

The Burger Court Opinion Writing Database

United States v. Little Lake Misere Land Co.

412 U.S. 580 (1973)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



To: Mr. Justice Douglas
Mr. Chief Justice Warren
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Thurgood Marshall
Mr. Justice Tom C. Clark
Mr. Justice Potter Stewart
Mr. Justice William J. Brennan

1st DRAFT

FIG. 1. *Location of the study area*

SUPREME COURT OF THE UNITED STATES

~~MAY 25 1973~~

No. 71-1459

Recirculated: _____

United States, Petitioner,	} On Writ of Certiorari to the	
v.		United States Court of Ap-
Little Lake Misere Land Company, Inc., et al.		peals for the Fifth Circuit.

[June —, 1973]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted the writ in this case to consider whether state law may retroactively abrogate the terms of written agreements made by the United States when it acquires land for public purposes explicitly authorized by Congress.

The United States initiated this litigation in 1969 in the United States District Court for the Western District of Louisiana, seeking to quiet title to two adjacent parcels of land in Cameron Parish, Louisiana, which the Government had acquired pursuant to the Migratory Bird Conservation Act as part of the Lacassine Wildlife Refuge.¹ Title to one parcel was acquired by the United States by purchase on July 23, 1937; to the other parcel by a judgment of condemnation entered August 30, 1939. Both the 1937 act of sale and the 1939 judgment of condemnation reserved to the respondent Lake Misere oil, gas, sulphur and other minerals for a period of 10 years from the date of vesting

¹The United States brought two separate suits for this purpose under 28 U. S. C. § 1345, which were consolidated by consent pursuant to Rule 42 (a), Fed. Rule Civ. Proc.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 6, 1973

Re: No. 71-1459 - U.S. v. Little Lake Misere Land Co.

MEMORANDUM TO THE CONFERENCE:

Potter's proposed concurring opinion in this case led me to re-work parts of this opinion to make explicit what was before implicit, i. e., that the case is really controlled by the Contract and Supremacy Clauses. In short, the "choice" of the federal courts to choose to follow Louisiana law is overridden here because Act 315 is in direct conflict with a federal program and the Constitution.

Changed areas are indicated as usual.

Regards,

WB B

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

OFFICE OF THE CLERK OF THE SUPREME COURT

To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Marshall
Mr. Justice Stewart
Mr. Justice Souter
Mr. Justice Thomas
Mr. Justice Alito
Mr. Justice Kagan
Mr. Justice Gorsuch
Mr. Justice Kavanaugh
Mr. Justice Barrett

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-1459

From

Circulate

Recirculated: JUN 6 1973

United States, Petitioner }
v. } On Writ of Certiorari to the
Little Lake Misere Land } United States Court of Ap-
Company, Inc., et al. } peals for the Fifth Circuit.

[June —, 1973]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted the writ in this case to consider whether state law may retroactively abrogate the terms of written agreements made by the United States when it acquires land for public purposes explicitly authorized by Congress.

The United States initiated this litigation in 1969 in the United States District Court for the Western District of Louisiana, seeking to quiet title to two adjacent parcels of land in Cameron Parish, Louisiana, which the Government had acquired pursuant to the Migratory Bird Conservation Act as part of the Lacassine Wildlife Refuge.¹ Title to one parcel was acquired by the United States by purchase on July 23, 1937; to the other parcel by a judgment of condemnation entered August 30, 1939. Both the 1937 act of sale and the 1939 judgment of condemnation reserved to the respondent Lake Misere oil, gas, sulphur and other minerals for a period of 10 years from the date of vesting

¹ The United States brought two separate suits for this purpose under 28 U. S. C. § 1345, which were consolidated by consent pursuant to Rule 42 (a), Fed. Rule Civ. Proc.

3

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

Joined 5/31

June 12, 1973

Re: No. 71-1459 - United States v. Little Lake Misere
Land Company, Inc., et al

MEMORANDUM TO THE CONFERENCE:

Given the date and the reactions to an unequivocal, explicit
"Contract Clause" holding, I now enclose the original circulation
plus Part IV.

Regards,
W.S.J.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

Chief!
I am still with
you in your last
circulation
for

To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice Souter
Mr. Justice Kagan
Mr. Justice Alito
Mr. Justice Ginsburg
Mr. Justice Breyer
Mr. Justice Sotomayor
Mr. Justice Kagan
Mr. Justice Alito
Mr. Justice Ginsburg
Mr. Justice Breyer
Mr. Justice Sotomayor

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-1459

Circulation

Recirculated:

JUN 1 5 1973

United States, Petitioner,

Little Lake Misere Land
Company, Inc. et al.

On Writ of Certiorari to the
United States Court of Ap-
peals for the Fifth Circuit.

[June 1973]

MR. CHIEF JUSTICE BURGER delivered the opinion of
the Court.

We granted the writ in this case to consider whether
state law may retroactively abrogate the terms of written
agreements made by the United States when it ac-
quires land for public purposes explicitly authorized by
Congress

The United States initiated this litigation in 1969
in the United States District Court for the Western
District of Louisiana, seeking to quiet title to two ad-
jacent parcels of land in Cameron Parish, Louisiana,
which the Government had acquired pursuant to the
Migratory Bird Conservation Act as part of the Lacassine
Wildlife Refuge.¹ Title to one parcel was acquired by
the United States by purchase on July 23, 1937; to the
other parcel by a judgment of condemnation entered
August 30, 1939. Both the 1937 act of sale and the
1939 judgment of condemnation reserved to the re-
spondent Lake Misere oil, gas, sulphur and other min-
erals for a period of 10 years from the date of vesting

¹ The United States brought two separate suits for this purpose
under 28 U. S. C. § 1345, which were consolidated by consent pur-
suant to Rule 42 (a) Fed. Rule Civ. Proc.

4, 5, 6, 13, 18-19, 21-22
There are technical changes
file

To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Burger

4th DRAFT

From: Mr. Justice Burger

SUPREME COURT OF THE UNITED STATES

No. 71-1459

Recirculated: JUN 14 1973

United States, Petitioner, }
v. } On Writ of Certiorari to the
Little Lake Misere Land } United States Court of Ap-
Company, Inc., et al. } peals for the Fifth Circuit.

[June —, 1973]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted the writ in this case to consider whether state law may retroactively abrogate the terms of written agreements made by the United States when it acquires land for public purposes explicitly authorized by Congress.

The United States initiated this litigation in 1969 in the United States District Court for the Western District of Louisiana, seeking to quiet title to two adjacent parcels of land in Cameron Parish, Louisiana, which the Government had acquired pursuant to the Migratory Bird Conservation Act as part of the Lacassine Wildlife Refuge.¹ Title to one parcel was acquired by the United States by purchase on July 23, 1937; to the other parcel by a judgment of condemnation entered August 30, 1939. Both the 1937 act of sale and the 1939 judgment of condemnation reserved to the respondent Lake Misere oil, gas, sulphur and other minerals for a period of 10 years from the date of vesting

¹ The United States brought two separate suits for this purpose under 28 U. S. C. § 1345, which were consolidated by consent pursuant to Rule 42 (a), Fed. Rule Civ. Proc.

3

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 26, 1973

Dear Chief:

In re 71-¹⁴⁵⁹~~1459~~ - U. S. v.

Little Lake Misere Land Co.

Although I voted the other way at
Conference, my view was somewhat unsettled.
And on reconsideration of the merits I
now join your opinion in this case.

W. O. D.

The Chief Justice

cc: Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 29, 1973

RE: No. 71-1459 United States v. Little
Lake Misere Land Company, Inc.

Dear Chief:

I agree.

Sincerely,

Bul

The Chief Justice

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

9

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

May 29, 1973

Re: No. 71-1459, United States v. Little
Lake Misere Land Co.

Dear Chief,

While I cannot agree with your opinion for the Court in this case, I do concur in the result you reach. In due course I shall circulate a brief concurring opinion.

Sincerely yours,

P.S.
/

The Chief Justice

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

3
Joined
Chief

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

Circulated: MAY 31 1973

No. 71-1459

Recirculated: _____

United States, Petitioner,
v.
Little Lake Misere Land
Company, Inc., et al. } On Writ of Certiorari to the
United States Court of Ap-
peals for the Fifth Circuit.

[June —, 1973]

MR. JUSTICE STEWART, concurring in the result.

I cannot agree with the Court that the mineral reservations agreed to by the United States and the respondents in 1937 and 1939 are governed by some brooding omnipresence labeled federal common law. It seems clear to me that when any party, including the Federal Government, goes into a State and acquires real property, the nature and extent of the rights created are to be determined, in the absence of a specifically applicable federal statute, by the law of the State.

That was the very premise of the decision in *Leiter Minerals, Inc. v. United States*, 352 U. S. 220, 228-230 (1957), which remanded the case to the Court of Appeals with instructions to secure an authoritative construction of the state statute by the state courts, in order possibly to avoid deciding the federal constitutional issues. Other decisions of this Court lead to the same conclusion. *United States v. Yazell*, 382 U. S. 341, 352-358 (1966); *United States v. Burnison*, 339 U. S. 87, 89 (1950); *Davies Warehouse Co. v. Bowles*, 321 U. S. 144, 155 (1944); *Sunderland v. United States*, 266 U. S. 226, 232-233 (1924); *Mason v. United States*, 260 U. S. 545, 557-558 (1923); *United States v. Fox*, 94 U. S. (4 Otto) 315, 320 (1887). Cf. *Wallis v. Pan American Petroleum Corp.*, 384 U. S. 63 (1966).

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U. S. DEPT. OF JUSTICE

STYLISTIC CHANGES THROUGHOUT.

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-1459

To: The Chief Justice
 Mr. Justice Douglas
 Mr. Justice Brennan
 Mr. Justice White
 Mr. Justice Marshall ✓
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist

From: [Name], J.

Circulated: _____

United States, Petitioner, } On Writ of Certiorari to the
 v. } United States Court of Ap-
 Little Lake Misere Land } peals for the Fifth Circuit.
 Company, Inc., et al. }

Filed: JUN 8 1973

[June —, 1973]

MR. JUSTICE STEWART, concurring in the result.

I do not think that the mineral reservations agreed to by the United States and the respondents in 1937 and 1939 are governed by some brooding omnipresence labeled federal common law. As a matter of law, not a matter of "choice," it seems clear to me that when anyone, including the Federal Government, goes into a State and acquires real property, the nature and extent of the rights created are to be determined, in the absence of a specifically applicable federal statute, by the law of the State.

That was the very premise of the decision in *Leiter Minerals, Inc. v. United States*, 352 U. S. 220, 228-230 (1957), which remanded the case to the Court of Appeals with instructions to secure an authoritative construction of the *state* statute by the *state* courts, in order possibly to avoid deciding the federal constitutional issues. Other decisions of this Court lead to the same conclusion. *United States v. Yazell*, 382 U. S. 341, 352-358 (1966); *United States v. Burnison*, 339 U. S. 87, 89 (1950); *Davies Warehouse Co. v. Bowles*, 321 U. S. 144, 155 (1944); *Sunderland v. United States*, 266 U. S. 226, 232-233 (1924); *Mason v. United States*, 260 U. S. 545, 557-558 (1923); *United States v. Fox*, 94 U. S. (4 Otto) 315, 320 (1887). Cf. *Wallis v. Pan American Petroleum Corp.*, 384 U. S. 63 (1966).

To: The Chief Justice
Mr. Justice Douglas ✓
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-1459

Circulated: _____
Recirculated: JUN 14 1973

United States, Petitioner, }
v. } On Writ of Certiorari to the
Little Lake Misere Land } United States Court of Ap-
Company, Inc., et al. } peals for the Fifth Circuit.

[June —, 1973]

MR. JUSTICE STEWART, concurring in the result.

I cannot agree with the Court that the mineral reservations agreed to by the United States and the respondents in 1937 and 1939 are governed by some brooding omnipresence labeled federal common law. It seems clear to me, as a matter of law, not a matter of "choice" or "borrowing," that when anyone, including the Federal Government, goes into a State and acquires real property, the nature and extent of the rights created are to be determined, in the absence of a specifically applicable federal statute, by the law of the State.

That was the very premise of the decision in *Leiter Minerals, Inc. v. United States*, 352 U. S. 220, 228-230 (1957), which remanded the case to the Court of Appeals with instructions to secure an authoritative construction of the state statute by the state courts, in order possibly to avoid deciding the federal constitutional issues. Other decisions of this Court lead to the same conclusion. *United States v. Yazell*, 382 U. S. 341, 352-358 (1966); *United States v. Burnison*, 339 U. S. 87, 89 (1950); *Davies Warehouse Co. v. Bowles*, 321 U. S. 144, 155 (1944); *Sunderland v. United States*, 266 U. S. 226, 232-233 (1924); *Mason v. United States*, 260 U. S. 545, 557-558 (1923); *United States v. Fox*, 94 U. S. (4 Otto) 315, 320 (1887). Cf. *Wallis v. Pan American Petroleum Corp.*, 384 U. S. 63 (1966).

Since I think the Government's property acquisitions

WP
WP

7
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 29, 1973

Re: No. 71-1459 - U.S. v. Little Lake Misere
Land Co., Inc.

Dear Chief:

I join your opinion in this case.

Sincerely,



The Chief Justice

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 31, 1973

Re: No. 71-1459 - U. S. v. Little Lake Misere

Dear Chief:

Please join me.

Sincerely,



T.M.

The Chief Justice

cc: Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 12, 1973

Re: No. 71-1459 - U. S. v. Little Lake Misere
Land Company, Inc.

Dear Chief:

I am still with you in your last
circulation.

Sincerely,



T.M.

The Chief Justice

cc: Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

SECRET NO. 100-441111-1

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 29, 1973

Re: No. 71-1459 - U.S. v. Little Lake Misere
Land Co.

Dear Chief:

Please join me.

Sincerely,

H. A. B.

The Chief Justice

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

SECRET NO. 100-447111

file

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 7, 1973

Re: No. 71-1459 - United States v. Little Lake Misere Land Co.

Dear Chief:

When I joined your circulation of May 25, I was entirely content with the opinion as drawn. It seemed to me that it struck an ideal balance between the respective interests of the federal government and those of the state.

As I read your recirculation of June 6, the opinion, it seems to me, despite the lack of change in the earlier pages, has become primarily a Contracts Clause case. I am not at all sure of my footing, for this case, in that area of constitutional law. If, therefore, the draft of June 6, which already had commanded seven votes, becomes the opinion of the Court, would you please note me as concurring in the result.

Sincerely,

H.A.B.

The Chief Justice

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 12, 1973

Re: No. 71-1459 - United States v. Little Lake Misere Land Co.

Dear Chief:

Please join me in your recirculation of June 12.

Sincerely,

H.A.B.

The Chief Justice

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

SECTION OF ADVISORY

7
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 1, 1973

No. 71-1459 U. S. v. Little Lake Misere

Dear Chief:

Please join me.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

1 - joined on
of chief 5/31
CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

Supreme Court of the United States
Washington, D. C. 20543

June 7, 1973

No. 71-1459 U. S. v. Little Lake Misere Land Co.

Dear Chief:

I am still with you.

Sincerely,

lfp

The Chief Justice

lfp/ss

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

9
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 12, 1973

No. 71-1459 United States v. Little Lake Misere
Land Company, Inc., et al

Dear Chief:

I am still with you.

Sincerely,

Lewis

The Chief Justice
cc: The Conference

LFP/gg

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF COMMERCE

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPT. OF JUSTICE

The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-1459

Mr. Justice Rehnquist, J.

Amended 6/12

United States, Petitioner,
v.
Little Lake Misere Land
Company, Inc., et al. } On Writ of Certiorari to the
United States Court of Ap-
peals for the Fifth Circuit.

[June —, 1973]

MR. JUSTICE REHNQUIST, concurring the result.

I agree with my BROTHER STEWART that the central question presented by this case is whether Louisiana has the constitutional power to make Act 315 applicable to this transaction, and not whether a judicially created rule of decision, labeled federal common law, should displace state law. The Migratory Bird Conservation Act does not establish a federal rule controlling the rights of the United States under the reservation. Whether Congress could enact such a provision is a question not now before us. In *Clearfield Trust Co. v. United States*, 318 U. S. 363, 366 (1943), this Court held that federal common law governed the rights and duties of the United States "on commercial paper which it issues. . . ." The interest in having those rights governed by a rule which is uniform across the Nation was the basis of that decision. But the interest of the Federal Government in having real property acquisitions that it makes in the States pursuant to a particular federal program governed by a similarly uniform rule is too tenuous to invoke the *Clearfield* principle, especially in light of the consistent statements by this Court that state law governs real property transactions.

What for my BROTHER STEWART, however, is a "text-book example" of a violation of the Obligation of Con-