
IN THE
Supreme Court of the United States

OCTOBER TERM, 1959

No. 10, Original

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI,
ALABAMA and FLORIDA,
Defendants.

**SUPPLEMENTAL BRIEF OF THE STATE OF MISSISSIPPI
IN OPPOSITION TO MOTION FOR JUDGMENT
ON AMENDED COMPLAINT.**

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Pursuant to the permission granted by this Court to the parties hereto at the conclusion of the oral arguments herein on October 15, 1959, we submit this supplemental brief with the hope that it may lend clarity to the position of the State of Mississippi in the light of the oral arguments of counsel for the United States and the questions propounded by the Court during the arguments.

I

Mississippi's boundary description as set out in its Enabling Act of March 1, 1817, which was included in the Mississippi Constitution of 1817, and which was included by reference in the Act of Admission of December 10, 1817, established a seaward boundary for said State six leagues from shore in the Gulf of Mexico.

By his Proclamation of 1682 under which he claimed Louisiana for France by discovery, LaSalle claimed

the area south of the Mississippi River including "the seas, harbours, ports, bays and adjacent straits." *The Louisiana Purchase* 4 (Washington, 1955). Thus it would appear that LaSalle was familiar with the nature of the islands lying off the shore.

In 1699, Iberville settled at the site of the present City of Biloxi, Mississippi, and on Dauphin Island, one of the sand islands presently lying off the shore of Alabama, where he remained for 23 years before relocating on the banks of the Mississippi River. He, also, must have been intimately familiar with the location and the nature of the islands lying off the shore.

Likewise, King George III of Great Britain must have known the nature of these islands, which were described by this Court in *Louisiana v. Mississippi*, 202 U. S. 1, 46, as "sea-sand islands," when he proclaimed a boundary six leagues into the Gulf of Mexico by defining the southern boundary of West Florida (which included the area which is now the southern portions of Mississippi and Alabama) as "bounded to the southward by the Gulf of Mexico, including all islands within six leagues of the coast." *American State Papers*, 5 Public Lands 308.

We have not been able to determine, and we do not believe it can be accurately determined at this time, the exact location of all of the islands which lay off the shore of the State of Mississippi, or off the shore of any of the Gulf Coast States for that matter, at the time King George proclaimed the six league gulfward boundary aforesaid in 1763. Nor have we been able to establish, nor do we believe that it can be established, the exact location of the islands lying off the shore of

Mississippi at the time said State was admitted into the Union.

We believe that it is reasonable to assume that there were islands on or approximately on the six league seaward boundary line, and that this was the reason King George established said boundary at that distance. But even if there were no islands on said perimeter boundary, at least we must assume that King George knew the character of these sand islands — that they shifted and moved from time to time, and that some disappeared and some reappeared — and that he also knew that the shore lines of the islands were constantly changing as a result of the winds and the washing action of the waves and tides. Also, it must be assumed that he was aware of the shoalness of the waters which prohibited the approach of ships closer than several miles from the mainland in most places. He must have concluded that islands were likely to appear at almost any place within the six league perimeter boundary.

These assumptions attributing such knowledge to these figures in history are only assumptions of course, but we believe them to be reasonable assumptions to which the physical facts have borne testimony in past years and to which they continue to bear witness even to the present day.

The Congress, in establishing Mississippi's boundary in the Gulf of Mexico in the Enabling Act of March 1, 1817, 3 Stat. 348, by the use of the language "thence due south to the Gulf of Mexico, thence westwardly, including all the islands within six leagues of the shore, to the most eastern junction of Pearl River with Lake Borgne, . . ." apparently intended to claim as a part of the State of Mississippi everything in the Gulf of Mexico that King George III had claimed by his said

proclamation and which had been likewise claimed by each succeeding owner in the chain of title from 1763 until the United States claimed title to this area under the Louisiana Purchase. 8 Stat. 200.

Needless to say, at the time of the passage and approval of Mississippi's Enabling Act and the Act admitting Mississippi into the Union, 3 Stat. 472, the United States was as familiar with the changeable nature of the islands lying off her southern shore as were her predecessors in the chain of title.

II

“Territorial sea” should not be confused with property rights under the sea, and the argument of plaintiff that the seaward boundaries “as they existed at the time” each Gulf Coast State became a member of the Union were automatically withdrawn to three miles from the coast line is untenable.

The brief of the United States and the oral argument of Government counsel seem to confuse “territorial sea” with property rights in the subsoil and seabed under the Gulf of Mexico. We make no claim to title to any part of the territorial sea. We readily concede that under the Submerged Lands Act, 67 Stat. 29, the United States expressly retained exclusive jurisdiction over the territorial sea for the purposes of navigation, flood control, the production of power, and the like. But just as surely as the United States expressly retained jurisdiction over the territorial sea, by the same Act, property rights in the subsoil and seabed, including the natural resources therein, were quitclaimed to and vested and confirmed in the Gulf States to the extent of their boundaries as they existed at the time they became members of the Union.

And as to the meaning of the words "as they existed at the time" used in the Submerged Lands Act with reference to the Gulf States' boundaries at the time they were admitted into the Union, which was much belabored in the oral argument of the Solicitor General, suffice it to say that if the argument of the United States to the effect that a three mile national seaward boundary existed at the relevant times and that this foreclosed any State from claiming beyond the national boundary after admission into the Union, and that the said words meant "boundaries as they existed just after admission" should prevail, then the Congress did a vain and useless thing by including any reference to the boundaries of the Gulf States more than three miles seaward.

We submit that the rules of statutory construction decry such an interpretation of uselessness being read into a substantial portion of this Act of the Congress which was duly approved by the President. We contend that the Act of Admission of Mississippi, approved December 10, 1817, referred back to the Enabling Act of Congress of March 1, 1817, and the Mississippi Constitution adopted pursuant to said Enabling Act in August of the same year, and incorporated by reference thereto the Mississippi boundary description set out in said two earlier documents. Thus, rather than refuting its prior setting of the seaward boundary of Mississippi at three leagues in the Gulf, the Congress, by referring back to the Enabling Act and to the Mississippi Constitution in the Act of Admission, thereby reaffirmed that at the instant Mississippi was admitted into the Union and from that time on, unless duly and legally altered, its seaward boundary was fixed and

would remain six leagues from shore in the Gulf of Mexico.

III

If the Court cannot take judicial notice of the shoalness of the waters and the movement and shifting of the islands and the seabed off the shore of Mississippi, and if the Court is of the opinion that the establishment of such facts is essential in order for it to deny the motion of the United States for judgment, then Mississippi should be permitted to present evidence of such facts.

We would emphasize the fact that unlike the traditional "rockbound" coast of Maine, the islands and shoals off the shore of Mississippi are constantly changing. And we submit that we can establish the following facts relative to the islands in and the seabed under the Mississippi Sound and the Gulf of Mexico lying off the shore of said State:

(1) That the chain of islands presently most distant from and off the shore of the State of Mississippi, namely, Petit Bois, Horn, Ship, and Cat Islands, are sand islands;

(2) That the shore line of each of these islands changes from time to time due to the winds and washing action of the sea and the tides, and that the shore lines of said islands are not the same as they were when Mississippi entered the Union;

(3) That Fort Massachusetts, which was erected on Ship Island in 1860-61, was at that time located well upon the island and, in fact, until as recently as 40 or 45 years ago said Fort was entirely upon dry land, but that now a considerable portion of said Fort is in the water;

(4) That in 1947 a hurricane cut a channel across Ship Island, dividing the island in two;

(5) That the Isle of Caprice, formerly located to the east of Ship Island, disappeared below the surface of the waters in the year 1931. Prior to its disappearance, a casino, a refreshment pavilion, and other facilities had been operating on said island, and the island had become a popular tourist attraction.

If this Court should deem such evidence to be necessary in order for Mississippi to establish the fact that its seaward boundary, "as it existed at the time" it became a member of the Union, was six leagues in the Gulf of Mexico, we earnestly request that we be permitted to present documentary evidence of these facts as well as expert testimony relative to the action of the winds and the sea on the islands and seabed off the Mississippi shore to prove to the Court how the islands move and shift and how they disappear and how they sometimes reappear.

Moreover, we are informed that it can be proved that islands off the shore of the State of Louisiana, which are similar to the islands off the Mississippi shore, have moved considerable distances over the years, and that one of such islands, measuring approximately seven miles in length and one-half mile in width, has moved as much as nine miles from its former location to a position nearer the shore of Louisiana.

CONCLUSION

The State of Mississippi respectfully submits that the motion of the United States for judgment should be denied, and that judgment should be entered herein recognizing title in the State of Mississippi to the submerged lands and natural resources within three marine leagues from its coast line into the Gulf of Mexico, however, not to extend beyond its boundary which existed at the time it became a member of the Union and which was located six leagues from shore in the Gulf.

Respectfully submitted,

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Attorney General of Mississippi

JOHN H. PRICE, JR.
Assistant Attorney General

October, 1959.

PROOF OF SERVICE

I, Joe T. Patterson, Attorney General of the State of Mississippi, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the _____ day of October, 1959, I served copies of the foregoing supplemental brief on the several parties to said cause as follows:

(1) On the United States, by mailing copies in duly addressed envelopes, with air mail postage prepaid, to the Attorney General and the Solicitor General of the United States, respectively, at the Department of Justice Building, Washington 25, D. C., and

(2) On the States of Texas, Louisiana, Alabama and Florida, by mailing copies in duly addressed envelopes, with air mail postage prepaid, to their respective Attorneys General at their respective addresses as follows: Capitol Building, Austin, Texas; Capitol Building, Baton Rouge, Louisiana; State Office Building, Montgomery, Alabama; and Capitol Building, Tallahassee, Florida.

I also certify that on the _____ day of October, 1959, I served typewritten copies of the foregoing supplemental brief on the Solicitor General of the United States, pursuant to the instructions of this Honorable Court, by mailing copies in a duly addressed envelope, with air mail postage prepaid, to him at the Department of Justice Building, Washington 25, D. C.

JOE T. PATTERSON
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