No. 31, Original

# In the Supreme Court of the United States

OCTOBER TERM, 1967

STATE OF UTAH, PLAINTIFF

*v.*

UNITED STATES OF AMERICA

*ON BILL OF COMPLAINT*

## REPLY MEMORANDUM FOR THE UNITED STATES

ERWIN N. GRISWOLD,
*Solicitor General.*

# In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 31, Original

STATE OF UTAH, PLAINTIFF

*v.*

UNITED STATES OF AMERICA

*ON BILL OF COMPLAINT*

**REPLY MEMORANDUM FOR THE UNITED STATES**

We address ourselves briefly to Points I and II of Utah's brief, not previously discussed in our memorandum. In these sections of its brief, the State argues that intervention by Morton International and other private littoral landowners is barred because the participation of those parties would constitute (1) unconsented suits against the State and (2) unconsented suits against the United States.

## I

The Eleventh Amendment prevents any federal court from entertaining an unconsented suit against a State by citizens of another State, even on a federal claim. *Louisiana* v. *Jumel*, 107 U.S. 711. And like principles of sovereign immunity insulate a State



289-490—68

from being compelled to answer a suit brought by its own citizens in federal court. *Hans* v. *Louisiana,* 134 U.S. 1. On the other hand, if the State has consented, the federal courts are competent to adjudicate a claim, otherwise within federal jurisdiction, filed against the State by its own citizens or citizens of another State. See *Parden* v. *Terminal Co.,* 377 U.S. 184, 186, and cases cited. Accordingly, the question on this branch of the case is whether Utah may fairly be deemed to have waived its sovereign immunity so as to permit a suit against it by private citizens with respect to the lands claimed by it in the present suit.

In our view, the State's action in asserting title to the disputed lands and submitting that question for adjudication constitutes consent to the determination of any adverse claim with respect to the same *res.* It is elementary that he who asks judgment in his favor submits himself to the risk of an adjudication in favor of his opponent. Even sovereigns are not exempt from this principle. See *United States* v. *The Thekla,* 266 U.S. 328, 339–340. To be sure, a suit to collect a money judgment does not waive sovereign immunity with respect to a counterclaim for a greater sum. *United States* v. *Shaw,* 309 U.S. 495. But when a sovereign invokes the aid of the courts to settle its claim to a certain asset, it must be taken to have consented that opposing claims to the same asset should be entertained. *Clark* v. *Barnard,* 108 U.S. 436, 447–448. That is obvious in the case of the named defendant. *E.g., United States* v. *Louisiana,* 363 U.S. 1, 84. Nor is it apparent why the principle does not apply to intervening claimants, especially if they are

indispensable parties. Cf. *Gunter* v. *Atlantic Coast Line,* 200 U.S. 273.

In sum, we believe neither the Eleventh Amendment nor any rule of sovereign immunity prevents the Court from entertaining the claims of Morton International or other private parties insofar as they assert ownership to the lands which Utah has chosen to place in litigation by praying that its own title thereto be quieted. We accordingly conclude that all of the private claimants should be allowed to intervene to assert their title as against the State with respect to the acreage also claimed by both Utah and the United States. On the other hand, we note that the Court need not resolve disputes between the State and private claimants *with respect to lands disclaimed by the United States* in order to fulfill the immediate objective of the Great Salt Lake Lands Act. Indeed, strictly construed, the Act authorizes the present suit only to determine the extent of the *federal* lands in the area so as to fix the amount due the United States by Utah upon their transfer to the State. For that purpose, it is unnecessary to settle the State's title to lands which are adversely claimed by other persons, but not by the United States. And the United States is of course a disinterested bystander with respect to that controversy. Yet, since the same principles govern, it would seem appropriate in the interest of efficient judicial administration to resolve that controversy here also, if, as we believe, it encounters no jurisdictional obstacles and presents no special complexities.

II

It remains to answer the contention that the intervention of Morton International and other private claimants would constitute unconsented suits against the United States.

No doubt, Congress might have waived sovereign immunity for the sole purpose of permitting Utah alone to assert its claims against the United States. Cf. *United States* v. *Sherwood,* 312 U.S. 584. Indeed, a grudging reading of the jurisdictional statute authorizing this suit might reach the conclusion that no more was intended here. We reject that construction, however, because it would effectively defeat the purpose of the Great Salt Lake Lands Act, 80 Stat. 192, in consenting to the present suit.

Section 5 of the Act provides that the State of Utah "may maintain an action in the Supreme Court of the United States to secure a judicial determination of the right, title and interest of the United States" in the lands below the meander line of the Lake. The purpose of this determination is to fix the liability, if any, of the State toward the United States for these lands which are to be relinquished to the State. Yet, if there are other claimants, besides Utah, it is obvious that the title of the United States cannot be determined without adjudicating those claims as well. Nor is the United States entitled to payment for the lands if the true owners are the private claimants. Thus, it seems plain that the object of the suit will be frustrated unless all claims adverse to the United States are now adjudicated. In these circumstances, we sub-

mit the jurisdictional act must be construed as permitting, by necessary implication, the assertion and disposition of all claims of ownership with respect to the lands disputed between the State and the United States.

Respectfully submitted.

ERWIN N. GRISWOLD,
*Solicitor General.*

FEBRUARY 1968.

U.S GOVERNMENT PRINTING OFFICE: 1968