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CONSTITUTIONAL LAW-CONGRESSIONAL POWERS-VALIDITY OF THE 1953 SUBMERGED LANDS ACT

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CONSTITUTIONAL LAW—CONGRESSIONAL POWERS—VALIDITY OF THE 1953 SUBMERGED LANDS ACT—In 1947 and 1950 the Supreme Court held that the coastal states had no property interest in the submerged lands lying seaward from the low water mark, whether ownership of this land was held by the state prior[1] to admission into the Union or not,[2] and that the federal government had paramount rights in and power over this land, including the resources of the soil beneath it. In 1953 Congress passed, and the President signed, the Submerged Lands Act,[3] which vested in the coastal states title to and proprietary power over this land. Alabama and Rhode Island petitioned the Court for leave to file complaints against two of the coastal states as to actions taken and proposed to be taken under this act. *Held,* per curiam, two justices

[1] United States v. Texas, 339 U.S. 707, 70 S.Ct. 918 (1950).
[2] United States v. California, 332 U.S. 19, 67 S.Ct. 1658 (1947).
[3] 67 Stat. L. 29 (1953), 1 U.S.C. Cong. and Adm. News 29 (1953).

dissenting, motion denied.[4] Under article IV, section 3, clause 2 of the Constitution,[5] Congress has an unlimited power to dispose of any kind of property belonging to the United States.[6] *Alabama v. Texas*, 347 U.S. 272, 74 S.Ct. 481 (1954).

There were three major arguments against the validity of the Submerged Lands Act. The petitioning states first asserted that there was no subject matter on which article IV, section 3 might operate, since the federal government has never claimed ownership of these lands.[7] It is apparent, however, that this contention has no application to the lands lying seaward from the Texas shore, for the Court earlier found that ownership of these lands passed from Texas to the United States upon the admission of Texas to the Union.[8] Neither is it difficult to find that the United States has a property interest in the lands lying seaward from the other coastal states. The Court has held that the United States has the right to extract the minerals from beneath these submerged lands;[9] this is certainly property within the meaning of article IV, section 3.[10] In the *Texas* case[11] it was held that Texas must have relinquished its ownership of these lands to the United States in order to enter the Union on an equal footing with the other states. In his dissent in the present case, Justice Douglas asks how Texas may be made a gift of these lands and still remain on such an equal footing. Prior to 1950 the equal footing doctrine had had little application in the area of property rights, the rule being that all property owned by a territory passed to the new state upon admission.[12]

[4] Consistently with earlier holdings, e.g., Massachusetts v. Mellon, 262 U.S. 447, 43 S.Ct. 597 (1923), the Court could have refused to entertain these complaints on the ground of lack of sufficient interest in the petitioning states. The status of this "party in interest" doctrine as a requisite to the jurisdiction of the Court is in some doubt; if the Court feels that the case may be easily disposed of on other grounds, or if it appears desirable to rule on the point at issue, the rule may not be applied. Compare Illinois ex rel. McCollum v. Board of Education, 333 U.S. 203, 68 S.Ct. 461 (1948), with Doremus v. Board of Education, 342 U.S. 429, 72 S.Ct. 394 (1952). See also Barrows v. Jackson, 346 U.S. 249, 73 S.Ct. 1031 (1953).

[5] "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States. . . ." U.S. CONST., art. IV, §3, cl. 2.

[6] The language of the Court in the California case contained a clear hint that an act of Congress in this area would be valid and binding on the courts, although the hypothetical statute there referred to was of a different character. See United States v. California, note 2 supra, at 27.

[7] The Court struck from the decree proposed by the government in the California case the claim of the United States to proprietary rights in this land. See United States v. Texas, note 1 supra, at 724, note. One of the arguments employed by the opponents of the bill in Congress was that the United States had no property interest in these lands, and that thus the result would be a nullity. See H. Rep. No. 215, 83d Cong., 1st sess., p. 117 (1953).

[8] United States v. Texas, note 1 supra.

[9] United States v. California, note 2 supra.

[10] It is of course not necessary, in order for art. IV, §3 to be applicable, that the property involved be tangible. Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 56 S.Ct. 466 (1936) (electrical energy). See also 50 MICH. L. REV. 114 at 122 (1951).

[11] United States v. Texas, note 1 supra.

[12] Pollard v. Hagan, 3 How. (44 U.S.) 212 (1845).

In that year the Court held that since the other coastal states had been found not to own this type of property, Texas could not assert title consistently with the equal footing doctrine.[13] If it follows from the present case that Congress could have deeded these lands to Texas immediately after the admission of Texas to the Union, the emptiness and uselessness of that novel and doubtful[14] application of the equal footing doctrine is obvious. However, the question is largely hypothetical; since the Submerged Lands Act gives to all the coastal states the lands lying seaward from their shores, the states remain equal in this respect.

The third attack on the validity of the Submerged Lands Act was the most serious. Conceding that the United States does have some property interest in these lands, so as to bring article IV, section 3 into operation, nevertheless considerations such as the role played by the United States as a sovereign member of the family of nations, and the vast importance to United States security of control over these lands and the oil beneath them, demand that this property and these powers be kept in the United States.[15] This contention is buttressed by language in the *California*[16] and *Texas* cases, the latter having held that "although dominium and imperium are normally separable and separate, this is an instance where property interests are so subordinated to the rights of sovereignty as to follow sovereignty."[17] A sufficient answer to this argument would seem to be the fact that the Submerged Lands Act expressly reserves to the United States all its sovereign authority over these lands and the power to exercise that authority, the coastal states being given little more than bare title to the lands and the right to take the oil. If the exercise of this right proves an interference with the exercise of the power of the United States, the wording of the act makes it clear, if this is necessary,[18] that the interests of the United States will be supreme.[19] Thus Con-

[13] United States v. Texas, note 1 supra.

[14] An analysis and criticism of the application of the equal footing doctrine in the Texas case is given in 50 MICH. L. REV. 114 at 119 et seq. (1951). For a summary of the history and development of this doctrine, see CONSTITUTION OF THE UNITED STATES OF AMERICA, Corwin ed., S. Doc. No. 170, 82d Cong., 2d sess., p. 697 et seq. (1953).

[15] This was the major constitutional argument expressed by the minority on the Senate Interior Committee. S. Rep. No. 133, 83d Cong., 1st sess., part II, p. 11 (1953).

[16] "What this Government does, or even what the states do, anywhere in the ocean, is a subject upon which the nation may enter into and assume treaty or similar international obligations. The very oil about which the state and nation here contend might well become the subject of international dispute and settlement." United States v. California, note 2 supra, at 35.

[17] United States v. Texas, note 1 supra, at 719.

[18] In his dissent in the California case, Justice Frankfurter, arguing for state ownership of these lands, observed: "This is not a situation where an exercise of national power is actively and presently interfered with. In such a case, the inherent power of a federal court of equity may be invoked to prevent or remove the obstruction." United States v. California, note 2 supra, at 44.

[19] "The United States retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall

gress has defined clearly the distinction between ownership and sovereignty, a distinction which the Court has been unable or unwilling to make,[20] and has declared these two concepts to be entirely separate. The principle that the power of Congress under article IV, section 3 is without limitation appears to be solidly entrenched, and in view of the summary treatment given to the controversy in the present case, that principle is not likely to be attacked for some time.[21]

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be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective States and others by section 3 of this Act." 67 Stat. L. 29, §6 (1953), 1 U.S.C. Cong. and Adm. News 29 (1953).

[20] Texas had asserted only title to these lands and the right to extract the oil, conceding the sovereign power of the United States over these lands. As an example of the confusion between the concepts of imperium and dominium, consider the following language from the majority opinion in the Texas case: "The 'equal footing' clause prevents extension of the sovereignty of a State into a domain of political and sovereign power of the United States from which the other States have been excluded, just as it prevents a contraction of sovereignty which would produce inequality among the States." United States v. Texas, note 1 supra, at 719.

[21] See Justice Reed, concurring in the principal case at 277: "Such congressional determination as the legislation here in question is not subject to judicial review."