

CHAPTER I

Legal Background

The developments leading up to the controversy between the United States and several of the coastal states began in the 1920's with the State of California, under claim of ownership, issuing oil and gas leases on certain submerged lands underlying the waters of Santa Barbara Channel. With the development of oil production from offshore submerged lands along the California coast, applications were filed with the Federal Government for oil and gas rights under the Mineral Leasing Act of 1920 (41 Stat. 437). The attitude of the United States towards these applications vacillated from a policy of rejection, on the ground that the submerged lands were the property of the State of California, to a policy of acceptance, on the basis of federal ownership. Finally, upon recommendation of an interdepartmental committee, appropriate steps were taken by the Attorney General to have the conflicting federal-state claims adjudicated.¹

II. UNITED STATES *v.* CALIFORNIA

United States v. California, 332 U.S. 19 (1947), was the first of three Supreme Court cases—commonly known as the *Submerged Lands Cases*—involving rights in the submerged lands underlying the ocean and outside of the inland waters of the States of California, Louisiana, and Texas.

The *California* case was the pilot case to establish rights one way or the other. The litigation began in 1945 when the United States invoked the original jurisdiction of the Supreme Court by instituting a suit against the State of California. The Government complaint alleged that the United States "is the owner in fee simple of, or possessed of paramount rights in and powers over, the lands, minerals and other things of value underlying the Pacific Ocean, lying

1. CHAPMAN, YEARS OF PROGRESS (1945-1952) 192, U.S. DEPT. OF INTERIOR. For a chronology of the major background events in the submerged lands controversy from 1921 to 1953, see Memorandum of Feb. 14, 1953, from staff counsel, Senate Committee on Interior and Insular Affairs, to Senator Guy Cordon, in *Hearings before Committee on Interior and Insular Affairs on S. J. Res. 13 and other Bills*, 83d Cong., 1st sess. 1231 (1953).

seaward of the ordinary low-water mark on the coast of California and outside of the inland waters of the State, extending seaward three nautical miles"; that California had unlawfully issued oil and gas leases on lands underlying such ocean area; and that the state's lessees had entered upon such lands and taken oil and gas from them. (See fig. 1.)

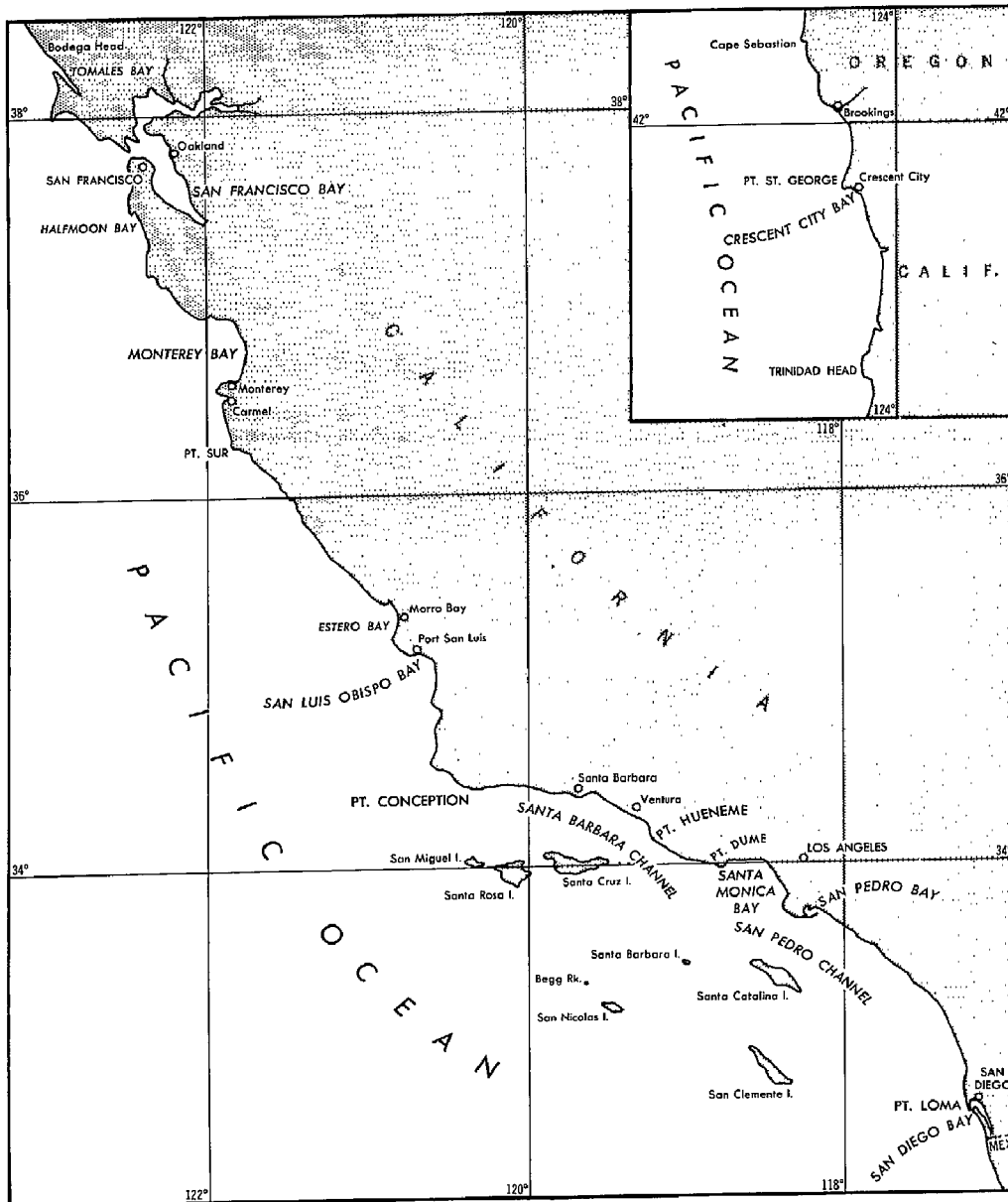


FIGURE 1.—Bays and channels along the California coast.

California filed an answer in which it was contended among other things that the 3-mile belt was within her boundaries, that title to submerged lands within the boundaries of the Thirteen Original States was acquired by those states from the Crown of England, and that since California was admitted on an equal footing with those states she also became vested with title to such lands.² It was also contended that no case or controversy in a legal sense was presented so as to fall within Article III, section 2, of the Constitution, but merely a difference of opinion between federal and state officials; and that it was impossible to identify the subject matter of the suit because the land claimed by the Government had not been sufficiently described and because of the numerous difficulties in fixing the point where inland waters end and the marginal sea begins. Therefore, it was contended, there was no basis for a definite decree, and that all that was wanted was an abstract declaration of rights concerning an unidentifiable 3-mile belt, which could only be used as a basis for subsequent actions in which specific relief could be granted as to particular localities.

The United States moved for judgment on the basis of the state's answer and the motion was set down for hearing. No documentary nor oral evidence was introduced.

III. THE GOVERNMENT'S COMPLAINT—TIDELANDS NOT INVOLVED

The Government's Complaint in the *California* case specifically excluded from the controversy lands under inland navigable waters and the tidelands. It stated: "This suit does not involve any bays, harbors, rivers or other inland waters of California, nor does it involve the so-called tidelands, namely those lands which are covered and uncovered by the daily flux and reflux of the tides."³

State sovereignty over such lands goes back to the early days of the Republic. State and Federal courts have repeatedly expounded the theory on which such sovereignty rests. For centuries the title to the beds and shores of navigable waters within the territory or jurisdiction of England was owned by the Crown as an incident of sovereignty, subject to the public right of fishing and navigation. This was true of the English possessions in America.

After the American Revolution the Thirteen Original Colonies became sovereign states and, as successors to the Crown, became vested with the title

2. This contention relies in large measure on the theory that the Original States, and subsequently admitted states, owned, as an incident of their sovereignty, the tidelands and lands under navigable waters within their respective boundaries.

3. Motion for Leave to File Complaint and Complaint 2, *United States v. California*, Sup. Ct., No. 12, Original, Oct. Term, 1945.

to all lands within their boundaries over which the tide ebbed and flowed and to the beds of inland navigable waters.

With the adoption of the Federal Constitution, the states ceded to the Federal Government certain powers, one of which was the right to regulate interstate commerce, and with it the concomitant right to control navigation. No title to the tidelands nor to the lands submerged under navigable inland waters was thereby conferred. As the United States Government is one of delegated, limited, and enumerated powers, any power not expressly granted or necessarily implied in the Constitution is beyond its scope. Title to the tidelands and to the soil under inland navigable waters therefore remained in the several states, to be disposed of by them as they deemed fit, or to be reserved for their own uses.

New states, such as California, entering the Union subsequent to the adoption of the Constitution, were admitted on an equal footing with the Original States, and therefore acquired the same rights in the tidelands and submerged lands under inland navigable waters.

Martin v. Waddell, 16 Pet. 367 (41 U.S., 1842),⁴ and *Pollard's Lessee v. Hagan*, 3 How. 212 (44 U.S., 1845), are the earliest cases in which the Supreme Court expounded these doctrines. The first involved title to an oyster bed in Raritan Bay and River of New Jersey (one of the Original States). The Court held that upon attainment of independence, New Jersey became the owner of the bed of the bay and river and had the authority to issue an exclusive license for the taking of oysters therefrom. The *Pollard* case involved a controversy over a tideland area bordering on the Mobile River in Alabama (a subsequently admitted state). The Court said that when Alabama ceased to be a territory and was admitted into the Union as a state, she was thereby placed "on an equal footing with the Original States," and as an incident of that status, the ownership of the tidelands within her boundaries was transferred from the United States to Alabama.

112. THE SUPREME COURT DECISION

On June 23, 1947, the Supreme Court, by a vote of 6 to 2, enunciated its now historic decision that "California is not the owner of the three-mile marginal belt along its coast, and that the Federal Government rather than the state has paramount rights in and power over that belt, an incident to which

4. Prior to 1882, the volumes of the United States Supreme Court reports were designated by the name of the official reporter and a number—for example, 1 Dallas, 16 Peters, 3 Howard, etc. Later, a serial number was added which carries through to the present time. In this publication, cases in the early series are cited by giving both the original reference and the serial reference, thus: 16 Pet. 367 (41 U.S., 1842).

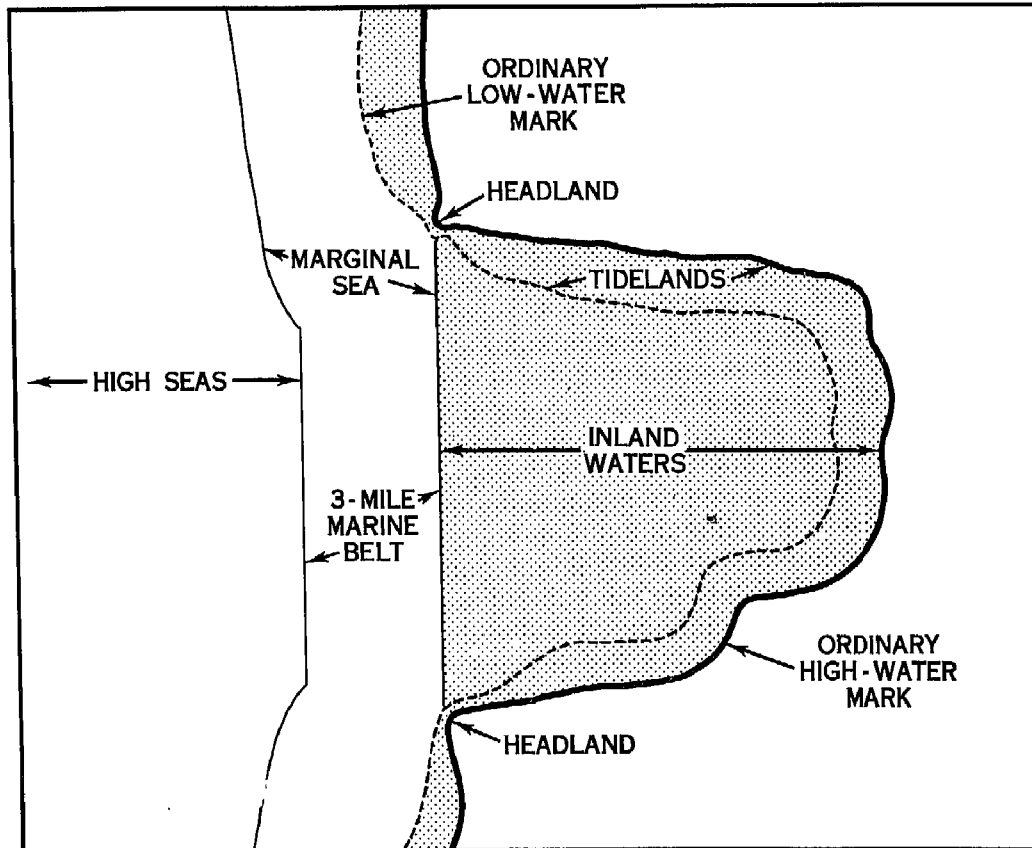


FIGURE 2.—The 3-mile marginal belt and its relation to inland waters and the high seas.

is full dominion over the resources of the soil under that water area, including oil.”⁵ (See fig. 2.)

The basis for the Court’s finding was that historically the concept of a maritime belt around a country, over which it could exercise exclusive jurisdiction, was only a nebulous suggestion at the time the Thirteen Colonies separated from the British Crown.⁶ “From all the wealth of material sup-

5. *United States v. California*, 332 U.S. 19, 38 (1947). This was spelled out in greater detail in the Court’s decree, entered Oct. 27, 1947, as embracing “the lands, minerals, and other things underlying the Pacific Ocean lying seaward of the ordinary low-water mark on the coast of California, and outside of the inland waters.” 332 U.S. at 804.

6. To support this, the Court cited *FULTON, THE SOVEREIGNTY OF THE SEA* 21 (1911), where it is stated that “mainly through the action and practice of the United States of America and Great Britain since the end of the eighteenth century, the distance of three miles from shore was more or less formally adopted by most maritime states.” Also cited by the Court was the note from Secretary of State Jefferson in 1793 to the British Minister (reprinted in H. Exec. Doc. 324, 42d Cong., 2d sess., 553-554 (1872)), in which he pointed to the nebulous character of a nation’s assertions of territorial rights in the marginal belt and put forward, the Court states, “the first official American claim for a three-mile zone which has since won general international acceptance.” *United States v. California*, *supra* note 5, at 32, 33.

plied,"⁷ the Court said, "we cannot say that the Thirteen Original Colonies separately acquired ownership to the three-mile belt or the soil under it, even if they did acquire elements of the sovereignty of the English Crown by their revolution against it."⁸ The Court also found that no previous case had ever been before it in which this particular state-federal conflict was put squarely in issue.⁹ It therefore felt free to decide whether to transplant the *Pollard* rule of ownership as an incident of state sovereignty, in relation to inland waters, out into the soil beneath the ocean, or whether to establish a new ocean rule. In its judgment, there were compelling reasons why a new rule should be established.

The Court found that "the three-mile rule is but a recognition of the necessity that a government next to the sea must be able to protect itself from dangers incident to its location." Protection and control of the three-mile belt, the Court said, "has been and is a function of national external sovereignty" and is "of vital consequence to the nation in its desire to engage in commerce and to live in peace with the world; it also becomes of crucial importance should it ever again become impossible to preserve that peace. And as peace and world commerce are the paramount responsibilities of the nation, rather than an individual state, so, if wars come, they must be fought by the nation. The state is not equipped in our constitutional system with the powers or the facilities for exercising the responsibilities which would be concomitant with the dominion which it seeks." 332 U.S. at 34, 35.

7. For a representative collection of official documents and scholarship on the subject, the Court cited CROCKER, *THE EXTENT OF THE MARGINAL SEA* (1919); JESSUP, *THE LAW OF TERRITORIAL WATERS AND MARITIME JURISDICTION* (1927); MASTERTON, *JURISDICTION IN MARGINAL SEAS* (1929); COMMENT, *Conflicting State and Federal Claims of Title in Submerged Lands of the Continental Shelf*, 56 *YALE LAW JOURNAL* 256 (1947).

8. *United States v. California*, *supra* note 5, at 31. The Court cited *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 316 (1936), in which it was said: "The broad statement that the Federal Government can exercise no powers except those specifically enumerated in the Constitution, and such implied powers as are necessary and proper to carry into effect the enumerated powers, is categorically true only in respect of our internal affairs. . . . As a result of the separation from Great Britain by the colonies acting as a unit, the powers of external sovereignty passed from the Crown not to the colonies severally, but to the colonies in their collective and corporate capacity as the United States of America."

9. Some 50 cases were cited by California in support of state ownership of submerged lands in the marginal belt, beginning with the cases of *Martin v. Waddell* and *Pollard's Lessee v. Hagan* (*see* 111). A partial list of these includes *Smith v. Maryland*, 18 How. 71 (59 U.S., 1855) (Chesapeake Bay); *Barney v. Keokuk*, 4 Otto 324 (94 U.S., 1877) (Mississippi River); *McCready v. Virginia*, 4 Otto 391 (94 U.S., 1877) (Ware River); *Manchester v. Massachusetts*, 139 U.S. 240 (1891) (Buzzard's Bay); *Hardin v. Jordan*, 140 U.S. 371 (1891) (inland lake); *Illinois Central Railroad v. Illinois*, 146 U.S. 387 (1892) (Lake Michigan); *Shively v. Bowlby*, 152 U.S. 1 (1894) (Columbia River); *United States v. Mission Rock Co.*, 189 U.S. 391 (1903) (San Francisco Bay); *Louisiana v. Mississippi*, 202 U.S. 1 (1906); *The Abby Dodge*, 223 U.S. 166 (1912) (Gulf of Mexico and Straits of Florida); *Port of Seattle v. Oregon & Washington Railroad Co.*, 255 U.S. 56 (1921) (Port of Seattle); *Oklahoma v. Texas*, 258 U.S. 574 (1922) (Red River); *Massachusetts v. New York*, 271 U.S. 65 (1926) (Lake Ontario); *Borax Consolidated, Ltd. v. Los Angeles*, 296 U.S. 10 (1935) (Inner San Pedro Harbor); *United States v. O'Donnell*, 303 U.S. 501 (1938) (San Francisco Bay). For a more complete list, *see* Radigan, *Jurisdiction Over Submerged Lands of the Open Sea* 6-7, 17-20 (1951), Legislative Reference Service, Library of Congress (prepared for Senate Committee on Interior and Insular Affairs, 82d Cong., 1st sess.).

If the rationale of the *Pollard* case is a basis for a conclusion that paramount rights run to the states in inland waters to the shoreward of the low-water mark, then, the Court said, "the same rationale leads to the conclusion that national interests, responsibilities, and therefore national rights are paramount in waters lying to the seaward [of the low-water mark] in the three-mile belt." *Id.* at 36. The Court was fully cognizant of the fact that in many of the cases which California cited in support of its position (*see note 9 supra*), language had been used that was strong enough to indicate that the Court then believed that states not only owned the tidelands and the soil under inland navigable waters, but also owned soils under all navigable waters within their territorial jurisdiction, whether inland or not. But the Court said: "All of these statements were, however, merely paraphrases or offshoots of the *Pollard* inland-water rule, and were used, not as an enunciation of a new ocean rule, but in explanation of the old inland-water principle." But, "none of these cases either involved or decided the state-federal conflict presented here. . . ." ¹⁰

On the question of the absence of a case or controversy (*see 11*), the Court said that "conflicts as these constitute a controversy in the classic legal sense, and are the very kind of differences which can only be settled by agreement, arbitration, force, or judicial action." 332 U.S. at 24-25.

As to the difficulties that might be encountered in fixing the exact boundary between inland waters and the marginal sea, the Court said: "We may assume that location of the exact coastal line will involve many complexities and difficulties. But that does not make this any the less a justiciable controversy. Certainly demarcation of the boundary is not an impossibility. Despite difficulties this Court has previously adjudicated controversies concerning submerged land boundaries." 332 U.S. at 26.¹¹

1121. *Dissenting Opinions*

Justices Reed and Frankfurter dissented from the conclusion reached by the majority;¹² the former on the ground that "While no square ruling of this Court has determined the ownership of those marginal lands, to me the tone

10. *United States v. California*, *supra* note 5, at 36. The Court examined but distinguished three such cases—*Manchester v. Massachusetts*, *Louisiana v. Mississippi*, and *The Abby Dodge* (*see note 9 supra*)—whose language, in its opinion, lent more weight to California's argument than any of the others. *Id.* at 37-38.

11. The Court cited *New Jersey v. Delaware*, 291 U.S. 361 (1934), 295 U.S. 694 (1935); *Borax Consolidated, Ltd. v. Los Angeles*, 296 U.S. 10, 21-27 (1935); and *Oklahoma v. Texas*, 256 U.S. 70, 602 (1921).

12. Justice Jackson took no part in the consideration or decision of the case, having been Attorney General of the United States when the litigation was first prepared.

of the decisions dealing with similar problems indicates that, without discussion, state ownership was assumed." 332 U.S. at 43.

Justice Frankfurter's dissent was based not on the ground that California had proven ownership, but rather that proprietary interest in the Government "has not been remotely established except by sliding from absence of ownership by California to ownership by the United States." In his view, assuming that ownership by California cannot be proven, a fair analysis of all the evidence bearing on ownership would indicate the area to be "unclaimed land, and the determination to claim it on the part of the United States is a political decision not for this Court." 332 U.S. at 45.

12. UNITED STATES *v.* LOUISIANA

The *California* case laid the groundwork for the suits against Louisiana and Texas. Both were decided on June 5, 1950, and upheld the rights of the United States to the lands and minerals underlying the open waters of the Gulf of Mexico adjacent to these states.¹³

The *Louisiana* case was in many respects strikingly parallel to the *California* case. The preadmission histories were much the same; Louisiana was acquired from France and California was acquired from Mexico. Both became member states of the Union subsequent to its formation, and in each statute of admission there was the customary clause "on an equal footing with the Original States in all respects whatever."¹⁴ Louisiana's defense was therefore substantially similar to California's.¹⁵ There was one significant difference, however, between the two cases. In the *California* case, the suit covered rights in the lands underlying the 3-mile marginal belt, whereas in the *Louisiana* case the Government prayed for a determination of rights in the submerged lands to a distance of 24 marine miles beyond that belt.¹⁶

The Court unanimously upheld the claim of the United States on the principle laid down in the *California* case (*see* 112).¹⁷ It perceived no reason

13. *United States v. Louisiana*, 339 U.S. 699 (1950); *United States v. Texas*, 339 U.S. 707 (1950). Decrees were entered on Dec. 11, 1950 (340 U.S. 899, 900).

14. Louisiana became a state under the Act of Apr. 8, 1812 (2 Stat. 701, 703).

15. In its answer, Louisiana admitted the paramount rights in and full dominion and power of the United States over the lands in controversy "to the extent of all governmental powers existing under the Constitution, laws and treaties of the United States," but it denied that its claim of title constituted an interference with such rights and power. See *United States v. Louisiana*, *supra* note 13, at 702, where the Court summarizes Louisiana's defense.

16. This was because Louisiana, by statute in 1938, had extended its seaward boundary to 27 marine miles from the shoreline. La. Rev. Stat., Sec. 49:1 (1950).

17. Justices Jackson and Clark took no part in the consideration or decision of the case, the latter having been Attorney General when the litigation was being prepared (*see* note 12 *supra*).

why Louisiana stood on a better footing than California insofar as the 3-mile belt was concerned. "The national interest in that belt," it said, "is as great off the shoreline of Louisiana as it is off the shoreline of California." It took note of the fact that Louisiana had extended its boundaries beyond the 3-mile belt, but intimated no opinion on the power of a state to unilaterally extend its external territorial limits. As far as the rights of the United States in the submerged lands beyond the marginal sea are concerned, it held the matter of state boundaries to have no relevancy. "If as we held in California's case," the Court said, "the three-mile belt is in the domain of the Nation rather than that of the separate States, it follows *a fortiori* that the ocean beyond that limit also is. The ocean seaward of the marginal belt is perhaps even more directly related to the national defense, the conduct of foreign affairs, and world commerce than is the marginal sea. Certainly it is not less so." 339 U.S. at 705.

13. UNITED STATES *v.* TEXAS

The *Texas* case presented somewhat different problems, arising primarily from Texas' preadmission status.¹⁸ The State of Texas was not created out of federal territory, as were the States of California and Louisiana, but was admitted into the Union through the process of annexation. Of the 37 states that have joined the Union subsequent to its formation, Texas alone was an independent nation immediately prior to statehood and did not first pass through a territorial status.¹⁹

As an independent republic, Texas must have enjoyed the same paramount rights in its offshore submerged lands that the Court in the *California* case said the United States possessed by virtue of its national external sovereignty. On the other hand, if the doctrine of federal paramount rights was valid with respect to California, then it must necessarily apply with equal force to every state whose shores are washed by the open sea, regardless of the status a state may have

18. In 1836, the Texans revolted from Mexico and established the independent Republic of Texas. 1 Laws, Rep. of Texas 6.

19. Texas was admitted to the Union under the joint resolution of annexation, 5 Stat. 797, and the joint resolution of Dec. 29, 1845 (referred to as the resolution of admission), 9 Stat. 108. In the resolution of annexation the conditions of annexation were set out, among which was the provision that Texas would be allowed to retain "all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities of said Republic of Texas." The Republic of Texas, by Act of Dec. 19, 1836, had fixed its seaward boundary in the Gulf of Mexico at a distance of 3 leagues (9 nautical or geographic miles) from land. 1 Laws, Rep. of Texas 133. The resolution of admission, which finalized Texas' entry as a state, provided, among other things, that Texas is admitted "on an equal footing with the Original States in all respects whatever." These two provisions constituted the crux of the *pro* and *con* aspects of the *Texas* case.

enjoyed prior to its admission. In finding for the United States, the Court resolved this seemingly irreconcilable situation by a new interpretation of the "equal-footing doctrine," which it held works also in the converse and prevents extension of the sovereignty of a state into the domain of national sovereignty from which other states have been excluded.²⁰ "When Texas came into the Union," the Court said, "she ceased to be an independent nation. She then became a sister state on an 'equal footing' with all the other states. That act concededly entailed a relinquishment of some of her sovereignty . . . as an incident to the transfer of that sovereignty any claim that Texas may have had to the marginal sea was relinquished to the United States." The United States then took her place as respects foreign commerce, the waging of war, the making of treaties, defense of the shores, and the like. 339 U.S. at 717-718.

On the question of separating the *dominium* (ownership or proprietary rights) from the *imperium* (governmental powers of regulation and control) in the submerged lands, as urged by Texas, so as to leave the former with the state, the Court said that although the two are normally separable and separate, in this case, "once low-water mark is passed the international domain is reached. Property rights must then be so subordinated to political rights as in substance to coalesce and unite in the national sovereign. . . . If the property, whatever it may be, lies seaward of low-water mark, its use, disposition, management, and control involve national interests and national responsibilities. . . . Unless any claim or title which the Republic of Texas had to the marginal sea is subordinated to this full paramount power of the United States on admission, there is or may be in practical effect a subtraction in favor of Texas from the national sovereignty of the United States."²¹ 339 U.S. at 719.

The Court did not pass upon the relevancy of the "vacant and unappropriated lands" provision in the resolution of annexation (*see* note 19 *supra*), but merely noted the conflicting contentions of the parties.²² 339 U.S. at 715.

20. The Court said that while the "equal footing" clause generally refers to political rights and to sovereignty and not to economic stature, yet it has long been held to have a direct effect on certain property rights and operated to establish in the newly created states rights comparable to those of the Original States—for example, ownership of the shores of navigable waters and the soils under them. *United States v. Texas*, *supra* note 13, at 716.

21. Justices Reed and Minton dissented from the majority opinion. In their view, Texas owned the marginal area by virtue of its original proprietorship which it had not lost by the terms of the resolution of annexation. Justice Frankfurter, without joining the majority of the Court, stated: "Time has not made the reasoning of *United States v. California* more persuasive but the issue there decided is no longer open for me." He recognized, however, "the historically very different situation of Texas" and that the lands in controversy were at one time "part of the domain of Texas." Justices Jackson and Clark took no part in the consideration or decision of this case (*see* note 17 *supra*).

22. In the Government's view, the purpose of the clause, the circumstances of its inclusion, and the meaning of the words in federal and Texas usage (citing *Mann v. Tacoma Land Co.*, 153 U.S. 273, 284

One other feature of the *Texas* case differentiates it from the *California* and *Louisiana* cases. The controversy involved not only lands under the marginal belt but also lands beyond to the outer edge of the continental shelf.²³ The Court noted the irrelevancy of Texas' unilateral extension of its seaward boundary to the issue before it, thus following its holding in the *Louisiana* case (*see* text following note 17 *supra*).

The *Texas* decision spelled out more specifically the nature of the rights which the Court was adjudicating in the three submerged lands cases. The emphasis on the inseparability of the *dominium* from the *imperium*, and the coalescence of the two in the national sovereign, seemed to be designed to set at rest the doubts that had arisen in the wake of the *California* decree as to federal "ownership" of the submerged lands.²⁴

The *Texas* decision also lent color to the suggestion that in laying down the doctrine of federal paramount rights in the marginal belt in the *California* case as an attribute of national external sovereignty, the Court intended to foreclose any other state from asserting a superior right.²⁵ Had the Court in the latter case based its decision solely on title, as the term is ordinarily understood, it would have been hard put to rationalize the *Texas* decision. But it said, "the crucial question on the merits is not merely who owns the bare legal title. . . . The United States asserts rights transcending those of a mere property owner."²⁶

(1894), and *Galveston v. Mann*, 143 S. W. 2d 1028 (1940)) gave them a more restricted meaning. The lands contemplated were those which were suitable for sale and disposal and from which money could be realized for the reduction of the Republic's debt. This, it said, could hardly apply to lands under the sea in 1845. Texas, in reply, contended that since the United States refused to assume the liabilities of the Republic, it was to have no claim to its assets except the defense properties expressly ceded. (Five years after Texas became a state, she actually did sell a portion of her territory to the United States for 10 million dollars (9 Stat. 446 (1850)). This land is now included in the States of Kansas, Colorado, New Mexico, Oklahoma, and Wyoming.)

23. This was because Texas in 1941 extended its seaward boundary to a line 24 marine miles beyond the 3-mile limit (Act of May 16, 1941, L. Texas, 47th Leg. 454), and in 1947 extended it to the edge of the continental shelf (Act of May 23, 1947, L. Texas, 50th Leg. 451).

24. The Court struck the words "of proprietorship" from the decree proposed by the United States, which read "possessed of paramount rights of proprietorship in, and full dominion and power over." *United States v. California*, *supra* note 5, at 804. This led to the belief that the Court was adjudicating something less than ownership. Whatever the Court's reasoning for modifying the proposed decree, the *Texas* decision made it clear that what the Court was thinking of in the *California* case was not a diminution of rights associated with ownership, but rather an enlargement of such rights (*see* Part 2, 1521). *United States v. Texas*, *supra* note 13, at 719.

25. BARTLEY, *THE TIDELANDS OIL CONTROVERSY* 203 (1953).

26. *United States v. California*, *supra* note 5, at 29. The Government had based its case on two theories: the chain of title theory, under which the territory of California was ceded by Mexico to the United States in consonance with the Treaty of Guadalupe Hidalgo, proclaimed July 4, 1848 (9 Stat. 922), followed by the express reservation in the act admitting California to statehood, that title to all public lands were to remain in the United States; and the theory of national external sovereignty based upon the position of the United States as a member of the family of nations. The Court adopted the latter theory.

14. SUMMARY OF CASES

The *Submerged Lands Cases* established the doctrine that the Thirteen Original Colonies did not acquire ownership of the lands under the 3-mile belt along the open coast, seaward of the ordinary low-water mark, even if they did acquire elements of the sovereignty of the English Crown by their revolution against it; that states subsequently admitted to the Union did not acquire and did not retain ownership (as in the case of Texas) of these lands; and that the Federal Government and not the states has paramount rights in and full dominion and power over that belt as a function of national external sovereignty, and that these rights, *vis-a-vis* the states, extend to the outer edge of the continental shelf.²⁷

27. Although the decisions adjudicated a controversy between the Federal Government and the states, they were in effect a tacit recognition of the validity of the United States' claim to jurisdiction over the continental shelf under the Presidential Proclamation of Sept. 28, 1945 (*see* Part 2, 2221). The Court cited the proclamation as an example of the broad dominion exercised by the political agencies of the Government over the 3-mile marginal belt and beyond. *United States v. California*, *supra* note 5, at 33-34.