In the

Supreme Court of the United States

UNITED STATES,	)	
	)	
Petitioner	)	
	)	
v.	)	No. 71-1459
	)	
LITTLE LAKE MISERE LAND COMPANY, INC., ET AL.	)	

Washington, D. C.
January 15 & 16, 1973

Pages 1 thru 64

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UNITED STATES, Petitioner	:	
v.	:	No. 71-1459
LITTLE LAKE MISERE LAND COMPANY, INC., ET AL.	:	

Washington, D.C.
Monday, January 15, 1973
Tuesday, January 16, 1973

The above entitled matter came on for argument at 2:23 o'clock p.m. on January 15 and was continued at 10:10 o'clock a.m. on January 16, 1973

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

AUSTIN W. LEWIS, ESQ., 225 Baronne Street, New Orleans, Louisiana 70112 for the Respondents

WILLIAM BRADFORD REYNOLDS, ESQ., Assistant to the Solicitor General, Department of Justice, Washington, D. C. 20530 for the Petitioner

C O N T E N T S

- - -

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 71-1459, United States against Little Lake Misere Land Company.

Mr. Reynolds, you may proceed.

ORAL ARGUMENT OF WILLIAM BRADFORD REYNOLDS, ESQ.,

ON BEHALF OF THE PETITIONER

MR. REYNOLDS: Mr. Chief Justice and may it please the Court:

This case is here on writ of certiorari to the United States Court of Appeals for the Fifth Circuit. The action was instituted by the United States to quiet its title to lands in the State of Louisiana which it had acquired some years ago by deed and condemnation for use as a wildlife refuge.

The relevant events leading to commencement of this lawsuit can be briefly summarized. In 1916, the United States and Great Britain ratified a treaty for the purpose of protecting the many species of birds that customarily migrate at different seasons of the year between Canada and the United States.

Among the several protections enumerated in the treaty was the establishment of wildlife refuges both here and in Canada. In 1929, Congress, in furtherance of a national program for the protection of wildlife, enacted the Migratory

Bird Conservation Act, implementing in part the treaty between this country and Great Britain. The act, which is set forth in our brief at pages 19 to 23 authorizes the Secretary of the Interior, among other things, to acquire lands deemed valuable for wildlife refuges upon obtaining the consent of the state in which the acreage is located.

Pursuant to this authority, the United States, in 1937, entered into contract negotiations with Little Lake Misere Land Company for the purchase of some 10,048 acres of undeveloped marshland located in the State of Louisiana to form a part of the Lacassine Wildlife Refuge.

On July 23, 1937 the United States acquired this acreage from Lake Misere by deed of purchase. The deed contained a reservation clause which is set out in the Appendix at page 25 pertaining to "All the oil, gas, sulfur and other minerals in, on and under the land." By its terms, it reserved to Lake Misere, again I quote, "the right of investigating, exploring, prospecting, drilling and mining for and producing said oil, gas, sulfur and other minerals" for a period of ten years from the date of the deed.

It further provided that at the end of the ten-year period the company, if it was then conducting drilling operations or actually producing minerals, could continue to do so until it ceased drilling for 60 consecutive days or until its mineral production ceased.

The United States and Lake Misere agreed in addition that if Lake Misere was not conducting mining operations on the land, at the end of the ten-year period of reservation, "the right to mine, produce and market said oil, gas, sulfur and other minerals shall terminate and the complete fee title to said land shall thereby become vested in the United States."

The United States agreed to pay in excess of $40,000 for the acreage. Approximately two years later it obtained for the refuge an additional 2,574 acres of marsh-land from Lake Misere in the same area by a condemnation judgment entered in 1939. The United States paid in excess of $12,000 compensation.

The condemnation judgment contained a ten-year reservation provision that was in all material respects identical to the one that the parties had included in the earlier deed of purchase. Both conveyances also provided that the United States would receive from Lake Misere royalty payments for minerals removed from the government lands during the period of reservation.

Now, at the time that these conveyances were negotiated and entered into, it is agreed that the laws of Louisiana recognized mineral reservations of the sort just described as providing for what was called"a period of contractual prescription." The word prescription" refers essentially to nonuse or inactivity and has the legal

effect of cutting off an existing interest or servitude for the failure to exercise it.

The servitude, in essence, lapses for nonuse or, in more technical terms, terminates by force of prescrption.

Under the Louisiana Civil Code, the period of non-use cannot extend beyond ten years but any period up to and including ten years may be designated by contract. In 1937 and 1939 when these conveyances were completed there was no restriction under Louisiana law on the right of the United States or anyone else to agree to a period of contractual prescription.

A mineral reservation in a deed of purchase that was by its terms to terminate in time because of nonuse was as enforceable under Louisiana law by the United States if no mining had occurred as by any private party to a land contract and that was the clear understanding of the United States and Lake Misere at the time that they agreed to the land transactions involved here and bargained for the reservation of a mineral servitude for a period of ten years.

Q Would you please state again what the Louisiana law generally was at that time by -- there is a reservation and it is a reservation of not much more than an easement, I guess, isn't it? And the right to --

MR. REYNOLDS: It is an easement.

Q Right.

MR. REYNOLDS: In other words, servitude. It is a right to go on the property --

Q And there was just a reservation period that is extinguished by nonuse after the passage of ten years.

MR. REYNOLDS: After -- by the terms of the conveyance here, after the passage --

Q No, no, I am just talking about Louisiana law.

MR. REYNOLDS: After -- it could not extend beyond ten years of nonuse. The statutory prescription under Louisiana law would cut off the right to go on the land at the end of ten years of nonuse if there --

Q Now, could the parties by contract extend that period beyond ten years?

MR. REYNOLDS: The parties cannot contract for a period longer than ten years of nonuse. They can contract for any period up to and including ten years.

Q Right, they could contract the period but they couldn't extend it, expand it.

MR. REYNOLDS: That is correct, your Honor, but they could not expand the period of nonuse. If there was use during that ten-year period, then you would have an additional ten years from the time of use.

Q It begins to run again from each use?

MR. REYNOLDS: That is correct under Louisiana

law, but they could not contract for a period longer than --

Q The ten-year period of nonuse.

MR. REYNOLDS: -- the ten-year period of nonuse under the law.

Q That was the Louisiana law at the time of these conveyances.

MR. REYNOLDS: It was the Louisiana law and it was the understanding of the parties at the time that they entered into these conveyances and negotiated them.

Now, thereafter, the State of Louisiana enacted new legislation with respect to prescriptive right. It was applicable not to all acquisitions in the state but only to those acquisitions made by the United States.

Now, this new legislation eliminated for the most part the termination of mineral servitudes by force of prescription under conveyances of the United States. The statute, Louisiana Act 315, was passed in 1940. It is set forth in relevant part in our main brief at pages three and four and it reads as follows, I quote, "When land is acquired by conventional deed or contract, condemnation or expropriation proceedings, by the United States of America or any of its subdivisions or agencies from any person, firm or corporation and by the act of acquisition, order or judgment, oil, gas, or other minerals or royalties are reserved, the rights so reserved shall be imprescriptible."

Q Was the effect of this act in combination with other Louisiana statutes to treat the United States completely differently from any other entity in this respect?

MR. REYNOLDS: Under this statute, your Honor, that is correct. There was an earlier statute in 1938 where Louisiana treated its own state agencies with respect to statutory prescription in the same manner as the United States and said that the prescriptive period shall not run with respect to the statutory prescription provisions of Louisiana law but under this statute, which the Louisiana Supreme Court construed in the Leiter Minerals case to pertain not only to statutory prescription but to contractual prescription. That is, a contractive period of nonuse.

This covered only the United States and was directed only at the United States.

Q Well, there is a very good reason for it that is spelled out somewhere here in the brief.

MR. REYNOLDS: Well, the reason -- one of the reasons for it was to make it easier for the United States to acquire lands --

Q Right.

MR. REYNOLDS: -- in Louisiana by being able to offer a perpetual servitude to their vendors if they --

Q Because of the very odd Louisiana law it was thought that before that amendment it was difficult for

the United States to acquire land for this kind of purpose, or so I gather from reading the briefs.

MR. REYNOLDS: That was one of the reasons for it.

Q Is it your position that that statute can speak only as to the future after 1940?

MR. REYNOLDS: That is our position, your Honor, that it can only be given prospective application. It cannot be applied retroactively to cut off existing interests in the minerals that the United States acquired prior to the enactment of the legislation.

The Louisiana court in construing the statute, as I indicated, declared that it was applicable both to statutory and contractual prescriptions but there is one exception with respect to contractual prescription. If the contract specified a servitude for a term of definite duration as opposed to one of indefinite and uncertain duration, then the act was inapplicable but in all other respects it was held to be applicable and the Louisiana court said that it could be applied retroactively with respect to all past acquisitions of the United States where the prescriptive period had not run as of the date of enactment and this litigation arose because of Lake Misere's claim that the agreed terms of the reservation in the deed of purchase and the condemnation judgment were rendered inoperative by the subsequently enacted imprescriptible

legislation.

There is no dispute here that Lake Misere was not conducting any mining operations on the bird refuge at the end of the ten-year period and that it had not either before or after the agreed cut-off dates conducted any such mining activity.

The Federal District Court felt itself bound by the earlier two-to-one decision of the Fifth Circuit in the Leiter Minerals case and held Louisiana 315 of 1940 to be applicable to the mineral reservations in these earlier 1937 and 1939 conveyances.

The Court of Appeals affirmed on the authority of Leiter Minerals.

Initially, we disagree with the Court of Appeals that the mineral servitudes in these conveyances were of indefinite duration so as to be imprescriptible under Louisiana Act 315, even assuming that act's application here. Our reasons are discussed in detail in our main brief on that point.

But if the Fifth Circuit was correct in that respect, an application of Louisiana Act 315 to cut off the prescriptive rights of the United States that have been bargained for, validly agreed to and purchased prior to enactment of the legislation would, we submit, violate several provisions of the Constitution.

It would abrogate the express terms of the reservation in these conveyances as they were understood by the parties at the time that the transactions were entered into and thus would impair the obligations of contracts in violation of Article one, Section ten of the Constitution.

More particularly, and with specific reference to the fact that we deal here with land acquisitions by the United States, an application of 315 -- act 315 -- would contravene the property clause of the Constitution, which vests the power in Congress to dispose of and regulate property belonging to the United States.

Since the landmark decision in McCulloch versus Maryland, it has been a basic principle of our constitutional jurisprudence that the affirmative grants of legislative power in the Constitution are to be broadly construed and, consistently, this Court has held that the Article IV power of Congress with respect to the regulation and disposition of federal property is exclusive and unlimited.

It thus was for Congress and Congress alone to legislate with respect to the disposition of the valuable mineral interests that the United States had acquired under these conveyances.

Q What was the point, then, of the decision of this Court in Leiter Minerals that told the federal courts to abstain, refrain until they got -- until it was clear in

the Indiana and the Louisiana Supreme Court what the Louisiana law was. If the Louisiana law was wholly irrelevant in any circumstance, what was the whole point of Mr. Justice Frankfurter's opinion for the Court in Leiter Minerals?

MR. REYNOLDS: Well, I think the whole point was to determine --

Q It was, you might say it was a question you've never known the answer to, maybe.

MR. REYNOLDS: I don't presume to know the answer, but I would imagine that the point would be to determine what the Louisiana -- the highest court in Louisiana -- would -- what construction it would put on the statute; whether it would, for example, say that the statute applies merely to statutory prescription or applies solely prospectively in which case no constitutional questions such as we have presented here would need to be decided by the Court.

The issues in Leiter Minerals were the same as the issues raised here and I believe that the --

Q That a federal law is going to be controlling what was -- what possible relevance could the Louisiana law have had and therefore what possible purpose could the court's decision in Leiter Minerals have been designed to perform?

MR. REYNOLDS: Well, your Honor, I -- I think that

the court is reluctant to reach out and decide constitutional questions that aren't --

Q No, no, this is before you get to the constitutional questions. You just said that federal law applies.

MR. REYNOLDS: I think --

Q And if you tell us that if we agree with you on that, we don't have to reach any constitutional questions but if that is true, then what was the point of the Court's opinion in Leiter Minerals?

MR. REYNOLDS: I don't know, your Honor. I don't know that the Court had gone as -- considered the case yet as fully as to determine what the various considerations were.

Q It was briefed and argued here, I suppose, wasn't it? This was before I was on the Court. I had assumed that it was a full-dress opinion written by Justice Frankfurter.

MR. REYNOLDS: I just -- I think the federal law controls. I don't know why it was sent back.

Q Well, it wasn't decided which law controls, was it? Did it?

MR. REYNOLDS: No, it was not decided.

Q And that is at the heart of the argument in this case.

Q Is it conceivable --

Q If it was so clear, then this case wouldn't be here.

Q Is it conceivable, Mr. Reynolds, that the Court sent this back because of some of the idiosyncracies of the Louisiana law that might not be true as to the other 49 states?

MR. REYNOLDS: Well, I am sure that had something to do with it and I think that if they had gotten an interpretation from the Louisiana court that would have applied the statute only prospectively and would have said it applied only to statutory prescription, then you would not even have the issue that we have here with respect to whether federal law or state law --

Q No federal precedent at all.

MR. REYNOLDS: There would be no precedent.

Q It would be a statutory question.

MR. REYNOLDS: And I believe it was sent back to determine what the construction would be by the Louisiana court.

Q Mr. Reynolds, what if the United States owned some bonds in the State of Louisiana? Do you say that the rights under those bonds are determined strictly by federal law and that even though Louisiana were to make a particular interpretation that applied to all bondholders that the United States would not be bound by it?

MR. REYNOLDS: Well, your Honor, I think we are dealing here with a contract that the United States entered into --

Q Fine.

MR. REYNOLDS: -- for the acquisition of property and I think that --

Q It's a bond is a contract, too, isn't it?

MR. REYNOLDS: Well, I -- if you -- if you go down -- a lot turns if the United States goes down into Louisiana and it says that it agrees that it is going to rely on Louisiana law with respect to determinations of these sorts, then I think that Louisiana law might well be applicable but what happened in this case is, we contracted in Louisiana and gave a reservation which under the existing law in Louisiana only gave a servitude for a period of time.

Now, that contract did not contemplate the change in the Louisiana law to cut off the rights that we had agreed to. We think that is a different situation.

That's -- what we got here was a future interest in the minerals beneath the surface of the property and that future interest is no less property belonging to the United States under Article Four than was the yet-to-be produced electric energy in Ashwander v. Tennessee Valley Authority which also was to be obtained in the future from lands and, in that case, property in the United States -- water owned

by the United States. But --

Q Mr. Reynolds?

MR. REYNOLDS: Yes, your Honor.

Q On this property clause argument that you are making, the Respondent takes the position, as I understand it, that the reversionary interest here is not a property right at all but is characterized as a hope or, at most, an expectancy under Louisiana law. That would not be true in my state of Virginia; a reservation of mineral rights is an interest in property. But does the government take issue with Respondent as to what Louisiana law is in this respect?

MR. REYNOLDS: Well, your Honor, I -- I think that under Louisiana law the -- all that the reservation gives is a servitude to go upon the government's property to explore for and extract the minerals. The minerals themselves are part of the realty and therefore, the United States does have more than a hope or expectancy, it has a real interest at the time that it acquires that realty. But I think that whatever the technical characterization of this interest, I think that under general federal law principles that it is a future interest that certainly is a vested interest that the government is entitled to at the termination of the ten-year period and therefore it is a property interest belonging to the United States.

Now, what Louisiana has done by its subsequently

enacted legislation is transferred that future interest to somebody else. It has disposed of or made a disposition of that federal property of the government. The government, under the Mineral Leasing Act for Acquired Lands, can lease a future interest in mineral deposits under its lands and the disposition of that future interest in mineral deposits is now, by the state statute, if applied retroactively, taken away from the government and we don't think that that is a -G Me think whatever the technical characterization under the Louisiana law, that we have a property interest here of the government's that is only for disposition by the government under Article Four.

I think, in addition to that, that the reservation in the conveyances that these parties agreed to contemplated that the government would have this interest in the future and that the ten-year mineral servitude would be prescriptible.

Now, under the contracts clause, we think that what a retroactive application of Louisiana Act 315 does is abrogate the express terms of the reservation and that is an impairment of the obligation of contracts.

The United States acquired -- the United States agreed that Lake Misere could retain the right for a period of ten years to come on that land and explore for and extract minerals but Lake Misere had an obligation under the reservations to be actively engaged in mining those lands in

the ten-year period or its servitude would not be renewed. It would terminate and it could no longer come on the land. At that time, the whatever interest it had reverted to the United States.

Louisiana Act 315 releases Lake Misere of this obligation to be actively engaged in mining the land at the end of the ten-year period and it extends indefinitely this servitude, thereby depriving the United States of its future interest in the minerals that had been bargained for, validly agreed to under the existing law, and purchased by the United States prior to enactment of the legislation. And we don't believe any of the alleged purposes for this Louisiana legislation justify such an impairment of the obligation of contracts.

Q Do you -- just to go back a minute -- do you agree that the interest that the United States acquired under the deed originally, the reservation, was to be measuered by Louisiana law?

MR. REYNOLDS: The -- the reservation was to be?

Q Yes.

MR. REYNOLDS: I don't understand your question.

Q How did the United States get this property?

MR. REYNOLDS: It acquired it by a deed of purchase and by condemnation.

Q With a reservation in it for ten years on

the minerals?

MR. REYNOLDS: That is correct.

Q Now, the interest in the property that the United States acquired at that time, under that deed --

MR. REYNOLDS: Right.

Q -- was to be measured by Louisiana law?

MR. REYNOLDS: Well, I think that that is the nature of the interest, that is right, that the -- that the term and the reversionary rights. I don't think that --

Q If, under Louisiana law at that time, future interest was subject to modification under state law, the United States future interest was subject to the same state power, I suppose.

MR. REYNOLDS: Well, your Honor, future interests weren't subject to modification under the Louisiana law at that time. The -- this is different than if we had contracted to be bound by the statutory prescription period.

I think in that situation we then would have agreed to be bound by whatever changes there are in the prescription -- the statutory prescription law of the State of Louisiana.

Q If you had agreed generally to be bound by the statutory law.

MR. REYNOLDS: That is correct, but here we entered into a contract for specific terms. We didn't

agree to any modification. We said that the reservation would be for this period and if there is no mining at the end of this period, it would terminate and the title would vest in the United States.

Q And so you say that once you acquired this property interest,however it is determined under Louisiana law, that it couldn't be modified or taken away except pursuant to federal law?

MR. REYNOLDS: That is correct.

Q And federal law governs the disposition of --

MR. REYNOLDS: That is correct.

Q -- United States property.

MR. REYNOLDS: Under the property clause.

I should like to save the rest of my time for rebuttal, if I may.

MR. CHIEF JUSTICE BURGER: Very well.

Mr. Lewis.

ORAL ARGUMENT OF AUSTIN W. LEWIS, ESQ.,

ON BEHALF OF THE RESPONDENTS

MR. LEWIS: Mr. Chief Justice, and if the Court please:

I think that this case is somewhat more complicated than the average one because I don't believe the government and the respondents are together on what issue is before the Court here today.

We consider on the issue question that there are two and only two issues before the Court. One is, do these servitures involved here, these mineral reservations, do they fit the definition established by the Louisiana Supreme Court of a case of contractual prescription so as to make effective to them Act 315 of 1940? That is question one.

Then, if they do and the Act is so applied to them, then, Mr. Chief Justice, I think there is a reason to be before you today. As so applied, do they violate any provisions of the United States' Constitution?

I think those are the only two issues before the Court and I think, to clarify that, you should go back and get in more detail about the history of this Leiter Minerals litigation.

In 1957 the case was before the Court. The majority of the Court, with Justice Douglas dissenting, considered Act 315 of 1940 and said expressly that before we rule on the constitutionality of that act, send it back to the state court, get an opinion on why it was passed, what is its effect and is it constitutional under state law?

Q Could that conceivably have disposed of the matter without any problems of federal law coming in?

MR. LEWIS: Well, your Honor, I -- I can see no reason at all to have sent this case back to wander tortuously back through the courts till it got up to the

court of appeals and it was compromised. I am talking about Leiter Minerals. Had the Court at that time taken counsel's argument and said that federal law and not the Louisiana law should apply to this, it could have been disposed of at that hearing and there would have been nothing else to do.

Now, Justice Douglas, in rather picturesque language in his dissent in that case, suggested that the Court was beating the devil around the bush by not going ahead and deciding it and he said that, as I interpret his dissent, not only is it a question of whether state law or federal law is to be applied, but that the court was competent to apply either one of them without sending it back, having just taken the case away from state court to begin with.

Now, if I may borrow Justice Douglas' language, I would respectfully suggest that we have beat the devil around the bush some seven times since that time if, as the result of this hearing today, state law is going to be ignored and federal law is going to be applied.

There have been five legal decisions in the Leiter case and two in this, all based on the applicability of this statute.

Q Well, what about applying state law as it was in 1937 and 1939?

MR. LEWIS: Your Honor, I will get to that in a

moment but I will answer you briefly now.

The statute has been construed by the Louisiana Supreme Court on two occasions to be retrospective in effect and to be constitutional as so applied. So if we are going to take half of Louisiana law, I think we have to take the other half too. Then, testing it only against the provision of the United States Constitution, which I will deal with later.

But if the Louisiana law is the guiding law, and I feel so strongly it is, then part of that law is that this is a remedial right only, the same as a cause of action and that it can be lengthened or shortened as it has been done both by the Louisiana court. It has been shortened as well as lengthened and upheld both in doing that and upheld as a retrospective law.

Now, the suggestion of the Solicitor General that some federal law should be applied here, leaving out Leiter and leaving out cases we have cited in our brief, the United States versus Fox, United States versus Yazell, a more recent case, holding that where isolated land transactions are involved, the law of the state does apply to the exclusion of any federal law.

But I asked myself during the entire history of this case, if the Court pleases, if federal law is to be applied, what federal law? Here we have a complete civil

law concept we are dealing with here, the mineral reservation that is peculiar to Louisiana and not true of any of the other 49 states.

So where would we find that federal law? In its reply brief -- which I just received over the weekend -- the government attempts to answer that on page 11 and they suggest they would have no difficulty in fashioning a federal common law to apply in these circumstances and then, immediately citing Thompson on real property and citing the common law approach that an estate in reversion is always a vested interest.

Now, from my civil law vantage, if the Court pleases, I read that with a sense of almost horror. It is just completely foreign to our concept. Our courts have squarely held that this right or expectancy to obtain the reversion of these minerals is not an estate at all. It is not a property interest. It can't even be sold. And, therefore, the courts have held that you can validly cut across the limitation period or prescription period that is running against that servitude and that expectancy at the same time.

Now, while it was not mentioned by Mr. Reynolds in his argument, the brief suggests that the Migratory Bird Act has some legal significance in this case to assist in the application of federal law and to bring into play some of the Constitutional issues that were raised. I believe in the

last reply brief they have largely receded from that but we submit that this statute did just the opposite. While we concede, as some of the attorneys in the cases preceding me did, that Congress could have preempted this field, just a mere casual reading of that statute shows that it did not. It specifically preserved the jurisdiction rights of the state in the statute itself.

Q Mr. Lewis?

MR. LEWIS: Yes.

Q You said that this interest, whatever it may be, cannot be sold. Is that according to Louisiana statute?

MR. LWEIS: No, sir, it is according to Louisiana decisions.

Q Louisiana court decisions.

MR. LEWIS: Two supreme court decisions right on that point, sir.

Q In other words, regardless of what the contract says, you just can't sell it?

MR. LEWIS: That's right.

Q Because you can't separate it.

MR. LEWIS: It is just a mere hope or expectancy that attaches to the land and it follows the land.

Q What are you talking about now, the reversionary right?

MR. LEWIS: The reversionary right, yes, sir.

Q And in this case it is specifically the expectancy of the government that by nonuse the mineral right would be extinguished?

MR. LEWIS: That is correct.

Q That is what you are talking about?

MR. LEWIS: That is correct, sir.

Q That expectancy.

MR. LEWIS: No, sir, the right -- the hope of getting the minerals back, yes, sir. In other words, if five years --

Q The government's expectancy in this case?

MR. LEWIS: Yes, sir.

Q Is that what you are talking about?

MR. LEWIS: I sold the property due and reserved the minerals.

Q Right.

MR. LEWIS: Now --

Q Are you talking about my expectancy?

MR. LEWIS: Yes, sir, you could not sell your hope of getting these minerals back, Mr. Justice White.

Q All right, so you are talking about the --

MR. LEWIS: Yes, sir, the expectancy rather than the minerals.

Q That mainly is expectancy.

MR. LEWIS: Right. You can, of course, sell the

servitude freely.

Q After the lapse of ten years, then you say they would have vested the ten years or --

MR. LEWIS: It would have reverted to the land, yes, see --

Q Then could they be sold separately under Louisiana law?

MR. LEWIS: The mineral rights can, yes, sir. They could be reserved as they were here or sold.

Q Suppose the United States government wanted to keep it for birds but granted leases to oil exploration companies? They could do that.

MR. LEWIS: Yes, sir, if they got the minerals with the land, yes, sir.

Q Just the mineral rights.

MR. LEWIS: Yes, sir and it is freely done.

Q So that for some purposes, the Louisiana law does recognize that kind of a right in the state?

MR. LEWIS: Well, your Honor, the matter is complicated only to this extent. Our courts have squarely held that this property interest is not a property interest, this reversionary right. They have held it is a mere hope or expectancy and it is subject to retrospective dealing.

Q Again, we are talking about the possibility of the mineral rights being extinguished by prescription.

MR. LEWIS: Yes, sir.

Q That is what we are talking about?

MR. LEWIS: Yes, sir.

Now, I'll return to that in -- well, let me -- the Fifth Circuit Court in the United States versus Nebo Oil Company probably said this better than I can say it, and I quote, "We conclude that this so-called 'reversionary interest' is nothing more than a mere expectancy or hope based upon an anticipated continuance without change of the applicable laws of prescription. It cannot be regarded as a vested right protected by the Constitution."

MR. CHIEF JUSTICE BURGER: We will pick it up there in the morning, Mr. Lewis.

MR. LEWIS: Thank you.

(Whereupon, at 3:00 o'clock p.m., the Court was adjounred until the following day at 10:00 o'clock a.m.)

MR. CHIEF JUSTICE BURGER: We will resume arguments in No. 71-1459.

Mr. Lewis.

MR. LEWIS: Mr. Chief Justice and may it please the Court:

With the Court's indulgence and also it will require some repetition, I would like to devote my remaining time here today to a step-by-step analysis of the four legal concepts that I consider are applicable in this case, hoping that this will place this unique civil law problem in proper perspective for the Court.

Initially, though, I will say in the absence of additional questions from the Court, I will lay aside any further discussion of the point that state law should be applied here over any federal law. We believe that this is fully covered in the briefs and consdier that the Leiter Minerals opinion of this court as well as the other cases cited in the respondents brief removes this as a serious issue in the case and while, certainly, no concession has been made by the Solicitor General, I had the feeling from the government's reply brief and the argument made yesterday that this does not -- will not disturb the government too seriously.

Now, the four items to be considered, in my opinion, are these:

First, a brief discussion of the legal status of a mineral servitude in the State of Louisiana.

Second, a consideration of the three types of mineral servitudes that exist in that state.

Then, third, the legal status of the case of contractual prescription which unquestionably is involved in the present case.

And, fourth and finally, the precise nature of the so-called reversionary interests of the United States in the case of contractual prescription and whether any of the constitutional questions raised by the government are applicable to this case.

Now, on the first point I will not devote a great deal of time to the basic mineral servitude. Its nature appeared to have been understood by the Court yesterday, except I would like to stress that in Louisiana there can be no separate estate in minerals. No matter what form the deed or reservation is placed and what language is used, only a servitude of easement is created, which expires in ten years if not exercised by drilling. I might say that --

Q Is the law of Louisiana unique among the states?

MR. LEWSI: It is, yes, sir.

Q In holding that there cannot be any property right?

MR. LEWIS: I know of no other state that has that rule.

Q. In minerals as such?

MR. LEWIS: No, sir, as a rule, and it is based, of course, on our civil ore concepts.

Q None of the other states have borrowed the civil law in this instance?

MR. LEWIS: I am satisfied that we have made some rather serious research on that and could find nothing comparable to it.

Q Are there consequences of not being property--in that it cannot be alienated and can't be transfered?

MR. LEWIS: Yes, that is just one evidence that it is not your Honor. I think the consequences we are dealing with here is that it involves only a remedial right, the prescription or limitation of ten years and therefore can be validly modified by subsequent acts of legislature. That is, that is the precise form.

Q I suppose you will come later to the question whether that can override the local Louisiana law on this subject, can override an explicit contract made between the state and the United States Government?

MR. LEWIS: I certainly will, your Honor. I think that is a key issue in the case.

Now, I will say that this strict rule of no seperate

estate and no mineral estate separate from the fee has met the test of many ingenious offers to overcome it. Sales for 20 years, sales in perpetuity, probably the most interesting was a sale purporting to transfer the fee title and the minerals to the land below a claim 500 feet below the surface. In other words, they were attempting to get both the title and the minerals, but the court said that was servitude in disguise.

Q Mr. Lewis?

MR. LEWIS: Yes, sir.

Q Is it a characteristic of the civil law generally -- there isn't a civilian up here on the bench and so I ask these rather basic questions.

MR. LEWIS: Yes, sir, that is the -- the concept that fee cannot be divided into separate estates has caused the civil law and our civil code to evolved a system of charges and burdens upon the land. In other words, a servitude takes the place of a separate mineral estate but the courts firmly hold that such a servitude does not give the owner any title to the minerals in place. He simply possesses the right to go on the land and explore for and reduce the minerals to his possession.

Q And this is true in France and other places where the civil law prevails?

MR. LEWIS: Yes, sir, it is taken from the French law.

But, now, while this -- this servitude cannot be expanded or converted into a separate estate, it can be modified by contract in two ways. So as a result, we wind up in Louisiana with three types of servitude and these, I might add, are painstakingly described by the Louisiana Supreme Court in the Leiter advisory opinion.

Now, the first of these is a servitude for fixed term, for five, eight, ten years, with no provision whatever for extending that servitude. Now, clearly, this is a vested property right that the United States in this case would have, had this servitude been of that character -- category because an Act 315 could not have impaired that right.

The second is the ordinary statutory servitude previously discussed which expires in ten years unless exercised by the drilling of a well and the obtaining of production.

The third, and the one that is under consideration here, is the servitude subject to contractual prescription.

Now, there are two and only two requirements to establish such a servitude. One is that when it is originally established, it must be of uncertain or indefinite duration and, second, it must provide for its conditional extinguishment in some way.

Now, I hasten to add that the fact that the servitude in this case mentioned a period of ten years does

not in any way detract from it being a case of contractual servitude. Actually, the law of Louisiana does that, had the period not been mentioned.

We consider, if this Court pleases, that this category squarely fits the servitudes in the present case. They provide that if they were not exercised by drilling, they would expire in ten years. Of course, whether or not there would be drilling ten years later clearly was an uncertain and indefinite event and could not be foreseen at the time and, of course, as I said, that is simply a reexpression of Louisiana law because the servitude cannot last for more than ten years.

And, of course, it also clearly provided for its conditional extinguishment if a well was not drilled on or before the end of the ten-year period.

Now, the only departure of these servitudes from the statutory type is the effect of the use of the servitude by the drilling of a well; a well not completed as a producer under these servitudes would not extend the servitude for a full period of ten years, as would be the case in statutory interpretation. By the contract, it would only extend it for 90 days. If we got production, of course, it would last as long as production would last. But we submit, if the Court pleases, that this limitation has nothing whatever to do with the designation and the

classification of the initial servitude as being one of contractual prescription. That depends entirely on the terms relating to the ten-year period and the method by which it could be extended or extinguished at the end of that ten-year period.

I think, if I may refer the Court to pages 12 and 13 of the Respondents' brief, you will find quotations from the Supreme Court's advisory opinion in Leiter that say this better than I can say it.

For example, the last paragraph on page 12 says this, "Most mineral servitudes are not established for a fixed time. A servitude of indefinite duration is extinguished only when it is not exercised for a period of ten years," precisely our case. "Such a servitude created by mineral reservation in a sale to the government would, under Act 315 of 1940, be rendered imprescriptible and would never be lost by prescription, provided it was in existence at the time the 1940 Act went into effect."

Now, the second quote on page 13, "Nevertheless, contracting parties are at liberty to establish a contractual period of prescription for the conditional extinguishment of the servitude through nonuse, provided that the period is ten years of less." Again, precisely our case.

Now, if the Court please, I feel also greatly buttressed in our assertion that this is a case of contractual

servitude by the decisions of the two courts below. In the district court a trained Louisiana jurist said this of these servitudes, "Clearly these servitudes present cases of contractual prescription." In the Fifth Circuit, with a panel containing one of our most distinguished Louisiana jurists, the court quoted that language of approval and said "And, of course, as a result of that, Act 315 makes imprescriptible these servitudes." So I think when these Louisiana jurists reach this conclusion without any problem whatever, it is with some benefit to our contention that we do have cases of contractual prescription.

Now, we now turn to what the legal status of a case of contractual prescription is. The Louisiana Supreme Court said squarely that it is identical with that of the statutory prescription. I refer the Court in that connection to page 30 of our brief where this was said by the court, speaking of Act 315 of 1940.

"The Act draws no distinction between statutory and contractual prescription and as we view the matter from the history of the Act and the objects and purposes for which it was adopted. It is manifest that the legislature intended the Act to be applicable to prescription, whether established by statute or by contract where prescription had not already accrued at the time that the Act became effective."

Now, if the Court please, the repeated argument of

the government is over and above Act 315 because it has a contract. It seems to us to beg the question entirely.

The question is, what did that contract do?

And under the Supreme Court resolution of this thing, it clearly established a case of contractual prescription. The brief of the government acknowledges that the law of contractul prescription was in existence when these servitudes were purchased. The government is bound to know the law, is charged with knowing the law, and certainly it was aware of the rule that if a contractual prescription was established, then it could be modified, either lengthened or shortened the prescription applicable to it by subsequent legislative act.

Now, this brings us to the final and decisive issue in the case, in our view. With a clear case of contractual prescription bringing to bear all the legal principles applying to statutory prescription, what were the legal rights of the United States with respect to its so-called "reversionary interest" when Act 315 of 1940 was adopted.

Again, the state law is crystal clear on this point, holding that since only a law of prescription or limitation is involved, this law goes only to matters of remedy and does not form a part of the contract itself and that therefore the period of prescription may be shortened

or lengthened without impairing the obligations of the contract. This, of course, because no vested rights are involved.

In fact, we have a specific decision of our Louisiana Supreme Court cited on page 35 of our brief where Act 315 was applied retrospectively to a reservation of mineral rights in a sale to the United States and was held to be constitutional under the state constitution.

Now, the gist of all this, if your Honors please, is quite fundamental. It simply is based on the recognition, I believe mentioned by Mr. Justice Stewart yesterday, that the reversionary interest is not a vested right at all but is merely an inchoate hope or expectancy based on the laws of prescription or limitation which could be changed by legislative act.

And I repeat again my statement of yesterday, that there is no resemblance whatever between this so-called "reversionary interest" -- it really should be called " a hope or expectancy" -- and the common laws stating reversion. There is simply no legal resemblance at all.

Now, this Court has also repeatedly recognized that where statutes of limitation are involved, which exist when a contract is executed, do not form a part of that contract and therefore, they may be modified or even abrogated with respect to a preexisting contract,

constitutionally. These cases are cited on page 32 of our brief.

Now, for the first time in this case in this reply brief --

Q Did one of these cases, Mr. Lewis, involve contracts between two sovereigns or are they --?

MR. LEWIS: I don't think they are, your Honor. Let's see. No, they all seem to be be -- Ogden versus Saunders, Campbell versus Holt, Atchafalaya versus Williams -- no, sir, it would not.

Now, for the first time in this case, the government, in its reply brief, received by me only over the weekend in spite of diligent efforts on Mr. Reynolds' part, I hasten to add -- they apparently recognized the probability of the application of Louisiana law and they attempt to analyze their rights under the law of Louisiana, under these contracts.

That is done on pages 2, 3 and 4 of their brief.

Now, I must mention that I am somewhat troubled over the use on page 3 of the brief of the old Louisiana decision of Federal Land Bank versus Mulhern and a quotation from that case which indicates that some of the principles I have just announced here may not be correct. I think the Court should know that that concept was retracted by the Supreme Court in this very case on rehearing. It has never

been repeated since. It simply has no place in our law.

Q Let me interrupt you. On what page is that?

MR. LEWIS: That is page 2 of the reply brief of the government. Page 3, I'm sorry.

Q The reply brief of the government.

MR. LEWIS: Of the government, yes, sir.

Q Of Mulhern?

MR. LEWIS: Federal Land Bank versus Mulhern.

Q It was Mulhern on rehearing, Mr. Lewis, or this case on rehearing?

MR. LEWIS: No, I said, "The Mulhern case on rehearing."

Q Retracted that -

MR. LEWIS: Retracted -- not this particular language -- retracted and said we are going back to the common law concept -- I mean the civil law concept that I have just described.

Now, as I say, the government now is offering to the Court its analysis of the law of Louisiana and that is found in the first complete paragraph on page 4 of the reply brief and it says this: "Consequently, once the conveyances involved in the present case were consummated, the United States, by virtue of its undisputed ownership of the surface rights of the land in question, had a paramount interest in the minerals below the surface subject only to

the limited servitude stipulated in the reservations."

Now, if the Court please, I would like to lay side by side with that conclusion this quotation from the Supreme Court of Louisiana in the Leiter Minerals advisory opinion and I quote, "In this case, when property is conveyed and the mineral rights are reserved, the party reserving the minerals is vested with the real right, the right to drill upon the land and produce the minerals. In such a case, the purchaser of the land, subject to this servitude, does not acquire the mineral rights. As to the minerals, all the purchaser has acquired is the expectancy or hope that the mineral servitude will be extinguished by the ten-year prescription of nonuse and will not be extended or continued by use beyond this period. Where the minerals have been reserved, the purchaser of the land pays nothing for them and has no vested right in them."

Then, quoting from a prior decision of the Supreme Court in Tennant versus Russell, the court says this: "A right is vested when the right to enjoinment present or prospective has become the property of some particular person or persons as a present interest. The right must be absolute, complete and unconditional, independent of a contingency and a mere expectancy of future benefit or a contingent interest in property does not constitute a vested right."

So we say, if the Court please, if this concept of the Louisiana law is accepted by this Court and applied, we think that all fo the constitutional issues raised by the United States, contract, property, supremacy, are dissolved in thin air because we are not dealing with any vested interests in this so-called "reversionary interest" of the government.

MR. CHIEF JUSTICE BURGER: Mr. Lewis, it would be best to take into account your time. The Court will extend your time about five minutes in order to give you time to develop this contract matter.

MR. LEWIS: Thank you very much.

Now, the reservation, if your Honor please, is found on page 1-A of the Addendum of our brief. There are two of them but they are identical, as Mr. Reynolds noticed yesterday.

Now, it starts off by simply making the normal reservation that would be involved in a statutory prescription, reserving the right to drill for and to produce and to lay pipelines and do all the necessary incidental things, which rights will remain in force for a period of ten years from the date of vesting title in the United States and as long thereafter as oil, gas, sulfur or some other mineral is produced in the land or so long thereafter as grantor shall conduct drilling or reworking operations thereon with no

cessation of more than 60 days until production results. If the production results, of course it remains in effect indefinitely.

Now, this language, your Honor, the paragraph I just read, is identical with the law of statutory prescription with the single exception that I noted earlier, that the drilling operations must be conducted at sixty-day intervals to maintain the servitude, if they do not result in production. Otherwise, this is a straight tracking of the Louisiana law.

And it provided further, "If, in the said ten-year period of reservation, it is not extended as hereinabove provided, or the termination of any extended period, the operation has not been carried on, the right to mine and so forth, it shall terminate and complete fee titles will thereby become vested in the United States." Then, I think, there is an unimportant royalty provision.

If your Honor please, this simply is saying that if this conditional extinguishment, and it is clearly conditional because it depends on the will of the servitude, your Honor, as to whether you will drill or not drill, occurs then, of course, the mineral rights terminate. That, of course, would be true in the case of a statutory prescription. So we say that with the single exception, your Honor, of the limitation that is placed on the drilling, that there is no

difference between this contract reservation and one that would be made under the law of Louisiana.

Q Mr. Lewis?

MR. LEWIS: Yes.

Q Why did the legislature make Act 315 applicable only to the United States?

MR. LEWIS: Well, if I am not intruding on my time too much, that is a question I was dying to get into.

The history of this thing is that this Act was passed primarily for the benefit of the United States. I didn't cite it in my brief, but if the Court will refer to the original opinions of the district court in the United States versus Nebo Oil Company, you will find a complete history of why it was adopted.

The United States was the largest purchaser of land in Louisiana. It was having increasing trouble buying land because the people did not want to sell and have their mineral rights possibly terminated in ten years and as a result of that, in order to facilitate its purchases of land in Louisiana, this Act was adopted.

Now, it is a valid reason, too, because Louisiana is an oil-rich state and it is almost impossible to purchase lands at any price if the minerals are not reserved in tracts of any sizeable size.

Q Well, why couldn't that have been accomplished

just as well as if it had been made effective as to all future transactions?

MR. LEWIS: Well, I assume it could have, your Honor but there we are breaking into the question of what was the right -- the reversionary right -- gained by the United States? They did not get it. They made it apply retrospectively but, again, we are just at the point that that reversionary interest of the United States was such an interest and could be cut across by intervening statute.

Q The summary answer to Mr. Justice Rehnquist's question is contained, I think, in the excerpts from the opinion of the Louisiana Supreme Court in the latter case, which appear on pages 37 and 38 of your brief.

MR. LEWIS: Yes, that is right.

Q Isn't that correct?

MR. LEWIS: That is correct.

I might add too, in further answer to the question, Louisiana ran into the same problem and not too long after this statute was adopted, they adopted an identical statute making the same imprescriptibility rule with respect to all purchases made by any agency in the State of Louisiana.

Q So that Louisiana is in the same boat as the United States?

MR. LEWIS: That's right.

Q So we have private parties.

MR. LEWIS: Private parties, no. The only rule as to private parties is that prescription does not run against a miner and subscription is extended. That is a court-made rule.

Q Let's assume that a general statute in Louisiana, not naming just the United States, but just announcing a general rule of nonprescriptibility, applying to everybody. Would it have applied to the United States?

MR. LEWIS: Why, I assume so. The government was purchasing this property in a proprietary capacity.

Q Well, why didn't it apply to everybody?

MR. LEWIS: Because the statute limited it to the United States.

Q Well, I understand that, but what was the reason for limiting it to the United States?

MR. LEWIS: Well, I think, your Honor, and this Nebo discussion will bear this out, I believe, it was applied because the United States was having a serious problem in its land acquisitions in Louisiana and it was applied for its benefit, not as a case of hostile discrimination as the Solicitor General has suggested.

Q But it certainly has an impact on the United States.

MR. LEWIS: Well, certainly it does. But, now, whether that impact --

Q But to no other parties?

MR. LEWIS: Pardon?

Q But to no other parties?

MR. LEWIS: Well, that outweighs the -- the benefit the United States gained by its future acquisitions as --

Q Well, what is the law? Can you just pick out the United States to apply this rule to?

MR. LEWIS: We think so, your Honor.

Q The United States says you cannot. What is your view of that?

MR. LEWIS: Well, first of all, we don't think the United States is a person.

Second, and this is the basic concept that I am doing my utmost to get across, whether it was wisely done or equitably done, it did not deprive the United States in this case of contractual prescription of any vested contract right. Now, if it had no right to assert, we just don't think any of the constitutional issues come into play.

Q Well, if it isn't an interest in realty, as you suggest, then why doesn't the contract clause govern?

MR. LEWIS: I am not sure I --

Q You have argued strongly and very cogently that this contract pleaded no interest in realty.

MR. LEWIS: That is correct.

Q So then let's say it is just a contract, a

contract between two parties, in this case between --

MR. LEWIS: Your Honor, the contract, whether it is an interest in realty or just an interest, the contract clause in my humble opinion only applies if you have some vested right that is being impaired and our Louisiana courts say this is not a vested right.

Q Not a vested right in terms of realty.

MR. LEWIS: Not a vested right, period, your Honor.

Q Let me ask --

Q Well, of course, I suppose that is for the contract clause, ultimately, isn't it?

MR. LEWIS: I assume so, yes, sir.

Q Let's assume that at the time the United States acquired whatever interest it acquired, if any, the case law in Louisiana was contrary to what you say it is now? Then it was clearly so. And then, after the United States acquired an interest, the case law in Louisiana changed on prescriptibility. They overruled prior decisions.

MR. LEWIS: Oh, I would have --

Q Would you say then -- what?

MR. LEWIS: I would have difficulty with that one.

Q Yes, you would. YOu would. YOu really would.

MR. LEWIS: Yes, sir.

Q So your case hinges on whether at the time

the United States acquired whatever interest it acquired, the law of Louisiana clearly was that whoever acquired that interest would have known that its interest was subject to -- whatever it read in the contract, it was subject to change.

MR. LEWIS: Precisely, your Honor.

Q Under the -- by the legislature or by a court.

MR. LEWIS: Precisely. Well -- I question the second, but all I can say is that we are talking to the question here.

Q I take it you are saying that it is just like the United States in the deed that it took, if in the deed it took, it said, you will have these mineral interests in ten years unless the legislature passes a law that says you will get them in 30 years. That is the situation you are posing and the legislature, before the ten years is over, passes a law that says your interest is postponed for thirty years or, it is terminated.

MR. LEWIS: Well, that would be true, your Honor, if you would add a qualification to -- I mean a provision to your contract clause saying that it will last for ten years unless it is extended by drilling or production.

Q Yes.

MR. LEWIS: That is what makes the case of contractual prescription.

Now, I have conceded already in argument and I have conceded in briefs.

Q Yes, but doesn't it have to appear clearly from the Louisiana law that whatever interest the United States acquired when it took its deed, that that interest was subject to modification by a change in the law?

MR. LEWIS: Well, I would not think so, your Honor. The -- the promise involved here is not --

Q You do not claim that the Louisiana law at that time made it clear that --

MR. LEWIS: Oh, I thought you said that the contract would have to make it clear.

Q No.

MR. LEWIS: I misunderstood you.

Q No, no, no, no, the --

MR. LEWIS: But the law of Louisiana was clear that there was a legal classification of contractual prescription. The government admits that in its last brief. When they bought, that was the law of Louisiana.

Q And the law is, in that case --?

MR. LEWIS: That contractual prescription is the same as statutory prescription and statutory prescription as a rule has been clear throughout the years that this is a matter of remedy based on the -- the remedy lies in the ten-year prescription, the limitation act, and as I said, that

simply does not form a part of the contracts and this Court has said that in some five or six decisions of your own.

It is the same as a cause of action, precisely.

Q Now, under your theory of the case, at any future time, can Louisiana go in and begin drilling operations?

MR. LEWIS: Well, the respondents in this case can.

Q Respondents I meant to say.

MR. LEWIS: Yes, sir, certainly they could.

Q Then that might have some impairment of whether the purpose for which the United States Government acquired it under the Migratory Game --

MR. LEWIS: Your Honor, I respectfully assist the Court with that. This Migratory Game Act provides specifically for the Secretary of the Interior taking title subject to limitations, easements, everything else, provided he found that they did not impair the use of the refuge.

Now, he found that in this case because --

Q Well, it found it impaired it for a ten-year limitation.

MR. LEWIS: Yes, but he had no way of knowing that, your Honor. There may have been one hundred wells drilled on it, like Idamenoes and it could have been going on for another hundred years.

Q No, no.

MR. LEWIS: So he faced a situation where he

agreed to an easement of indefinite duration and, clearly, he must have found, because he actually inquired into it, that that would not impair the use of the refuge.

Q Now the land company can drill for the next 100 years if they want to, though.

MR. LEWIS: That's correct.

Q Is that correct?

MR. LEWIS: That is correct, yes, sir.

Well, if there are no further questions, I express appreciation for the additional time.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Lewis.

Mr. Reynolds, we will extend your time five or six minutes, if you think you need it.

MR. REYNOLDS: Thank you, Mr. Chief Justice.

REBUTTAL ARGUMENT OF WILLIAM BRADFORD REYNOLDS, ESQ.,
ON BEHALF OF THE PETITIONER

MR. REYNOLDS: Let me state that while we believe the determination here with respect to what the interest was that the United States acquired under these conveyances is a matter of federal law. I also want to point out that with respect to the --

Q Could you stop there? How do you support that statement, that the interest -- you took it to be --

MR. REYNOLDS: We took it to be to apply --

Q -- you took a deed to apply to a conveyance

to some property and you are saying that federal law would govern what interest you acquired under that deed?

MR. REYNOLDS: That --

Q That is what you just said.

MR. REYNOLDS: That is our position, your Honor.

Q And you said just the contrary, yesterday.

MR. REYNOLDS: I don't believe I said the contrary.

Q Well, how do you argue that? What is the authority for saying that when the United States acquires some real property in a state that the language in the -- in that deed is -- the meaning of it is determined by federal law?

MR. REYNOLDS: Well, your Honor, we -- in our brief, we have explained and the decisions of this court uphold the proposition that when the United States is a party to the contract, that the interest that the United States acquires under that contract as a party is a matter of federal law and not state law, where this is a contract that the United States is a party and entered into and it is a matter of federal law to determine what interest the United States did acquire. Now, we further --

Q Assistant General, it's like the United States was issuing the deed itself?

MR. REYNOLDS: Well, that --

Q If the United States issues a deed

to real property that it owns?

MR. REYNOLDS: That is right. That would be a matter of federal law as to the interest, but if the United States is party to a contract entered into with a private party, then the interest that the United States obtains under that contract is a matter for federal law as opposed to state law.

Q Well, what do you do with the Yazell case?

MR. REYNOLDS: Well, I think the Yazell case, I think, is considerably different. It is quite a unique situation and there the United States went down into Texas. It bargained and negotiated the contract on the basis of the Texas law. It was everybody's understanding that the existing law in Texas at that time would control and then after the fact, the United States turned around and said Texas law was not going to apply. Now, here what we are --

Q We are talking about the basic point that you are making is wholly contradicted by the Yazell case, that federal law controls. That is your point and this contract was written, reflecting the Louisiana law, was it not?

MR. REYNOLDS: Well, your Honor, let me see if I can state it this way. If -- when we went into Louisiana, if you looked to Louisiana to see what interests were acquired, I think that the Louisiana law supports the proposition that the United States, when it acquired the property here, acquired a paramount interest to the minerals

under the land, that the only one in Louisiana who can grant a servitude, which only goes to the use of the minerals, only goes to exploration for the minerals, the only one in Louisiana who can do that is a landowner. He has the paramount interest in those minerals. Those minerals are not a separate estate, they are part of the property and while --

Q As a matter of Louisiana law.

MR. REYNOLDS: As a matter of Louisiana law, and while the counsel for Lake Misere stated that that -- that the reversionary interest which is again the use that comes to the United States at the end, while that cannot be sold separately, that can be sold along with the sale of the land.

If I sell the land, if the United States sells the land, then the reversionary interest is sold. Now, we believe that those interests --

Q Well, the new landowner has the same expectancy, that is what it amounts to, isn't it?

MR. REYNOLDS: Well, he has the -- when it terminates, he has the use reverts to him, the exclusive use to explore for --

Q Yes, because he is now the landowner.

MR. REYNOLDS: He is the landowner.

Q And if he owns the land, he owns the minerals under the land.

MR. REYNOLDS: Now, those -- that is right, and

the United States here owned the land.

Now, the bundle of interests or the bundle of rights that the United States got, if you want to look to Louisiana law, are as I stated, are the property rights, the inseparable estate and the minerals and the reversionary interest to exclusive use to explore and whether that bundle of rights is property under article four is a federal law question and whether the government, whether that can be disposed of, is a matter for Congress.

Q That is a little different point than Handis made, I take it.

MR. REYNOLDS: Well, that, I still submit that it is a matter of federal law as to what interests were acquired.

Q I know you do.

MR. REYNOLDS: But -- but what I am saying --

Q Whatever your point, I just wondered what the authority was for it, like Mr. Justice Stewart.

What is the authority for some case -- some case for example -- what is the authority for saying that you look to federal law to determine what interest you acquired into that deed?

MR. REYNOLDS: I believe that the Allegheny County is authority for that, your Honor. That is one decision. I also think that Ivanhoe Irrigation District v. McCracken is

another authority for that.

Q You don't think it is contrary to Yazell, then?

MR. REYNOLDS: I think Yazell was a special situation. I think that the thing that bothered the Court about Yazell was that the government was trying to renig on an agreement with respect to existing law that it relied on. Here, the government, even if you want to look to Louisiana law, the existing Louisiana law, the government is trying to assert the interest that it acquired under the existing law and in Yazell we had a different situation where the government had gone in and negotiated the particular rights under the state law and then it tried to say, well, now, we are not going to look to state law.

Q Well, I gather you don't agree with this argument, even if we don't agree.

MR. REYNOLDS: Yes, your Honor.

Q Your second argument is that under the property clause in any event it is a whatever you got --

MR. REYNOLDS: Right, and what --

Q Whatever it may be --

MR. REYNOLDS: That's correct.

Q -- it is subject to the property clause.

MR. REYNOLDS: It is subject to the property clause. Whatever label the state puts on that --

Q And to that extent it is federal law, whatever may be the --

MR. REYNOLDS: That is correct, your Honor.

Q And then I gather you have a third argument that I gather you do under the contract clause of due process clause that in any event this statute limited an application of 315, at least -- the United States did what?

MR. REYNOLDS: The application of -- what, you mean the contract clause argument? That the application of 315 applied retroactively does abrogate the express terms --

Q That's right.

MR. REYNOLDS: -- of the contract.

Q Now, then, is there a fourth argument, that in any event the application by 315 only to lands acquired by the United States?

MR. REYNOLDS: We believe that there is a Fourteenth Amendment argument there. It is discriminatory.

Q You still have the argument that you don't agree with the Court of Appeals on the state law.

MR. REYNOLDS: And we also assert that we don't agree with the Court of Appeals on state law. That is correct, your Honor.

Q On your contract clause argument, Mr. Reynolds, doesn't the court's decision in Blaisdell in 290 U.S. upholding the Minnesota Mortgage Moratorium Act back in the

thirties where the -- Minnesota had altered the time for exercising the equity of redemption give you some trouble?

MR. REYNOLDS: I don't believe so, your Honor. I think that, in fact, that supports the proposition that we are making here. There the court emphasized that the state was acting in a particular special emergency with respect to housing shortages, that in meeting this emergency, the statute was a limited one, addressed to the particular emergency that the extension of the sales rights after the foreclosure and the especial exemption given under that Missouri statute was a very limited one only for a period of time and they went and looked at the purposes behind the atatute to see whether or not in that particular situation you could impair the obligation, it was permissible to impair the obligation in the contract.

Now, in this case, there are no reasons comparable to what we had in Blaisdell to warrant a retroactive application of Louisiana Act 315 to impair the obligation of contracts.

One of the principal reasons of the statute is, as we have been told this morning, was purely prospective, to make it easier for the United States to acquire land in Louisiana in the future and what we are talking about here is a retroactive application to cut off the interests that already had been acquired which certainly doesn't further

the prospective purpose.

So I don't think that we have any of the circumstances that were involved in Blaisdell which the court said, because of those special, unique circumstances it was permissible in tha t instance to impair the obligation of contracts.

Q What is your view of the statute insofar as it is currently applicable and prospectively applicable and applicable to your contemporaneous acquisitions of land in Louisiana under this Act?

MR. REYNOLDS: Your Honor, we are not challenging the prospective application of the statute and I think that certainly a good number of the arguments we are making here would be inapplicable with respect to prospective application, that they are addressed to the retroactive application extensions.

Q Except that your basic argument is, I suppose, that federal law is applicable and I gather from your argument and as a matter of fact I also gather from previous opinions of this Court that that is just a way of saying the law is anything the government wants it to be in a particular case.

MR. REYNOLDS: I think that on a prospective law I think that if federal law controls, that some of the arguments we make here could be asserted.

Q Against the contemporaneous validity of the statute. Right?

MR. REYNOLDS: That is right, but I think there that is much closer to Yazell and I believe that we would have a much more difficult time in that circumstance because the State of Louisiana has there declared that these contractual prescriptions are imprescriptible by statute and we would be going down in Louisiana and we would be -- we would know that the existing law of the state at that time had declared it and I think that that is a much more comparable situation to what you had in Yazell where the government will go in and would enter into the contract on the basis of that law and then try to get out from under it later. I don't think we have that here. So, I --

Q With regard to the Blaisdell case, the equity of redemption under the Mortgage Foreclosure Law was a matter of state statute giving one year for redemption as I recall it and the Mortgage Moratorium Act was, in effect, an extension of that one year.

MR. REYNOLDS: Of that one year.

Q So that it wasn't just purely a matter of contract, it was a matter of statute.

MR. REYNOLDS: Well, ti was statute but there was a question of whether you could -- whether the statute, the operation of the statute would --

Q Well, the contract had been made, of course.

MR. REYNOLDS: Yes, sir.

Q In the light of that statute, but I am simply suggesting it wasn't purely a matter of contract.

MR. REYNOLDS: Not purely.

Q It was a matter of contract plus statute.

MR. REYNOLDS: Plus statute.

Q What you have here, I presume, you have contract plus statute.

MR. REYNOLDS: Well, we have a subsequently enacted statute that I guess it would be comparable to what you have here.

Q It would certainly apply in both cases.

MR. REYNOLDS: But the statute there was directed, I think, at some very definite emergency situations that just aren't present here.

Q The difference is that in the Blaisdell case, the contract had been made with reference to a preexisting statute. Here, it was a subsequent statute only. In the Blaisdell case you had before and after.

MR. REYNOLDS: Right. Here, that is correct.

Q That is correct.

MR. REYNOLDS: If there are no further questions, I think I ahve already used more than my allotted time.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Reynolds.

Thank you, Mr. Lewis.

The case is submitted.

(Whereupon, at 10:55 o'clock a.m., the case was submitted.)