

STEVENS, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 96–1400

CALIFORNIA AND STATE LANDS COMMISSION, PETITIONERS v. DEEP SEA RESEARCH, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[April 22, 1998]

JUSTICE STEVENS, concurring.

In *Florida Dept. of State v. Treasure Salvors, Inc.*, 458 U. S. 670 (1982), both the four Members of the plurality and the four dissenters agreed that the District Court “did not have power . . . to adjudicate the State’s interest in the property without the State’s consent.” *Id.*, at 682; see also *id.*, at 699–700; *id.*, at 703, n. (White, J., concurring in judgment in part and dissenting in part). Our reasons for reaching that common conclusion were different, but I am now persuaded that all of us might well have reached a different conclusion if the position of Justices Story and Washington (that the Eleventh Amendment is no bar to any *in rem* admiralty action) had been brought to our attention. I believe that both opinions made the mistake of assuming that the Eleventh Amendment has the same application to an *in rem* admiralty action as to any other action seeking possession of property in the control of state officers.

My error, in writing for the plurality, was the assumption that the reasoning in *Tindal v. Wesley*, 167 U. S. 204 (1897), and *United States v. Lee*, 106 U. S. 196 (1882), which supported our holding that *Treasure Salvors* was entitled

to possession of the artifacts, also precluded a binding determination of the State's interest in the property. Under the reasoning of those cases, the fact that the state officials were acting without lawful authority meant that a judgment against them would not bind the State. See 458 U. S., at 687–688 (“In holding that the action was not barred by the Eleventh Amendment, the Court in *Tindal* emphasized that any judgment awarding possession to the plaintiff would not subsequently bind the State”). That reasoning would have been sound if we were deciding an ejectment action in which the right to possession of a parcel of real estate was in dispute; moreover, it seemed appropriate in *Treasure Salvors* because we were focusing on the validity of the arrest warrant.

Having given further consideration to the special characteristics of *in rem* admiralty actions, and more particularly to the statements by Justice Story and Justice Washington quoted at pages 9 and 10 of the Court's opinion,* I am now convinced that we should have affirmed the *Treasure Salvors* judgment in its entirety. Accordingly, I agree with the Court's holding that the State of California may be bound by a federal court's *in rem* adjudication of rights to the *Brother Jonathan* and its cargo.

*See also Fletcher, A Historical Interpretation of the Eleventh Amendment, 35 Stan. L. Rev. 1033, 1078–1083 (1983) (discussing the historical basis for this interpretation).