instance, to be taken away. But we see nothing in the charter to require this conclusion. * * *

* * * And if the great right of dominion and ownership in the rivers, bays, and arms of the sea, and the soils under them, were to have been severed from the sovereignty, and withheld from the crown; if the right of common fishery for the common people, stated by Hale in the passage before quoted, was intended to be withdrawn, *the design to make this important change in this particular territory would have been clearly indicated by appropriate terms; and would not have been left for inference from ambiguous language.* (Emphasis supplied)

. . . And when the people of New Jersey took possession of the reins of government, and took into their own hands the powers of sovereignty, the prerogatives and regalities which before belonged either to the Crown or the Parliament, became immediately and rightfully vested in the State. * * *"

The principles of the foregoing decision have been approved in many subsequent cases.[17]

This Court has on many occasions declared that State ownership of submerged lands seaward of its shores is an attribute of sovereignty possessed by the State though not expressly provided for in the act creating the State, and even though such State may have never seen fit to define its limit.[18] The follow-

[17]Den v. The Jersey Co., 15 How. 426, 432-3, 14 L.Ed. 757, 760-1.
Barney v. Keokuk, 94 U.S. 324, 338, 24 L.Ed. 224;
Hardin v. Jordan, 140 U.S. 371, 380-2, 35 L.Ed. 428, 433;
Shively v. Bowlby, 152 U.S. 1, 16, 47, 38 L.Ed. 337, 349;
Mann v. Tacoma Land Co., 153 U.S. 273, 283, 38 L.Ed. 714, 717;
Alaska Pac. Fisheries v. U. S., 248 U.S. 78, 87-9, 63 L.Ed. 138, 140-1;
Mass. v. New York, 271 U.S. 65, 87-90, 70 L.Ed. 838, 848-9;
New Jersey v. Delaware, 291 U.S. 361, 373-4, 78 L.Ed. 847, 853.

[18]Pollard v. Hagan, 44 U.S., 3 How. 212, 11 L.Ed. 565;
Weber V. Harbor Comm. (1873) 18 Wall. 57, 66, 21 L.Ed. 798;
McCready v. Virginia, 94 U.S. 391, 24 L.Ed. 248;
Packer v. Bird (1890), 137 U.S. 661, 672, 34 L.Ed. 819, 821-2;
Hardin v. Jordan (1890), 140 U.S. 371, 35 L.Ed. 428;
Illinois Cent. R. Co. v. Illinois (1892), 146 U.S. 387, 434-5, 452-460, 36 L.Ed. 1018, 1036-7, 1042-45;
Shively v. Bowlby (1894), 152 U.S. 14-16, 38 L.Ed. 331, 336-7, 341;
The Abbey Dodge v. U.S., 223 U.S. 166, 173-4, 177, 56 L.Ed. 390, 392-4;
Massachusetts v. New York (1926), 271 U.S. 65, 89, 70 L.Ed. 838, 849
U. S. v. Oregon, 295 U.S. 1, 14, 79 L.Ed 1267, 1274;
Hackworth's Digest of International Law, Vol. 1, p. 623-4.

ing is quoted on this point in the case of *Hardin v. Jordan* (1890), 140 U. S. 371, 381, 35 L.Ed. 428, 433:

> ". . . Such title to the shore and lands under water is regarded as incidental to the sovereignty of the State—a portion of the royalties belonging thereto and held in trust for the public purposes of navigation and fishery-and cannot be retained or granted out to individuals by the United States Pollard v. Hagan, 44 US 3 How. 212 (11:565); Goodtitle v. Gibbe, 50 US, 9 How. 471 (18:220); Weber v. Board of Harbor Comrs. 84 US 18 Wall. 57 (21:798). Such title being in the State, the lands are subject to state regulation and control, under the condition, however, of not interfering with the regulations which may be made by Congress with regard to public navigation and commerce. The State may even dispose of the usufruct of such lands, as is frequently done by leasing oyster beds in them ,and granting fisheries in particular localities. * * * * *"

We also quote from the opinion in *Massachusetts v. New York* (1926), 271 U. S. 65, 89, 70 L.Ed. 838, 849:

> "The dominion over navigable waters and property in the soil under them, are so identified with the exercise of the sovereign powers of government that a presumption against their separation from sovereignty must be indulged. . . . It follows that, wherever there is a grant by a State. . . of the rights and title of government and sovereignty over a specified territory. . . . the

grant . . . carries with it as an incident, title to lands under navigable waters."

In the case of *State v. Ruvido* (Maine, 1940), 15 Atl. 2d. 293, 297, the Supreme Court of Maine held that, even in the absence of a statute, a State's boundary and jurisdiction automatically include the marginal sea, saying:

> "Such a statute, however, would be only declaratory of the law . . . the legislature by its act cannot extend the jurisdiction of the state beyond the limits generally rceognized by law. The sovereignty over territorial waters exists even though the state has never seen fit to define their limit. The State of Maine has exercised this authority as to portions of these waters. . . There is no reason why it may not assume control over all."

The attention of this court is called to quotation, from Mouton, "*The Continental Shelf*," found in Appendix B in which the doctrine of the extension of land mass into the continental shelf and its continuation of and association with the shore is stressed as a matter of necessity.

2. The Louisiana Purchase Obligated the United States To Hold the Territory of Louisiana in Trust for Future States to the Full Extent that the Territory Had Been Claimed by France and Spain.

The Territory of Orleans, that part of the Louisiana Purchase which became the State of Louisiana, included all submerged lands and waters extending into

the Gulf of Mexico that had previously been under the claim and dominion of France and Spain. The United States acquired this territory from France, in trust, for the inhabitants of the territory and for the State to be formed out of the property thus ceded by France.[19] This obligation of trust is expressly stipulated in Article 3 of the Treaty of Paris whereby the territory of Louisiana was ceded by France to the United States.[20] During the 18th Century France and Spain, without protest from other powers, and with the consent of Great Britain, held dominion over the Continental Shelf of Louisiana as far as forty leagues offshore.

As early as 1763 Great Britain, France and Spain, who then possessed the entire North American Continent, agreed that fifteen and even thirty leagues was a reasonable measure of the width of territorial waters. A treaty between these three powers signed at

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[19]New Orleans v. U. S., 10 Pet. 662, 737, 9 L.Ed. 573, 602;
Pollard v. Hagan, 3 How. 212, 11 L.Ed. 566;
Goodtitle v. Kibbe, 9 How. 471, 13 L.Ed. 220;
Doe v. Beebe, 13 How. 25, 14 L.Ed. 35;
Barney v. Keokuk, 93 U.S. 324, 24 L.Ed. 224;
Dred Scott v. Sanford, 19 How. 393, 446-8, 15 L.Ed. 691, 718;
Knight v. U. S. Land Assn. 142 U.S. 161, 183, 35 L.Ed. 974, 982;
Shively v. Bowlby, 152 U.S. 43, 38 L.Ed. 337, 347;
Borax Cons. v. Los Angeles, 296 U.S. 10, 15, 80 L.Ed. 9, 14.

[20]8 Stat. 200-7;
2 Miller's Treaties 498.

Paris on February 10, 1763 stipulated such a limit for Britain's territorial waters off Nova Scotia and New Foundland.[21]

In 1790 Spain and England agreed to a ten league territorial limit offshore for Spain's possessions in the Pacific Ocean and in the South Seas (Gulf of Mexico and Carribbean Sea and in South America) and a like boundary for England's possessions in North America. This latter agreement was in the form of a treaty signed at Escurial on October 28, 1790—just ten years before Spain ceded Louisiana to France in the Treaty of St. Ildefonso.[22] This Treaty contains the following provisions in Articles 3, 4, and 6:

"Article III

. . . It is agreed, That their respective Subjects shall not be disturbed or molested, either in navigating or carrying on their Fisheries in the Pacific Ocean, or in the South Seas, or in landing on the Coasts of those Seas, in Places not already occupied, for the Purpose of carrying on their Commerce with the Natives of the Country * * *"

"Article IV.

His Britannic Majesty engages to take the most effectual Measures to prevent the Naviga-

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[21]Journal House of Commons, 18 March 1763, p. 589.

[22]Convention between His Britannic Majesty and the King of Spain—Journal House of Commons, December 3, 1790, p. 30. (See Appendix C)

tion and Fishery of His Subjects in the Pacific Ocean, or in the South Seas, from being made a Pretext for illicit Trade with the Spanish Settlements; and, with this View, it is moreover expressly stipulated, that British Subjects shall not navigate, or carry on their Fishery, in the said Seas, within the Space of Ten Sea Leagues from any Part of the Coasts already occupied by Spain."

"Article VI.

It is further agreed, with respect to the Eastern and Western Coasts of South America, and to the Islands adjacent, That no Settlement shall be formed hereafter, by the respective Subjects in such Parts of those Coasts as are situated to the South of those Parts of the same Coasts, and of the Islands adjacent, which are already occupied by Spain: * * *"

The provisions of this treaty were never questioned by any nation. France had then surrendered all her possessions in North America, and neither France nor any other nation protested this claim to these territorial waters in the American seas.

During the time that France possessed Louisiana her boundaries extended beyond as far as forty leagues to the 27th parallel in the Gulf, and included the entire Continental Shelf.

As stated in "The Louisiana Purchase", an historical sketch from the files of the General Land Office issued by the Department of the Interior in 1933 and re-printed in 1955 (Page 11):

"French title to the territory called 'Louisiana' in the Mississippi Valley had its origin and

was based upon the discovery and Proclamation of LaSalle, April 9, 1682."

LaSalle in his Proclamation of April 9, 1682 took possession of the country of Louisiana in the name of France with its Seas, ports and bays as far as the mouth of the Mississippi in the Gulf of Mexico to the 27th degree of latitude. This parallel of latitude extends some forty leagues seaward into the Gulf. This proclamation was made by Notarial Act and read with great ceremony in the presence of French Troops and a number of Indian tribes. It reads, in part.[23]

> "In the name of the Most High, Mighty, Invincible and Victorious Prince, Louis the Great, by the Power of God, King of France and Navarre, 14th of that name, this the 9th day of April, one thousand six hundred and eighty-two, I, by virtue of the commission of his Majesty, which I hold in my hand and which may be seen by all whom it may concern, have taken and do now take possession of this country of Louisiana, the seas, ports, bays, adjacent straits, and all the nations, peoples, provinces, cities, towns, villages, mines, minerals, fisheries, streams, and rivers, comprised in the extent of said Louisiana, * * * as also along the River Colbert, or Mississippi and rivers which discharge therein—as far as its mouth in (dans) the sea or Gulf of Mexico about the 27th degree

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[23]Manuscript of Notarial Proclamation of LaSalle, Dept. of Marine Archives of Paris; (See Appendix D.)

"The Louisiana Purchase", issued by the General Land Office, Washington, D. C. (1955).

of the elevation of the North Pole, and also to the mouth of the River of Palms; * * *"

LaSalle therefore claimed the country of Louisiana and the adjacent seas to the 27th parallel of latitude *in the sea*, or Gulf of Mexico. The 27th parallel of latitude is the same latitude as that of the mouth of the River of Palms in Florida as claimed by LaSalle in the Proclamation. It is stated on Page 7 of "The Louisiana Purchase" that the Palm River is difficult to locate on the map of Florida as it is not named, but the old maps show it as a river emptying into Palm Sound, now called Sarasota Bay. Sarasota Bay is in the proximity of the 27th parallel of latitude. This parallel of latitude lies offshore from the State of Louisiana some 40 leagues into the Gulf of Mexico. The seas referred to in LaSalle's Proclamation and claimed as the property of France therefore extended 40 leagues into the Gulf of Mexico beyond the shores of Louisiana.

Again referring to the Proclamation of LaSalle, the "Louisiana Purchase" states:

> "These Acts of LaSalle were, in fact, the foundation of French ownership; and have been so considered by all nations since 1682."

The same pamphlet on "The Louisiana Purchase" states on page 12:

> "French title to the Gulf territory from the Mississippi River to Palm River, on the Gulf coast of Florida, as a part of original Louisiana, was as good as French title to the Mississippi Valley, for both districts came under the French flag at the

same time and for the same reason, viz, the discoveries of LaSalle and his proclamation based thereon, at the mouth of the Mississippi River, April 9, 1682. It therefore follows that subsequent cessions of 'the whole territory known under the name of Louisiana,' or of 'the colony or province of Louisiana, with the same extent * * * that it had when France possessed it', conveyed title to this territory just as surely as they conveyed title to territory drained by the Mississippi River and its tributaries, and the title thus conveyed was just as good."

LaSalle's claim to the 27th degree of latitude was not made in error. At that time explorers and navigators could make accurate measurements in latitude by the simple use of the quadrant although the determination of longitude was more difficult. LaSalle's claims were recognized by the American Department of State as being "certain, authentic and particular."

In a letter written by the Secretary of State, John Quincy Adams, addressed to the Spanish Minister, De Onis, under date of March 12, 1818, the statement is made:

> "Of all the heroic enterprise which, in the sixteenth and seventeenth centuries signalized the discoveries of Europeans upon this Continent, there is not one of which evidence is more certain, authentic, particular, than those of LaSalle."
>
> American State Papers, Vol. IV, p. 472

Some of the early publicists of International Law expressed the view that the shallowness of the waters

should be considered in determining the proper seaward limits of a littoral nation.

Valin in his work, *Nouveau commentaire sur l' ordonnance de la marine du mois d'aout 1681*" (1760), page 638 said:

> "Others, finally, have taken for the rule the extent of sea which can be seen from the shore; but this measure being uncertain by its nature, it would have been better, perhaps, to reckon the domain over the adjacant sea by the sounding-lead, and to assign its limits exactly at that point where the lead ceased to fetch bottom; so that, outside soundings, the sea would have been recognized as free for navigation and fishing, as being incapable of belonging to any one's domain."

To the same effect, see *Fauchille's "Treatise on International Public Law,"* 8th ed., Tome 1, 2nd part.

The sounding line was used to delineate the territorial limits of Louisiana by France. In 1705 an official French map of "The Coasts and Environs of the Mississippi River as Discovered by Monsieur de La Salle in 1683 and 1699" was prepared by N. de Fer, Geographer of the Dauphin. This map shows a sounding line which apparently went to the 100 fathom line and which bears the warning:

> "Les gros bastimens n' aproche pas la coste n'y ayant de fond que jusque a ces points."

The translation of the warning means that large ships (armed vessels) must not approach the coast beyond these points (this line). Defendants Map Ap-

pendix contains a reproduction of this 1705 map. The old French maps invariably show this line.

Louisiana's historic boundaries therefore were forty leagues into the Gulf "when France possessed it" and the Treaty between France and the United States signed at Paris, April 30, 1803 for the Louisiana Purchase obligated the United States to incorporate this territory in the State to be formed.

Although in later years, and for certain purposes only, the United States and Great Britain have championed the claim that territorial waters extend only three miles seaward, they have not consistently followed such a rule. From time to time they have in various respects made exceptions and agreed to a broader extent of territorial seas.[24]

The cannon-shot rule, which developed into a three mile rule in the nineteenth Century was accepted by some nations, and was applied originally to the shores of Europe. Because of the narrowness of the Continental Shelf there, the large number of small nations with limited coast lines, and the great population to be served, it was neither practical nor desirable to permit any one nation to claim and possess exclusive rights to a broader expanse of territorial waters than the range of cannon-shot, or 3 miles. These conditions did

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[24]Church v. Hubbart, 2 Cranch 187, 234-5, 2 L.Ed. 249, 265;

Riensenfeld, "Protection of Coastal Fisheries Under International Law", p. 131-6, 260;

Colombos, "International Law of the Sea", p. 103.

not exist in the new world, and particularly in the Gulf of Mexico where wider belts in the marginal seas were accepted as a rule.

Chief Justice Marshall in 1804, the year following the Louisiana Purchase, made the following statement in *Church v. Hubbart*, 2 Cranch 187, 234-5, 2 L.Ed. 249, 265:

> "In different seas, and on different coasts, a wider or more contracted range, in which to exercise the vigilance of the government, will be assented to. Thus in the channel, where a very great part of the commerce to and from all the north of Europe, passes through a very narrow sea, the seizure of vessels on suspicion of attempting an illicit trade, must necessarily be restricted to very narrow limits; but on the coast of South America, seldom frequented by vessels but for the purpose of illicit trade, the vigilance of the government may be extended somewhat further; and foreign nations submit to such regulations as are reasonable in themselves and are really necessary to secure that monopoly of colonial commerce, which is claimed by all nations holding distant possessions." * * *

As will be hereinafter shown the United States has never applied the so-called three mile rule to the coasts of the Gulf of Mexico. On the other hand it has consistently recognized a three-league boundary in the Gulf until 1945 when the President declared that the sub-soil and resources of the entire Continental Shelf "appertained" to the coastal States on all the

coasts of the United States. This is graphically borne out by excerpts contained in Defendants Appendix E, and Defendants Map Appendix.

E. LOUISIANA'S HISTORIC BOUNDARIES AND ITS CLAIM TO THE CONTINENTAL SHELF ARE IN ACCORD WITH INTERNATIONAL LAW

LaSalle's Proclamation in which he took possession of the territory of Louisiana including the sea to the 27th parallel of latitude was recognized as a matter of international law at that time. The entire Continental Shelf off Louisiana's coast is included within this parallel of latitude and the sub-soil in the Continental Shelf off the American coast and off the shores of other nations was recognized in International Law as a legitimate claim of the coastal State at the time when Louisiana was admitted to the Union and at this present time.

1. Treaties Between World Powers in the 17th and 18th Centuries Recognized Territorial Jurisdiction and Ownership of the Continental Shelves in the American Seas.

Long prior to the time Louisiana was admitted to the Union treaties were made between the nations that colonized the North American Continent relating to fishing "banks". A "bank" is defined as "an elevation coming nearer the surface than 100 fathoms, but not so near as 6 fathoms." See Encyclopediae Britannica, 1945 Ed., Vol. 16, p. 682.

The Treaty of Utrecht in 1713 concluded the war

of the Spanish Succession and consisted of a series of treaties between England, France, Spain, Austria, United Provinces, and other European nations. The treaty between Great Britain and France entered into on March 4, 1713, and assented to by the other nations, in Article VII prohibited France from fishing off the banks of Nova Scotia within 30 leagues from shore.

Later in the preliminary Articles of Peace signed at Fontainbleau, November 3, 1762, by Great Britain and France the provisions of the Treaty of Utrecht were reiterated and confirmed, except that the Gulf of St. Lawrence territory limits were fixed at three leagues from the British coast. Outside of the Gulf of St. Lawrence these territorial limits were fixed at "fifteen leagues from the coast of the Island of Cape Breton." In the definitive Treaty of Peace signed at Paris, February 10, 1763, Spain also signed the final articles which included the provisions as to territorial limits on the Canadian coast.

The definitive Treaty of Peace and Friendship between Britain and France signed as Versailles on the 3rd day of September, 1783, reaffirmed the Treaty of Utrecht of 1713. In Article V of this Treaty the Subjects of France were only permitted to fish outside of the Gulf of St. Lawrence, within 30 leagues of the coast as provided in the Treaty of Utrecht. However, they were permitted to fish within three leagues of the coast in the Gulf of St. Lawrence in conformity with the 5th Article of the Treaty of Paris of 1763.

Since the New Foundland banks did not extend

further than thirty leagues offshore the three Treaties referred to above recognized the right of Great Britain to extend its territorial claims so as to include the entire Continental Shelf in that area.

2. Nations Have Always Recognized the Right of Sedentary Fishing As An Attribute of Ownership of the Submerged Lands of the Continental Shelf.

Beginning in 1811 and continuing on down to date the family of nations has recognized the rights of littoral States to resources in the seabed and the subsoil of the Continental Shelf. Various nations and various dominions of the British Empire have been accorded the right to exclude other nations from exploiting the seabed and the sub-soil off their coasts. These rights dealt particularly with pearl fisheries and other sedentary fishing.

Ceylon protected its pearl fisheries as early as 1811 when it prohibited foreign ships from hovering within an area between the 4 and 12 fathom lines. This area stretched at some points to a distance 20 miles from the shore.[25]

In 1925 Ceylon enacted a new pearl fisheries ordinance which applied to "pearl banks" which were de-

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[25]Ceylon Ordinance Rev. ed. 1894, Vol. 1, p. 13;

Riesenfeld, "Protection of Coastal Fisheries Under International Law", p. 169;

Colombos, "International Law of the Sea", 3rd. ed. p. 306;

Vattel's Law of Nations (Chitty ed. 1883), p. 127-8.

fined as an area between the 3—and in some places 5-fathom line and the 100 fathom line. (The 100 fathom line marks the limit of the Continental Shelf off the Louisiana coast)[26].

Ireland passed its sea fisheries act in 1868 for the purpose of regulating oyster fishing in waters within a distance of 20 miles seaward from the straight line between Lambay Island and Carnsore Point.[27]

Various Australian States have a number of statutes protecting oyster and pearl fisheries covering areas that stretch out considerably in the sea. Thus Queensland passed its "Pearlshell Beche-de-Mer Fishery Act" in 1831 which applies to an area extending in some places as far as 250 miles from the coast.[28]

Western Australia protects its oyster fisheries by a statute passed in 1881, and protects its pearl fisheries by the Pearling Act in 1912. These acts do not set any limit within which the Governor might declare a part of the ocean to be one of the protected "pearl-shell areas".[29]

Jessup in his law of Territorial Waters and Maritime Jurisdiction (1927) at page 16 says:

"Judging from the official map of New

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[26]Riesenfeld, "Protection of Coastal Fisheries Under International Law"

[27]Colombos, "International Law of the Sea", 3rd ed., p. 305.

[28]Riesenfeld - p. 170.

[29]Riesenfeld - p. 170; Colombos - p. 307.

Guinea and Papua (at page 969 Official Year Book of the Commonwealth of Australia, No. 15, 1922) the British claim to jurisdiction in these regions is very extensive indeed, being measured by a line drawn frequently more than a 100 miles from shore to embrace the numerous scattered islands. The Queensland Boundary is shown in part as extending more than 100 miles out to sea."[30]

Textwriters as early as 1803 recognized that the coastal states had a claim in the Continental Shelf adjoining their shores. Mouton, in his work "The Continental Shelf", page 33, reviews the statements of various writers on this subject as follows:

> "Already in 1803 de Rayneval, p. 161, argued on geological grounds:' . . . le fond de la mer, le long descotes, peut etre considere comme ayant fait partie du continent, et qu'il est cela considere comme en faisant encore partie'. In the Proclamation of President Truman we read in the fourth paragraph:' . . . since the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it . . . ' and in the Mexican and Argentine Declarations we find words of the same tenor as in the Peruvian Decree of 1 August, 1947,: . . . ' the continental shelf forms a single morphological and geological unity with the continent'. Yepes, who said in the 67th meeting of the International Law Commission, p. 4: 'The first and most important was the rule of continuity, according to

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[30]See also Mouton, "The Continental Shelf", p. 138-143.

which the continental shelf was only the submarine continuation of the territory above water.' And finally Smith, p. 8: 'The shelf is nothing more than an extension of the continent into the sea. It may be argued that this fact alone gives a State paramount right to assert its claim to those resources. It would seem that the principle of propinquity is another way of stating that the geography of the location gives a State a paramount right to such resources.' "

This writer goes on to make the following statement regarding Bottom-Fisheries on page 135 of the above quoted work:

"As far as bottom-fisheries are carried out by trawling, they are linked up with the shelf, as described in Chapter I (the sea-bottom which is not deeper than 100 fathoms), because trawling is mostly carried out up to this depth. * * *

As far as declarations or decrees do claim the seabottom or sea-bed of the continental shelf to belong to the coastal State, or being under the control and jurisdiction of the coastal State, it is obvious that trawling by foreign fishermen on that sea-bed will be objected to.

It would be closing our eyes to reality if we tried to argue that bottom-fish are not fixed to the sea-bed but move freely and only live on or near the sea-bed. The trawlnet scrapes the seabottom very closely. . . . "

Riesenfeld quotes the following statement made in 1803 by de Rayneval in his "Institutions du droit de la Nature et des gens":[31]

[31]Riesenfeld, "Protection of Coastal Fisheries Under International Law", p. 31.

"The sea which washes the shores is deemed to form a part thereof; its safety and tranquillity render this property necessary: the sea must play the part of a bulwark. We could add that the bottom of the sea along the coasts can be considered as having formed a part of the continent and is therefore still considered as forming such part.

But the extent of this property is not determined by a uniform rule. Some fix it at thirty leagues, others only at three; others again fix it at the range of a cannon placed upon the shore. Along the southern coasts of France the distance was ten leagues with regard to the moors."

Proprietary Exercise of fishery rights are enenlarged upon in Defendants Appendix B.

3. International Law Has Always Recognized Effective Occupation of the Sea-Bed and Sub-Soil of the Continental Shelf As a Basis of Title in The Coastal State.

The inhabitants of Louisiana living in the coastal area have depended upon trawling, shrimping and oyster fishing for their livelihood ever since the State became populated. The State of Louisiana has enacted laws beginning in 1870 and continuing on down to the present date regulating the cultivation and taking of oysters, fish, trawling and shrimping, and drilling wells for the production of oil, gas and other minerals. (Excerpts from the acts of the Legislature of Louisiana referred to hereafter are contained in Defendants Appendix, Section H.) These Acts of the

Louisiana Legislature usually begin by an assertion that the State of Louisiana owns the beds of the bays and inlets bordering on the Gulf of Mexico and on that part of the Gulf within its jurisdiction not heretofore sold or conveyed by the State. They provide for the leasing of the bed of the Gulf for the taking of oysters and for mineral production. Act 18 of 1870 forbids aliens from fishing or removing oysters from any of the reefs, bays and coasts of the State of Louisiana.

Act 106 of 1886 of the Legislature of Louisiana provides that the bed of the Gulf of Mexico adjoining Louisiana "shall continue and remain the property of the State of Louisiana, and may be used as a common by all the people of the State for the purpose of fishing and of taking and catching oysters and other shellfish, subject to the reservations and restrictions hereinafter imposed." This Act of the Legislature vests authority in the Police Juries of any Parish "in which natural oyster beds are formed and in which there are water beds and water ways suitable for oyster planting and cultivation" to make regulations for the enforcement of the Act. It makes owners and masters of canoes, boats, or vessels registered or licensed under the Act, officers for the purpose of arresting persons who may violate the provisions of the Act.

A reference to Sheets 1115 and 1116 prepared by the United States Coast & Geodetic Survey of the United States—Gulf coast, Mississippi River to Galveston, filed in this Court as an Appendix to this brief, shows the oyster shoals extending beyond the line

adopted by the Legislature of Louisiana as its coast line in Act 33 of 1954. These shoals extend as much as 25 or 30 miles seaward in some places.

In 1896 the Louisiana Legislature adopted Act 121 which embodies many of the provisions of prior Acts on the same subject that were passed in 1886 and in 1892. It contains a provision that "the citizens of this State shall have the exclusive privilege to fish or to take oysters in any natural oyster bed or shoal in its territorial waters in the Gulf of Mexico." Act 144 of 1908 of Louisiana creates a Commission for the Conservation of Natural Resources to cooperate with a similar Commission of the Federal Government in the matter of conservation of natural resources, including the prevention of waste and the extraction of oil, gas and other minerals.

Louisiana Act 189 of 1910 declares that all that part of the Gulf of Mexico within the jurisdiction of the State "including all natural oyster reefs and all oyster and other shell fish growing therein shall be, continue and remain the property of the State of Louisiana." Various Acts of the Louisiana Legislature beginning with Act 245 of 1910 declare that all salt water shrimp found in the waters of the State are property of the State, and regulate the manner in which they shall be taken.

Act 168 of 1912 levies a license on seines used for the taking of shrimp and the license fee is graded to cover seines in excess of 200 fathoms in length. This

Act was amended by Act 193 of 1916 to increase the tax on seines over 300 fathoms in length. The law therefore contemplated the taking of shrimp in the deeper waters lying far offshore in the Gulf of Mexico. Witnesses will testify that the State has regulated shrimping and trawling to the edge of the Continental Shelf.

The Legislature of Louisiana in 1914 passed Act 271 which authorized the Governor to lease the water bottoms of the State "for the development and production of oil, gas, coal, salt, sulphur, lignite, and any other minerals". Other Acts for this purpose were enacted in subsequent years specifically for the purpose of leasing the bed of the Gulf of Mexico. The first lease for this purpose offshore in the Gulf of Mexico was executed by the Governor on January 3, 1920. Subsequent to that date leases have been executed by the State of Louisiana on almost two million acres of land and these leases extend up to 50 miles offshore in the Gulf of Mexico.

Louisiana can show by the testimony of witnesses the extent to which it has exercised jurisdiction over the waters, the sea-bed and the subsoil of the Gulf of Mexico as far as the memory of living witnesses can go. This exercise of jurisdiction has included the greater part of the Continental Shelf, and the United States as well as foreign nation have acquiesced in Louisiana's possession of the Shelf for so long that its claim thereto amounts to undisputed title, that is, until oil was discovered and produced in such large quantities that

the Federal Government devised a method of claiming the Shelf as property affected with "a national interest."

These Acts of Louisiana exercising exclusive jurisdiction over and possession of the sub-soil and sea-bed of the Gulf of Mexico since the admission of the State to the Union in 1812, with the acquiescence of the United States and the family of nations, constitutes a basis of State title and ownership parallel to that of Ceylon, New South Wales, Australia, New Guinea, Ireland and other constituent parts of the British Empire. In this respect the United States is able to assert federal jurisdiction over the Continental Shelf (within the limits of its constitutional powers) not only because of the Louisiana Purchase Treaty but also by means of the ownership acquired by Louisiana through immemorial possession and effective occupation thereof.

Mouton, in his work on "The Continental Shelf", page 153, comments on this subject as follows:

> "As the coastal State acts as proprietor, the question may be asked where this right came from. The Under Secretary of State for the Colonies, answering a question to that effect regarding the chank fisheries of Ceylon, in the British Parliament in 1923, (column 993) said: 'The claim of the Ceylon Government to this fishery is based on immemorial user by successive sovereigns of the island.' . . .
>
> As most writers speak of occupation, does

that mean that sedentary fisheries are quite different in character from other fisheries?

> Sedentary fisheries, says Fulton, p. 697, 'have always been considered on a different footing from fisheries for floating fish . . . they are looked upon rather as belonging to the soil or bed of the sea than to the sea itself. This is recognized in municipal law, and Internationl Law also recognizes in certain cases a claim to such fisheries when they extend along the soil under the sea beyond the ordinary territorial limit.' "

Comment on this subject is made by Colombos in his "Internationl Law of the Sea", page 306-7, as follows:

> "Sir Cecil Hurst, in a remarkable article already referred to, concluded that such claims are valid provided they conform to certain conditions, namely (i) the coastal State must have exercised effective occupation of, and jurisdiction over, the sedentary fisheries on the sea-bed for a long period; (ii) there must be no interference with freedom of navigation in the waters above the sea-bed; and (iii) there must be no interference with the right to catch swimming fish in the waters above the sea-bed. In their comments on the Revised Draft Articles on the continental shelf prepared by the International Law Commission in 1951, the British Government stated that they considered Sir Cecil Hurst's article as correctly stating the law on sedentary fisheries and that they were in entire agreement with the author's conclusion that 'the claim to the exclusive ownership of a portion of the bed of the sea and to the

wealth which it produces in the form of pearl, oysters, chanks, coral, sponges or other fructus of the soil is not inconsistent with the universal right of navigation in the open sea or with the common right of the public to fish in the high seas.' The drafting of article 3 by the International Law Commission seems to be in accordance with the above conclusions. . ."[32]

As this Court said in *Louisiana v. Mississippi*, 202 U. S. 1, 52, 50 L.Ed. 931:

> "The maritime belt is that part of the sea which, in contradistinction to the open sea, is under the sway of the riparian states, which can exclusively reserve the fishery within their respective maritime belts for their own citizens, whether fish or pearls, or amber, or other products of the sea. See Manchester v. Massachusetts, 139 US 240, 35 L.Ed. 159, 11 S.Ct. Rep. 559; McCready v. Virginia, 94 US 391, 24 L.Ed. 248."

The Court in this case, in referring to the riparian state's exclusive rights in the sea, was specifically referring to Louisiana — and not the United States. An extension of the maritime belt for any purpose, and particularly with respect to natural resources, would consequently inure to the benefit of this state.

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[32]See also: 2 Hackworth's Digest of International Law 672-680.

F. PRIOR TO THE PRESIDENTIAL PROCLAMATION OF 1945 AND THE SUBMERGED LANDS ACT AND OUTER CONTINENTAL SHELF LANDS ACT OF 1953, THE UNITED STATES HAS CONSISTENTLY APPROVED STATE OWNERSHIP OF A THREE LEAGUE BELT IN THE GULF OF MEXICO

As an alternative to its claim to ownership of the sub-soil and minerals under the entire Continental Shelf-boundaries co-extensive with those of the United States-Louisiana insists that its boundaries must be at least three leagues from its coast in the Gulf of Mexico. (Answer p. 21-24)

The State says that if its southern boundary, the Gulf of Mexico "including all islands within three leagues of the coast", is not a land boundary which includes by necessary implication, and as any attribute of State sovereignty, the historic boundaries of the Territory of Orleans incorporated into the Union as the State of Louisiana, that is, "the seas, ports, bays, and adjacent straits comprised in the extent of said Louisiana . . . along the River Mississippi — as far as its mouth in the sea or Gulf of Mexico about the 27th degree of the elevation of the North Pole", then this southern boundary is a water boundary extending seaward three leagues into the Gulf. The Supreme Court has in fact held that this seaward boundary of Louisiana is a water boundary. (Louisiana v. Mississippi, 202 U.S. 1, 50, 53, 50 L.Ed. 913, 932) Although the United States was not a party to the case just cited, it

is bound by the Court's opinion and decree as to the location of Louisiana's boundary.[33]

Although the Department of State of the United States has on several occasions asserted that three miles is the extreme limit that any nation may claim sovereignty over the adjoining sea, and there are Court decisions which state this to be a rule of international law, accepted by some nations, the so-called rule has been applied only to the Atlantic and Pacific shores of this nation, and it was not an accepted rule in the United States when Louisiana became a State of the Union in 1812. *It is most significant that a three mile limit has never been applied to coastal States bordering on the Gulf of Mexico* by the United States or any other nation.

On the contrary the United States has at all times prior to its claim to the entire Continental Shelf recognized the fact that *sovereignty over the marginal belt in the Gulf of Mexico extends three leagues into the sea,* and has never asserted that State ownership consists of any lesser width or extent in this Gulf.

Treaties and declarations to this effect have been made by the United States over a long period of time, and include among others the following:

Treaty with Spain of February 22, 1819, 8 Stat. 252,

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[33]Florida v. Georgia, 17 How. 478, 15 L.Ed. 181
49 Am. Jur. 247 - Note 6.

Treaty with Mexico of January 12, 1828, 8 Stat. 372,

Resolution of Congress recognizing independence of Texas, March 1, 1837, Cong. Globe, 24th Cong. 2d Sess. 270,

Convention for Marking Boundary Between the U.S. and Texas, April 25, 1838. 4 Miller's Treaties 133, notes pages 135-136,

Joint Resolution of Congress annexing State of Texas, March 1, 1845, 5 Stat. 797,

Treaty of Guadalupe Hidalgo between the United States and Mexico, February 2, 1848, 9 Stat. 922, 923,

Gadsden Treaty with Mexico, December 30, 1853, Cong. Globe, 33rd Cong. 1st Sess. 1568, 10 Stat. 1031.

Act of Congress approving the Constitution of the State of Florida, February 25, 1868, 15 Stat. 73.

The above described treaties with the Republic of Mexico in which the parties agreed that the boundaries of the respective nations extended three leagues into the Gulf of Mexico have been reaffirmed and readopted on numerous occasion, including Boundary Conventions of 1882, 1889, and 1905. Similar recognition of Mexico's three league limit was made in 1936. See Hackworth's Digest of International Law, Vol. 1, page 639-642.

Said treaties and conventions fixing the boundaries of the coastal states in the Gulf of Mexico three

leagues seaward have been accepted by the family of nations and specifically recognized by the great maritime nations of the world since Louisiana was admitted to the Union in 1812.

Spain and the United States fixed their corner at the mouth of the Sabine River in the sea by their Treaty of Limits in 1819. This Treaty was the basis for the fixing of this corner at the mouth of the Sabine "three leagues from land" in the Boundary Convention between the United States and the Republic of Texas in 1838. (See U.S. v. Texas, 162 U.S. 1, 31-32, 40 L.Ed. 867, 876-7)

The notes appended to the convention for marking the boundary between the United States and Texas signed April 25, 1838, 4 Miller's Treaties, pages 135 and 136, show that the earlier treaties made by this nation with Spain and with Mexico constituted the basis for the international boundary extending three leagues into the Gulf of Mexico at the mouth of the Rio Grande.

> "Each of the two Governments from the beginning of their relations regarded the boundary fixed by the earlier treaties of the United States with Spain and with Mexico (Treaties of 1819 and 1828) (Documents 41 and 60) as binding, so far as concerned the line between the United States and the Republic of Texas. The Government of the United States was so informed by the representatives of Texas as early as January 11, 1837 (Garrison, Diplomatic Correspondence of Texas pt. 1, 175); the attitude of that Govern-

ment at no time varied in that regard (ibid., 232, 279, 295); indeed, the Government of Texas appointed a commissioner to run the line accordingly (ibid., 252, August 4, 1837; 279, December 31, 1837). The boundaries of Texas, as claimed by that Government, were thus described in the instructions of March 21, 1838, from R. A. Irion, Secretary of State of Texas, to Memucan Hunt (ibid., 318-20):

> The present boundaries of Texas as fixed by an act of Congress are as follows, viz.—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. . .' "

The idea of a three league belt of territorial waters which appears in all of the earlier negotiations of the United States with Great Britain and France, and which was approved in this nation's treaties with Spain, Mexico and Texas was undoubtedly suggested and influenced by the writings of Georg Friedrich von Martens, who wrote a Latin Treatise on the Law of Nations in 1785. He later published a new work in 1789 in French and a German edition in 1796. The French edition was translated into English by William Cobbett in 1795 and published in Philadelphia. As the translator stated in the second edition, von Martens' work was subscribed for by all members of the Congress of the United States. In that translation the following statement is made:

> "A custom, generally acknowledged, extends the authority of the possessor of the coast to a

cannon shot from the shore; that is to say, three leagues from the shore, and this distance is the least, that a nation ought now to claim, as the extent of its dominions of the seas."

A footnote for Martens' German edition of 1796, page 46, reads as follows:

"Pfeffel in Principles du droit naturel, bk. 3, Chap. iv, sec. 15, indicates the distance of three leagues as the now universal principle. This principal is now incorporated in many treaties even though no cannon reaches that far, especially over the sea.' "

Riesenfeld, in his "Protection of Coastal Fisheries", page 29, says of Martens:

"It is probably no exaggeration to state that G. F. von Martens gave the theory of international law a new direction. He was the great model of all continental writers in the century which followed the appearance of the first French and German edition of his work. Rivier calls him in his well-known 'Esquisse d'une histoire litteraire des gens depuis Grotius jusqu'a nos jours', the true originator of the systematic and scientific study of the positive law of nations."

In the 1802 London edition of Cobbett's English translation the following advertisement is printed (p. v):

"A French copy of this work was received in America in the year 1794. It came into the hands of the government, who, impressed with a high opinion of its utility, were very anxious that

it should obtain a general circulation, for which purpose it was necessary that it should be translated into English, a task which it happened to fall to my lot to discharge. The translation met with great success. The President, the Vice-President, and every member of the Congress became subscribers to it; and, I believe, there are few law-libraries in the United States, in which it is not to be found . . ."

The Treaty of Guadalupe Hidalgo signed on February 2, 1848 describes the boundary line between the United States and Mexico in Article V which reads in part as follows: (9 Stat. 922, 926)

> "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."

In the debates in the Senate on the ratification of this Treaty no question was raised as to the validity of that portion of the boundary commencing "in the Gulf of Mexico, three leagues from land." This Treaty was ratified by the Senate on March 10, 1845.

The United States again fixed its boundary with Mexico in the Gadsden Treaty which was concluded on December 30, 1853. Article I of this Treaty provides (10 Stat. 1031):

> "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 5th Article of the Treaty of Guadalupe Hidalgo."

The official report of the marking of this boundary prepared for the Department of Interior states:

> "Lt. Wilkinson, in command of the Brig Morris, repaired at the appointed time to the Mouth of the River and made soundings . . . to trace the boundary as the treaty required, 'three leagues out to sea' ".[34]

This three league line was surveyed again and agreed upon as the international boundary between the United States and Mexico in 1911. The international boundary line extending three leagues into the Gulf of Mexico is shown on Map Sheets 29 and 30 of "Department of State—Proceedings of the International Boundary Commission United States and Mexico —Joint Report of the Consulting Engineers on Field Operations of 1910-1911. American Section". (Dept. of State, 1913). Defendants Map Appendix contains these map sheets showing this three league International Boundary.

A fairly complete discussion of the establishment of the United States boundary 3 leagues into the Gulf of Mexico can be found in the case of *Amaya v. Stanolind Oil and Gas Company*, 62 Fed Sup. 181, et seq., 158 F. 2d 554.

On August 30, 1935 Mexico amended Section 1 of Article IV of its Law of Immovable Properties of the

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[34]1 Emory, Report of the United States and Mexican Boundary Survey (Washington, 1857) p. 58.

Nation so as to state that the territorial waters should extend to a distance of nine nautical miles counted from the mark of the lowest tide on the coast of the mainland or on the shores of the islands forming part of the national territory. The Department of State of the United States protested under date of March 7, 1936 and was reminded by the Mexican Foreign Office that the territorial waters of Mexico as well as those of the United States had been fixed by the Treaty of Guadalupe Hidalgo at nine nautical miles. The Department of State reply on May 23, 1936 stated that the *treaty only fixed this as a boundary in the Gulf of Mexico* and that its protest was directed at the extension of the Mexican territorial waters into the Pacific Ocean. In effect the Department of State admitted that the territorial waters of the United States and of Mexico extended three leagues into the Gulf.[35]

The United States was the first nation which officially recognized the independence of the Republic of Texas. In a special message to Congress on December 22, 1836 President Jackson indicated in the following language that the United States in recognizing Texas' independence was also recognizing its territorial claims:

> "The title of Texas to the territory sea claims is identified with her independence."[36]

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[35]1 Hackworth Digest of International Law 639-641.

[36]Congressional Globe, 24th Cong. 2nd Sess. 45.

United States Senate on March 1, 1837 adopted a Resolution recognizing the independence of Texas.[37] Senator Walker, the author of the Resolution, in a speech in the Senate on May 21, 1844, said:

> "As the author of the Resolution, before it was adopted, I read to the Senate the Boundaries of Texas, as described in her Organic Law, claiming it also *as the ancient boundaries of Louisiana;* and with the full knowledge of these facts, the Resolution was adopted." (See App. Cong. Globe 28 Cong. 1st Sess 549)

On September 25, 1839, the Treaty of Amity Commerce and Navigation was made between the Republic of Texas and France in which the territorial claims of Texas were recognized. A similar treaty was made by Texas with the Netherlands on September 18, 1840, and on November 13, 1840 such a treaty was concluded between Texas and Great Britain.[38]

It would therefore appear that as a matter of international law a boundary not less than three leagues in the Gulf of Mexico was recognized in the family of nations during the early part of the 19th Century. Apparently no objection has been offered with respect to the three league claim of Texas in the Gulf of Mexico, nor was any objection offered by any nation when Florida's boundaries were declared to be five leagues in the Gulf of Mexico in its Constitution of 1868, which

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[37]Congressional Globe, 24th Cong. 2nd Sess. 270.

[38]2 Gammel's Laws of Texas 655, 880, 905.

limit was subsequently reduced to three leagues in the Florida Constitution of 1885.[39] The Florida Constitution of 1868 was approved by United States Congress.[40]

If the boundary between the United States and Spain in 1819, between the United States and Mexico in 1828, and between the United States and Texas in 1838, was three leagues offshore in the Gulf of Mexico and if the boundary of the United States with Mexico was fixed three leagues in the Gulf by various Treaties since, is it reasonable to say that on these dates, or subsequently, the southwest corner of Louisiana was less than three leagues offshore? It would therefore follow that these boundary agreements with Spain, Mexico and Texas explain the meaning of the Act of Admission of Louisiana to the Union wherein its boundary on the Gulf includes "all islands within three leagues of the coast".

1. Equality and Uniformity Require that Louisiana's Boundary in the Gulf of Mexico Be No Less Extensive Than Those of Other Gulf Coastal States.

In the 1950 Tidelands decision, *United States v. Texas*, 339 U. S. 707, 715-716, 94 L.Ed. 1221, 1226 the Supreme Court ruled that the State of Texas owned nothing beyond low-water mark in the Gulf of Mexico although the Treaty of Annexation whereby Texas joined the Union obligated the United States to recog-

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[39] Thorpe's American Charters, Constitutions and Organic Laws, Vol. 2, p. 706, 734.

[40] 15 Stat. 73.

nize its three league boundary into the Sea. The Court justified this conclusion by saying:

> "We are of the view that the 'equal footing' clause of the Joint Resolution annexing Texas to the Union disposes of the present phase of the controversy.
>
> The 'equal footing' clause has long been held to refer to political rights and to sovereignty. See Stearns v. Minnesota, 179 US 223, 245. It does not, of course, include economic stature or standing. There has never been equality among the States in that sense. * * * The requirement of equal footing was designed not to wipe out those diversities but to create parity as respects political standing and sovereignty.
>
> *Yet the 'equal footing' clause has long been held to have a direct effect on certain property rights.*
>
> . . . The 'equal footing' clause prevents extension of the sovereignty of a State into a domain of political and sovereign power of the United States from which the other States have been excluded, just as it prevents a contraction of sovereignty (Pollard's Lessee v. Hagan, supra) which would produce inequality among the States. For equality of States means that they are not 'less or greater, or different in dignity or power.' See Coyle v. Oklahoma, 221 US 559, 566."

So the equality rule works in reverse here. If Texas and Florida are to have boundaries extending three leagues into the Gulf then the other Gulf coastal

states including Louisiana must be placed on the same "equal footing". If the United States can recognize a three league limit for Mexico, Texas and Florida whose coast lines include more than 80 per cent of the Gulf's perimeter, it can hardly be considered equal treatment for Louisiana to be limited to three miles.

The Submerged Lands Act uniformly recognizes the principle that "in different seas and on different coasts, a wider or more contracted range in which to exercise the vigilance of the government, will be assented to".[41] In accordance with the authority just quoted, the Submerged Lands Act makes a classification, or grouping of States, which relates to the seas upon which their coasts are located. On strictly inland seas, such as the Great Lakes, a wide marginal belt is recognized, whereas on the greatest of all international highways, the Atlantic and Pacific Oceans, where international conflicts are most likely to occur, the most restricted belts are located.

Thus the Act provides that all states bordering the Great Lakes may extend their boundaries to the International Boundary that runs down the middle of these inland seas. Lake Huron has an average width of 155 miles, so the States bordering on Lake Huron extend seaward an average of more than 77 miles. The Submerged Lands Act uniformly provides a seaward limit of three miles for all States bordering on the At-

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[41]Church v. Hubbart, 2 Cranch 187, 234-5, 2 L.Ed. 249,

lantic and the Pacific Oceans. It sets a limit of three leagues in the Gulf of Mexico. Louisiana is entitled to at least that much.

G. THE UNITED STATES HAS RECOGNIZED A THREE LEAGUE MARGINAL BELT

In the California Case (332 U. S. 19, 32) the opinion states that "when this nation was formed, the idea of a three mile belt over which a littoral nation could exercise rights of ownership was but a nebulous suggestion." This is a correct statement in so far as the so-called three mile rule is concerned, because this idea did not take definite form until sometime later in the 19th century. However, all the text writers on International Law and all of the treaties defining territorial limits on the American Continent have recognized State sovereignty over submerged lands in the sea, but at greater distances from the shores or the coasts than three miles.

Thus the Continental Congress authorized the capture of any ship carrying British goods "if found within three leagues of the coasts."[42]

In August of 1779 the Continental Congress passed a Resolution relating to negotiations for peace with Great Britain. A paragraph of this Resolution is quoted from the Journals of the Continental Congress, Volume XIV, 1779, page 922:

"RESOLVED, that the faith of Congress be

[42]Journal of the Continental Congress, 1781, pages 185, 186, 187.

pledged to the several states that without their unanimous consent, no treaty of commerce shall be entered into, nor any trade or commerce whatsoever carried on with Great Britain, without an explicit stipulation on her part not to molest or disturb the inhabitants of the United States of America in taking fish on the banks of Newfoundland and other fisheries in the American seas anywhere, excepting within the distance of three leagues of the shores of the territories remaining to Great Britain at the close of the war, if a nearer distance cannot be obtained by negotiation."

In the records of the Continental Congress of August, 1782, the instructions to the United States Ministers are recorded regarding the position to be taken by the United States in negotiations for the Peace Treaties which were to be considered between this nation, Great Britain and France. The following statement appears in those instructions:

"Another claim is the common right of the United States to take fish in the North American seas, and particularly on the Banks of Newfoundland. With respect to this object, the said ministers are instructed to consider and contend for it, as described in the instructions relative to a treaty of commerce, given to John Adams on the 29th of September, 1779. They are also instructed to observe to his most Christian Majesty, with respect to this claim, that it does not extend to any parts of the sea lying within three leagues of the shores held by Great Britian or any other nation. That, under this limitation, it is conceived by Congress a common right of taking fish cannot be denied

to them without a manifest violation of the freedom of the seas, as established by the law of nations and the dictates of reason; according to both which the use of the sea, except such parts thereof as lies in the vicinity of the shore and are deemed appurtenant thereto, is common to all nations, those only excepted who have either by positive convention, or by long and silent acquiescence under exclusion, renounced that common right; that neither of these exceptions militate against the claim of the United States, since it does not extend to the vicinity of the shore, and since they are so far from having either expressly or tacitly renounced their right, that they were prior to the war, though indeed not in the character of an independent nation, in the constant, and even during the war, in the occasional exercise of it; that although a greater space than three leagues has in some instances been, both by public treaties and by custom, annexed to the shore as part of the same dominion, yet, as it is the present aim of the maritime Powers to circumscribe, as far as reason will justify, all exclusive pretensions to the sea, and as that is the distance specified in a treaty to which both Great Britain and his Majesty are parties, and which relates to the very object in question, it was supposed that no other distance could, in the present case, be more properly assumed; that if a greater or an indefinite distance should be alleged to be appurtenant by the law of nations to the shore, it may be answered that the fisheries in question, even those on the Banks of Newfoundland, being of so vast an extent, might with much greater reason be deemed appurtenant to the

whole continent of North America than to the inconsiderable portion of it held by Great Britain. . ."[43]

When the United States was negotiating for its treaty of independence with Great Britain in 1783 Congress instructed the negotiators to require an explicit recognition of American fishing rights in the American seas "excepting within the distance of three leagues of the Shores of the Territory remaining to Great Britain at the close of the war, if a nearer distance cannot be obtained by negotiation."[44] The American negotiators, however, through their skillful diplomacy succeeded in obtaining for the United States fishing privileges in all waters belonging to Great Britain on the Canadian coast when the Peace Treaty of September 3, 1783 was concluded (See Article III). Comment upon this subject was made by President Madison to Mr. Adams by a letter addressed to the latter on December 17, 1814, in which the President said:

"It appears from one of your letters . . . that the original views of Congress did not carry their

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[43]Crocker, "The Extent of the Marginal Seas", p. 630. American State Papers, 2nd Series, Vol. 6, pages 871-873.

[44]Journals of the Continental Congress, Vols. 13 and 14, reprinted in proceedings in the North Atlantic Coast Fisheries Arbitration, Vol. 7, App. p. 38.

See also the letter of Mr. Adams to Mr. Livingston of February 5, 1783, reprinted in the Appendix to these proceedings at page 190.

ultimatum beyond the common right to fish in waters distant 3 leagues from the Britist shores. The negotiations, therefore, and not the instructions . . . have the merit of the terms actually obtained."[45]

In 1793 Secretary of State Jefferson, in letters written to the diplomatic representatives of France and Great Britain, stated that one sea league was the smallest limit of territorial waters which had been recognized and that the character of the American coast would entitle us to a broader margin of protected navigation. In this letter he wrote:

"You are sensible that very different opinions and claims have been heretofore advanced on this subject. The greatest distance to which any respectable assent among nations has been at any time given, has been the extent of the human sight, estimated at upwards of 20 miles, and the smallest distance I believe, claimed by any nation whatever is the utmost range of a cannon ball, usually stated at one sea league. Some intermediate distances have also been insisted on, and that of three sea leagues has some authority in its favor. The character of our coast, remarkable in considerable parts of it for admitting no vessels of size to pass near the shores, would entitle us in reason to as broad a margin of protected navigation as any nation whatever. Reserving however the ultimate extent of this for future deliberation the President gives instructions to

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[45]Appendix Volume 7, p. 226, Proceedings in the North Atlantic Coast Fisheries Arbitration.

> the officers acting under his authority to consider those heretofore given them as restrained for the present to the distance of one sea league or three geographical miles from the sea shores."[46]

An Act of Congress of February 18, 1793 for enrolling and licensing fishing vessels established jurisdiction over such licensed ships within three leagues.[47]

On May 15, 1793 Thomas Jefferson as Secretary of State forwarded to the French Minister an opinion on the seizure of the ship "Grange" in which the Attorney General stated:

> "The necessary or natural law of nations. . . will, perhaps, when combined with the Treaty of Paris in 1783 justify us in attaching to our coasts an extent into the sea beyond the reach of cannon shot."[48]

In a note of May 17, 1800 Secretary of State Madison suggested negotiations with Great Britain for an agreement restraining captures "within the distance of four leagues from the shore", and "if the dis-

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[46]Letter from Mr. Jefferson (U. S. Secretary of State) to to Mr. Genet (Minister of France) of November 8, 1793, reprinted in Proceedings in the North Atlantic Coast Fisheries Arbitration, Vol. 4, App. p. 96

Letter from Mr. Jefferson (U. S. Secretary of State) to Mr. Hammond (British Minister at Philadelphia) of November 8, 1793, reprinted ibid, Vol 4, App. p. 97.

[47]1 Stat. 305, 314.

[48]American State Papers, Class I, Foreign Relations, Vol. 1, p. 147.

tance of four leagues cannot be obtained, any distance not less than one sea league may be substituted."[49] This language was repeated in his instructions of May 17, 1806.[50]

On November 30, 1805 President Jefferson stated that assent was given to a limit of 3 miles in 1793 because "we were not then prepared to assert the claim of jurisdiction to the extent we are in reason entitled to" and that the matter had been reserved "for future consideration."

On December 3, 1805 Thomas Jefferson in his 5th annual message to Congress made the following report:

> "Since our last meeting the aspect of our foreign relations has considerably changed. Our coasts have been infested and our harbours watched by private armed vessels, some of them without Commissions, some with illegal commission, others with those of legal form, but committing piratical acts beyond the authority of their commission. They have captured in the very entrance of our harbours, as well as in the high seas, not only the vessels of our friends coming to trade with us, but our own also . . . I found it necessary to equip a force to cruise within our own seas, to arrest all vessels of these descriptions found hovering on our coasts within the limits of the Gulf

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[49]Crocker, "The Extent of the Marginal Seas," p. 639.

[50]3 American State Papers, p. 122.

Stream and to bring the offenders in for trial as pirates.

The same system of hovering on our coasts and harbours under color of seeking enemies has also been carried on by public armed ships to the great annoyance and oppression of our commerce. New principles too have been interpreted into the law of nations, founded neither in Justice nor the usage or acknowledgement of nations. According to these a belligerent takes to itself a commerce with its own enemy which it denies to a neutral on the ground of its aiding that enemy in the war; . . ."[51]

The foregoing message had particular reference to some incidents which had occurred off the coast of South Carolina. The map of the Gulf of Mexico which is contained in the map appendix filed with this brief shows that the Gulf stream off the coast of South Carolina begins at a distance of approximately 90 miles offshore from the southern boundary of this State and extends approximately 150 miles offshore at the northern boundary. The distance offshore increases as the Gulf stream proceeds northeasterly across the Atlantic Ocean.

The attitude of the United States toward a limitation of its maritime belt is discussed in Kent's Com-

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[51]"Abridgment of the Debates of Congress" (1857) Vol. III p. 346

Messages and Papers of the President, Vol. 1, p. 383-4.

mentaries (12th Ed) Vol. 1, pages 30, 31, as follows:

" . . . (c) The executive authority of this country, in 1793, considered the whole of Delaware Bay to be within our territorial jurisdiction; and it rested its claims upon those authorities which admit that gulfs, channels, and arms of the sea, belong to the people with whose lands they are encompassed. It was intimated that the law of nations would justify the United States in attaching to their coasts an extent into the sea beyond the reach of cannon-shot.

Considering the great extent of the line of the American coasts, we have a right to claim, for fiscal and defensive regulations, a liberal extension of maritime jurisdiction; and it would not be unreasonable, as I apprehend, to assume, for domestic purposes connected with our safety and welfare, the control of the waters on our coasts, though included within lines stretching from quite distant headlands, as, for instance, from Cape Ann to Cape Cod, and from Nantucket to Montauk Point, and from that point to the capes of the Delaware, and from the south cape of Florida to the Mississippi . . . In 1793, our government thought they were entitled, in reason, to as broad a margin of protected navigation as any nation whatever, though at that time they did not positively insist beyond the distance of a marine league from the sea-shores; (a) and, in 1806, our government thought it would not be unreasonable, considering the extent of the United States, the shoalness of their coast, and the natural indication furnished by the well-defined path of the Gulf stream, to expect an immunity from bellig-

> erent warfare, for the space between that limit and the American shore. It ought, at least, to be insisted, that the extent of the neutral immunity should correspond with the claims maintained by Great Britain around her own territory, and that no belligerent right should be exercised within 'the chambers formed by headlands, or anywhere at sea within the distance of four leagues, or from a straight line from one headland to another."

The same author discusses both the British and the American Acts regarding the interception of foreign goods within 4 leagues of the coast on page 32 as follows:

> . . . "The statute 9 Geo. II. c. 35, prohibited foreign goods to be transshipped within four leagues of the coast without payment of duties; and the act of Congress of March 2d, 1799, c. 128, sec. 25, 26, 27, 99, contained the same prohibition; and the exercise of jurisdiction, to that distance, for the safety and protection of the revenue laws, was declared by the Supreme Court in Church v. Hubbart, (d) to be conformable to the laws and usages of nations."

Toward the middle of the 19th Century as the United States and Great Britain increased in naval power they agreed in some instances to a limitation of territorial waters to three marine miles, but this limit was not uniformly applied. As shown in a proceeding section of this brief the United States has consistently recognized a three league limit in the Gulf of Mexico until the year 1945 when the President proclaimed that the entire Continental Shelf on all the

coasts of the United States appertained to the coastal states and was subject to the jurisdiction and control of the United States insofar as the seabed, subsoil, and the natural resources of the Shelf were concerned.

H. LOUISIANA ACT 33 OF 1954 DEFINES THE STATE'S COAST LINE IN ACCORDANCE WITH APPLICABLE ACTS OF CONGRESS

1. The Louisiana Coast Has Been Defined Pursuant to Acts of Congress As the Line Dividing Inland Waters From the Open Sea.

In the event that the Court should hold that the United States owns a belt of land surrounding the territory of the coastal States wherein the States own no proprietary rights, and refuses to sustain Louisiana's claim set forth hereinabove, then, pleading in the alternative, Louisiana shows that Act 33 of 1954 passed by its Legislature correctly designates the State's coast line in accordance with applicable Acts of Congress. In its third defense (Answer p. 17, et seq) Louisiana says that its boundaries extend to a line three leagues seaward of the line of demarcation between its inland waters and the open sea, said line having been established by the Act of Congress of February 19, 1895 as hereinafter shown.

By Act of Congress, approved February 10, 1807 by Thomas Jefferson as President, the Chief Executive of the United States was authorized and requested to cause a survey to be made of the coasts of the United

States within twenty leagues of any part of the *shores* of the United States.

The Act of Congress of April 8, 1812 admitting Louisiana to the Union described its southeasterly and southern limits as "the Gulf of Mexico" including all islands within three leagues of the *coast.*" (2 Stat. 701, 702).

When Congress defined Louisiana's boundary in the Act of its admission into the Union as being three leagues from coast, into the Gulf of Mexico, Congress must be taken to have intended that the three league boundary line into the Gulf was from the coast line to be designated and defined by the agency of the federal government provided by said Act of Congress of February 10, 1807.

By Section 2 of the Act approved February 19, 1895[52] Congress provided authority in the Secretary of Commerce to designate and define "the line dividing the high seas from rivers, harbors, and inland waters."

In 1896 the Supreme Court held, that pursuant to the authority of the 1895 Act of Congress, the Secretary of Commerce by Department Circular 95 on May 10, 1895, "designated and defined the dividing line between the high seas and the rivers, harbors and inland waters of New York", and that the waters inside of that coast were "as much a part of the inland

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[52]28 Stat. 672, 33 U.S.C. 1351.

waters of the United States within the meaning of this Act as the harbor within the entrance" to the New York Harbor.[53]

This refutes the contention made by some that the coast line fixed under these Acts of Congress is for navigation purposes only. Fact is, the inland rules of navigation apply to navigation over inland waters because of the character of said waters as "inland waters." But, said waters are not "inland" because inland rules of navigation apply thereupon.

In 1946, Congress, by Sec. 101 of Reorganization Plan No. 3 (11 F. R. 7875), vested authority in the Commandant of the Coast Guard to designate and define the coast line under Sec. 2 of the Act of February 19, 1895.

By virtue of this authority the Commandant of the Coast Guard promulgated existing regulations that had been adopted by his predecessors under said Act "to establish the lines dividing the high seas from the rivers, harbors, and inland waters in accordance with the intent of the statute and to obtain its correct and uniform administration."

The regulations fix the *Boundary Lines of Inland Waters*, and provide that the waters inshore of the lines described are "inland waters" and the waters outside of the lines described are the high seas. CG-

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[53]The Delaware, 161 U.S. 459, 463, 40 L.Ed. 771, 773.

169, March 1, 1955, Part 82-Boundary Lines of Inland Water, Sec. 82.1.

Sec. 82.95 and 82.103 designate and define the coast line or outer boundary of the inland waters from Mobile, Alabama to Sabine Pass, Texas. These regulations define the inland waters as they had been marked and surveyed during the 19th Century as required by the Acts of Congress referred to above.

This coast line, including that of the State of Louisiana, is shown on a map prepared by the Commandant of the Coast Guard, and this coast line, so designated and defined in accordance with applicable Acts of Congress, was accepted and approved by the Louisiana Legislature by Act No. 33 of 1954, as follows:

> "From Ship Island Lighthouse to Chandeleur Lighthouse; thence in a curved line following the general trend of the seaward, high-water shore lines of the Chandeleur Islands to the Southwestern most extermity of Errol Shoal; thence to Pass-a-Loutre Lighted Whistle Buoy 4 to South Pass Lighted Whistle Buoy 2; thence to Southwest Pass entrance Midchannel Lighted Whistle Buoy; thence to Ship Shoal Lighthouse; thence to Calcasieu Pass Lighted Whistle Buoy 1; thence to Sabine Pass Lighted Whistle Buoy 1."

These boundaries are shown on a map attached to and made a part of the 1954 Act of the Louisiana Legislature, and also appear on U.S. Coast and Geodetic Survey Charts 1115 and 1116 (See Map Appendix hereto).

Under specific provisions of the 1807 and 1895

Acts of Congress as amended, and the decisions of the Supreme Court, all of the waters inside of said coast line, therefore, are "as much a part of the inland waters" within the meaning of the Act as the New Orleans harbor.

By said Act 33 of 1954, Louisiana's historic gulfward boundary was simply restated as extending a a distance into the Gulf of Mexico 3 marine leagues from said coast line.

Attention is directed to the fact that the Submerged Lands Act of May 22, 1953 recognized State ownership and quit claimed whatever right, title and interest which the United States had, if any, in and to all lands beneath navigable waters and natural resources within the seaward boundaries of a State in the Gulf of Mexico as they existed at the time such State became a member of the Union, but in no event, (Section 2b) "Shall the term 'boundaries' or the term 'lands' beneath navigable waters' be interpreted as extending from the coast line * * * more than three marine leagues into the Gulf of Mexico."

That provision "three marine leagues into the Gulf of Mexico" from the coast line applies specifically to the State of Louisiana because it is only the State of Louisiana which has a boundary *three leagues from coast* into the Gulf as existed at the time it became a member of the Union. Act of Congress approved April 8, 1812, 2 Stat. 701, 702.

The other Gulf coastal States are Texas, Mississippi, Alabama and Florida.

The Texas boundary is " . . . *three leagues from*

land" into the Gulf of Mexico. Act of December 19, 1836 by the Congress of the Republic of Texas.

The Mississippi boundary is "... *six leagues of the shore*" into the Gulf of Mexico, as defined by the Act of Congress of March 1, 1817.

The Alabama boundary is "*6 leagues of the shore*" into the Gulf of Mexico, as defined in the Acts of Congress of March 3, 1817, and March 2, 1819.

The Florida boundary is " ... *five leagues from the shore*" into the Gulf of Mexico as fixed by its 1868 Constitution, accepted by Congress when reinstating the State of Florida.

Therefore, the fact that the 1953 Submerged Lands Act of Congress recognized and established title to the Gulf coastal states within a maximum distance of *three leagues from coast* into the Gulf of Mexico and that Louisiana is the only State which has a gulfward boundary *three leagues from coast* leaves only one conclusion: that provision is particularly applicable to the State of Louisiana.

The coast line adopted by the 1954 Act of the Louisiana Legislature is in accord with the Submerged Lands Act which thus defines "coast line":[54]

> "The term 'coast line' means the line of ordinary low-water along that portion of the coast which is in direct contact with the open sea and

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[54]Title I Sec. 2 (c), 67 Stat. 29, 43 U.S.C. 1301 (b).

the line marking the seaward limit of inland waters."

The Act of February 19, 1895[55] authorized and directed the establishment of the "lines dividing the high seas from rivers, harbors and inland waters" and this line, as above described has accordingly been adopted by the Legislature in 1954 as its "coast line".

Further support for the adoption of this line as Louisiana's coast line is found in a Congressional Act of July 17, 1939[56] which declared that "the term 'high seas' means all waters outside the line dividing the inland waters from the high seas, as defined in Section 151 of Title 33" (the Act of February 19, 1895).

The Supreme Court interpreting an Act of March 12, 1863 relating to captured and abandoned property has defined "Inland Waters" to apply to "all waters of the United States upon which a naval vessel could go, other than bays, and harbors on the sea coast.[57]

Because of the unusually shallow depth of the waters of the Gulf along the extent of Louisiana's seacoast, and the existence of many shoals[58] and reefs

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[55]28 Stat. 672, Sec. 2, 33 U.S.C. 151.

[56]53 Stat. 1049, 46 U.S.C. 224 a (12).

[57]U. S. v. The Steam Vessels of War, 106 U.S. 607, 612, 27 L.Ed. 286, 287.

[58]A shoal or reef is defined as a part of the seabed "which comes within 6 fathoms of the surface, and so may constitute a danger to shipping." Encyclopaedia Britannica (1945 ed.) Vol. 16 p. 682.

it is not possible for sea going vessels to sail inland of the line dividing the high seas from the inland waters. This line, as fixed by the United States, traverses for the most part waters less than 6 fathoms in depth—in some instances less than 3 fathoms.

U. S. C. & G. S. Charts 1115 and 1116 contained in Defendants Map Appendix show water depths.

2. Louisiana's Coast Line and Seaward Boundary Adopted By the Legislature Accomplishes Stability and Certainty of Location

In another part of this brief relating to Louisiana's historic boundaries we called attention to a statement by a French authority on International Law, Valin, wherein he stated that "it would have been better, perhaps, to reckon the domain over the adjacent sea by the sounding lead, and to assign its limits exactly at that point where the sounding lead ceased to fetch bottom" than to measure the territorial waters as far as can be seen from the shore.

In view of the tortuous nature of Louisiana's shore line, the continuous changes that occur as a result of accretion and erosion, subsidence of land masses, and sudden changes caused by storms and hurricanes, there can be no certainty as to the location of any line along the shores of the State from year to year or even from day to day. There is a constant accretion of land in some segments and erosion of the shore in other segments. Some of these changes have occured gradually, others have occurred rapidly. Storms and hurricanes

have shifted the shore line and changed the shape of islands overnight. In a region such as this where oil and mineral exploration and development are being conducted on a grand scale, the base line for the measurement of a marginal belt cannot be a line whose location is constantly shifting. The coast line fixed by the Louisiana Legislature in accordance with the Acts of Congress, as the line dividing the inland waters from the open sea does not have this infirmity or uncertainty of location.

The "coast line of the United States" has always been measured along this line dividing the inland waters from the open sea. See: "The Public Domain" (1884), by Thomas Donaldson, printed by the Government Printing Office pursuant to Acts of Congress of March 3, 1789 and June 16, 1880, page 464, and U. S. C. & G. S. Charts 1115 and 1116 of the Gulf of Mexico in the Map Appendix to this brief.

This Court has, in at least two decisions, recognized the fact that Louisiana's coast line is a water boundary. In *Queyrouze v. U. S.*, 70 U. S. (3 Wall.) 83, 18 L.Ed. 65, the Court made mention of the fact that Ship Shoal Lighthouse is on the coast of Louisiana. This lighthouse is one of the markers "designating the lines dividing the high seas from the . . . inland waters" in accordance with the requirements of the Act of Congress of February 19, 1895, supra. In the *Queyrouze Case*, which is also entitled "The Jose

phine", the following statement is made regarding the locale of the controversy:

> "The schooner Josephine, laden with a cargo of three hundred and twenty-two bales of cotton and a lot of slaves, was captured by the United States ship of war Hatteras, George F. Emmons, Esq., captain, on the high seas, off Ship Shoal Lighthouse on the coast of Louisiana on the 28th of July, 1862 . . ."

In Mr. Chief Justice Chase's opinion he stated that the steamer Josephine "must have been coming from some point west of Ship Shoal Lighthouse, which is laid down on the coast Survey Charts as more than a 100 miles west of the Mouths of the Mississippi".

In the case of *Louisiana v. Mississippi*, 202 U. S. 1, 43, 50 L.Ed. 913, 928, the Court after quoting the enabling Act of Congress for the creation of the State of Louisiana (Act of February 20, 1811, 2 Stat. 641), declared that Louisiana's boundary on the east and south is a water boundary following the deep water sailing channel in the open sea or Gulf of Mexico. The Court said:

> "The eastern boundary thus described is a water boundary, and, in extending this water boundary to the open sea or Gulf of Mexico, we think it included the Rigolets and the deep-water sailing channel line to get around to the westward. A little over one year later Louisiana was created a state by the act of Congress of April 8, 1812, with this identical eastern boundary line;

and the addition of territory by the Act of April 14, 1812 did not affect the deep water sailing channel line as a boundary."

Earlier in its opinion (202 U. S. 36, 50 L.Ed. 925) the Court referred to maps and diagrams which are made a part of the opinion and stated:

> "Map or diagram No. 1, given in the opening statement, shows the limits as thus defined.
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> By an act of Congress approved April 14, 1812 (2 Stat at L. 708, chap. 7), additional territory was added to the State of Louisiana. This added territory is shown on map or diagram No. 2."

These diagrams very closely follow the deep sailing channel where the markers, buoys and lighthouses were placed to establish the dividing line between the inland waters of Louisiana and the open sea.

In 1938 the Legislature of Louisiana by Act 55 declared the boundaries of the State to be 27 miles seaward of its shore line. This boundary was then considered to be co-extensive with the boundaries of the United States under the theory that this nation had adopted the "cannon shot" rule fathered by the great Dutchman, Bynkersholk, at the beginning of the 18th Century. During the 19th Century this cannon shot rule developed into the so-called 3 mile rule because that was the limit of the range of cannon that could protect the marginal sea from hostile invasion. Since in 1938 our seacoast batteries had a maximum ef-

fective range of 27 miles, our legislature extended the boundaries of Louisiana to what it then believed to be the full-limit permitted by International Law.

In Louisiana's original Tidelands Case decided in 1950 (339 U. S. 699, 94 L.Ed. 1216), the Supreme Court, in commenting on Act 55 of 1938, stated that "Louisiana's enlargement of her boundary emphasizes the strength of the claim of the United States to this part of the ocean and the resources of the soil under that area, including oil." This is a correct statement to the extent that it recognizes the right of the coastal states thus to declare their boundaries as a matter of International Law, and to the extent that it emphasizes the right of the United States to extend its appropriate national jurisdiction and its federal powers enumerated in the Constitution to the full limit of the boundaries of the several states of the Union. This statement by the Court directly implies that the boundaries of the United States and of Louisiana must be co-extensive.

The United States takes the position, in its motion for judgment and in its opposition to Louisiana's motion to take depositions, that the boundaries of the State and of the nation are co-terminous; Louisiana agrees with that position.

I. LOUISIANA IS ENTITLED TO FURNISH EVIDENCE IN SUPPORT OF ITS PLEAS OF ACQUIESCENCE, ESTOPPEL AND PRESCRIPTION

1. Many Equities Are Involved in This Controversy. The United States Is Subject to the Same Rules of Justice and Equity Applicable to Other Litigants.

Louisiana since her admission into the Union has at all times, and with the acquiescence of the United States, exercised governmental and proprietary rights in its Continental Shelf. Evidence on this subject will be offered by the State in the form of numerous maps, charts, records of the State Land Office, State Department of Conservation, State Mineral Board, and by the records of other State offices, and by the oral testimony of witnesses. These are facts which require a hearing since the Court will not take judical notice thereof.

There are many equities involved in this controversy, and of course, the United States is subject to the same rules of justice and equity which are applicable to other litigants. [59]

Although this Court overruled pleas of prescrip-

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[59] Guaranty Trust Co. v. U. S., 304 U.S. 126, 82 L.Ed. 1224;
Lukenbach v. The Thekla, 266 U.S. 328, 69 L.Ed. 313;
U. S. v. Chaves, 159 U.S. 452, 464, 40 L.Ed. 215, 220;
Carr v. U. S., 98 U.S. 433, 25 L.Ed. 209;
Cooke v. U. S., 91 U.S. 389, 398, 23 L.Ed. 237, 243;
The Siren v. U. S., 7 Wall. 152, 19 L.Ed. 129;
Brent v. Bank, 10 Pet. 596, 614, 9 L.Ed. 547, 555;
U. S. v. Barker, 12 Wheat. 559, 6 L.Ed. 728.

tion, acquiescence and estoppel in the California case the committees of Congress questioned the justice of this ruling, saying:[60]

> "That effect of this ruling of the Court is to place the State of California in the same legal position as an individual, thereby depriving it of its status as a sovereign. It should be noted that the case of U.S. v. California was a controversy between two sovereigns, namely, the United States on the one hand and the State of California on the other, both of which occupied equal dignity as sovereigns. The sovereign rights enjoyed by the United States were in the first instance derived from the States and the sovereign powers of the United States can rise no higher or have any greater effect than that which was delegated to the Central Government by the Constitution. The committee believes that, as a matter of policy in this instance, the same equitable principles and high standards that apply between individuals, should be applied by Congress as between the National Government and the sovereign States. (See Indiana v. Kentucky, 136 US 479, 500, 10 S. Ct. 1051 (1890); U.S. v. Texas, 162 US 1, 61, 16 S. Ct. 725 (1896); New Mexico v. Texas, 275 US 279, 48 S.Ct. 126 (1927).

The statement of the Congressional Committees that the State should be treated as an equal sovereign entity in matters of this kind is supported by many

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[60]Senate Rep. No. 133, 83rd Cong. 1st Sess. p. 67. House Rep. No. 215, 83rd Cong. 1st Sess. p. 46.

opinions and rulings of this Court. The following excerpt from the opinion in *Texas v. White*, 75 U. S. (7 Wall) 700, 725, 19 L.Ed. 227, 237 is pertinent here:

> "Not only, therefore, can there be no loss of separate and independent antonomy to the States, through their union under the Constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National Government."

Another equally compelling conclusion on this subject appears in the following excerpt from the opinion in *Wheeler v. Smith*, 50 U. S. (9 How.) 55, 78, 13, L.Ed. 44, 54:

> "When this country achieved its independence, the prerogatives of the crown devolved upon the people of the States. And this power still remains with them, except so far as they have delegated a portion of it to the federal government. The sovereign will is made known to us by legislative enactment. And to this we must look in our judicial action, instead of the prerogatives of the crown. The State, as a sovereign, is the parens patriae."

Later authorities which support the conclusions of the Congressional Committees that "the same equitable principles and high standards that apply between individuals, should be applied . . . between the Nation-

al Government and the sovereign States" are cited in the footnote below,[61] and in cases later referred to herein.

2. This Court Has Applied Long Possession and Acquiescence as Supporting Title in Actions Involving the United States as a Litigant.

This sovereignty of the State is not lost or diminished whenever a conflicting claim arises between it and the national sovereign. Presumptions of title are indulged in such a case from long continued possession and acquiescence. This is well illustrated by the Court's ruling in *New Orleans v. U.S.*, 10 Pet. 662, 722, 736-7, 9 L.Ed. 573, 596, 602 where title to a public place was conclusively presumed as belonging to a State subdivision as against the United States. The following excerpts from the opinion are pertinent:

> "The public use of this common for so great a number of years, and the general recognition of it from the time it was dedicated, in numerous private and official transactions, and the acquiescense of the French king, offered no unsatisfactory evidence of right. If a grant from the king

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[61]Re Heff, 197 U.S. 488, 505, 49 L.Ed. 848, 855
The Abby Dodge v. U. S., 223 U.S. 166, 173, 56 L.Ed. 390, 392
Osborn v. Ozlin, 310 U.S. 53, 62, 84 L.Ed. 1074, 1079
Skiriotes v. Florida, 313 U.S. 69, 77, 85 L.Ed. 1193, 1200
Parker v. Brown, 317 U.S. 341, 87 L.Ed. 315
12 U.S. Sup. Ct. Digest, p. 388 et seq.

were necessary to confirm the claim of the city, might it not be presumed under such circumstances? . . .

The government of the United States, as was well observed in the argument, is one of limited powers. It can exercise authority over no subjects except those which have been delegated to it. Congress cannot, by legislation, enlarge the federal jurisdiction, nor can it be enlarged under the treaty-making power . . .

That this common, having been dedicated to public use, was withdrawn from commerce, and from the power of the king rightfully to alien it, has already been shown; and also, that he had a limited power over it for certain purposes. Can the federal government exercise this power?. . .

It is very clear that as the treaty cannot give this power to the federal government, we must look for it in the Constitution, and that the same power must authorize a similar exercise of jurisdiction over every other quay in the United States. A statement of the case is a sufficient refutation of the argument.

Special provision is made in the Constitution for the cession of jurisdiction from the States over places where the federal government shall establish forts or other military works. And it is only in these places, or in the territories of the United States, where it can exercise a general jurisdiction.

The State of Louisiana was admitted into the Union on the same footing as the original States. Her rights of sovereignty are the same, and by

consequence no jurisdiction of the federal government, either for purposes of police or otherwise, can be exercised over this public ground, which is not common to the United States. It belongs to the local authority to enforce the trust, and prevent what they shall deem a violation of it by the city authorities.

All powers which properly appertain to sovereignty which have not been delegated to the federal government, belong to the States and the people.

It is enough for this court, in deciding the matter before them, to say that in their opinion, neither the fee of the land in controversy nor the right to regulate the use, is vested in the federal government. . ."

Although defenses of laches, estoppel and prescription may not be argued by individuals against a state or the Federal Government because the sovereign is immune from such a plea, the rule is different where two sovereign powers are involved. *In Phillips v. Payne*, 92 U. S. 130, 132, 23 L.Ed. 649, the Court

"The law of prescription applies to nations with the same effect as between individuals."[62]

Estoppel, like prescription, resting on considerations of fairness and justice, has been applied between sovereign nations. See Lauterpacht, Private Law

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[62]See also: Arkansas v. Tenn. 310 U.S. 563, 570, 84 L.Ed. 1362, 1366-7; New Mexico v. Texas, 275 U.S. 279, 298-9, 72 L.Ed. 280; U. S. v. Chaves, 159 U.S. 452, 40 L.Ed. 215, 220; Guaranty Trust v. U. S., 304 U.S. 126, 134, 82 L.Ed. 1224, 1229.

Sources and Analogies of International Law (London, 1927) 203-2-7, citing seven important international arbitration cases where estoppel was made the basis of the award.

In the case of *Maryland v. West Virginia*, 217 U. S. 1, 42, 54 L.Ed. 645, 658, this Court said.[63]

> "As said by this Court in the recent case of Indiana v. Kentucky, 136 US 479, 510, 34 L.Ed. 329, 10 S.Ct. Rep. 1051, 'it is a principle of public law, universally recognized, that long acquiescence in the possession of territory, and in the exercise of dominion and sovereign over it, is conclusive of the nation's title and rightful authority.' "

It will thus be seen that the law of nations on the subject of prescription, lachès and estoppel has been applied by this Court to the sovereign States of the United States. It is equally applicable to the national sovereign.

The Supreme Court has held that acquiescence by the United States in a boundary is binding. In *Missouri v. Iowa*, 7 How. 658, 674 12 L.Ed. 861, 867 this Court said:

> ". . . And as the treaties were drawn by authority of the United States, they must be taken as recognitions, on the part of the general govern-

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[63]See Also: Rhode Island v. Mass., 4 How. 591, 639, 11 L.Ed. 1116, 1137; Louisiana v. Miss., 202 U.S. 1, 53, 50 L. Ed. 913, 932; Indiana v. Kentucky, 136 U.S. 479, 510, 34 L.Ed. 329, 332.

ment, that the Missouri boundary and the old Indian boundary are identical. . .

. . . From these facts it is too manifest for argument to make it more so, that the United States were committed to this line when Iowa came into the Union. And, as already stated, Iowa must abide by the condition of her predecessor, and cannot now be heard to disavow the old Indian line as her true southern boundary."

In *United States v. Texas*, 162 U. S. 1, 60, 40 L.Ed. 867, 892, Mr. Justice Harlan made the following statement in the opinion of the Court:

"But it is said that the United States has in many ways, and during a very long period, recognized the claim of Texas to the territory in dispute, and upon principles of justice and equity should not be heard at this late day to question the title of the State.

. . . This question deserves the most careful examination, for long acquiescence by the general government in the claim of Texas would be entitled to great weight."

See also: *New Mexico v. Colorado*, 267 U. S. 30, 40-41, 69 L.Ed. 499, 502.

Under the foregoing decisions the possession and jurisdiction exercised by Louisiana in the Gulf of Mexico and the acquiescence of the Federal Government in that possession and jurisdiction are facts to which this Court should attach great weight in determining the rights of Louisiana in the submerged lands in dispute.

In a prior section of this brief we have outlined some of the Acts of the Louisiana Legislature assert-

ing jurisdiction over and ownership of the bed of the Gulf of Mexico, and have related facts to show that this jurisdiction and possession by the State have been exercised far out on the Continental Shelf and more than three leagues from coast. These are evidentiary facts of which the Court will not take judical notice and concerning which the State should be permitted to offer testimony and exhibits.

The acts of United States administrative and executive officials in recognizing Louisiana's title is certainly evidence to explain and interpret the original intent of the Federal and State governments in describing Louisiana's boundaries in the Act of Congress incorporating the Territory of Orleans into the State of Louisiana.[64] In Appendix H filed with this brief various Acts of the Legislature are digested covering dealings between the State and national government respecting offshore lands.

By Act 117 of 1855 the Louisiana Legislature makes reference to appropriations made by Congress for the construction of lighthouses on the coast and waters of the State. The Act provides that the Governor of the State may transfer to the United States title

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[64]Mass. v. N. Y., 271 U.S. 65, 96, 70 L.Ed. 838, 848-851;
Martin's Lessee v. Waddell, 16 Pet. 410, 10 L.Ed. 1012;
Handly v. Anthony, 5 Wheat. 374, 383, 384, 5 L.Ed. 113, 115;
U. S. v. Hill, 120 U.S. 169, 30 L.Ed. 627;
Sutherland, Statutory Construction, 3 Ed., Vol. 2, Sec. Sec. 5103.

and jurisdiction over any tract of lands containing not more than twenty acres which might be selected by an officer of the United States for the purpose of erecting thereon a lighthouse, beacon, or other public work. This Act was carried forward in Section 2948 in the Louisiana Revised Statutes of 1870, and is repeated in Act 13 of 1871. Pursuant to these Acts of the Louisiana Legislature, the Federal Government did acquire lighthouse sites on the coast and in the Gulf of Mexico from the State of Louisiana, thereby recognizing title of the State thereto.

The Louisiana Legislature in 1921 passed Act 11, (eleven) authorizing the Governor of the State to withdraw from sale certain State lands for the purpose of maintaining the navigability of the channels of the Mississippi River at its Mouth in the Gulf of Mexico. This Act recites that the United States Government, through its War Department Chief Engineers, had requested such legislation. The lands so withdrawn by the State from entry and sale extend to deep water in the Gulf of Mexico, and are bounded on the south by deep water in the Gulf of Mexico. Obviously, this Act asserted State jurisdiction and title over submerged lands lying seaward of the Mississippi River Delta.

Again in 1921 the Louisiana Legislature passed Act 52 for the creation of a Game and Fish Reserve and Public Hunting Grounds in the Delta of the Mississippi River. The lands described in this Act included submerged lands lying seaward of the Delta in the Gulf of Mexico.

By Act 329 of 1948, Louisiana joined with Florida, Alabama, Mississippi and Texas, the only other

Gulf coast states, by entering into the "Gulf States Marine Fisheries Compact", in which those states asserted their proprietary interest in and jurisdiction over marine fisheries in the Gulf of Mexico within their respective boundaries. This contract was assented to by Congress under Public Law 66, 81st Congress. It is significant to observe that in agreeing that the Fish and Wildlife Service of the United States Department of the Interior be the primary research agency of the Gulf States Marine Fisheries Commission (Compact, Art. VII), Congress recognized the proprietorship and jurisdiction of Louisiana and the other Gulf coast states in the waters, resources and seabeds within the historic seaward boundaries of the respective states. (Defendant's App. H contains excerpts from said Compact).

In the Legislative history of the Submerged Lands Act Congress took cognizance of the fact that State ownership of the submerged lands has been recognized not only by the Federal judiciary over a period of 160 years but also by the Executive Departments of the Federal Government,[65] and Congress itself.[66]

Louisiana is entitled to offer evidence, oral and documentary, for the purpose of showing acquiescence and recognition of title in the State by the Federal Government.

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[65] House Report # 215, 83rd Congress, 1st Session, page 44.

Senate Report # 133, 83rd Congress, 1st Session, page 16.

[66] Public Law 66, 81st Congress

CONCLUSION

Louisiana submits that its motion to take depositions should be sustained and that it be allowed to take the testimony of witnesses in support of the allegations of fact made in its Answer, and that the Plaintiffs motion for Judgment be overruled.

In the alternative if the Court should deny Louisiana's motion to take deposition then, it is respectfully submitted that the motion for judgment should be denied, and the Court should hold that the boundaries of Louisiana are co-extensive with the boundaries of the United States, and since the latter has extended the national boundary to the edge of the Continental Shelf, Louisiana's boundary also extends to the edge of the Continental Shelf; and that within such boundary the State of Louisiana has ownership of the seabed, subsoil and mineral resources of the Continental Shelf.

Defendant has shown that its historic boundaries extended to the 27th parallel of latitude by virtue of the Proclamation of LaSalle and the Treaty of Cession with France in 1803, and that the United States acquired that portion of the territory lying seaward in the Gulf of Mexico in trust for the State of Louisiana, and in admitting Louisiana to the Union reserved no part of the seabed, subsoil or natural resources of the Continental Shelf.

The State has further shown that the United States has not acquired any title to the Continental Shelf by any method enumerated or implied in the Constitution and that the United States has no lawful

right to dispossess the State from submerged lands and resources which it has possessed and over which it has exercised jurisdiction for a long period of time; and that to the extent that the Submerged Lands Act or the Outer Continental Shelf Lands Act of 1953 permit the Federal Government to exercise proprietary rights in said area they are violative of obligations made in Louisiana's behalf in the Treaty of Paris in 1803 and are furthermore in conflict with the fifth, ninth and tenth amendments to the Constitution, and are also in conflict with Article IV, Section 4 of the Constitution.

In the alternative, and only if the Court should deny Louisiana's title and claim set forth above, it is submitted that Act 33 of 1954 of the Legislature of Louisiana correctly designates the coast line of the State as fixed in accordance with appropriate Acts of Congress, and that Louisiana's boundary extends three leagues seaward of that line under the terms of the Act admitting the State to the Union in 1812.

It is further submitted in the alternative that since the United States has consistently approved State ownership of a three league belt in the Gulf of Mexico, and that the Congress has recognized the boundaries of Texas and Florida as extending three leagues into the Gulf of Mexico, any contrary interpretation of the Act of Admission of Louisiana would deprive this

State of the benefits of the equal footing clause of the Constitution.

Respectfully submitted,

JACK P. F. GREMILLION
Attorney General

W. SCOTT WILKINSON
Special Assistant Attorney General

EDWARD M. CARMOUCHE
Special Assistant Attorney General

JOHN L. MADDEN
Special Assistant Attorney General

BAILEY WALSH
Special Counsel

HUGH M. WILKINSON

VICTOR A. SACHSE

MORRIS WRIGHT

JAMES R. FULLER

MARC DUPUY, JR.
Of 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——— ————————, 1957, I served copies of the foregoing Brief of the State of Louisiana In Opposition To The Motion For Judgment By The United States, by leaving copies thereof at the offices of the Attorney General and the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C.

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OF COUNSEL