United States Senate
Office of the Democratic Leader
Washington, D.C.

Dear Friend:

When Senator Price Daniel made his maiden speech on the floor of the United States Senate on April 8, he offered a most thorough and able presentation of the case for restoring to Texas the title to our tidelands. Senators from both parties, even those who oppose the Texas claim, joined in calling Senator Daniel's address the best presentation of the matter they had ever heard. Every Texan has reason to be proud of Senator Daniel.

This presentation will prove, in my opinion, to be a historic document. I have had some copies of it printed for distribution. I am pleased to enclose one of them, believing you will want to preserve it in your files. I know it will prove informative and interesting to you, reflecting as it does Senator Daniel's vast knowledge of this subject, so important to Texas.

Sincerely,

Lyndon B. Johnson
Submerged Lands:
The Case for the States

REMARKS
OF
HON. PRICE DANIEL
OF TEXAS
IN THE SENATE OF THE UNITED STATES
Wednesday, April 8, 1953

Mr. DANIEL. Mr. President, as a co-sponsor of Senate Joint Resolution 13, confirming and restoring State ownership of submerged lands within their historic boundaries, the junior Senator from Texas desires to discuss seven points. Some of these points have already been touched upon in the arguments which have been made on the floor of the Senate, and I shall try to avoid unnecessary repetition. These points may be summarized as follows:

First. All the 48 States—not merely 3 coastal States, and not merely 21 coastal States, but all 48 States—have lands beneath navigable waters within their historic boundaries, title to which would be confirmed or restored by this legislation.

Second. All of the 48 States have held and possessed their submerged lands, both inland and seaward, under the same rule of law, recognized for more than 100 years by the Supreme Court of the United States.

Third. It would be rank discrimination against the coastal States to exclude their marginal sea lands from this rule of State ownership while continuing its application to the far greater bodies of lands beneath inland waters and the Great Lakes.

Fourth. The rule of State ownership of lands under inland waters and the Great Lakes grew from the common law rule of State ownership of the lands under the marginal sea.

Fifth. The coastal States have been in complete good faith in their possession and ownership of the sea bed within their historic boundaries for more than 100 years.

Sixth. Under such circumstances, restoration of these lands to the States will not be a gift but an act of equity and justice.

Seventh. Texas has a special claim under its annexation agreement with the United States which should be confirmed by this legislation.

ALL STATES CONCERNED
All of the 48 States have lands beneath navigable waters within their historic boundaries, title to which would be confirmed or restored by this legislation.

Senators who would like to know the exact acreage within their respective States may turn to page 76 of the hearings on Senate Joint Resolution 13, Senate Committee Report No. 133, which is on the desks. In the table on page 76 will be found the approximate areas of submerged lands beneath the waters of each of the States. The map which was used yesterday by the Senator from Florida (Mr. Holland) shows the lands beneath the navigable waters within each of the 48 States. It will be noted that the inland waters are shown in black. The rivers, lakes, and bays are also shown. Senators will note the small marginal belt along the Atlantic and Pacific coasts within the boundaries of the Atlantic Coast States and the Pacific Coast States, extending out 3 miles from shore. On the gulf coast it will be noted that the boundaries of Florida and Texas are 3 leagues from shore, while the boundaries of the other Gulf Coast States extend out 3 miles from shore.

I ask particular attention to the Great Lakes States, in which we find by far the greater acreage involved in this legislation. On page 76, in the table showing the approximate areas of submerged lands within State boundaries, it will be noted that the Great Lakes States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin that there is a total of 33,698,840 acres of lands beneath the Great Lakes.

These lakes have been held to be open seas, high seas. State ownership of the land underlying them has been held to rest under the same rule of law by which the coastal States own the lands and tidewaters within the marginal belts inside the 3-mile or 3-league boundaries.

States with inland waters have 28,960,640 acres covered by the joint resolution. That information is shown on page 76.

If Senators will compare column 3 with the previous columns to which I have referred, it will be seen that the 21 coastal States put together have only 17,029,120 acres of marginal sea lands within their boundaries, and covered by the pending joint resolution.

There we have the comparison. The Great Lakes States have more than 33 million acres of land under what have been held to be open seas. States with inland waters have 28,960,640 acres covered by the joint resolution. The 21 coastal States have only 17,029,120 acres of marginal sea lands within their boundaries and covered by the joint resolution.

All 48 States have valuable resources beneath their navigable waters. I ask unanimous consent to have printed in the RECORD at this point as a part of my remarks a table showing not only the approximate area beneath navigable waters within State boundaries, but present uses and revenues of such lands. I have obtained this information from a brief prepared by the National Association of Attorneys General.

There being no objection, the table was ordered to be printed in the Record, as follows:
Mr. DANIEL. For instance, Mr. President, the Senate Committee on Interior and Insular Affairs has reports from the governors of several States as to the valuable resources their States have beneath the navigable waters of the States. I have in my hand a report from Governor William G. Stratton, of Illinois, in answer to questions submitted by the Committee on Interior and Insular Affairs. Question No. 9 was:

What prospect is there for minerals in your State which may be found under submerged lands in the future?

Governor Stratton replied:

Coal, oil, and gas, in some localities. Also gravel, sand, some lead and fluorapatite.

I have here also a report from the Governor of the State of Michigan. In answer to question No. 9, as to what natural resources there are under the Great Lakes and other waters of that State, or that may be anticipated, the Governor replies:

According to our State geologist, the bottoms of the Great Lakes potentially contain huge deposits of iron ore, copper, oil, gas, salt, brines and many other minerals which are known to exist under Michigan's dry land.

I have also in my hand the report of the Governor of Minnesota. Question No. 5 submitted by the Committee on Interior and Insular Affairs to the Governor of that State was:

What minerals are now being developed from your submerged lands?

The reply from the Governor of Minnesota states:

Iron ore, sand, and gravel. Rules and regulations are now being drafted covering the prospecting for and the mining of copper and nickel.

The Governor of Minnesota adds this note:

The total date amount of $3 million has been collected by the State in royalties covering iron ore removed from submerged lands.

I should like to say, Mr. President, that the amount recovered by Minnesota from royalties on ore iron ore under the Great Lakes, which have been held to be open seas within the State boundaries, is more than the State of Texas has recovered, up to date, from royalties on oil taken from the marginal lands of the States.

I cite that instance to show that while all the States do not have oil beneath their submerged lands, every State has some deposits beneath its soil, and the records of the committee show that today 10 times more oil is being produced from the inland waters of the United States than from the marginal lands of the coastal States.

I point out that there are some Senators who have introduced bills which would require the States to give a greater area of inland water and Great Lakes lands but would deny to the coastal States any right of property, to which they are entitled under the same rule of law.

SAME RULE OF LAW

Second, all the 48 States have held and possessed their submerged lands, both inland and seaward, under the same rule of law, recognized for over 100 years by the Supreme Court.

This common rule of law applicable to all States and to all lands under navigable waters, both inland and seaward, was stated more than 50 times by the Supreme Court, to be as follows: "That the States own all lands beneath navigable waters within their respective boundaries." Prior to the California decision in 1947, no distinction had been made between lands beneath inland waters and lands beneath seaward
find a brief which the Senate Committee States on the issue before the Senate Florida [Mr. HOLLAND], only 1 State in the past 6 years of this fight asking for State sions for over 100 years, the States have courts to be

Senator from Texas is a former eminent submerged lands at least out to the Senator from Texas has not owned the lands beneath navigable waters under the common law, and ac­

gress should write clearly for the future 1945, taken the position that the Con­

clusion of Attorneys General has always included as appendix G.

have a right to the tidelands oil, as it is

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called, would they not also have a right to the oysterbeds and the shrimpbeds which are found on thousands of acres of land off the coast of my State?

Mr. DANIEL. Absolutely.

Mr. MAYBANK. As I recall, the at­

Mr. DANIEL. The Senator is correct.

Mr. ROBERTSON. Mr. President, will the Senator yield further?

Mr. DANIEL. I yield to the Senator from Virginia.

Mr. ROBERTSON. Is it not also true that either last year or the year before President Truman said that if we let the Federal Government take the oil he would agree that the States could keep their fractions? Then the Federal Government did not claim to be the owner of the submerged resources, why was it necessary for him to say that?

Mr. DANIEL. I have not seen the statement to which the Senator has re­ferred. The only statements made by President Truman I have seen were statements made in 1945, when he said that the Federal Government had the same jurisdiction over the fish below low tide along the coasts of the 21 coastal States. Only recently be­fore President Truman left the White House he stated that when he claimed jurisdiction over the oil in the Continen­

Mr. DANIEL. Mr. President, will the Senator from Texas yield to me?

Mr. DANIEL. I yield.

Mr. HUNT. I should like to ask the distinguished Senator from Texas the question, for all during the debate I have not heard any reference to the point I have in mind; neither have I seen any reference to it in any of the reports. My question is this: Under the decision of the Supreme Court, who owns the docks and the piers that extend over the tidelands in the case of practically every port in the United States? Will the Senator from Texas comment on that situation?

Mr. DANIEL. I shall be glad to do so. Under the three decisions of the Supreme Court thus far on this point, the Federal Government has paramount rights and power over the docks and piers and every other piece of property which has been built beyond the low-tide mark, off the coast. As I shall show in a few moments, we believe there is danger that officials of the Federal Gov­

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Mr. MAYBANK. Mr. President, will the Senator from South Carolina?

Mr. DANIEL. I yield to the Senator from South Carolina.

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Mr. DANIEL. I yield to the Senator from South Carolina.
not interfere with the powers of the Fed­eral Government in navigation, national defense, commerce, and international affairs, all of which p.were the National Government has over the waters. There is no reason why by means of this joint resolution the Congress cannot protect property interests in the soil from those paramount governmental powers of the national sovereign, in the way we have always in the past thought they existed.

Mr. DOUGLAS. Mr. President, will the Senator from Texas yield to me?

Mr. DANIEL. Mr. President, I should like to complete the discussion of this particular point before I yield further.

Mr. DOUGLAS. Certainly.

Mr. DANIEL. Then I shall be glad to yield to the Senator from Illinois.

THE POLLARD CASE

The rule I have just discussed was first stated by the Supreme Court in the early case of Pollard v. Hagan (3 How. 322, 229 (1845)) in the following words:

"First. The shores of navigable waters, and the soils under the same, were not granted by the Constitution to the United States, but were reserved to the States respectively.

"Second. The States own their natural rights, sovereignty, and jurisdiction over this subject as the original States.

Mr. President, the whole theory behind the State ownership of submerged lands is based upon the 10th amendment to the Constitution, which provides that—"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively."

These lands were not transferred to the Federal Government by the original States, and therefore the Supreme Court has said that they were retained by the States, and that the new States have the same rights of ownership therein.

The Pollard case, from which I have just read, and its general rule common to lands under both inland and seaward waters was approved, and incorporated as Federal Supreme Court decisions and 244 State and Federal court decisions prior to the decision in the California tidelands case. Excerpts from these opinions are included in appendix G of the report of the Interior and Insular Affairs Committee on Senate Joint Resolution 13, page 77.

The majority opinion in the California case concedes that the Supreme Court in the past has indicated its belief that this Pollard rule of State ownership applies equally to all lands under navigable waters within State boundaries, whether inland or seaward.

Mr. President, those who are trying to accuse the States of taking something they have never owned, those who accuse the coastal States of proceeding in bad faith, should read the decision of the Supreme Court in the California case. That decision was by Mr. Justice Black, and he approved and confirmed the decision of the 10th Circuit Court of Appeals, 151 F. 87, because he himself says the States have been acting in good faith.

Mr. Justice Black said for the majority in the California case "many times, and in doing so has used language strong enough to indicate that the Congress intended the States not only owned tidelands and soil under navigable inland waters, but also the submerged soils under all bodies of water within their territorial jurisdiction, whether inland or not."

Mr. President, if this rule of State ownership of land was enough to make the previous courts believe that the States owned lands whether inland or not, so long as they were within the State boundaries, it certainly was enough to justify the belief of the 21 coastal States that they owned these lands, and that these lands were theirs; and that belief existed for approximately 150 years after the Union was formed. No Federal Government ever made a claim to these lands until 1937.

On the contrary, as was pointed out yesterday on the floor of the Senate by the Senator from Florida (Mr. HAGAN), the very day after the Federal Government wrote opinions in which they said the States owned not only the lands beneath the inland waters and the lands beneath the Great Lakes, but also the lands beneath the marginal sea within the 3-mile or the 3-league belt of the coastal States.

Mr. DOUGLAS. Mr. President—

Mr. DOUGLAS. Mr. President, the PRESIDING OFFICER (Mr. GOLDSWARY in the Chair) asks the Senator from Texas to yield to the Senator from Illinois?

Mr. DOUGLAS. I yield.

Mr. DOUGLAS. I thank the Senator from Texas for his courtesy, and I wish to affirm what every Member of the Senate knows, that the Senator from Texas has probably had the greatest legal experience with this issue of any Member of this body, and perhaps of any citizen of the United States, because he very ably represented his State in the proceedings before the Supreme Court. In that sense, and without any doubt, I was a third-rate prizefighter being sent in at the last minute to contest against such a champion.

Mr. DANIEL. I thank the Senator from Illinois for his flattering remarks. I stand ready now for the Senator's blows. (Laughter.)

Mr. DOUGLAS. Do I correctly understand the Senator from Texas to be contending that for the Federal Government to retain the paramount rights in the submerged lands is equivalent to the Federal Government's putting into effect a program of national socialism?

Mr. DANIEL. The Senator from Texas said that if the theory of paramount rights of the Federal Government were carried to its logical conclusion, it would result in nationalization, because the Federal Government has paramount rights in national defense and international affairs, over your home, over the streets of this city, over the streets of coral States, over farms, ranches, and everything else. The Federal Government can take any property it wants for national defense or for use in conjunction with international affairs. It can exercise its paramount right to take any property, but heretofore it has always been held that the Federal Government must pay just compensation. In the tidelands opinion, the same kind of reasoning was used, namely, that the Federal Government has paramount rights over this property; but nothing was said about paying compensation.

If that rule were extended to private property, we would end up with nationalization of property. I believe that, if Dean Roscoe Pound made such a statement for the Senator from Texas to concur in it.

Mr. DOUGLAS. Do I correctly understand that the Senator from Texas is advocating national socialism?

Mr. DOUGLAS. The Senator from Texas is not saying that Federal ownership of the lands beyond low tide would create State socialism or nationalization of property. What the Senator from Texas said was that, if the reasoning of the Senator from Illinois as to the Texas and Louisiana tidelands cases is carried forward to private property, then it would create national socialism.

Mr. DOUGLAS. But to defend us against any such danger to private property, we have the protection of the Constitution, which provides that no property can be taken without the property is condemned under due process of law, and without just compensation. Mr. DANIEL. Does not that protection apply to the States as well as to private persons?

Mr. DOUGLAS. Certainly. But now we come to the question as to whether the States ever had ownership of title to the submerged lands seaward from the low-water mark.

Mr. DANIEL. Mr. President, I should like to say that the courts of our land have held that the constitutional provision that the Federal Government shall not take property without just compensation applies equally to States and political subdivisions, as well as to individual citizens.

Mr. DOUGLAS. Let that be true. Now, I would like to raise a question regarding the Pollard case, which the Senator used as his principal precedent. Is it not a fact that the Pollard case involved lands which were originally washed by the tides of the Mobile River, and that the ownership was extinguished over the passage of years, later became filled. That being true, did not the Pollard case involve lands washed by tides inland waters? Am I not correct in stating that this case concerned lands seaward from the low-water mark, which is the area of land
covered by the pending joint resolution now under dispute.

Mr. DANIEL. The Senator from Illinois is correct as to the particular lands involved in the Pollard case. But if the Senator from Illinois will read the Pollard decision, he will find that the court was trying to arrive at a general rule of law, and then to see whether the property under the Mobile River came within the general rule of law. When arriving at the general rule of law, the Supreme Court of the United States determined the boundaries of Alabama—

Mr. DOUGLAS. That is correct.

Mr. DANIEL. And the Senator from Illinois has in mind, I may say that about 1842, in the case of Martin against Waddell, someone held a lease from the State of New Jersey for an oyster bed in Raritan Bay. A suit arose between the lessee of the State and claimants under a Federal lease. The Supreme Court held that the State owned the property, and that the State could give a good lease, because it said, the State of New Jersey, when it won its independence, had acquired all the rights of England, and had, therefore, owned all the lands beneath their navigable waters.

Mr. DOUGLAS. Within their boundaries.

Mr. LONG. Had that lease applied to the Senator from Illinois, he would have been in the possession of saying, “We have here a case involving a mere declaration of principle.”

Mr. DOUGLAS. No.

Mr. LONG. “And since that is the case, the Government should go ahead and take the land, because the rule would not apply.”

Mr. DOUGLAS. Not at all. May I be permitted to reply briefly to the Senator from Louisiana?

Mr. DANIEL. I yield.

Mr. DOUGLAS. It is not true that the Waddell case to which the Senator from Louisiana refers, covered submerged lands in Raritan Bay, and that Raritan Bay had always been regarded as an inland navigable water. Therefore there was no new rule introduced? All cases involved either (a) tidelands proper or (b) submerged lands under navigable inland waters. The Senator could try to stretch these cases to eternity, but he could not make the facts of the cases extend to submerged lands seaward from the low-water mark.

Mr. DANIEL. And, Mr. President, neither can the distinguished Senator from Illinois find anything in the 52 cases referred to by the Senator from Illinois which limits the rule of law to inland waters or to rivers or to the Great Lakes. I shall point out to the Senator from Illinois that this rule began with tidewaters of the open sea. Senator from Illinois, the boundaries of that State extend 40 miles into Lake Michigan. The title of the State of Illinois to the lands which are beneath the lake was held not to rest on the fact that they were beneath inland waters. Those lands have the same characteristics as lands under the open sea. Another court referred to these waters as the “high seas.” In the past the rule was held to apply to all navigable waters within the coastal boundaries of the States.

Mr. DOUGLAS. Mr. President, will the Senator yield to the Senator from Illinois?

Mr. DANIEL. I should like to go further into that point, and then I shall yield.

UNWARRANTED DISCRIMINATION

Third, it would be rank discrimination against the coastal States to exclude their marginal-sea lands from this rule of State ownership while continuing its application to the far greater bodies of land waters beneath inland waters and the Great Lakes.

Yet that is exactly what the supporters of S. 107 and S. 1017, the Anderson bills, would do. They propose to quench and quiet the titles of the Great Lakes States to 33 million acres of submerged lands, and also 28 million acres of lands under inland waters, while taking away from the 21 coastal States their smaller area of 17 million acres within their seaward boundaries.

Thus, we shall see the distinguished Senator from Illinois [Mr. Douglas] dealing with the ownership by Illinois of 976,000 acres beneath Lake Michigan while he rejects the same claim of ownership for the coastal States. We shall see the distinguished Senator from Minnesota [Mr. Breathing] fighting with one hand for Minnesota’s 1,415,680 acres under the Great Lakes which extend 32 miles from the shore, while with the other he flays the coastal States which have held their submerged lands under the same rule of law.

The cry is that all these coastal lands within seaward boundaries should be put in a common pot or, if the people want the land, they should have to pay for it. The distance offshore from 3 miles to 3 leagues distance. I ask why not include the submerged lands of their own States in the common pot? They are just as valuable and cover a greater area.

As I said earlier, Mr. President, the record shows that there is 10 times as much oil being produced from land underlying the inland waters as from the marginal belt of the coastal States. The Great Lakes States do not stop at 3 miles or even 3 leagues from shore. As I pointed out, some of them run from 20 to 75 miles from shore. Illinois runs its
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As early as 1610, in The Case of Royal Fishery of River Banne (80 Eng. Rep. 540), the highest court of England related the history of and stated the rule to be as follows:

"The reason for which the King hath an Interest in navigable rivers, as high as the sea flows and ebbs in it, is, because such river participates of the nature of the sea, and is said to be a branch of the sea so far as it flows. * * * And that the King hath the same prerogative and interest in the branches of the sea and navigable rivers, so high as the sea flows and ebbs in them, which he hath in alto mare, is manifested by several authorities and records."

This derivation of the one rule applicable to lands under all navigable waters was recognized in many United States Supreme Court cases, including the following:

In Weber v. Board of Harbor Commissioners (18 Wall. 57, 66 (1873)):

"The title to the shore of the sea, and of the arms of the sea, and in the soils under tidewaters, is, in England in the King, and in this country in the States Supreme Court cases, including the following:"

In the above-mentioned Pollard decision—Pollard v. Hagan (3 How. 212, 229)—Mr. Justice McKinley expressly said that "the territorial boundaries of Alabama have extended from the waters above the power of the sea," page 230—and stated the broad question of the case as being "whether Alabama is entitled to the shores of the navigable waters, and the soil under them, within her limits," page 225.

The unity of this rule of property and State-Federal relations, as applied to both inland and coastal waters within the States, as exemplified by the great concern of all the States, both inland and coastal, in its preservation.

Here we have a navigable water rule:

State ownership of all lands beneath navigable waters, provided their boundaries originated with sovereign ownership of the land beneath the marginal sea. If the very foundation of the rule is destroyed, naturally the extension of the rule as it applies to the inland waters and to lands under the Great Lakes is destroyed. That is why inland State officials are worried. They do not want this rule destroyed at its very foundation. They can see that if the theory of the recent Supreme Court decisions can be made to apply to the foundation of the rule, it may also be extended to lands under rivers, lakes, and other Inland waters.

The unity of this rule also accounts for the fact that all previous members of the Supreme Court recognized this rule broad enough to cover all navigable waters, whether inland or not. There is no dispute that the tidewater area within the marginal sea is navigable both in law and in fact, and that all such areas covered by this legislation are within the lawful boundaries of the respective States.

The Senator from Florida [Mr. Howland] pointed out yesterday that the joint resolution is limited to lands beneath navigable waters and within original or historic State boundaries, boundaries as they existed at the time the States entered the Union, or as they were thereafter approved by the Congress of the United States, as in the case of Florida.

In the above-mentioned Pollard decision—Pollard v. Hagan (3 How. 212, 229)—Mr. Justice McKinley expressly said that "the territorial boundaries of Alabama have extended from the waters above the power of the sea," page 230—and stated the broad question of the case as being "whether Alabama is entitled to the shores of the navigable waters, and the soil under them, within her limits," page 225.

The Senator from Illinois [Mr. Douglas] speaks of the Pollard decision as a rule applying to inland waters. If that be so, why did the Supreme Court of the United States state the rule in a broader way, and why did the Supreme Court say that Alabama's boundaries extended out into the sea? They were looking to see if the property involved was within the boundaries of Alabama, not if it was under inland waters, so they stated that the boundaries of Alabama extended into the Great Lakes under the decision of the Senate from Florida.

Holding that Alabama's sovereign municipal power was the same on the sea as on the shore within her boundaries, the Court said:

"First, the shores of navigable waters, and the soils under them, properly secured by the Constitution to the United States, but
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All soils under the tidelands within her limits passed to the States.

He was referring to California.

In our view of the subject the correct principles were laid down in Martin v. Waddell (16 Pet. 367), Pollard's Lessee v. Hagan (9 How. 812), and Goodittle v. Kibbe (9 How. 471). These cases related to tidelands. It is true; that they enunciated principles which are equally applicable to all navigable waters (longshore and shore of such waters) properly belong to the State by their inherent sovereignty.

Chief Justice Waite in 1876 said that—

Each State owns the beds of all tidelands within its jurisdiction.

Did the Court say “tidelands under bridges” or “tidelands and waters under rivers” or “inland waters”? No. The Court said:

Each State owns the beds of all tidelands within its jurisdiction.

Chief Justice Gray in 1894 said:

The New States admitted into the Union since the adoption of the Constitution have the same rights as the original States in the tidelands, and in the lands under them, with their jurisdiction over them.

Not “within their inland waters,” but “within their respective jurisdictions.”

Chief Justice White said in 1912:

Each State owns the beds of all tidelands within its jurisdiction.

Chief Justice Taft in 1926 said that—

All the proprietary rights of the Crown and People over tidelands (such as tidelands over, lands under tidewater vested in the several States.)

Chief Justice Hughes said in 1935:

The soils under tidelands within the original States were reserved to them respectively, and the States since admitted to the Union have the same sovereignty and jurisdiction in relation to such lands within their borders as the original States possessed.

So we see that in these cases, and in all the other cases to which I refer, the Court, in determining who owns lands beneath navigable waters, has simply applied two tests, namely, first, “Is the high water mark beneath the tidelands?” and, second, “Is it within State boundaries?” The Court has never applied the test of “whether the waters happen to be inland waters.”

Yes, the rule is so broad because it actually grew up from the marginal sea and was extended to inland waters as arms of the sea. That is why the rule is stated so broadly; and because it is so broadly and applies to all the inland waters, as well as marginal sea waters, officials of the States do not want to see the rule destroyed as to any States, which are reserved to the States respectively. Sec. 25 of the Act of July 3, 1866.

Weber v. Harbor Commissioners (18 Wall. 57, 65 (1873)).

Barney v. Kockuch (94 U. S. 324, 333 (1876)).

McKendry v. Virginia (94 U. S. 381, 394 (1876)).

Shively v. Bowlby (125 U. S. 1, 57 (1889)).


U.S. v. New York (271 U. S. 284, 381 (1926)).

Sov. Consolidated v. Los Angeles (296 U. S. 16, 19 (1936)).
especially as to the States and the area in which the rule itself originated.

Mr. DOUGLAS. Mr. President, will the Senator yield?

Mr. DANIEL. I yield.

Mr. DOUGLAS. Do I correctly understand the Senator from Texas to say that the question of who has ownership of and title to submerged lands first out at sea, in the marginal or territorial sea, however broad that might be, and then proceeded inland to bays and ports, and inland lakes, and that all the other rules are derivatives of the law of the sea?

Mr. DANIEL. That is exactly what the text writers and the decisions of our own Court, as well as the English decision from which I quoted, have said as to the origin of the rule.

Mr. DOUGLAS. Is he further stating that the first case on the right of a nation to submerged lands under the open sea was the case decided in England in 1811, from which case the Senator quoted earlier in his remarks?

Mr. DANIEL. In that case was the first case explaining the origin of the rule in the common law. It was the case of the River Banne.

Mr. DOUGLAS. The Senator from Texas will, of course, permit the Senator from Illinois to point out that the case referred to was a British case, and that England, or Great Britain, is what is known as a national government, but is to say, there is a national government which has external jurisdiction, but there are no state subdivisions within Great Britain. Great Britain has internal jurisdiction as well. In the United States, however, we have a Federal Government, or a so-called National Government, having jurisdiction over foreign affairs, with the State governments being given large powers over domestic affairs.

Is not that true?

Mr. DANIEL. That is true; and that is exactly why, in England, the King had both the governmental powers and the ownership.

But when the Colonies, and then the original States of this Nation, won their freedom, they did not give proprietary rights to the Federal Government under which they expressly described the property and granted it for certain purposes. Certain paramount governmental powers of the King were delegated to the National Government in our country, but, according to all our court decisions, the proprietary rights in soils under navigable waters were left by the Constitution in the States, and not delegated or transferred to the National Government.

Mr. DOUGLAS. I should like to point out to the Senator from Texas that in England it may well be true that the same politician or government which had jurisdiction over submerged lands seaward from the low water mark should also have jurisdiction over submerged lands in bays, ports, rivers, lakes, or inland waters. The Senator would not have that. In recent years Federal officials have receded from those claims and said they would not ever seek title to the rivers and waters of the Senator's State.

Mr. DANIEL. Federal officials in the past have claimed that they would not ever seek title to the rivers and waters of the Senator's State.

But I would say to the Senator from Texas that the principles which have been applied to the marginal sea in the three tidelands cases could be applied to his State if Federal officials ever wanted to apply them. At least they to some extent clouded the title of the Senator's State and the State of Alabama and all the others in all cases represented on this floor to their rivers.

The very same Federal officials who first came before the Congress in support of the Nye resolution said to the committees of Congress, "The Federal Government has the right to all the natural resources, the oyster beds, and other things, in the inland waters." I wish the Senator would not forget that. In recent years Federal officials have receded from those claims and said they would not be willing to cede such rights to the States.

Mr. DANIEL. Mr. President, will the Senator further yield?

Mr. DOUGLAS. I yield to the Senator from Arizona.

Mr. GOLDWATER. Mr. President.

The PRESIDING OFFICER (Mr. MARTIN in the chair). Does the Senator from Texas yield to the Senator from Arizona?

Mr. DANIEL. I will yield only on the point of order, because I am coming to another point. I yield to the Senator from Arizona.

Mr. GOLDWATER. I should like to ask the distinguished Senator from Texas the question: If what the opponents of the pending measure hold to be true, that the Federal Government has rights to the submerged lands, what would be the effect on the 210,000 acres of submerged lands in a comparatively dry inland State such as Arizona?

Mr. DANIEL. Federal officials in the past have claimed that they would not ever seek title to the rivers and waters of the Senator's State.

But I would say to the Senator from Arizona that the principles which have been applied to the marginal sea in the three tidelands cases could be applied to his State if Federal officials ever wanted to apply them. At least they to some extent clouded the title of the Senator's State and the State of Alabama and all the others as represented on this floor to their rivers.

The very same Federal officials who first came before the Congress in support of the Nye resolution said to the committees of Congress, "The Federal Government has the right to all the natural resources, the oyster beds, and other things, in the inland waters." I wish the Senator would not forget that.

The Federal Government has the right to all the natural resources, the oyster beds, and other things, in the inland waters. But it was said by them in 1937: "The Federal Government has the same right under the rivers and the inland waters as under the sea."

Mr. GOLDWATER. Mr. President, will the Senator further yield?

Mr. DANIEL. I yield to the Senator from Arizona.

Mr. GOLDWATER. In view of the recent Fallbrook case, in which the Federal Government tried to do just what the Senator has been stating, we in Arizona are disturbed by the possibilities arising from that case, because our Colorado River is a navigable stream leads me to ask him this question, if the Federal Government claimed the rights to the lands off the shores of the Senator's State which have been historically the property of that State for centuries, they would claim and ask the Congress to claim and ask the Congress to do this for the 210,000 acres which have been held by his State under the same rule of law.

Mr. GOLDWATER. Mr. President.

The PRESIDING OFFICER (Mr. MARTIN in the chair). Does the Senator from Arizona yield to the Senator from Texas?

Mr. DANIEL. I yield to the Senator from Texas.

Mr. DOUGLAS. That is true; and that is exactly why, in England, the King had both the governmental powers and the ownership.

But when the Colonies, and then the original States of this Nation, won their freedom, they did not give proprietary rights to the Federal Government under which they expressly described the property and granted it for certain purposes. Certain paramount governmental powers of the King were delegated to the National Government in our country, but, according to all our court decisions, the proprietary rights in soils under navigable waters were left by the Constitution in the States, and not delegated or transferred to the National Government.

Mr. DOUGLAS. I should like to point out to the Senator from Texas that in England it may well be true that the same politician or government which had jurisdiction over submerged lands seaward from the low water mark should also have jurisdiction over submerged lands in bays, ports, rivers, lakes, or inland waters. The Senator would not have that. In recent years Federal officials have receded from those claims and said they would not be willing to cede such rights to the States. They then went to do that in order to divide and conquer the coastal States. But it was said by them in 1937: "The Federal Government has the same right under the rivers and the inland waters as under the sea."

Mr. GOLDWATER. Mr. President, will the Senator further yield?

Mr. DANIEL. I yield to the Senator from Arizona.

Mr. GOLDWATER. In view of the recent Fallbrook case, in which the Federal Government tried to do just what the Senator has been stating, we in Arizona are disturbed by the possibilities arising from that case, because our Colorado River is a navigable stream leads me to ask him this question, if the Federal Government claimed the rights to the lands off the shores of the Senator's State which have been historically the property of that State for centuries, they would claim and ask the Congress to claim and ask the Congress to do this for the 210,000 acres which have been held by his State under the same rule of law.

However, if the Senator will look at the Federal pleadings in that case, involving an inland river, he will find at the end of the pleadings the Government included the phrase "and paramount rights" as being claimed by the Government in those waters.

I am sure the Senator is familiar with the North Platte River case, in which Nebraska and Wyoming were suing over the waters of the North Platte River. That was in 1935. In that case the Secretary of the Interior and claimed that the Federal Government owned the waters within the North Platte River. By the way, the Court did not decide the point. It left it undecided, as to whether the Federal Government was the original owner of those particular waters.

So, Mr. President, I say that those who accuse us of trying to mislead inland States are not looking at the facts and the evidence, or they would realize why 47 States have sent officials to the Congress asking for the enactment of the very legislation now under consideration.

Mr. GOLDWATER. I thank the distinguished Senator from Texas, and I wish to express my interest, as a Senator from the State of Arizona, in this subject, in pointing out so clearly that the so-called inland-waters rule is nothing in the nature of a derived or extension of the rule already existing and announced earlier with reference to the
Florida is certainly correct, and I thank him for bringing out that point. For instance, those attorneys said, as appears on page 11 of the brief:

Mr. DOUGLAS. Mr. President, will the Senator from Florida read the next sentence?

Mr. HOLLAND. I wish the Senator from Florida will read that sentence. He will then have ample time to propound such other questions as he may desire. To continue, the Senator from Texas will recall also that able Federal attorneys in the case in which we have alluded continued in the showing of their displeasure with the inland waters rule, or disapproval of that rule, by using such words as "erroneous," "unsound," "mistaken," "fallacious," and "a legal fiction," all those words relating to the inland waters rule.

The question I wish to ask the distinguished Senator is this. Was not the fact that the Senator from Texas was on the floor of the United States Senate, and was honest, in that they were calling attention to the fact that while they were disapproving the decision of the Supreme Court dealing with tidelands and lands under inland waters, they did not at the same time approve the decisions of the Supreme Court in those tidelands and submerged lands cases, which they were against the rule applicable to submerged lands under the offshore waters within the boundaries of the States?

Furthermore, anything the Government attorneys wrote in their brief as to what should be done by way of equity is not binding on the United States. I should like to point out to the Senator from Illinois that on the same day when the Government filed that brief, in which the Government attorneys criticized the State ownership of lands under inland waters, but said it is all right for the Court to reaffirm that ownership—thus giving assurances to the inland States that the decision of the Supreme Court did not follow the suggestion. The Court did not reaffirm the rule of State ownership of lands beneath the tidelands within the boundaries of the States.

In other words, was not the Government saying that the Court should not overrule the decisions in these cases in regard to the States above the tidal waters, but should it in effect reaffirm them?

Mr. DANIEL. The Senator from Illinois has correctly read from the Government's brief in the California case which has just been read by my distinguished friend, the Senator from Illinois, than there was reason for the States to believe that they could rely upon the earlier assurances given by the Secretary of the Interior, Mr. Ickes, and by all his predecessors in that office, to the effect that the decision of the Supreme Court would not be used to take away the submerged lands under the offshore waters within their boundaries?

Mr. DANIEL. There is less reason to believe the assurances contained in the brief of the Federal Government attorneys in the California case which has just been read by my distinguished friend, the Senator from Illinois, than there was reason for the States to believe that the decisions of the Supreme Court would not be used to take away the submerged lands under the offshore waters within their boundaries.

Mr. HOLLAND. Is it not true that in the California case, as reaffirmed in the Texas case and in the Louisiana case, we are given the definite warning by the Supreme Court that it will not apply in favor of States whose property is jeopardized by the Federal Government, equitable defenses such as estoppel, laches, adverse possession, and other equitable defenses which would apply as between individuals, and that the States would not be subject to recitals, no matter from how dignified a source—even from the President himself—to the effect that the rights of the States are not jeopardized, if later officials come to a different conclusion and decide to attack the titles of the States in proceedings before the United States Supreme Court? Is not that true?

Mr. DANIEL. The Senator from Florida is correct.

In the California case the Court said:

"No estoppel can arise here from any possible mistaken or unauthorized acts, statements, or commitments of officers of the United States."

In the same decision the Court said:

"Officers who have no authority at all to dispose of Government property cannot by their conduct cause the Government to lose its title to submerged lands."

In spite of that assurance, only a little more than a year later a lawsuit was filed against the United States, and my colleagues and I hold it in our hands now. The point is that we cannot take the assurance of Federal officials that the inland States are in good condition and do not need to worry, any more than it was held to take the assurance of the Attorney General that Texas would not be sued, for the same Attorney General later filed suit against the State of Texas, as the President directed him to do. As a matter of fact, all 48 of the States are to be safe in the ownership of their lands beneath navigable waters.

Mr. HOLLAND. Mr. President, will the Senator from Texas yield?

Mr. DANIEL. I yield to the Senator from Florida.

Mr. HOLLAND. Is there any more reason for the States which have inland waters to trust and rely upon the assurance given in the brief of the Federal Government attorneys in the California case which has just been read by my distinguished friend, the Senator from Illinois, than there was reason for the States to believe that they could rely upon the earlier assurances given by the Secretary of the Interior, Mr. Ickes, and by all his predecessors in that office, to the effect that the decision of the Supreme Court would not be used to take away the submerged lands under the offshore waters within their boundaries?
cause to ask for the enactment of this proposed legislation.

Mr. LONG. Mr. President, will the Senator refer to Principle (a) ?

Mr. DANIEL. I yield.

Mr. LONG. Were not the facts such that in the California case the State of California presented a great number of examples and much evidence to show that in many instances the Federal Government had recognized California's title and contended that the Federal Government was bound by the doctrine of estoppel? But did not the Supreme Court simply brush aside that point by saying that Federal agents could not be stopped, but that they could change their minds the next day and could move to attempt to have those lands seized, and that they had a right to do so?

Mr. DANIEL. That is the effect of the decision.

Mr. LONG. Is it not also true that the same Solicitor General who told us that we need not worry about having the Federal Government change its mind and need not expect that the decisions be reversed is the same person who told us that previously he had urged that the Court reverse its position, and that he felt the Court should reverse its position, in the long line of decisions relating to racial discrimination?

Mr. DANIEL. That is correct.

Mr. DOUGLAS. Mr. President, will the Senator from Texas yield to me?

Mr. DANIEL. I yield.

Mr. DOUGLAS. If the Senator from Florida cites the words of the Government's attorneys as threatening the ownership rights of inland States, is it not equally proper to cite other words of the Government's attorneys to neutralize the alleged threats on these points?

Mr. DANIEL. Yes; and then it is proper to decide which we shall believe—in other words, whether we shall believe that they are going to recognize State ownership or whether we shall believe that they will deny it and will file suit against us.

Mr. DOUGLAS. But do not the rights of the States in the submerged lands under the Great Lakes stand as a defense and the lands rest not only on the assurances of the Government attorneys but also upon the long and unbroken chain of decisions on these points? I believe I have read approximately 52 cases which refer either to (a) the tidelands proper not only on bays but on the open sea, and many of those cases were quoted by the distinguished Senator from Texas; or (b) submerged lands under bays, harbors, ports; or (c) submerged lands under rivers; or (d) submerged lands under the Great Lakes.

In all those cases the Court said that those submerged lands belonged to the States. But until the California case arose, the Court never had before it a case involving submerged lands seaward from the low-water mark as evidenced in the Rodgers case. The question is whether the Court is bound by general words or statements in earlier opinions which must be applied immediately in individual cases no matter how different the facts may be, or whether the common law arises from individual cases and can be adapted to new conditions and to new situations which present themselves for decision.

Mr. DANIEL. Shall I show the Senator from Illinois that the Supreme Court did consider the matter of ownership of oyster beds and fisheries attached to the soil within the 3-mile belt. That occurred in the Anheuser-Busch case and in the case of Manchester against Massachusetts.

But at this time I prefer to cite the Supreme Court from Illinois in citing to his own State, namely, the case of Illinois Central Railway Co. against the State of Illinois.

Mr. DOUGLAS. I am delighted to have that case cited.

Mr. DANIEL. If that case is not directly in point in holding that the States own the lands under the open sea waters within their boundaries, then I do not know how the Senator can cite it.

First, Mr. President, let me call attention to the case of the Genesee Chief (12 Howard 443 (1851)), in which it was clearly held that the same waters were, in the same way, as the open seas with respect to admiralty jurisdiction. I wish to quote from that case in order to lay the foundation to show the Senate that the Great Lakes have been held to be open seas, and that the same rule was applied to them as had been applied to the coastal States along the borders of the sea.

From the Genesee Chief case, I read from the opinion of the Supreme Court of the United States the following:

A great and growing commerce is carried on upon them—

That is, upon the Great Lakes—between different States and foreign nations which is subject to all the incidents and hazards that attend commerce on the ocean. Hostile fleets have been encountered on them, and prizes been made, and every reason existed for the necessity jurisdictio to the Federal Government on the Atlantic seas applies with equal force to the Great Lakes. The same doctrine is in this country held to be applicable to lands covered by fresh water in the Great Lakes, over which there is extended commerce with different States and foreign nations. These lakes possess all the general characteristics of the open seas.

Then, in the case of United States against Rodgers, the Supreme Court went even further, saying—

Mr. DOUGLAS. Mr. President, will the Senator yield?

Mr. DANIEL. I will yield in a moment. The Supreme Court went even further in United States against Rodgers, because it had to consider a law of the Congress which made the commission of certain acts on board a vessel on the high seas crimes, and in this case the vessel was on the Great Lakes. In that case the Supreme Court said:

The Great Lakes possess every essential characteristic of sea. They are high seas.

I am quoting the words of the Court. The Court went on to say that, regardless of the name you apply to them, they are high seas.

And the Supreme Court compared these lakes to the Baltic and the Black Seas, and then to the Atlantic Ocean and to the Pacific Ocean.

The Court concluded that this law by the Congress applies to the Great Lakes because they are high seas, not inland waters.

Then, Mr. President, in 1893, the Congress passed an act applying to navigation in harbors, rivers, and inland waters of the United States. Did the Congress apply the rule of State ownership of the submerged lands of the Great Lakes and their connecting and tributary waters as far east as Montreal?

Mr. President, in view of the ruling by the Supreme Court that the Great Lakes were "open seas," when it came time to decide whether the State of Illinois had ownership of the soil seaward of low-tide line on Lake Michigan, what rule did the Supreme Court apply? Did it apply an inland-water rule? No; Mr. President, it applied the rule of State ownership of lands on the borders of the sea.

As proof of this I should like to read from the case of Illinois Central Railway Co. v. Illinois (146 U. S. 387), rendered by the Supreme Court of the United States in 1892. The State of Illinois today claims ownership of 976,000 acres of land beneath Lake Michigan, within its borders, because that lake and the other Great Lakes are similar to the seas along the coasts of the states. This is what the Court said:

It is the settled law of this country that the ownership of and dominion and sovereignty over lands covered by the tidewaters within the limits of the several States belong to the respective States within which they were found, with the consequent right to use or dispose of any portion thereof, when that can be done without substantial impairment of the interest of the public in the waters. * * * This doctrine has been often announced by this Court and is not questioned by counsel for the defendant. The same doctrine is in this country held to be applicable to lands covered by fresh water in the Great Lakes, over which there is extended commerce with different States and foreign nations. These lakes possess all the general characteristics of the open seas.

Did the Court say they were inland waters? No; the Court said they were seas, open seas. As the Court said in the Rodgers case, even though they are inland seas, they are high seas, and the same rule should apply as to admiralty jurisdiction that applies to the high seas along the Atlantic and Pacific. Continuing from the Illinois Central case:

These lakes possess all the general characteristics of open seas, except in the freshness of their waters and in the absence of the ebb and flow of the tide. In other respects they are inland seas, and there is no reason to adopt the principles of seamen's dominion and sovereignty over and ownership by the State of land covered by tidewaters. This is a principle applicable to its own ownership and dominion and sovereignty over lands covered by the fresh waters of these lakes.

The Supreme Court of the United States applies this rule.

The Great Lakes are not in any appreciable respect affected by the tide, and yet on their
waters, as said above, a large commerce is carried on, exceeding in many instances the entire commerce of States on the borders of the sea.

Does it say "exceeding the commerce of States on their inland waters"? No— exceeding in many instances the commerce of States on the borders of the sea.

When the reason of the limitation of admiralty jurisdiction in England was found incapable to the condition of navigable waters in this country, the limitation and all of its incidents were discarded. So also by holding the doctrine of dominion over and ownership of the Crown of lands within the realm under tidewaters is not founded mous terms in England.

It is applied to the coastal States, it should do the same thing for all the States.

The Court continues—

And here, Mr. President, is the final holding of the Court, saying that Illinois owns these 976,000 acres of land:

Mr. DANIEL. I believe the Senator is correct.

That is why I say it would be unfair for the Great Lakes State of Illinois to hold the Great Lakes as applies to ownership by the States of lands under tidewaters on the borders of the sea.

Mr. HUMPHREY. The Court has not preceded on this precise point.

Mr. DANIEL. I yield.

Mr. JOHNSON of Texas. It appears that the so long as proposed legislation does not give anything to the coastal States it is all right with the junior Senator from Minnesota and the senior Senator from Illinois.

Mr. DANIEL. That seems to be the answer.

Mr. LONG. Possibly my able colleague is not taking the right approach in trying to persuade the Senator from Illinois to go along with him.

A year ago the Senator from Illinois wanted to apply tolls on all inland waterways except on the Great Lakes. He finally agreed to amend his bill so that tolls would also apply on the Great Lakes.

Mr. JOHNSON of Texas. Mr. President, will the Senator from Texas yield?

Mr. DANIEL. I yield.

Mr. HUMPHREY. Mr. President, will the Senator from Texas yield?

Mr. JOHNSON of Texas. Mr. President, will the Senator from Texas yield?

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Mr. JOHNSON of Texas. Mr. President, the reason why I have gone into all this history with reference to certain States—and all 48 States have navigable waters, and lands under them, with natural resources which are valuable—is that the lands are being held under the same rule of law as that under which Texas, Louisiana, Florida, and the other States have held their ownership all these years. They have done so in good faith under the same rule of law as was applied to the inland States and the Great Lakes States. I simply wish to stress the point that if Congress does something for some of the States with regard to submerged lands it should do the same thing for all the States.

Mr. DOUGLAS. First, I should like to mark a question dealing with the memorial of the Illinois Legislature. Is it not a fact that all the legislation asked that the title of Illinois to the submerged lands under the Great Lakes be confirmed?

Mr. DANIEL. I believe the Senator is correct.

The memorial says the Congress of the United States is petitioned to enact legislation which will apply to those millions of acres. If the rule is applied to the coastal States, it should also be applied to the Great Lakes States. Their land is just as valuable, and there is twice as much of it as there is in all the coastal State marginal belts put together.

Mr. HUMPHREY. Mr. President, will the Senator from Texas yield?

Mr. DANIEL. I yield.

Mr. HUMPHREY. First, I want to express my appreciation for the generous sentiments of the Senator from Louisiana and the Senator from Texas. I appreciate their great concern for Minnesota and Illinois. But would it not be a little more desirable, rather than saying we should make it a matter of equity, under their interpretation, to recognize that the Supreme Court has ruled in both the cases referred to? Mr. DANIEL. I yielded for a question, not for a speech.

Mr. HUMPHREY. The Court has ruled in the case of Illinois Central Railroad Company v. State of Illinois (145 U. S. 387) that Illinois' ownership of that portion of Lake Michigan within its boundaries rested upon the same rule of law as "lands under tidewaters on the borders of the sea, and under the high seas, and not hold on to those millions of acres. If the rule is applied to the coastal States, it should also be applied to the Great Lakes States. Their land is just as valuable, and there is twice as much of it as there is in all the coastal State marginal belts put together.

Mr. HUMPHREY. Mr. President, will the Senator from Texas yield?

Mr. JOHNSON of Texas. Mr. President, will the Senator from Texas yield?

Mr. DANIEL. I yield.

Mr. HUMPHREY. Mr. President, will the Senator from Texas yield?
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all the things the Senator is now presenting to the Senate.
Mr. DANIEL. There is no question in my mind but that the Court had those facts before it. I do not know where the Senator from Minnesota was when I first laid the foundation for my argument.
Mr. HUMPHREY. I was present.
Mr. DANIEL. Is the Senator going to ignore the Supreme Court when it rules against him? It is up for it when it rules in favor of him?
Mr. HUMPHREY. No.
Mr. DANIEL. In the case of United States against Rogers the Court stated that the Great Lakes possessed every essential characteristic of seas and that the character of these lakes as seas was recognized by the Court in the Chicago Lakefront case.

The Senator from Minnesota knows what the Court held in the Illinois Central case. Later, did the Supreme Court in the Rodgers case say it held that the Great Lakes are inland waters and that based its decision on that fact? No. It rules in favor of him?
Mr. HUMPHREY. That is correct.
Mr. DANIEL. That is based upon the same rule under which the States on the borders of the sea own their submerged lands. The Supreme Court has said that the lands are held by the same right in the other case.

Now, subsequently the Supreme Court has said that coastal States do not own their lands on the borders of the sea, and therefore the rule applicable to my State and your State has been abrogated. I say it would be only fair that the Government, if it is going to hold on to our lands, should prosecute a case against the Great Lakes States, because their submerged lands are held under the same rule. It would be grossly unfair and discriminatory for the Federal Government to take away our lands and not coastal States take your lands. I do not want to see that done. I merely say that it would be unfair to take away our lands and at the same time allow the Great Lakes States to retain their lands, when both groups of States hold the lands under the same rule of law.

I believe the fair procedure would be to have Congress say to the Great Lakes States and the coastal States, "You may continue to have the ownership you thought you had in good faith since the beginning of the Nation."
Mr. HUMPHREY. The Senator then is stating that, under the ruling of the Court, lands under the Great Lakes are the property of the States. Is that his statement?
Mr. DANIEL. Yes, subject to what has been done to the rule by the recent decisions of the Court. It seems to me that the decisions in the Texas, Louisiana, and California cases have destroyed the rule. I think the Attorney General of the United States could go to court and obtain the same kind of judgment against the Senator's State of Minnesota as was obtained against the State of Texas, if the Attorney General would be willing to try that procedure. The same rule of law has always applied.
Mr. HUMPHREY. I do not contest the prophetic vision of the Senator from Texas, but I am considering the matter according to the way in which the Court ruled. The Court has ruled, insofar as inland waters or insofar as the Great Lakes are concerned, however the Senator wishes to designate them, they are known on the map as the Great Lakes—that lands under those waters are the property of the States. Is that the case?
Mr. DANIEL. The Supreme Court ruled that lands under navigable waters within State boundaries are owned by the States, and up until the California tidelands decision, the Court had never limited its decisions to inland waters or to the Great Lakes—never.

Mr. HUMPHREY. The Senator from Texas was a member of the Association of Attorneys General, was he not?
Mr. DANIEL. The Senator is correct.
Mr. HUMPHREY. Does the Senator recall that the Association of Attorneys General in its effort to muster support on this position none held by the Senator from Texas indicated to the respective States through their governors, attorneys general, and other officials, that the Federal Government might attempt to take control of and claim property under the Great Lakes?
Mr. DANIEL. I imagine the Senator's statement is correct, because officials from 47 States came to Congress and said that it had been held that submerged lands of the Great Lakes belong to coastal States.

Is that not what the Senator is saying?
Mr. HUMPHREY. Yet is it not the basis of the Senator's argument this afternoon, in an effort to claim what he considers to be equity for the coastal States and equitable to themselves, to say that lands under the Great Lakes belong to coastal States and give to coastal States what the Senator says the Supreme Court has already definitely stated belongs to inland States in the Great Lakes area? Is that not what the Senator is saying?
Mr. DANIEL. No; I have stated my position.
If the Senator had been here since I began my argument, I believe he would have understood it fully. My position is that for more than 150 years all the States have been held by the Supreme Court to own all the lands beneath navigable waters, whether inland or seaward. All the States have been acting in good faith. Then the Court came along and said to the 21 coastal States, "You do not own your land any more. The Federal Government can take it away."

The question now before Congress is, Shall we ask Federal officials to see how far that doctrine applies? Shall we ask the Federal Government to sue the Great Lakes States and perhaps take their lands when they sue the inland States for their rivers and other waters? Or shall Congress, in the public interest and in all fairness to those who claim such lands in good faith, allow all States to continue to own what was believed by all the courts to have been owned by the States for more than 150 years? That is the question before Congress.

I simply say that the fair thing for Congress to do is to treat all States alike with respect to lands beneath navigable waters within their boundaries, because it would be most unfair to allow, for instance, the Great Lakes States to continue to hold 38 million acres of land under the same rule of law that coastal States have been holding their 17 million acres of land, and then take away the 17 million acres owned by the 21 coastal States. They should be treated alike.

Mr. HUMPHREY and Mr. PASTORE addressed the Chair.

The PRESIDING OFFICER (Mr. BURTON in the chair). Does the Senator from Texas yield; and if so, to whom?
Mr. DANIEL. I yield first to the Senator from Minnesota.

Mr. HUMPHREY. The Senator from Texas is delivering a splendid address to the Senate. I regret that I was not in the Chamber to hear all of the Senator's remarks, but I may say that much of the argument that he has advanced is new to me. I am familiar with the general phases of it.

I have asked the Senator one or two very simple questions. I asked, first, is it the argument of the Senator from Texas that, insofar as the Great Lakes and the States bordersing on the Great Lakes are concerned, the Supreme Court has held, up until this day, April 8, 1933, that the resources and land beneath the waters of the Great Lakes are the property of the States? That is a simple question and can be answered yes or no, and the answer is "Yes." The Supreme Court in Senator.

said, by which the coastal States own Lakes are concerned, the Supreme Court

More recently these decisions have been but under the same rule of law, the Court

domination and sovereignty over and ownership of the Great Lakes States in their lands. After

calling the Great Lakes open seas and saying that they had the same character as the Atlantic and the Pacific, the Court said:

"We hold, therefore, that the same doctrine as to the dominion and sovereignty over and ownership of lands under the navigable waters of the Great Lakes applies, which obtains at the common law as to dominion and sovereignty over and ownership of lands under tidewaters on the borders of the sea—"

Not inland tidewaters, but "tidewaters on the borders of the sea"— and that the lands are held by the same right in the one case as in the other.

Is it not a simple statement that the same rule of law applies to the marginal seas of the coastal States as applies to the Great Lakes?

Mr. PASTORE. Mr. President, will Mr. LONG. Mr. President—

Mr. HUMPHREY. That is correct.

Mr. DANIEL. I yield now to the Supreme Court decision in the case of Manchester against Massachusetts. I want the Senator from Minnesota wanted to know what "tidewaters" mean. Mr. HUMPHREY. That is correct.

Mr. DANIEL. The Senator from Minnesota now tells me about the meaning of "tidewaters." Is that correct?

Mr. HUMPHREY. I want the Senator to quote the language of the Court again.

Mr. DANIEL. I will quote the language of the Court again. Then I shall quote the language of the Supreme Court as to what it meant by tidewaters on the borders of the sea.

Mr. HUMPHREY. I shall await the answer.

Mr. DANIEL. This is the same decision in the Illinois Central case as to the Great Lakes States. The Senator's State is in the same boat with Texas and Louisiana, but he does not seem to know it yet.

Mr. HUMPHREY. I thank the Senator from Texas for his incisive remark. I think he is trying to play both sides of the street. He says, on the one hand, that the States bordering the Great Lakes have ownership. On the other hand, in order to win support for his claim of ownership, he says that the Court has destroyed the right in the one case as in the other. I am beginning to think there is a third hand being shown. The Senator says that the Great Lakes States hold title to the land beneath the Great Lakes based on the same rule of law that applies to land beneath tidewaters and inland bays.

Mr. DANIEL. This is becoming a pretty long question.

Mr. HUMPHREY. The latter part of it is very simple. Does the rule of law which applies to the coastal States, so far as tidal title to land bordering the Great Lakes decisions, apply to the tidewaters, the inlets, and the bays, rather than what are known as the open and marginal seas?

Mr. DANIEL. No.

Mr. HUMPHREY. Will the Senator read the decision of the Court again?

Mr. DANIEL. The Senator from Texas will be glad to read the decision again. The question has been asked, in writing the decision did the Court mean all tidewaters, or did the Court mean only land under inland waters?

Mr. HUMPHREY. We are talking about the land under the tidewaters, what does the word "tidewaters" mean? The word "tidewaters" refers to the ebb and flow of the tide, between low and high tide.

Mr. DANIEL. Technically, tidelands are only the beaches, from low tide to high tide.

Mr. HUMPHREY. That is correct.

Mr. DANIEL. The Senator from Minnesota now asks me about the meaning of "tidewaters." Is that correct?

Mr. HUMPHREY. I want the Senator to quote the language of the Court again.

Mr. DANIEL. I will quote the language of the Court again. Then I shall quote the language of the Supreme Court as to what it meant by tidewaters on the borders of the sea. I am not sure that the words "tidewaters on the borders of the sea"— and that the lands are held by the same right in the one case as in the other.

Is it not a simple statement that the same rule of law applies to the marginal seas of the coastal States as applies to the Great Lakes?

Mr. PASTORE. Mr. President, will Mr. LONG. Mr. President—

Mr. HUMPHREY. That is correct.

Mr. DANIEL. I read now from the Supreme Court decision in the case of Manchester against Massachusetts. It will be seen that the waters within the 3-mile belt, or whatever belt is used, are tidewaters. As a matter of fact, a distinguished author—an American, I believe—named "Anq," wrote a book in 1826 called Tide Waters. I got that book out the other day because I had heard that the Senator from Minnesota wanted to know what was meant by "tidewaters." The entire book relates to lands below low tide, in the marginal belt. Anqel himself says that the only complete work previous to his book on this subject was "Lord Hain's De Jure Maris, or The Law of the Sea."

The Supreme Court said, with relation to the Great Lakes, that tidewaters are waters which are moved by the tide, or affected by the tide. They cover all the salt waters along the borders of the sea, and the other inland waters. The Supreme Court said in Manchester against Massachusetts, on that very point, referring to the tidewaters in the 3-mile belt:

"We think it must be regarded as established that, as between nations, the minimum limit of territorial jurisdiction of a nation over tidewaters is a marine league from its coast.

I do not know how any clearer answer could be given by the Supreme Court of the United States as to what is meant by "tidewaters on the borders of the sea" than this one, which defines the territorial jurisdiction of a nation over tidewaters as a marine league from its coast, or 3 miles.

The same case holds that Massachusetts, since the Revolution, has the same rights as the King had before the Revolution, to the lands, the fish, and the waters within the area underneath those tidewaters on the borders of the sea within the 1-league belt, or 3-mile belt of Massachusetts, or the Great Lakes or the sea, as the case may be.

I will say to the distinguished Senator from Minnesota that his State has no better title to the lands under the 1,400,000 acres of Great Lakes than the 21 coastal States have to their marginal belts on the borders of the sea, because the title of his State rests on the same theory of law, and on decisions which the Supreme Court has now overruled. If it is fair for the Great Lakes States to continue to hold their lands, it is only fair for the coastal States to continue to hold the same type of property.

Mr. HUMPHREY. Mr. President, will the Senator yield for a final question?

Mr. LONG. Mr. President—

Mr. DANIEL. I yield to the Senator from Louisiana.

Mr. LONG. The Senator has made the statement that the courts have held that the Great Lakes belong to the State where they are located. I believe he will find that the Supreme Court has ever held that Lake Superior belongs to the State of Minnesota, for example. Should the Senator rely upon a case involving Lake Michigan, which does not involve an international boundary.

Mr. HUMPHREY. Does not involve what?

Mr. LONG. The case related to Lake Michigan, which, so far as I know, has no international boundary in it. Lake Superior has an international boundary in it, and in that respect is much more susceptible to the threat of the Federal Government seizing it. The opportunity to make a distinction between the Great Lakes and the other inland waters has been pointed out by Mr. Philip Perlman based upon the fact that an international boundary runs through all the Great Lakes except Lake Michigan.

If the Senator is relying upon reasoning by analogy that because Illinois owns the bed of Lake Michigan the State of Minnesota would own the bed of Lake Superior, I believe, Mr. Philip Perlman has shown him that the Court said in Martin against Wade all that the States own all the waters within their boundaries, and therefore
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the State of New Jersey owned the bed of Raritan Bay. Later, when the Court had an opportunity to say, "Oh, no. We have just decided the case of Raritan Bay, in which we said the States owned the lands beneath all their waters." It said in effect, "Oh, no. We have a case involving waters outside the bay, and we prefer to lay down a different rule to apply to waters outside inland waters within State boundaries."

So the Court laid down a different rule.

If the Senator wishes to rely upon the 52 Supreme Court decisions, I believe he will find that there is different thinking on the Court today, in many respects, than there was when those 52 decisions were handed down. Because there is different thinking, the Court is being asked to reverse some of its previous decisions.

There was a long line of cases involving the so-called separate-but-equal doctrine, holding that a State could provide one school building for white children and another for children of another race. That doctrine was laid down time after time. Some people disagreed with it, and the Court is now being asked to overrule a long line of decisions. I am curious to know whether the Senator from Minnesota would like to have the Court overrule that long line of decisions.

Mr. DANIEL. I think I can answer that question for the Senator from Minnesota, but I should like to get along with my presentation.

Mr. HUMPHREY. Mr. President, will the Senator yield for a final question?

Mr. DANIEL. I yield to the Senator from Minnesota for a question.

Mr. HUMPHREY. Since we are discussing the Court, I remind my able, distinguished, and beloved friend from Louisiana [Mr. Loxa], that in the case of Massachusetts against New York, which involved Lake Ontario, which has an international border, the Court ruled that the Illinois Central case rule applied to that case. In the Illinois Central case the Court also talked about the marginal belt of the coastal States, when adjacent to the coast which is property of the State.

I now get down to the final question. In cases between the States and the Federal Government, the Constitution, I believe, provides that the Supreme Court may be the court of original jurisdiction. In other words, such a case may go directly to the Supreme Court. There was a real purpose in that provision, as I understand from the proceedings of the Constitutional Convention. It was a way to protect what we call the Federal system, and the respective rights of the States and the Federal Government.

Is it not true that the court decisions in the cases involving inland waters, in cases involving the Great Lakes, which are considered a part of the inland waters, are really applied to the coastal States with respect to the submerged lands in the open seas, have all been handed down by the Supreme Court, and that the rule of law in each case has been applied back to other cases which the Supreme Court has decided, and that in each and everyone of those decisions the Court has held that where the open seas are involved on the coasts of the United States, the submerged lands belong to the Federal Government, and that in the inland waters, bays, inlets, and Great Lakes, the submerged lands belong to the States? Is it not that the rule of the Court, as of 1953?

Mr. DANIEL. That may be the rule of the Court as of 1953.

Mr. HUMPHREY. But it is not the opinion of the Court.

Mr. DANIEL. Just a moment. The Senator, in his remarks, has made reference to all the court decisions of the past relating to lands beneath navigable waters. What the Senator has stated is not true as to all the decisions of the past. For over a hundred years, in 52 separate decisions, the Supreme Court of the United States wrote the rule as to State ownership of lands beneath navigable waters broad enough to cover all navigable waters, both inland and seaward. Not one case can the Senator find in which the Supreme Court limited the rule to inland waters.

The present Supreme Court, in the California decision, conceded that I am sure the Senator from Minnesota is familiar with Justice Black's statement.

Mr. HUMPHREY. Yes; I am familiar with that.

Mr. DANIEL. He said that many times the Court had stated the rule broad enough to indicate that it believed that the States own all lands beneath the navigable waters within their boundaries, whether inland or seaward. If the rule was stated well enough to make the former courts believe the States owned the lands both inland and seaward, it certainly must have been stated well enough to make the States believe they were in good faith in claiming the property.

Mr. President, to show exactly how specific the courts have been in stating this rule in the past, and what outstanding justices have stated I wish to quote from at least one decision. I know the Senator from Minnesota has a high regard for Justice Oliver Wendell Holmes.

Mr. HUMPHREY. Indeed I have.

Mr. DANIEL. Let me read a sentence from an opinion concurred in by Justice Holmes while he was on the Supreme Court of Massachusetts, in which he follows a former decision of the Massachusetts court relating to lands within the marginal belt 1 mile from shore. This was in Massachusetts v. Manchester 152 Mass. (1890), opinion by Justice Field, concurred in by Justice Holmes, as follows:

There is no belt of land under the sea adjacent to the coast which is property of the United States and not property of the States.

It would seem to me that is pretty plain English; and how anyone can stand on the Senate floor and say that the Supreme Court justices have not written the law broad enough to cover the marginal belt of the coastal States, when they themselves in their own States claim their submerged lands under that same rule of law, is beyond me.

Mr. President, I am glad to say that the Legislature of Minnesota in past years, and the Governor in past years—

Mr. HUMPHREY. In past years; yes.

Mr. DANIEL. And the attorney general of Minnesota this year, have indicated that they think that the legislation now proposed is essential to enable the State of Minnesota to continue to enjoy ownership of its 1,400,000 acres of land beneath the Great Lakes.

Mr. HUMPHREY. Will the Senator yield so that we may correct the Record?

Mr. DANIEL. I am glad that someone from Minnesota agrees, and sees the danger that is impending, as does the Governor and attorney general and senior Senator from Minnesota [Mr. Three], and as officials from all the States except one happen to see it.

Mr. HUMPHREY. Mr. President, the Legislature of the State of Minnesota never discussed this issue until this year. This year the House of Representatives of the Legislature of the State of Minnesota had an open debate on the very subject matter we are now discussing, and by a vote of 2 to 1 the House of Representatives passed a resolution which the Governor of Minnesota asked that the submerged lands be maintained under Federal ownership and control, the Governor notwithstanding. He, by the way, has not dared make a public statement on this issue in the State of Minnesota, in spite of all the talk about the Great Lakes and the confusion which it has been attempting to bring into the debate.

Mr. DANIEL. Mr. President, may I have unanimous consent to reverse the usual order and ask the Senator from Minnesota a question without losing the floor?

Mr. HUMPHREY. I shall be glad to have the Senator do so.

The PRESIDING OFFICER. Without objection, the Senator from Texas may ask the question.

Mr. DANIEL. The Senate of the State Legislature of Minnesota has not acted on the matter, has it?

Mr. HUMPHREY. The House of representatives, the people's body, where the people are well represented, has acted.

Mr. DANIEL. Will the Senator answer my question? Has the State senate acted on the resolution?

Mr. HUMPHREY. The senate has not.

Mr. DANIEL. In the resolution passed by the House of the Legislature of Minnesota, in which they said they wanted the Federal Government to hold on to the submerged lands of the coastal States, to be divided up among all the people, did they offer to put in the 1,400,000 acres of submerged lands of Minnesota in the common pot to be shared by all the people?

Mr. HUMPHREY. The Legislature of the State of Minnesota merely asked that the Congress of the United States abide by the decisions of the Supreme Court, and when they asked that, they took into consideration the decisions concerning the Great Lakes which my dear friend from Texas has explained with greater eloquence than any court could
employ. They also asked that the decision with respect to the submerged lands along the coasts of Alabama, Louisiana, and Texas. In other words, the legislature believes the Court to be an honorable institution, that it is not engaged in forensics or debate, but in decision rendering on the basis of facts. I assure the house of representatives of the legislature of my State for their judicious action.

Mr. DANIEL. Mr. President, if the Senator from Minnesota is correct in his statement, it would seem that the house of representatives in Minnesota approved the 3 most recent decisions, which do not happen to be against his State, and disapproved the 22 previous opinions, under which we hold our lands in the coastal States, and under which Minnesota now holds its submerged land. If the same thing happens to the Senator's State that has happened to Texas, there will not be any land under the Great Lakes left under the control of his State, but the Federal Government will own these submerged lands.

Mr. LONG. Mr. President, will the Senator from Texas yield?

Mr. DANIEL. I yield to the Senator from Louisiana. Does he have a point?

Mr. LONG. Does the Senator from Texas know whether or not the resolution passed by the House of the Legislature of Minnesota urged that the Congress pass the Anderson bill?

Mr. HUMPHREY. I shall be glad to give the information to the Senator.

Mr. DANIEL. Mr. President, I must hasten on.

Mr. HUMPHREY. I know the Senator from Texas wants a full discussion. By the way, his discussion is a brilliant contribution to the debate.

Mr. DANIEL. Thank the Senator.

Mr. HUMPHREY. The Senator from Texas has almost persuaded me, considering the evidence with which he has had to work. His argument has been remarkable; and I say that in all seriousness.

Mr. DANIEL. I thank the Senator; and now I am ready for the next blow. (Laughter)

Mr. HUMPHREY. We are indeed debating with the experts. The Senator from Texas knows his facts and knows them well, and I shall yield to him when I have the floor, but I shall not be so technical as he is, as I shall discuss the matter from a layman's standpoint.

The house of representatives of the legislature of my State did take into consideration the due process clause as he is, as I shall discuss this afternoon, and leave the floor, in not more than an hour, so that another speech may follow on the same subject. I understand a Senator on the opposition is to speak this afternoon, so I should like to hasten my remarks.

Mr. President, I am sure the exchange between the Senator from Minnesota and the junior Senator from Texas have summed up as well as anything could the points I have been trying to make in the Senate this afternoon. Briefly summarized, they are as follows:

All our coastal States, have natural resources, valuable lands, under navigable waters. The States have all held them for over 100 years, under the same rule of law, and the only fair thing to do for the future is to leave the law as it has been, and not give the Great Lakes States their valuable lands and take away our smaller area of land beneath the marginal sea. Since we have held the lands under the same rule, it would be discrimination if a different rule were applied to the coastal States without even testing the claims of the Federal Government as to the Great Lakes States.

Especially is that true when we see what the Governor of Minnesota wrote to our committee as to the need of legislation such as are now proposed, and as to the valuable land under the Great Lakes within the State of Minnesota. He said that under those lands were copper, nickel, cobalt, gold, and other precious minerals.

I believe the Senator from Minnesota was not in the Chamber when I made the statement earlier this afternoon that the Governor of Minnesota said to the committee:

To date about $2 million has been collected by the State in royalties covering iron ore removed from submerged lands.

I stated that that was more royalty than we in Texas have received on oil from the submerged lands within our boundaries.

Mr. HUMPHREY. Mr. President, will the Senator from Texas yield?

Mr. DANIEL. I yield.

Mr. HUMPHREY. What governor was that?

Mr. DANIEL. The Governor of Minnesota.

Mr. HUMPHREY. What lakes was he talking about, in saying that $2 million in royalties had been received from the lands under them? I live in Minnesota, and I never heard of any of the Great Lakes that has beneath it any iron ore removed from submerged lands.

Mr. DANIEL. I am quoting from the report of the Governor of Minnesota, as given to the Senate Committee on Interior and Insular Affairs. In the report he says:

Please note that to date about $2 million has been collected by the State in royalties covering iron ore removed from submerged lands.

Mr. HUMPHREY. If he means from under Pike Lake, up in the woods—a lake across which a person can almost walk—I agree. But certainly he was not talking about Lake Superior.

Mr. DANIEL. Mr. President, I yield only for a question, not for an argument. If the Senator from Minnesota is correct in his discussion of the other, he can do so later on his own time.

GOOD FAITH OF COASTAL STATES

The coastal States have been in complete good faith in their possession and ownership of the seabed within their historic boundaries for more than 100 years.

This was admitted by the Supreme Court in the California case. It said the previous courts "many times" had indicated that they "had possessed a tract of land in good faith under navigable waters within their territorial jurisdiction, whether inland or not."

That the coastal States have possessed and developed these submerged lands in good faith was also admitted at the recent conference hearings by former Solicitor General Perelman. The question and answer—page 694—speak for themselves.

Senator DANIEL. I would like to ask the Solicitor General if he does not agree that, prior to the Federal assertions made in 1937 for the first time, the States were in good faith, those of us who did claim to own these lands?

Mr. PERELMAN. Yes, Senator, I do. I have to do that because I recall that prior to that time the Secretary of the Interior himself said that he thought the States had title.

This record of our hearings, the Senate Joint Resolution 13 is full of instances in which Federal officials acknowledged State titles to their marginal sea lands over a period of 100 years. Many of them were instances in which the Federal Government purchased or obtained grants from the States to lands below low tide for lighthouses, jetties, and other improvements.

The Senator from Florida [Mr. Holland] has already mentioned a long list of such particular instances in which the Federal Government purchased, if you please, submerged lands beyond the low-water mark—instead of attraction from the States for use for Federal purposes.

NOT A GIFT

Under such circumstances, Mr. President, restoration of these lands to the States will not be a gift. He does not give away something he never had. Until recently the Federal Government never thought it owned these lands, and even until now it has never possessed or used them. The lands are still in the possession of the States, awaiting action by Congress on the final question of future ownership. The passage of the pending proposed legislation will simply permit the States to keep what they have always had since the foundation of the Union. It will be an act of justice and equity—the same type of equity that would be applied to the family if the family had possessed a tract of land in good faith for over 100 years and another tried to take it away on some newly discovered theory of law.

The Supreme Court said it could not apply such rules of equity when the United States is involved.

Of course, Mr. President, in land suits between individuals, the lower courts do apply such rules of equity. If for 100
years no claim to a certain piece of land has been made by a family, the courts do not permit a member of that family thereafter, by instituting suit, to obtain the land, thus taking it away from a family that had claimed it and developed it in good faith for 100 years or more. The Supreme Court said it could not apply that rule of equity as against the United States, but the Court clearly said that Congress has the power to do so. That is precisely what this proposed legislation would do, for it would apply the moral equity that the Court felt itself without authority to apply. It would write the law for the future as all major nations of the world before they recognizes Texas' independence.

In the first place, after Texas entered the Union, the United States Government, following the Mexican War, entered into a treaty. The entrance of Texas, which officially took place on March 1, 1845, with Mexico. The United States won that war, and thereafter, in 1848, the Treaty of Guadalupe Hidalgo was entered into. The 3-league gulfs of land boundary of Texas was recognized by the United States and Mexico in the Treaty of Guadalupe Hidalgo, July 4, 1848, which significantly provides:

The boundary line between the two Republics shall commence in the Gulf of Mexico, 3 leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte (9 Stat. 922).

Of course, that war was fought because of the dispute over the boundary, namely, whether, in connection with the boundary, the line claimed by Texas should be followed or the line claimed by Mexico. I believe I can summarize this boundary argument, and not go into it in detail unless questions are asked by my colleagues, by referring the Members of the Senate to the Treaty of Guadalupe Hidalgo, which specifically followed the Texas 3-league boundary.

Later by the Gadsden Treaty, signed in 1853, such limits of the State were further confirmed—Tenth United States Statutes at Large, page 1031—and still later in 1911 they were actually surveyed by the International Boundary Commission. A map published by the State Department showing this boundary in the Annual Report of the American Geographical Society, page 411 of the transcript of the committee hearings now on Senators' desks.

For instance, Mr. President, in 1911, according to State Department records, the International Boundary Commission ran the 3-league boundary between Texas and Mexico out into the Gulf of Mexico. If Senators who wish to do so will examine the map shown opposite page 411 of the committee hearings, they will find folded there in the hearings a map which was printed in two sections by the State Department. The map has been reduced in size, but there Senators will see the boundary in the Rio Grande between the United States and Mexico, and then out into the Gulf of Mexico. On sheet No. 30, the Senators will see a red line going out into the Gulf of Mexico, the third line running north and south of the middle of sheet No. 30. At that point on the sheet Senators will see the following words:

International boundary begins 3 leagues from land—

Not 3 miles, but 3 leagues—opposite the mouth of the Rio Grande.

And to the right of that line Senators will see that the 3-league point is stated to be a certain number of meters beyond the edge of this sheet. The depth of water there is shown to be 27.3 meters. I think there can be no doubt that the boundary of Texas has been recognized as being three leagues from shore ever since Texas entered the Union; and the boundary of Texas will remain there under the pending measure. Similarly, I think there is no question that title to the lands out to that 3-league boundary should be confirmed to Texas, because the 3-league boundary was the one which existed at the time when Texas entered the Union.

Mr. HILL. Mr. President, will the Senator from Texas yield for a question?

Mr. DANIEL. No; that is not correct. The Senator from Alabama is partially correct. Let me explain what happened in 1836. I am now reading from Treaties and Other International Acts of the United States of America, published by the State Department, volume 4, page 65. The Senator will find there a complete history of the boundary agreement between the United States and Texas, in 1838, and of the manner of running of the boundary. The Senator will find printed on page 138 of these proceedings, issued by the State Department, the complete boundary of Texas, set forth exactly as the boundary was submitted to those who were to run it in 1838, and it goes 3 leagues out into the gulf. They did not want to actually mark the entire boundary, but the boundary commission was created to fix the boundary between the United States and Texas, and that boundary did not extend seaward 3 leagues.

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Only a small segment of the boundary was run. They did not run that part of the boundary which extends south out into the gulfs 3 leagues; they did not run that part of the boundary which extends north above the Red River. They ran only a segment of 300 miles, which did not involve our seaward boundary at all. That is the proposition, exactly. The Sabine River goes into the gulf, does it not?

Mr. DANIEL. That is correct. Mr. HILL. That is correct.
all regarding 3 leagues out into the gulf. I may say to my good friend from Texas that I have a map here, and I shall be glad to let him examine it.

Mr. DANIEL. I cannot let the Senator's statement remain unchallenged in the record that Texas made no claim whatever about the 3 leagues into the gulf. I must read into the record at this point the boundaries which were claimed by the Republic of Texas in 1838, in the official instructions submitted by the Texas commissioners to the secretary of state. I shall quote from a State Department book, volume 4, of Miller's Treaties, page 136. Here is a description of the boundaries which were being considered:

The present boundaries of Texas as fixed by an act of Congress are as follows, viz., Beginning at the mouth of the Sabine River and running west along the Gulf of Mexico 3 leagues from land to the mouth of the Rio Grande—

Mr. HILL. Mr. President, will the Senator yield?

Mr. DANIEL. I will yield in a moment. Let me finish this. This is taken from Miller's own writing. He goes on to say:

That description of the boundaries of Texas was contained in the Executive Order of the President of the United States out of the Executive Order of the President of the United States out of the Texas Act of December 19, 1836, to define the boundaries of the Republic of Texas, which contained the following provisions (Laws of the Republic of Texas, I, 123-124):

"That from and after passage of this act the civil and political jurisdiction of this Republic shall extend and be declared to extend to the following boundaries, to wit: beginning at the mouth of the Sabine River, and running west along the Gulf of Mexico 3 leagues from land to the mouth of the Rio Grande."

Mr. President, so that the record may be clear, let me say that I am reading from the 1838 Boundary Convention Proceedings, reported by the State Department, about which the Senator from Alabama is inquiring, and, though I cannot read all of the proceedings, all that anybody has to say is to read the proceedings, and he will see that only a segment of the boundary between Texas and the United States was intended to be run at the time. Only one segment of it was in dispute. The boundary out in the gulf and north of Red River was not in dispute. Here is the State Department record saying that that was all, and that only a portion of the boundary between the United States and the Republic of Texas was to be run by the commissioners "that which extends from the mouth of the Sabine, where that river enters the Gulf of Mexico, to the Red River." Mr. HILL rose.

Mr. HILL. Does the Senator have another question?

Mr. HILL. Is it the contention of the Senator that the boundary between Texas and the United States be a part of the boundary between Texas and the United States?

Mr. DANIEL. That is exactly what the State Department's records show, and that is all they ran. They did not run the boundary between Texas and the United States out in the gulf, or north of the Red River. There marked only 300 miles of a boundary that extends at least twice that far between the United States and the then Republic of Texas.

Mr. HILL. Mr. President, will the Senator explain?

Mr. DANIEL. I yield for another question.

Mr. HILL. The Senator has been speaking of the boundary extending out 10½ miles into the gulf.

Mr. DANIEL. Three leagues; that is 9 marine miles, or 10½ statute or road miles.

Mr. HILL. Is it not true, however, that for several years the Legislature of the State of Texas sought to extend its boundary seaward approximately 140 miles?

Mr. DANIEL. Several years ago the Legislature of Texas sought to extend its boundary to the edge of the Continental Shelf. I believe no limits were mentioned at that time.

Mr. HILL. That would be roughly a distance of 140 or 150 miles, would it not?

Mr. DANIEL. In the very farthest and most extreme places, it might run that far. This Senator from Alabama I hope the Senator does not mean to imply that the pending joint resolution covers any land beyond the 3-league boundary, so far as Texas is concerned. It certainly does not.

Mr. HILL. I appreciate that fact.

Mr. DANIEL. This measure is limited to lands within the boundaries of the State of Texas as they existed at the time Texas entered the Union, which, very clearly, from the records of the United States Joint Resolution Department itself, was 3 leagues from shore.

Mr. HILL. I certainly understand that the Senator from Texas has no wish and no desire in any way to make any claim on behalf of Texas beyond the 3 leagues.

Mr. DANIEL. Not in the pending joint resolution.

Mr. HILL. Not in the pending measure; I appreciate that. But I did not limit it to the pending measure. I asked whether he has any desire or any intent or any wish at all to make any claim, in any way, shape, fashion, or form, beyond 3 leagues.

Mr. DANIEL. I might have the desire, yes, to make the claim, just as I fear the Senator from Alabama might have a desire to make a claim to some of our Texas land. I might have a desire to claim more, but I do not, by this Senator's argument, by any stretch of the record, by any stretch of the argument, have a desire to make a claim on behalf of Texas beyond the 3 leagues.

Mr. HILL. Does the Senator claim that the area beyond the three leagues is within the boundary of Texas?

Mr. DANIEL. No; that is not within the original boundary of the State of Texas. I say it undoubtedly should be brought within the boundaries of the adjacent State for certain police purposes. There are other boundaries which extend on an area without any local law. A crime might be committed, and there would be no way to punish the criminal. I doubt whether even the Senator from Alabama would want the Continental Shelf outside the original boundaries of the State of Alabama to become a no man's land, consisting of nothing but some federally owned submerged land. I can see no State or local law applicable to that. That is all I am asking for the State of Texas. I shall not yield further, Mr. President, for any question on lands beyond historic boundaries, because such lands were eliminated from the resolution specifically for the purpose of confining it to lands within historic boundaries. The present boundaries of Texas as fixed by the United States out in the gulf, or north of the Red River, were, as I understand, to that State Department's records show, and that is all they ran. They did not run the boundary between Texas and the area beyond the three leagues, as of any time so far as State ownership of the property is concerned. Mr. HILL. The Senator spoke about 37½ percent beyond the three leagues, and, as I recall—

Mr. DANIEL. The Senator from Alabama asked me if I ever want to go out any further. I said the only thing I would ever ask beyond our original boundaries would be the same percentage of revenues which other States receive from federally owned submerged land. I claim not sure I am going to ask for that in this session of Congress.

I do not care to yield further on that point, because there is something without any stretch of the record which is more important. I want to impress upon the Members of the Senate the fact that the Texas seaward boundary has been recognized by the Federal Government time and again.

Let me refer to a book entitled "Geological Survey Bulletin No. 817," published in 1929 as House Document No. 131 by the 71st Congress, 1st session. On page 36 of the book, which gives the boundaries of all the States and the amount of land brought into the United States by them it is stated:

The area which Texas brought into the Union was limited by the boundary defined by the Republic of Texas, December 19, 1836:

"Beginning at the mouth of the Sabine River and running west along the Gulf of Mexico 3 leagues from land to the mouth of the Rio Grande."

Every time we find that the Federal Government recognized that the boundary of Texas goes 3 leagues out from shore.

THE ANNEXATION AGREEMENT

The people of Texas were anxious for annexation to the United States but their first overture was rejected in 1837 and thereafter withdrawn. The next offer
to the United States was in 1844. A treaty was signed between the two nations under which Texas would retain its territories, including "vacant lands, mines, minerals," and so forth, and the United States was to assume all debts of the Republic. After approving the joint resolution—Senate Document No. 341, 28th Congress, 1st session, 1844. This treaty was defeated in the United States Senate. A major objection was the assumption of all the debt, or what was regarded by some Senators as worthless land, consisting of "marshes, mines, minerals," and so forth, and the stricken Republic—approximately $10 million. Constitution, laws, public edifices, fortifications, barracks, ports, and other property, whether public or private, were to remain in the same state, that all laws, including the constitution, which have been acquired under the treaty, shall be in effect, and that all debts and liabilities to the United States in all respects whatever, shall retain all the public funds, debts, and other property, and shall also 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, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct, but no event are said debts and liabilities to become a charge upon the Government of the United States. (5 Stat. 551, Congressional Globe, 29th Cong., 2d sess. (1845), 362, 389.)

In accordance with the resolution and the consent given thereto by the Texas Congress on June 23, 1845, and by the President. It was never submitted to Texas, which was annexed to and formed a part of the United States on December 29, 1845. The boundaries of Texas were not specifically delineated in the resolution, but they were read on the floor, just as in the case of the boundaries of Hawaii. I do not understand that Hawaii's boundaries are set forth in any bill providing for the admission of Hawaii into the Union, but Congress will certainly want to know what those boundaries are. At least, I certainly hope so—and the matter will be brought up in discussion on the floor. That was exactly what was done in the case of Hawaii. The joint resolution of March 1, 1845. The boundaries of Texas were read on the floor. As a matter of fact, earlier in 1844, President Tyler was asked to furnish a map. He furnished one, on which reference was made to the December 19, 1836, boundaries of the Republic of Texas. There is no question that Congress knew they were bringing Texas into the Union as Texas had described itself in the act of 1836.

Mr. DOUGLAS. Would the Senator from Illinois read a section of the joint resolution of admission of December 29, 1845, provided as follows:

"That the State of Texas shall be one, and is hereby declared to be a part of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever."

Mr. DANIEL. The Senator from Illinois realizes, does he not, that that joint resolution of December 29, 1845, provided for:

"That the State of Texas shall be one, and is hereby declared to be a part of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever."

President Polk had said previous to that: All Texas will have to do will be to pass its resolution accepting the resolution of the United States Congress of March 1, 1845, and we will then consider Texas a member of the Union in accordance with the terms and guarantees proposed in the March 1 resolution. In the resolution in which the Senator from Illinois has referred, which was a mere formality approving what had previously been agreed to by the United States and Texas, there was a specific reservation of all vacant and unappropriated land within the boundaries of Texas. The Texas constitution of 1845 was laid before the Congress of the United States on the first Monday in December 1845. A final joint resolution of Congress was passed, and approved by the President of the United States on December 29, 1845, admitting Texas as a State in accordance with the "proposals, conditions and guarantees" contained in the first and second sections of the joint resolution of March 1, 1845, above quoted.

Mr. DOUGLAS. Mr. President, will the Senator from Texas yield? The PRESIDING OFFICER (Mr. KNOWLAND in the chair). Does the Senator from Texas yield to the Senator from Illinois?

Mr. DANIEL. I yield.

Mr. DOUGLAS. I think the Senator has said that Texas was annexed to and joined the United States of America in 1845, and I think the correct, or the correct, says was not ratified by the Senate, but it was the Senate. That is not correct.

Mr. DANIEL. That is correct. Of course, the joint resolution constituted an international agreement, which, I think the Senator from Illinois will concede, is just as solemn and should be respected and lived up to just as much as a treaty.

Mr. DOUGLAS. Is it not true that in the joint resolution of admission there was no mention of boundaries? It merely stated that Texas should enter the Union on an equal footing with the original States; did it not?

Mr. DANIEL. No; that is not correct. The Senator is picking out only one part of the final formal admission act. That was not a part of the agreement at all.

Mr. DOUGLAS. Was not the equal footing clause a part of the joint resolution of admission?

Mr. DANIEL. Not of the joint resolution submitted to the Congress of Texas, to which Texas was to enter the Union. The resolution about which the Senator from Illinois is talking was the final resolution, a mere formality after the agreement had been proposed by the joint resolution of March 1, 1845. After the constitution was approved, the resolution was adopted approving it, and formally admitting the State of Texas, but that resolution was never submitted to Texas. It was never involved in the proceedings by which Texas agreed to come into the Union. Certainly the Senator from Illinois does not believe that the inclusion of the words "equal footing" by the Congress alone, without even mentioning it to Texas, could alter the terms and guarantees by which Texas agreed to enter the Union.

Mr. DOUGLAS. May I ask the Senator from Texas whether the first joint resolution of Congress delineated the boundaries of Texas?

Mr. DANIEL. No; the first resolution of March 1, 1845, simply referred to all lands properly within the boundaries of Texas. The boundaries were not specified.
The people have determined from one end of the land to the other to go into the American Union and to abide all the consequences of their choice. They ask no exception to the proposal made not to accept any privileges granted to them, and denied to every other member of the Constitutional Convention. The people have determined to accomplish the great measure of annexation at every risk, regardless of consequences.

Is the Senator from Texas aware of that statement?

Mr. DANIEL. I have heard of that statement, but Mr. Ochiltree's views did not prevail at that convention. If the Senator will read the contract of agreement between the United States and Texas, he will see that Texas was given some rights which other States do not have; for instance, the right to divide into four additional States. The Senator from Illinois will realize that Mr. Ochiltree's contentions were not accepted at that convention.

I do not know if it should be said that it was a proposal and there was a counter proposal to Texas. It was not the proposal of Texas. Texas did not propose to enter the United States under a deal by which it would keep all its lands or divide them up. Texas originally proposed to come into the Union in 1844 as a Territory, and to give the United States all its lands, but the United States Senate turned down that proposal and made a counter proposal to Texas. It was not the idea of Texas that she should be especially favored. Nowhere in the records can I find where Texas asked for more than the other States received. It was not the proposal of Texas. Texas did not propose to enter the United States under a deal by which it would keep all its lands or divide them up. Texas is in a class by itself; it entered the Union by treaty.

That was during the campaign. A few weeks after the election Mr. Truman instructed the Attorney General to file a suit against our State for the submerged lands within its seaward boundary. Senators know the result. The Supreme Court refused to hear the evidence.

The Supreme Court decision in United States against Texas was against our State by a vote of 4 to 3. The case is reported in 339 U. S. 787. I had the honor of representing my State as its attorney general throughout the entire litigation, and I personally argued the case before the Supreme Court. I am not here to retry the lawsuit, but simply to say to the Senate that the Court decision was rendered without hearing any evidence of the long and consistent international law and interpretation of agreements between nations, in support of my argument that the Court should consider the evidence which I had accumulated. I offered to the Court their evidence and the work
which they had performed. They said that the Court should hear evidence in a case of this kind, but this the Court refused to do, by a vote of 4 to 3.

This was the first time in the history of the Supreme Court for Texas at the time of annexation for the State to the United States that a case was tried in the Supreme Court of the United States for a grant of certain lands running out into the Gulf of Mexico for the purpose of building lighthouses and jetties. A copy of this deed from the State of Texas to the United States, dated October 20, 1888, is filed with the committee.

If the Federal Government obtained those submerged lands, seaward of low tide, and within our boundaries, by the annexation agreement theory, it would not need to come to Texas to obtain deeds to the lands. The Federal Government came to Texas because it recognized the fact that Texas kept such lands under the annexation agreement.

Fourth. In 1904, the State of Texas filed suit against Capt. Edgar Jadwin, et al., of the United States Engineers, for title to and possession of a certain tract of land on the east end of Galveston Island, including submerged lands of Galveston Bay and the Gulf of Mexico. The Court of Civil Appeals rendered judgment in favor of the State (85 S. W. 490), in which the court said:

The land beyond the island belonged to the State. Equally, the Gulf and the gulf of 3 leagues from shore.

This case was appealed by the Attorney General of the United States to the Supreme Court of the United States, but the appeal was dismissed by the Solicitor General—Jadwin v. State of Texas (209 U. S. 535).

Fifth. This was the first time in the history of the Supreme Court that it refused to do, by a vote of 4 to 3.

If anyone cares to know exactly the land for which the United States Government intended a patent from the State of Texas off Galveston, beyond low tide, I have here a map, prepared by the United States Engineers, which shows this particular piece of land lying 16,000 feet from low tide out into the Gulf of Mexico.

Mr. HUMPHREY. I am not being facetious when I ask the Senator from Minnesota who, at the time, was the attorney general of the State of Texas, was this exhibit included?

Mr. HUMPHREY. In the presentation of the brief submitted to the Supreme Court by the Senator from Texas, who, at the time, was the attorney general of the State of Texas, was this exhibit included?

Mr. DANIEL. I am not being facetious when I ask the Senator from Minnesota where he was. I just explained to the Senate that I was denied the opportunity by the Supreme Court, by a 4 to 3 vote, to produce evidence on the subject. In my statement to the Court I did refer to the fact that the map was one piece of evidence I should like to have the Court appoint a master to examine, but the Court did not do it, and so the map is one of the matters of evidence I am presenting to the Senate which was not gone into by the Supreme Court, because it refused to hear evidence in the Texas case.

Mr. HUMPHREY. I thank the Senator. What did the Senator present to the Supreme Court when he brought his case to the Court?
Mr. DANIEL. I presented everything the Court would let me present.

Mr. HUMPHREY. Would the Senator wish to document his evidence?

Mr. DANIEL. It included the main argument, and the only argument before the Court, on a motion by the Federal Government for judgment on the pleadings alone. Think of that. In a case involving more than two million acres of land the Federal Government comes before the Court, and says, "Give us judgment on the pleadings alone. Think of that."

I presented my brief, all of it devoted to the point that the court, in a contested matter such as that, was between the Federal Government and a State, ought to hear the evidence. And I will say to the Senator that, if the court had heard the evidence, the decision would not have been rendered against the State of Texas. As it was, it was decided against us by only one vote. But if the court had heard the evidence as the Senator is hearing it, the decision would have been different. After Senators have heard all the facts and the evidence, I believe the Senator from Minnesota will

Mr. DANIEL. I dare say that if it had not been for the Court decisions the States would all have their lands, and we would not be here considering the joint resolution. Because the Court decisions were contrary to what we thought the law was and contrary to the annexation with Texas, we are here asking Congress to restore the property exactly as we claimed it for more than 100 years.

Mr. HUMPHREY. Will the Senator yield further?

Mr. DANIEL. I do not wish to yield further until I have completed my statement, but I shall be glad to do so then.

Mr. HUMPHREY. I thank the Senator.

Mr. DANIEL. Mr. President, I was referring to the map in connection with which the Federal Government acknowledges that Texas owns the lands seaward from low tide to the Gulf of Mexico for at least 16,000 feet.

A grant of this land was authorized by the Texas Legislature; and deed from the State of Texas to the United States, dated June 28, 1812, and title opinion of the Attorney General of the United States are filed with the committee.

The title opinion of the Attorney General of the United States on the so-called Texas tidelands or submerged lands, for which application for a deed was made to Texas, recites:

The legislature in passing Senate bill 121, ceding the land to the United States, as well as the submerged lands, intended to treat and did treat said Wallace location and patents as unauthorized and void, and there appears to be no question that Senate bill 121 vested in the United States a perfect title to all the land described in said bill and that the United States now do anything to get title—it cannot be made better.

Mr. President, a better title than the one Texas can give to the lands seaward from the shore line, with or without boundaries, cannot be made, according to the 1912 opinion of the Attorney General of the United States.

Sixth. On April 4, 1908, the Attorney General of the United States wrote an opinion holding that title to the abandoned bed of the Rio Grande, around what is known as Cordova cutoff, was in the State of Texas, rather than in the Federal Government. Although this involved inland submerged lands, the opinion was broad enough to show the general interpretation of the Texas annexation agreement as retaining all submerged lands.

The Attorney General of the United States then said:

I am, therefore, of opinion that all vacant and unappropriated lands within the limits of Texas which belonged to the Republic of Texas now belong to the State of Texas, and that the title to the same has never been in the United States, the United States owning in the State of Texas only such lands as have been acquired by
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pursuit or condemnation under the laws of Texas and was excepted by the joint resolution referred to above.

Seventh. Mr. President, I now come to the seventh item of evidence, and I am about to bring this presentation to a close. This is a very significant piece of evidence, for it did not have, but which I think the Congress should hear. On April 4, 1925, the Secretary of the Interior denied a permit requested by Leonhard B. Boncovich for an oil and gas prospecting permit in the Gulf of Mexico off the coast of Texas, on the grounds that the lands were not public lands of the United States, but that they belonged to the State of Texas. This was property beyond low tide in the Gulf of Mexico, upon which an applicant sought a lease from the Secretary of the Interior. The Secretary of the Interior said:

For information concerning the ownership of lands located within the State of Texas and under tidal waters adjacent to the State, your attention is invited to the following:

The Republic of Texas was admitted as a State on December 29, 1845, upon “guaranty” made by the State that she would also retain all the vacant and unappropriated lands lying within her limits” (5 Stat. 767, and 3 Stat. 260). It is also by E. H. Nye-wander (47 L. D. 372). Texas has, for more than three-quarters of a century, governed and disposed of its own public lands, with the consent and approval of the United States. Moreover, the Supreme Court of Texas has said: “The legislature of the State has the right of the use of the unappropriated lands within the State” (Victoria v. Victoria County (100 Texas, 438)).

As to Texas, one other reason may be given for this proposed legislation. It is a promise written by the President of the United States, James K. Polk, to Sam Houston while annexation proceedings were in progress. Sam Houston wanted to know whether the United States would defend our title to the lands within the boundaries we claimed as against Mexico. President Polk wrote to Sam Houston a letter in which the following statement was made:

Of course I would maintain the Texian title to the extent she claims it to be.

That was before Texas finally agreed to accept the proposal for annexation. The President of the United States except President Trump kept the promise.

Mr. President, lately some persons have written that President Roosevelt had these suits filed against the coastal States, but I want the record to be made perfectly clear that President Roosevelt did not do such things. It was not until after the death of President Roosevelt that the filing of any such suit against the coastal States was authorized. President Trump’s actions against the States over these lands, shall be separate and apart from the governmental powers, and shall be held by the States, rather than by the Federal Government.

If this rule is extended to its logical conclusion, Dean Found says the Federal Government could take any land, public or private, within the entire country without having ownership or paying compensation.

As said recently by Dean Roscoe Pound:

If this rule is extended to its logical conclusion, Dean Found says the Federal Government could take any land, public or private, within the entire country without having ownership or paying compensation.

The American Bar Association and the American Title Association have pointed out that this new doctrine is a threat to private ownership of land and minerals, because the Federal Government has the same rights as national defense and the same paramount powers and responsibilities with respect to private lands and minerals under private lands as it does with respect to lands beneath navigable waters.

This new application of paramount rights is closely akin to the Truman theory of “inherent powers.” Both disregard the constitutional concept that property rights are separate from political powers and cannot be taken by the Government without due process of law and just compensation. Both could lead to further nationalization of property and untold centralization of government. They are part of a dangerous trend which can be stopped to a large extent by the enactment of the terms and principles contained in Senate Joint Resolution 13.

Mr. President, the pending joint resolution would provide that for the future, proprietary rights, although they are subordinate to Federal governmental powers, shall be separate and apart from the governmental powers, and shall be held by the States, rather than by the Federal Government.

We believe that the pending joint resolution will do much toward stopping a dangerous trend toward further nationalization of property, in disregard of the rights of the States and of property ownership in this Nation.

Mr. HUMPHREY. Mr. President, if the Senator from Texas does not mind
Mr. DANIEL. The Senator is correct. Mr. HOLLAND. Is the Senator from Florida also correct in his understanding that, by that ruling, the State of Texas was precluded from affirming or supporting any of the affirmative defenses which it set forth in its answer, and which it stood ready to defend and sustain, had it been allowed to offer evidence? Mr. DANIEL. That is correct as to all of the defenses, which were based upon evidence.

Mr. HUMPHREY. Mr. President, will the Senator yield at that point? Mr. DANIEL. I will yield in a moment. While we are on the subject of “equal footing,” I should like to state for the record that throughout the history of this country the words “equal footing” have been held by our courts to apply to political rights, and not to property rights; certainly not to any property rights that would be taken away from States and granted to the Federal Government. We find that in the negotiations for the annexation of Texas there was an alternative clause, section 3, which would provide for further negotiation of a treaty apparatus very different from sections 1 and 2 which were actually submitted and accepted. Equal footing was mentioned in the alternative and was part of the March 1, 1835, resolution, but it was never submitted to Texas and was never agreed to by Texas. The closest the negotiators ever came to mentioning “equal footing” was when the negotiators for the United States had an instrument, on the original copy of which he had written the words “equal footing” and in their place inserted “the most favorable footing.” I get that from the State Department’s own records, from which I quoted.

Texas never had the words “equal footing” subordinated to it as a part of the agreement. It never considered the words at all, and certainly no one ever dreamed that those words, inserted in the subsequent joint resolution which was passed by Congress as a mere formality, would be used later in the manner in which they were used by the Supreme Court, to take away property which it was therefore agreed Texas should retain.

Mr. JOHNSON of Texas. Mr. President, will the Senator yield? Mr. DANIEL. I yield to my colleague, the senior Senator from Texas.
Mr. JOHNSON of Texas. Mr. President, I could not let this opportunity pass without commending my colleague for the very able and thorough and patient manner in which he has made his great presentation of this subject. I do not know that I have ever heard a cause more ably and eloquently presented. I only regret that every member of the Senate could not have been here to hear the junior Senator from Texas this afternoon. I believe I can with certainty speak for the 8 million people of our State in saying that we are very, very proud of the tolerance the Senator has shown, and of the able manner in which he has handled himself. I think the Senator has really been devastating in some of the answers he has made to some of the arguments advanced.

Mr. DANIEL. The junior Senator from Texas wants to thank the senior Senator from Texas. I fear he is a little bit prejudiced, but I do appreciate his very kind remarks.

Mr. LONG. Mr. President, will the Senator from Texas yield?

Mr. DANIEL. I yield to the Senator from Louisiana.

Mr. LONG, I wish to congratulate the Senator from Texas upon the very able argument he has made on the submerged lands issue, and also upon the manner in which he conducted himself during the hearings on this matter, in seeing that all the evidence was developed, in seeing that the case was fully presented, and in seeing that the very voluminous hearings, which we have before us, reflected all the evidence available and which could be obtained. I believe that he has given perhaps the best presentation of the argument for the submerged lands case on the States' side that I have heard presented before the United States Senate.

Mr. DANIEL. I thank the Senator from Louisiana.