IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

SUN OIL COMPANY, Plaintiff	)	
Vs.	(	CIVIL ACTION
HUMBLE OIL & REFINING COMPANY, ELENA S. KENEDY, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF JOHN G. KENEDY, JR., AND SARITA KENEDY EAST, Defendants	(	NO. 614

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FINDINGS OF FACT AND CONCLUSIONS OF LAW FILED PURSUANT TO RULE 52(a)

STATEMENT OF THE NATURE AND BACKGROUND OF THE CASE.

1.

Plaintiff, a New Jersey corporation, sued defendants,

counter 28739

citizens of Texas, to remove cloud from title to the oil and gas leasehold estate on certain lands alleged to be in the "Laguna Madre," off the coast of Texas, between Padre Island on the East and the Mainland on the West.

2.

Plaintiff alleged that pursuant to certain acts of the Texas Legislature the Commissioner of the General Land Office and the State School Land Board advertised for bids on the lands in controversy, among others. Accompanying the advertisement for bids was a "Map of a Part of the Laguna Madre," prepared by the General Land Office, showing on Sheet #3, among other lands, platted into numbered blocks, (varying in size from 300 to 800 acres) the particular lands in controversy to be in the Laguna Madre.

3.

Plaintiff alleged that it was the successful bidder and secured Oil and Gas leases from the State covering various numbered blocks, totaling from fifteen to sixteen thousand acres; and that, at the same time, Defendant, Humble, made bids upon some of the same blocks in which Sun was the successful bidder; and that Humble acquired similar Oil and Gas leases from the State covering other numbered blocks in the Laguna Madre, totaling approximately 35,000 acres of land, most of which, (the record shows) was generally West and South of the Sun leases in controversy and between such lands and the Texas mainland.

4.

Plaintiff further alleged that defendants had written the Land Commissioner and other State officials claiming title to the lands to be in the defendants, Kenedy and East, under original grants to vast areas on the mainland to the West of the area in

controversy; and claiming that Humble had title to the Oil and Gas leasehold estate under leases from defendants Kenedy and East, or their predecessors in title; that such letters of protest, written by defendants, were on file in the records of the General Land Office of Texas and constituted a cloud upon plaintiff's title. Plaintiff prayed for judgment removing such cloud and enjoining defendants generally from interfering with plaintiff in its possession of the leasehold estate.

5.

Defendants answered, claiming the blocks of land in controversy (upon which Sun was the successful bidder) has accreted to ranch lands owned by defendants, Kenedy and East, upon the mainland. Defendant Humble claims title to the Oil and Gas leasehold estates under leases from Kenedy and East.

The State of Texas was granted leave to intervene, over defendants' objection (88 Fed. Supp. 658). The State's petition in intervention alleged title to the premises as Sovereign, subject to the various Oil and Gas leases of plaintiff, under which the State reserved a 1/8th royalty and is to receive annual delay rentals of $15,745.00 per year. In other respects the State's petition is substantially the same as plaintiff's amended complaint. The State prayed for judgment removing the cloud from its title and an injunction restraining defendants from further clouding such title or from interfering with the State's officers, agents, or lessees, or "from interfering with the rights of the people of Texas, including the right of use by the public as regulated by law."

6.

Although the action was, in the opinion of the Court, of an equitable nature, defendants' request for a jury trial was granted the Court stating that he would treat any jury verdict as advisory.

7.

Evidence was presented for some three weeks before the Court and jury. More than 1200 Exhibits, including hundreds of pictures, maps and charts were introduced. At the conclusion of the evidence, the Court determined that there were no issues of ultimate fact to go to the jury. Splendid briefs have been submitted by counsel.

It is a temptation to write an opinion in the case but time will not permit, since the Court has been constantly engaged in the actual trial of cases and will be for the next three months. In any event, it would require the learning of a "Hutcheson" to do justice to the case. I shall not attempt this but will simply file Findings of Fact and Conclusions of Law without attempting to distinguish or discuss the many cases, textbooks and treatises.

8.

At the outset, a detailed and repeated reading of "the Padre Island case," State vs. Balli, 144 Tex. 195, 190 S.W. (2d) 71, (in which Chief Justice Alexander, and Justices Sharp and Simpson dissented), is indispensable to an approach and understanding of this case. Likewise, a study will have to be made of numerous maps and charts prepared by the United States Coast and Geodetic Survey, maps of Cameron, Willacy and Hidalgo Counties, on file in the State Land Office, and many other maps.

9.

Padre Island is approximately 110 miles long, situated off the coast of Texas, in Nueces, Kleberg, Kenedy, Willacy, and Cameron Counties. It is bounded by the Gulf of Mexico on the East, Laguna Madre on the West, Corpus Christi Pass on the North, and the Brazos-Santiago Pass on the South. It contains approximately

135,000 acres of land and runs almost the entire length of the Gulf Coast between Corpus Christi and Brownsville.

10.

In practically all of the maps referred to above, Padre Island is shown as a long strip of land, colored in the same color as the Mainland. In between, colored in blue, indicating water and connected with the sea at both ends, in an area called "Laguna Madre" in which the land in controversy, as well as the land upon which Humble obtained leases from the State, is located. Various smaller islands, between Padre Island and the Mainland in the particular area in controversy, are shown on practically all of these maps. These are, beginning on the North: Caballos, Grande, Cortado, Canales, Favias (or Farias), Lopena, Toro and Mesquite Rincon.

11.

On the Land Office maps most of these islands (except Toro) are called "Portreros," a Spanish word which defendants' counsel stated to the Court means "pasture," but which the record shows also means "island," at least as used in connection with these islands.

12.

All of the maps, including a highway map disseminated to the public by Humble, show that Padre Island is completely separated from the Mainland along the entire Texas coast; and in the particular area involved here, separated by the Laguna Madre which is shown as a body of water having outlets to the sea both on the North and on the South. In one map of the United States Coast and Geodetic Survey, published in 1913, the immediate area involved here is shown, for the first time, in small letters as "Mud Flats,"

but with a larger, over-all lettering of "Laguna Madre."

13.

The difficulty here, and the thing which probably gives impetus to defendants' claim, is the fact that the West boundary line of Padre Island, as fixed by Surveyor Boyles in State vs. Balli, supra, as "the line of mean high tide," (1.7 feet above mean low tide), does not coincide with the maps of Padre Island referred to above, but extends the West boundary line of Padre Island out into what is shown on all of the maps to be Laguna Madre and embraces a large portion of the "Flats" area, the same type of lands as the lands in controversy.

14.

In other words, the Supreme Court of Texas held in the Balli case that there was sufficient evidence before the Court of Civil Appeals to support a finding IN THAT CASE that there was no substantial difference in fact between the line of "high winter tide" and the line actually surveyed by Boyles, ("mean high tide," 1.7 feet above "mean low tide"). By the same token, and notwithstanding devastating evidence of a different character in this case, which was not in the Balli record, hereafter set out in these findings, defendants contend that the East line of the Mainland should be fixed at "mean high tide," according to various contour lines, out in the flats of Laguna Madre, at a line 1.7 feet above "mean low tide."

15.

This would result in an absolute closure of the East line of the mainland with the West line of Padre Island. Padre Island would no longer be an Island. It would result not only in loss by the State of fifteen to sixteen thousand acres leased to Sun, but over thirty-six thousand acres leased to Humble and approximately four thousand acres leased to others in the immediate area; and an undeterminable amount of land in other areas along the coast West of Padre Island.

Plaintiff's Exhibit No. 3 discloses Plaintiff's theory. It follows most of the official maps, showing the Laguna Madre area in blue up to or near the grass line, indicating the presence of water. Defendants' Exhibit No. 20 portrays Defendants' theory, showing in blue what it claimed to be up to the line of "mean high tide"; and the remainder of "Laguna Madre," up to the grass line, in white.

FINDINGS OF FACT

I.

AS TO "LAGUNA MADRE" - ITS CHARACTERISTICS, LOCATION, ETC., WITH REFERENCE TO THE WATERS OF THE SEA.

I find all of the facts set out in paragraphs numbered 9, 10, 11 and 12, above, with reference to Padre Island, its size, boundaries, etc., and the official maps, and what they show with reference to "Laguna Madre," separating Padre Island from the Mainland, etc.

From maps, photographs, serial mosaics and the personal observation of witnesses, what commonly has been regarded as Laguna Madre, until this controversy is clearly defined and readily visible. Around the grass line, both on theisland or portreros, and on the Mainland, there is a short, sandy beach. These constitute the shore, bank or margin of Laguna Madre (Spanish for "Mother Lagoon").

The area involved is above sea level, sloping, according to the contour lines, from about .01 feet above sea level to 3 or 4 feet on the edge of the islands. Defendants' Exhibit No. 20 shows these contour lines and shows, roughly, the upward slope on the North to be toward Padre Island on the East, Lopena, Farias, Canales, Cortoda and Grand on the West and Toro Island on the South and Southwest. These islands are 25 feet, and more, above sea level at their high points.

It shows areas below sea level on the west and slightly north of Toro, from which the land extends upward generally toward Toro on the east and southeast; toward the Mainland on the west and northwest; toward the Stepping Stone Islands on the north and northeast.

On the south end of Defendants' Exhibit 20, where Redfish Bay (a part of the Laguna Madre) extends toward Mesquite Rincon, the elevation is toward Padre Island on the east and northeast; and toward Mesquite Rincon on the north. It would take an expert to determine just what has accreted to Toro and to defendants' grants (if the plea of accretion should be sustained). In which event a Master should be appointed.

It is apparent, however, from defendants' Exhibit 20, that Boyles' west line of Padre Island does not take in all the land to "mean high tide," as part of the island. A glance at the lower part of defendants' Exhibit 20 shows a vast area of land west of Boyles' line above three feet in elevation, above two feet in elevation, and above one foot in elevation. It is equally clear, from defendants' Exhibit 20, that Boyles' west line of Padre Island takes in, on the north, land considerably below both mean high tide and below sea level, as part of Padre Island.[1]

The edge of the grass line, where it joins the small sandy beaches on all the islands or portreros and the mainland, is clear and abrupt. On these islands or portreros are grass, sunflowers, cactus, "sacajuista" and heavy brush, including large mesquite trees, especially on Toro Island. Deer and rattlesnakes have been seen on these islands or portreros.

Waters of the Laguna Madre stand throughout the year from Corpus Christi Bay on the North to a point approximately even with the south end of Lopena Island; and from the Brazos-Santiago Pass near Brownsville, on the South, to and including Redfish Bay, at a point less than one mile from Block 369, one of the tracts in controversy here. (Defendants' Exhibit 3). It is from these passes and bays that sea water rolls over the lands in controversy, throughout the year, driven by the prevailing winds.

In the area involved, there is no regular flow of the lunar tides ("twice in 24 hours"), as it is ordinarily known along the seacoasts. However, strong winds prevail from 9 to 10 months of the year. The prevailing wind is south southeast. At other times, there are strong winds from

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[1] As pointed out by the Court of Civil Appeals (173 S.W.2d 522), Boyles' line was, in part at least, a "guess"; and it was based upon a survey made in July, August and September, 1940, without benefit to him or to the Texas Appellate Courts of the devastating facts hereafter set out, with reference to seawater covering the area during seasons of prevailing winds.

the north. Within twenty-four hours after either of these strong winds start blowing, the waters of the sea rapidly roll in, over and upon the lands in controversy, from the north or from the south, inundating all or great portions of the entire area, including the "Callos" and inlets between the various islands and the grass or shore line of the mainland. Waves are created. The seawater rolls up over the small sandy beaches to the grass lines, leaving foam, driftwood and the like.

The water is extremely salty. It covers all or a part of the land in controversy (and the lands leased by Humble as well as portions of Padre Island and within Boyles' line) for substantial and appreciable portions of the year. At such time this water and the area in controversy contains literally millions of seafish, seagulls and pelicans are seen feeding on fish. During such times the water varies from three or four inches to many feet in depth. Seaplanes can and have landed upon it. Boats navigate it safely. Travel over portions of it is by means of swamp buggies, especially adapted to such area, when it is covered by shallow water.

Many times during the year the waters of the South and North basin are joined and the various islands or portreros are isolated by the water. When the water recedes, salt is deposited, fish die and all of the area, except that on the beaches, is mud, sand and "leathery algae," which cracks and stinks. During the dry season a large part of the area is dry. There is no grass or plant life of any kind in the entire area; or, indeed, between Padre Island and the mainland, except upon the islands or portreros. At times, however, cattle have walked across from the mainland to these islands or portreros. Also jeeps have driven across them without difficulty.

Some testimony in the case deals with the effect of storms and rainfall; but I find that this has no substantial effect upon the movement of seawater over the lands in controversy. Sea water rolls over the entire area throughout the year, irrespective of storms or rainfall.

Movement of this seawater over the entire area is formidable, the pictures resembling general coastal water with considerable waves.

Defense witnesses testified that there is no such thing as "wind tides," but rather that it is the effect of the wind upon the tides, which, to my mind, is a distinction without a difference. There is a regular movement of seawater repeated many times throughout the year over all or part of the lands in controversy, with regularity, according to the prevailing winds, although tides do not ebb and flow twice in twenty-four hours throughout the year within the usual meaning.

II

AS TO ALLEGED ACCRETIONS

Defendants' expert, Dr. Fisk, made studies of the area involved and testified that in his opinion the area is a former bay; that sand blew in from the east, the water brought in clay and left deposits of clay and algae, gradually raising the elevation of the bay above sealevel and the line of mean high tide; and that this is still going on. He frankly testified that the process was one requiring a long period of time and gave it as his opinion that the annual increase of the elevation in the area involved is one-third to one-fourth of an inch each year.

Defendants' Exhibit No. 73 depicts Dr. Fisk's theory as to the situation in 1804, showing in blue a through and connected channel of water from north to south, up to the present grass lines and beaches of Lopena, Farias and Cortado Islands on the north, swinging west to a line averaging three or four thousand feet from the present grass line and beach on the mainland, swinging back eastward north and east of Mesquite Rincon; and extending westward from the present grass line and beach on the west side of Padre Island, about five miles at one point.

According to Fisk's theory, at this point the waters of Laguna Madre actually were confined to a narrow neck of about 1500 feet between Padre Island and the above sea level mainland, at one point. (These

figures are my own approximations, from the scales given on Defendants' Exhibit 73). Even this theoretical map (Defendants' Exhibit 73), however, clearly shows the existence of El Toro Island in the very middle of the waters at that time. An appreciable portion of any accretion, if any there be, would therefore accrue to El Toro Island, even under defendants' theory.

For reasons hereafter stated, in connection with a discussion of the Spanish and Mexican Grants under which defendants claim, I am of the opinion, and so find that there has not been any substantial change or building up of the area since the original surveys, as advanced in the theories of Dr. Fisk.[2]

One of the things that impels me to this conclusion is a report, accompanied by a sketch made by Lieutenant Meade (later General Meade) in February 1846, while serving under General Zachary Taylor, preliminary to the invasion of Mexico. (Plaintiff's Exhibit No. 88). It is an historical fact that General Taylor's army landed at Flour Bluff, near Corpus Christi, north of the area involved. Lieutenant Meade explored the possibility of transporting various army equipment across Laguna Madre to Padre Island and continuing down the Island to near Brownsville. Circumstantially, he seems to have arrived at a point opposite to or near the southeast end of Lopena Island and reported the finding of flats and water at about the same depth as it is on the ground today. He stated that information was received that "this flat extended some 14 miles down, with only 14 inches of water, and beyond there was a good channel for 14 miles to the Colorado and from thence down to the Brazos Santiago." This 14 miles from the same approximate point east of Lopena would go over to the very flats area as it is today and, roughly, to Redfish Bay on the South. Since this was in February of 1846, at a time of the year when the evidence shows that the waters of the sea now roll in, over and upon the area involved, the depths of the water and the observations of Lieutenant Meade are significant to my mind.

The line of demarcation between the Laguna and the Mainland is still patent for all to see. The area is controversy, as well as the

[2] Before the jury was discharged, the Court suggested that there was possibly a jury issue on this question; but no request was made for its submission.

entire bed of the Laguna is not fast land. Nothing grows or can be grown upon it.

III

AS TO GRANTS UNDER WHICH DEFENDANTS CLAIM

Defendants Kenedy and East are the owners of ranch lands on the Mainland immediately west of the area involved. They claim under three grants (hereafter called "Big Barreta," "Mirasoles" and "Little Barreta." (All three grants contain excess acreage, even when limited to the surveys or lines contended for by Plaintiff-Intervenor).

They will be discussed in chronological order, as follows:

FIRST: BIG BARRETA: A presumed grant from Spain in 1803 to "La Barreta," Jose Francisco Balli, Grantee, (Grant shown on the South or lower part of Plaintiff's Exhibit 3, Defendants 20).

About 1904, the State of Texas sued defendants' predecessors in title for title and possession of "Big Barreta." The defendants claimed under a grant to Don Jose Francisco Balli by the Spanish Crown; they also pleaded in reconvention that the grant should be confirmed. The Texas Court of Civil Appeals held that there was a presumption of the issuance of the grant, by Spain, (State vs. Spohn, et al.), 83 S.W. 1135. The judgment of the trial court called for:

> "All that certain grant, tract, parcel or piece of land . . . fronting on the west side of the waters of the 'Laguna Madre' . . . being commonly and generally and especially known as . . . 'Barreta' tract or grant . . . said grant . . . being bounded on the East by and fronting upon the 'Laguna Madre' . . ."
>
> "The said 'Barreta' Grant . . . as herein intended to be described and hereby adjudged to the said defendants being more particularly bounded and described as follows, to-wit:
>
> "Beginning on the west margin of the said 'Laguna Madre' . . . (here follows calls for course and distance west for the southwest corner; north for the northwest corner) . . . .
>
> "Thence East to the said west margin or shore of said 'Laguna Madre:'
>
> "Thence in a southerly direction with the meanders of the said west margin, or shore, of said 'Laguna Madre' to the place of BEGINNING . . ." (underscoring supplied.)

It is to be noted that the general term first used above called for the grant to front on the west side of the "waters" of the 'Laguna Madre;' but the more particular description calls for the "margin" or "shore" of 'Laguna Madre.' [3]

State vs. Spohn, supra, confirming the presumed grant, was decided by the Texas Court of Civil Appeals on October 26, 1904. Defendants claim under this judgment, confirming the grant.

Judge James B. Wells, attorney for defendants' predecessors in title, attempted to obtain a patent based on the field notes description used in the judgment. The Land Commission refused to issue a patent on this basis, insisting that a survey be made. Judge Wells and the Kenedys (under whom defendants claim) took no further action. However, Major Armstrong, another claimant to a portion of the "Big Barreta," under the Spohn judgment, employed F. M. Maddox to make a survey and prepare field notes, including meander lines. Based upon the Maddox Survey, on January 18, 1907, the State issued a patent to Jose Francisco Balli, at the behest of Major Armstrong. This patent, covering the entire grant, was filed in the General Land Office by Armstrong. It contains Maddox's field notes.

Maddox's field notes on the "Big Barreta" extend out in a loop so as to roughly incorporate the group of islands known as "Mesquite Rincon," appearing East of the La Barreta Grant on the mainland (shown in the lower portion of Plaintiff's Exhibit No. 3 and Defendants' Exhibit No. 20). Maddox's footsteps can generally be found on the ground today, roughly around the shore, bank or margin of "Laguna Madre." They cannot, by any stretch of the imagination, be said to reach out into the areas involved in this suit.

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[3] It is interesting to note that in partition and other deeds, between defendants' predecessors in title, in 1889, 1894 and 1900, (before the Spohn judgment) covering, among other lands, portions of the "Big Barreta," the descriptions used never refer to the "waters" of Laguna Madre, but employ again and again such expressions as "on the margin of the Laguna Madre," "to the margin of the Laguna Madre," "with the meanders of the margin of the said Laguna Madre," "fronting on Laguna Madre," shore of the Laguna Madre." The only instance I have found where the "waters" of Laguna Madre is used is in the general description in the judgment, State vs. Spohn, et al., supra, followed by the more particular description calling for the "margin" or "shore" of Laguna Madre.

Defendants, claiming under the judgment, contend that they have never accepted the patent to Big Barreta (based upon Maddox's field notes); that it was applied for, received and filed by Major Armstrong. However, in a partition deed between the defendant, Mrs. East, and John G. Kenedy, Jr., (predecessor in title of the defendant, Mrs. Kenedy, in this suit) defendant, Mrs. East, acquired 58,000 acres in the East end of the Big Barreta. In 1934 and 1936, she executed and delivered to defendant, Humble, an Oil and Gas lease on the 58,000 acres in which the description of the leased premises expressly incorporated the patent issued by the State.

Also, as shown by the Maddox field notes, there is an excess in the La Barreta Grant, without extending its lines beyond the calls. Defendant, Mrs. East, being the owner of 58,568.4 acres out of the Big Barreta, under the partition deeds, has rendered and paid taxes upon 58,939.5 acres for ten years preceding 1949, when this controversy arose. She did not offer to pay taxes upon the additional lands now claimed by defendants, until 1949, after this controversy arose.

In addition to this, on May 23, 1934, Mrs. Marie Stella Turcott Kenedy, wife of John G. Kenedy, Sr., and mother of defendant, Mrs. East and John G. Kenedy, Jr., made an affidavit, filed in the deed records of Kenedy County, with reference to La Barreta and El Rincon de les Mirasoles, among others, as to fences completed in 1882, stating, among other things, that the lagoons and bays, on the North and East, constituted natural barriers. She further deposed that for many years defendants' predecessors in title claimed the lands covered by the Grants "to the full extent of the metes and boundaries of the respective grants as originally granted and surveyed and that where said lands have been patented by the State of Texas, such claim has been asserted and claimed to the full extent of the metes and boundaries as patented."

At the conclusion of the evidence, defendants stated that one of three possible fact issues to go to the jury was, whether the defendants or their predecessors in title had "accepted" under the patent. I stated

at the time that the facts being undisputed, it was a question of law as to whether the defendants had accepted.

As shown hereafter, under Conclusions of Law, I have concluded that, as a matter of law, the defendants did accept the patent, or acquiesce in it, under the facts. In my opinion, a jury verdict to the contrary would have to be set aside. [4]

SECOND: THE "MIRASOLES:" A Mexican Grant from the State of Tamaulipas, in 1832, called El Rincon de Los Mirasoles (Ygnacio Villareal, Grantee), on the North (grant shown on north or upper part of Plaintiff's Exhibit 3, Defendants' Exhibit 20).

"Mirasoles" was surveyed in August 1832 by Dominge de la Fuente, who likewise surveyed the "Little Barreta" (hereafter discussed). The Mirasoles is the northernmost grant, the boundaries of which are involved in this suit, claimed by defendants. It was patented by the State April 23, 1879, after a judgment of confirmation by the State District Court of Nueces County, dated April 19, 1867, (Plaintiff's Exhibit No. 629). The judgment ordered a survey to be made in accordance with the original grant and returned to the General Land Office.

A survey was made in 1869 by Field and Blucher. They were corrected by the Surveyor of Cameron County in 1877 and by a surveyor named Cocke, in 1879. These corrections and changes were carried into the patent issued April 23, 1879. Plaintiff and the State

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[4] The facts relied upon by defendants to show they had not accepted are: (a) That after the Land Commissioner refused to issue a patent based on the judgment in State vs. Spohn, they took no further action: (the survey made for Mayor Armstrong may account for this); and (b) a claim made in the State District Court in Kenedy County, in a suit brought against them by one R. Y. Walker about 1937. In that case Walker claimed the right to survey for 8 possible vacancies; and sought an injunction against the Kenedys to keep them from interfering with such surveys. The Kenedys countered for an injunction to keep Walker off their lands. They were successful in the trial court. The case was affirmed by the Court of Civil Appeals, (120 S.W.2d 484), and by the Supreme Court (which, however, dissolved the injunction, Walker vs. Kenedy, et al., 133 Tex. 193, 127 S.W.2d 163). Alleged vacancies on the Mainland, as well as between the east lines of defendants' grants and Laguna Madre, were involved. On appeal, however, plaintiff abandoned all alleged vacancies, except No. 8, between Big and Little Barreta. The opinion of the Court of Civil Appeals indicates that defendants were claiming under the patents in that case and under the Maddox and Cocke surveys. The Supreme Court said that defendants' grants "lie west of Laguna Madre."

challenge the validity of the judgment, the field notes and patent; but a determination of this is not necessary to a decision of this case, since placing the eastermost point of these surveys and of the patent calls based thereon, at the point contended for by defendants, does not reach or affect the area in controversy in this case.

The patent field notes call for the S. E. corner of the Mirasoles to be at "a post and stone round at the original S. E. corner on the margin of the Laguna Madre, designated as "Lindero del Paso Marciseno." This corner is definitely located on the ground at the present time, as placed by the original surveys. It is on the East "margin" of Favias Island (Plaintiff's Exhibit 3) or "Portrero Farias" (Defendants' Exhibit 20). The waters of the Laguna Madre roll in, upon and over the S. E. corner on the eastern edge or margin of "Portrero Farias" or Favias Island, as heretofore set out in connection with the entire area in controversy.

From this corner on the margin of the Laguna Madre the field notes call for (north) "with the margin of the Laguna Madre and its meanders . . . to the mouth of bayou separating the Portrero Farias from the Portrero de la Canala . . . across said bayou to the northern point of the Portrero de la Canala . . . Thence alone the edge of lagoon over mud flats subject to inundation . . . Thence across inundated mud flat . . . and across mud flat . . . to the shore of the Laguna Madre at the south point of the Portrero de los Caballos . . . Thence with the meanders of the shore . . . to the original southeast corner of the said survey in the name of Rafael Ramirez a post and stone mound on the south margin of the Atascosa Bayou . . ." (underscoring supplied)

There are calls for course and distance following the above meanders which roughly fit the grass or shore line on the eastern edge of Favias and Canales Islands; then across a mud flat edge to Caballos Island. Those have been roughly and approximately followed on the ground by surveyors for both plaintiff and defendants. They do not conflict with or include the area involved in this suit. Nor do they reach the waters of the Laguna Madre.

Conceding, but not deciding, the validity of the patent and field notes, as well as the Field and Cocke Surveys, I find that the easternmost extent of the Mirasoles could only be the Eastern margin of Favias, Canales and Grande Islands which was and is, roughly, the grass and shore or beach line, clearly ascertainable on the ground today; and that it does not include any of the lands in controversy.

The findings set out in connection with the Big Barreta above, as to claiming under the patent issued by the State, apply with equal force to the Mirasoles. Also, in an Oil and Gas lease, executed by defendants' predecessor in title (John G. Kenedy, Jr.) to La Gloria Corporation, covering the Penescal Grant (immediately north of the Mirasoles), it is provided that if any conflict exists as to the location of the line between the two grants, it shall be determined and fixed on the ground in accordance with the patent to the Mirasoles.

In addition, there is approximately 23,837.2 acres of land within the Mirasoles, as surveyed by Field. Defendants paid taxes on 23,819 acres for the ten years immediately prior to 1949, when this controversy arose. They did not offer to pay taxes on the additional acreage they now claim as accreted to the Mirasoles until this controversy arose.

THIRD: "LITTLE BARRETA:" A Mexican Grant from the State of Tamaulipas, in 1834, to "Las Motas de la Barreta," Leonardo Salinas, Grantee, (grant shown between the "Mirasoles" and "Big Barreta") (Plaintiff's Exhibit 3, Defendants' Exhibit 20).

Little Barreta was never patented by the State. A translation of the Expediente (original Mexican title papers) shows that Salinas, the grantee, made a "denouncement" for this land, setting up that it was vacant national land on the "coast . . . bounded on the east by the Laguna Madre." His witnesses, Villareal and Farias, also described it as "bounded on the east by the Laguna Madre." The report of the survey shows no calls for the "waters" of Laguna Madre. Unquestionably no effort was made by de la Fuente, the original Mexican surveyor, to run the coast line by metes and bounds. It is clear, however, that de la Fuente was attempting to give Salinas five (5) leagues of "fast" land, good for grazing, the equivalent of that surveyed previously for Hinojosa in "El Palmito," immediately north of most of the "Little Barreta."

As a beginning point for Little Barreta, de la Fuente took the southeast corner of El Palmito and went south. At 33 "cordeles" (cords) he reached the "edge of the Laguna Madre." He continued 117 additional cordeles (a total of 150 cordeles from his beginning point); "Only 33 cord lengths of land having resulted, the rest covered with shoals from the overflow of said Laguna Madre," according to one translation; "there having resulted only 33 c ord lengths upon fast land, and the balance on callos (inlets) of the marshes of said Laguna, corner having remained which the surveyor computed as absolutely worthless," according to another translation.

It is therefore clear from this, and other statements in the Expediente, that the surveyor was attempting to determine the depth of the broken area covered by callos, ("because the Laguna Madre juts into the land,") for the purpose of compensating Salinas for what is called, "useless land," in the Expediente. It is clearly evident that de la Fuente then attempted to approximately compute grazing or fast land outside of the Laguna Madre in a rough triangle in the northeast corner of Little Barreta, south of the Mirasoles so as to compensate Salinas for the "useless land."

There is a dispute between Plaintiff-Intervenor and Defendants as to whether in doing this de la Fuente crossed the flats near the southeast corner of the Mirasoles to the eastern edge of Portrero Farias, or Favias Island, thence south down the east edge of Farias and Lopena, thence back around what is known as the "Stepping Stone" Islands west of Lopena; or intended to stop west of Farias or at about the western edge of Farias and thence back with the meandering edges of the Laguna to the point 33 cordeles south of Hinojosa's southeast corner. These differences are pointed out by comparison of the triangular portion of Little Barreta, shown in pink on Plaintiff's Exhibit 3, and the larger triangle shown in green in the northeast corner of Little Barreta on Defendants' Exhibit 20. Both contentions have support in the evidence; although defendants' theory would extend the line east far beyond the calls for distance and result in a much greater excess than plaintiff's theory.

The fact issue (as to whether de la Fuente placed the N.E. corner on the East side of Farias, or Favias) was suggested as a jury question by defendants; but plaintiff and intervenor having stipulated that for the purpose of this case only, the Court might assume that de la Fuente's survey was as contended for by defendants, decision of the fact issue is not necessary to a determination of this case.

In this connection, however, it appears from the archives of the General Land Office, that, in response to inquiry in 1824 (before the Little Barreta survey) the Supreme Government of Mexico

issued instructions as to surveys of littoral grants of land, to the effect that they should be commenced "from the edge of the firm land, leaving to the sea the lakes that have communication with the same, as they shall be considered a part of the whole, not so the lakes or salt marshes, which are separated from the sea and surrounded on all parts by firm land," (underscoring supplied).

The "Little Barreta" Grant was confirmed by the Legislature for Five (5) Leagues (3rd Gammel's Laws 941). It was resurveyed in 1879 by Cocke, whose field notes were filed in the General Land Office. In his survey, which is not recognized as valid by plaintiff or intervenor (but which can be followed on the ground today), Cocke called to go along the shore of Laguna Madre; and "over Playa and Islets of grass." These islets and shores are still roughly in the same position on the ground, substantially as they were at the time of the Cocke survey. The maps of the General Land Office show "Little Barreta" as surveyed by Cocke, and include a portion of Favias, and all of Lopena and the "Stepping Stone" Islands as part of the grant.

Assuming, without deciding, that the triangular area surveyed by de la Fuente went, as contended by defendants, to the east edge of Portrero Farias, or Favias Island, thence south around the eastern edge of Lopena and the southern edge of the Stepping Stone Islands, I find that such edge, or margin, is easily found upon the ground and has been followed by the surveyors for all parties in this case. The lands involved in this suit are entirely outside of either de la Fuente's or Cocke's survey of the grant. Since Laguna Madre then had and now has communication with the sea, I conclude that de la Fuente did not, in view of surveying instructions and practices at the time, go beyond the present clearly defined eastern edge of Favias and Lopena.

Little Barreta, as surveyed by Cocke, contains in excess of five leagues of "fast" land, or grazing land. It contains according to Cocke's survey, approximately 32,235 acres. For ten years pre-

ceding this controversy, defendants paid taxes on 32,245 acres. They did not offer to pay taxes on the additional acreage, now claimed by them to be a part of "Little Barreta," until after this controversy arose.

IV

AS TO OIL AND GAS LEASES ON "LAGUNA MADRE."

On September 11, 1947, the Commissioner of the General Land Office and the State School Land Board (composed of the Governor, the Land Commissioner and the Attorney General) advertised for bids for Oil and Gas leases on the lands in controversy, (as State lands), as well as many others in the general area, listing them by specifically numbered tracts. A plat accompanied the advertisement for bids. Sheet No. 3 of this "Map of a part of Laguna Madre, in Kenedy and Willacy Counties, showing subdivision for mineral development by Bascom Giles, Commissioner of the General Land Office of Texas," (Plaintiff's Exhibit 624) covered the lands in controversy, as well as all other numbered blocks in the general area between the Kenedy Ranch on the mainland to the west, and Padre Island on the east. Sheet No. 3 also contained instructions for locating the tracts on the ground from a base line on Padre Island. From this base line plaintiff and defendants have located the tracts identically on the ground in Plaintiff's Exhibit No. 3 and Defendants' Exhibit 20.

Defendants protested the proposed leasing, in writing, claiming the area has accreted to their mainland grants. Bids were received and opened on November 4, 1947, but no awards of leases were made until March 3, 1948. Defendant, Humble, on the very day that it protested the leasing, submitted, through an agent, bids on more than 36,000 acres of land. It made bids on a number of the tracts of land in actual controversy here, upon which plaintiff was the successful bidder. After the bids were opened, and in view of defendants' protests, the Land Commissioner, as the Agent of the School Land Board, made a personal investigation and survey on the

ground and from the air. Upon occasions he was accompanied by representatives of defendants. He made a report of his investigation back to the School Land Board which fully considered same and awarded leases to the highest bidders, as hereafter set out.

Defendant Humble was the successful bidder on fifty-six tracts, for which it paid the State nearly one million dollars. These tracts lie largely in the area northwest, west, southwest and south of the tracts leased to Sun, in controversy here. Most of the tracts leased by Humble are in a solid block, commencing on Maddox's looped survey of the north line of "Mesquite Rincon," following such line around to Maddox's survey of the mainland of "Big Barreta," and following roughly Cocke's survey of "Little Barreta" north and then running east around to and south of the westernmost "Stepping Stone" Islands. At this point only two tracts (leased to one Coffield) intervene between Humble's tracts and Sun's. Humble's leases turn South, around the Coffield tracts, then East and South and East, making a complete ring around most of Sun's leases clear to the West line of Padre Island.

Five Humble tracts (313, 328, 371, 372, 381) lie along Boyles' West line of Padre Island, (which thus becomes a common boundary line with Humble's State leases), with four intervening Sun tracts between them.

Humble also leased eighteen tracts in a large block south of Maddox's looped line of Mesquite Rincon and up to his survey line of the margin or coast of the mainland.

In the north, Humble also leased Tract 276, immediately east of the north end of Favias Island; and made unsuccessful bids on a number of other tracts immediately bordering on Boyles' west line of Padre Island.

In all leases, including Humble's, the particular section was described as being in "Laguna Madre . . . . in Kenedy County, as shown by the official map of Laguna Madre now on file in the General Land Office." Thus Humble, by acceptance of the leases agreed that

the tracts leased by it are in the Laguna Madre, as shown by the official map and owned by the State.

By virtue of these same leases, intervening completely between "Big Barreta" and all of Sun's leases (except tracts 339, 340, 356 and 369), Humble has recognized that State owned land breaks any connection with "Big Barreta" (except as to said tracts 339, 341, 356 and 369). Likewise, in view of Humble's acceptance of leases from the State on tracts offsetting "Little Barreta" up to and including south of the westernmost of the "Stepping Stone" Islands, Humble has acknowledged that State owned land breaks any connection with Little Barreta, except from Lopena and a portion of the "Stepping Stone" Islands.

This is also true as to the area in dispute here lying east and northeast of Tract 276, off the north end of Favias Island. The only Sun tracts in the north of the area in dispute, as to which there is no break, are 280 and 281, opposite the south end of Favias and the Sun tracts south and southeast of Lopena Island where any claimed accretion would come in conflict with some unquestioned accretion, if not all, to Toro Island.

Humble says it bought these leases to buy its peace. There is no evidence of this, other than the presumption that might be inferred from the fact that on the same day it protested the leasing of these lands, it submitted bids on them, as well as upon other tracts where it was unsuccessful.

POINTS OF LAW ADVANCED BY THE PARTIES.

All parties agree that the Civil Law of Spain and Tamaulipas, in effect at the time of the grants in question, govern this case. They are in disagreement, however, in certain details, as to what that law is and its application under the facts in this case.

Plaintiff contends that the Civil Law of Spain, derived from the Roman Law, governs the definition, effect and extent of the seashore and accretion; that under the Civil Law "the shore of the

sea means that all that is covered by the waters of the sea, when it rises highest at any period of the year, either by its own movement or by force of the wind;" and that, since the land in controversy is covered by the waters of the sea from time to time throughout the year, as found herein, the land in controversy belongs to the State of Texas.

The State makes the same contention, saying that the area in controversy is part of the submerged bed of the Laguna Madre, since it is covered by the waters of the sea so long and so frequently during the whole year that no vegetation will grow on it, and since the facts show that no part of this bed has accreted to defendants' Mainland Grants.

Defendants say that the movement of sea water over the land in controversy, since it is caused entirely by wind action, does not constitute a tide in any sense of the word; and that under the Civil Law the eastern boundary of each of these grants became, and is today, the line of "mean high tide;" that State vs. Balli is "stare decisis" that the boundaries must be located at the line of "mean high tide;" and that the area in question has accreted to their lands upon the mainland.

Plaintiff and Intervenor assert that by virtue of acceptance of the patents from the State on the "Big Barreta" and the Mirasoles the defendants are estopped to claim any land east of the line fixed by those patents; and since the undisputed evidence shows that all of the lands in controversy lie to the east of the surveys upon which the patents are based, defendants have no title to the lands in controversy.

The State claims, in addition, that it is the owner, as Sovereign, of the area in controversy because it is excluded from defendants' mainland grants as located upon the ground; and, as a matter of law, upon presentation of the State's petition, the burden was upon defendants to show that the mainland grants covered the area in controversy, which defendants have failed to do.

Defendants counter that they have never accepted the patent on Big Barreta; that both original grants and the patent on the Mirasoles called for the east lines of such grants to be the Laguna Madre which would control over any calls for course and distance in the patents.

Plaintiff and Intervenor further contend that by acceptance of leases from the State on 56 tracts, bordering and lying in the general area of the land in controversy, defendant Humble has agreed, in writing, that the State is the owner of all of such lands and is estopped to deny such location and such ownership, particularly since both Humble and Sun bid and paid for their leases in accordance with the "official map of Laguna Madre now on file in the General Land Office," which map shows the tracts in dispute to be a part of Laguna Madre.

Defendant Humble replies that it is not estopped to deny ownership of the lands in controversy, since they are covered by separate leases on different lands, to which Humble was not a party.

Plaintiff further contends that the findings of the Land Commissioner and the State School Land Board, that the land in dispute is submerged land can not be collaterally attacked. Defendants say that since their title depends upon grants from Spain and Mexico, and not upon the action of the State officials, their findings have no effect upon defendants' title.

CONCLUSIONS OF LAW

1.

The Court has jurisdiction of the original action by reason of diversity of citizenship and amount in controversy; and of the State's intervention for the reasons set out in 88 F. Supp. 658.

2.

The Civil Law, as it existed at the time of the grants, governs the rights of the parties. (Miller vs. Letzerich, 121 Tex. 248, 49 S.W. (2d) 404, 85 A.L.R. 461; State vs. Balli, 144 Tex 195,

190 S.W. (2d) 71. It is incorporated in "Las Siete Partidas," a compilation of Spanish Law collected by Alphonso X, King of Spain. The Spanish Law and the Partidas were taken from the Institutes of Justinian and the Ancient Roman Law, State vs. Balli, supra.

3.

There is considerable dispute between the parties as to what State vs. Balli, supra, held. From careful reading and rereading of it, I have concluded that, among other things, the majority opinion definitely and unequivocally holds as follows:

(a) That Padre Island was granted by the State of Tamaulipas as an entire Island.

(b) That Padre Island is bounded on the west by Laguna Madre which separates it from the mainland.

(c) That the Spanish and Mexican Civil Law, as incorporated in Las Siete Partidas, was derived from the Institutes of Justinian and the Ancient Roman Law.

(d) That accretions by the sea became the property of the upland estate.

(e) That "all that ground is designated the shore of the sea which is covered with water of the latter during the whole year, whether in winter or in summer;" and, "By the shore of the sea we understand whatever part of it is covered with water, whether in winter or summer."

(f) That the evidence IN THAT CASE was sufficient to support a finding that there was no substantial difference, in fact, between the line of "high winter" tide and the line which the Surveyor Boyles considered "the line of mean high tide," (although "no survey was made of the line purporting to be the line of high winter tide.") [5]

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[5] The Texas State Court did not have before it evidence, as in this case, of the movement of sea water over the land "during the whole year," including several hundred pictures, (some of them by slide projectors), and aerial photographs. I can not believe that the Texas Supreme Court would have allowed the disposition that was made of that case if the evidence in this case had been before it.

4.

State vs. Balli is not stare decisis that the boundaries of defendants' grants must be located at the line of "mean high tide," especially since it merely holds that the evidence IN THAT CASE was sufficient to support a finding that there was no substantial difference in fact between the line of "high winter tide" and what surveyor Boyles considered the line of "mean high tide;" and the evidence here, as to the boundaries of defendants' grants, not common to Padre Island, being entirely different, stare decisis does not apply, State vs. Selby Oil & Gas Co., 135 Tex 146, 139 S.W. (2d) 781.

5.

State vs. Balli is not only not stare decisis that defendants' boundaries must be located at "mean high tide" but it is implicit in the decision that the line of "high winter tide" would have controlled if there had been any evidence in that case of a substantial difference in the location of the line of "high winter tide" and "mean high tide;" and that there is a difference between the "high winter tide" of the Civil law and "mean high tide" of the Common law.

6.

The word "during," as used in the definition of sea shore ("all that ground is designated the shore of the sea which is covered with water of the latter during the whole year, whether in winter or in summer") means, among other things, "at some period of" the whole year (Winston's Simplified Dictionary); otherwise there would be no necessity for the qualifying clause, "whether in winter or in summer."

7.

"The rule of the Civil Law made the shore extend to the line of the highest tide in winter . . . ," City of Galveston vs. Menard, 23 Tex 349 at 399, (a case by the Texas Supreme Court, recognizing the effect of the winds upon the tides and the waters of the sea, resulting in a "flats" area, as a part of the seashore). Under the Civil

law an ordinary grant of land bordering on the coast conveys title only to the mark of the "highest tide in winter," 7 Tex Jur. 18, p. 137; Rosborough vs. Picton (Tex. Civ. App.) 34 S.W. 791 (expressly approved by the Texas Supreme Court in Hynes vs. Packard, 92 Tex 44, 45 S.W. 562); Heard vs. Town of Refugio, 129 Tex. 349, 103 S.W. (2d) 728, 733; although "highest tide" does not mean the highest crest of storm driven sea water, Dincans vs. Keeran (Tex. Civ. App.) 192 S.W. 603.

Galveston vs. Menard, supra, cites Angell on Tidewaters, which lays down the rule that by the Civil law "high water mark is determined by the highest tides, and the shore, it is understood, includes the land as far as the greatest wave extends itself in the winter." Borax Consolidated, Ltd., et al. vs. Los Angeles, 296 U.S. 10, 56 S.Ct. 23, 80 L. Ed. 9, states the same rule. It seems to me that if, as defendants contend, the boundaries must be fixed at "mean high tide," then the Texas Supreme Court labored long and in vain, in Balli vs. State, to demonstrate the applicability and meaning of the Civil law as to what constitutes the seashore; and that the great lengths to which that great Court has gone in the past to keep the Civil law supreme as to Mexican and Spanish Grants have been wasted if the end result is that "high winter tide" means the same as the Common law "mean high tide."

8.

Since the waters of the sea, irrespective of storms or rains, repeatedly and with regularity, during the whole year, cover substantially or appreciably the area involved in this action, it is a portion of the seashore, title to which has never been relinquished by the State; and Plaintiff's leases thereon are valid.

9.

By the exhibiting of its petition in intervention, the State made out a prima facie case for the recovery of the lands described therein; and, so far as the State is concerned, the burden devolved

upon defendants to establish that either the State of Texas, or some prior sovereign, had relinquished, ceded, or granted, the lands here involved to defendants' predecessors in title. State vs. Balli (Tex Civ. App.) 173 S.W. (2d) 522; State vs. Delesdenier, 7 Tex. 76; Day Land & Cattle Company vs. State, 68 Tex. 526, 4 S.W. 865; Producers Oil Co. vs. State, 213 S.W. 349, 353.

10.

The undisputed facts (as to references to the patent in oil and gas leases, the affidavit of Marie Stella Turcott Kenedy as to claiming under the patent, the payment of taxes on approximately the number of acres called for in the patent, etc.) show, as a matter of law, that defendants accepted the patent to Big Barreta, as surveyed by Maddox.

11.

Since defendants have accepted under the patents to Big Barreta and the Mirasoles, and the calls for such patents can be followed upon the ground today, they are estopped to assert that these grants extend beyond the boundaries called for in the patents, Miller vs. Yates, 122 Tex. 435, 61 S.W. (2d) 767, Holmes vs. Yates, 122 Tex. 428, 61 S.W. (2d) 771.

12.

Since the patents to Big Barreta and the Mirasoles, under which defendants claim, do not call for the waters or the channel of Laguna Madre as their eastern boundary, but call for the shore, margin, or bank of Laguna Madre, which is clearly ascertainable upon the ground, and defendants have not discharged the burden placed upon them to show that the lands in suit are within such boundaries, the State is entitled to recover.

13.

Since the original grant to Little Barreta, based upon the survey by de la Fuente does not call for the waters or channel of Laguna Madre, but, on the contrary, calls for the edge of Laguna Madre

and shows that he was attempting to give Salinas "fast" land; and since the survey of Little Barreta by Cocke calls for the shore of Laguna Madre and "playa and islets of grass," which can still be found, and his footsteps can be followed upon the ground today; and since the lands in controversy are within the bed of Laguna Madre, and are outside the boundaries of Little Barreta, even as surveyed by Cocke, the State is entitled to recover, Welder vs. State (Tex Court of Civ. App.) 196 S.W. 868 (error ref.).

14.

Since de la Fuente's survey did not and could not go beyond the well defined shore or margin of the Laguna Madre, which had then and has now communication with the sea, the lands in controversy are in the bed of the Laguna Madre and Plaintiff and Intervenor are entitled to recover them, Hamilton vs. Menifee, 11 Tex. 718.

15.

There is no convincing evidence of any substantial accretions to defendants' mainland grants since the original surveys; but, even if the bed of the Laguna Madre has gradually built up above the line of mean high tide, a substantial portion of such accretions, if not all, would be to Toro Island, title to which has never been relinquished by the State. Cf City of Victoria vs. Schott, 29 S.W. 681; Fulton vs. Frandolig, 63 Tex. 330, Curry vs. Port Lavaca Channel & Dock Co. (Tex Civ. App.) 25 S.W. (2d) 987; 45 C.J. 195, p. 527. It is practically impossible to apportion accretions, if any, as between Toro and portions of defendants' mainland grant. Cf Welder vs. State (Tex Civ. App.) 196 S.W. 868 at 872.

16.

By virtue of oil and gas leases from the State on 56 tracts, each described as being in "Laguna Madre, in Kenedy County, as shown by the official map of Laguna Madre now on file in the General

Land Office," Humble is estopped to deny, as against the State and any claiming under it, that such lands are in the Laguna Madre; and that such Laguna extends to its grants upon the mainland. Green vs. White, 137 Tex. 361, 153 S.W. (2d) 575, Adams vs. Duncan, 147 Tex. 332, 215 S.W. (2d) 599 and cases therein cited; and, since the lands in controversy (leased by Sun) also are shown on the same official map as being in the Laguna Madre, under all the facts found herein, I think the estoppel applies to those lands as well, since Sun is claiming under the State. I think the terms used, with the map attached, are more than just generally descriptive. Certainly, even if estoppel does not apply, on the ground that it is a collateral action, it is prima facie evidence of the fact that Laguna Madre still exists on the ground, that the lands in controversy are in the bed of the Laguna, and that the Laguna is west and southwest of the lands in suit; 21 C.J. 73, 19 Amer. Jur. 27.

17.

Since, as found above, Humble has almost completely encircled the land in controversy by its leases from the State containing the quoted recitals, it is estopped to deny as against the State and those claiming under the State that the Laguna Madre lies between the area in dispute and defendants' mainland grants. If it is not estopped, then it is certainly strong evidence of that fact; and I so find and conclude as a matter of law.

18.

The findings of the Land Commissioner and the School Land Board that the area in controversy is submerged and a part of Laguna Madre are not conclusively binding on defendants. They are, however, in my opinion, prima facie evidence of those facts. Cf. Short et al, vs. W. T. Carter et al. 133 Tex. 202, 126 S.W. (2d) 953, appeal dism. 308 U.S. 513, 60 S. Ct. 140, 84 L. Ed. 438, Schneider vs. Lipscomb County Nat'l. Bank, 146 Tex. 66, 202 S.W. (2d) 832, 172 A.L.R. 1.

The policy of the State with reference to its public lands, including the mineral estate in tidewater limits, islands, etc., is set out in Art. 5421 e-3, et seq., Vernon's Civil Statutes. Various duties are imposed upon the Land Board. Art. 5421 c-3, 7, requires the School Land Board to adopt rules of procedure and regulations for sales and leasing. Plaintiff cites Logan vs. Curry, 95 Tex. 664, 69 S.W. 129, as authority for its contention that the board's findings are binding. This case is distinguishable.

Here, although defendants accompanied the Land Commissioner on part of his investigation, and protested the leasing, they could not have enjoined the Board or the Commissioner, nor could they have sued the State, Short vs. Carter, Supra. By answer in this case, when sued by plaintiff and the State they are entitled to defend on the ground that the lands are not submerged. This is a direct, not a collateral attack, on the findings of the Board. As stated, however, the Board's findings are, prima facie, correct- a presumption on the whole case, as distinguished from the prima facie case for the State alone, upon the exhibiting of its petition (as held under Conclusion No. 9 above).

19.

Plaintiff and Intervenor are entitled to judgment as prayed for.

20.

In view of the disposition of the case on the points discussed above, it is not necessary to discuss the interesting question raised by the State to the effect that the defendants, in any event, have not shown themselves entitled to the oil, gas, and other minerals, because of the original ownership of all minerals by the Government and their not being released to the owners of the soil until the Texas Constitution of 1866 was adopted.

The Clerk will notify counsel who will prepare a decree accordingly.

JAMES V. ALLRED
JUDGE.

Done at Corpus Christi, Texas,
this 29th day of April, 1950.

File No. Sketch File 1

Kenedy County

Sun vs. Humble Oil Compact extra.

Filed May 12, 1938

GARRY MAURO, Com'r

By Douglas Howard

Counter 28772