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## CONSTITUTIONAL LAW - OIL AND GAS - VALIDITY OF WELL-SPACING ACT - PROPORTIONATE SHARING OF PROCEEDS BY OWNERS OF LAND IN STATUTORY DRILLING UNIT

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CONSTITUTIONAL LAW — OIL AND GAS — VALIDITY OF WELL-SPACING ACT — PROPORTIONATE SHARING OF PROCEEDS BY OWNERS OF LAND IN STATUTORY DRILLING UNIT — Acting under the Well-Spacing Act,<sup>1</sup> the Corporation Commission of Oklahoma divided certain rural oil areas into ten-acre drilling units. Plaintiff owned six and one-quarter acres of a drilling unit, and the well, located in the center of the unit, was wholly on his land. The statute provided that each of the various owners of tracts making up a drilling unit should share in the oil royalties in the proportion that the acreage of his

<sup>1</sup> Okla. Sess. Laws (1935), c. 59, art. 1, Stat. Ann. (Supp. 1938), §§ 11574b-11574d3.

tract bore to the total acreage of the drilling unit.<sup>2</sup> Plaintiff sought to recover all the royalty on oil produced from the well, contending that the statute and order violated the contract, due process and equal protection clauses of the Federal Constitution. The Oklahoma court held the statute and order valid as a reasonable exercise of the police power.<sup>3</sup> On appeal to the Supreme Court of the United States, it was *held* that no substantial federal question had been raised, and the appeal was dismissed for want of jurisdiction. *Patterson v. Stanolind Oil & Gas Co.*, (U. S. 1939) 59 S. Ct. 259.

At common law a landowner is regarded either as absolute owner of the oil and gas in place under his land, or as qualified owner with a right to take equal to that of others owning land over a pool. He is privileged to drill as many wells on his land as he desires, and to extract therefrom all the oil and gas he is able to produce, whichever theory is followed.<sup>4</sup> In operation, this rule causes the various owners over a reservoir to drill uneconomically. Emphasis is placed on speed and the number of wells—the idea being to get the oil out before neighbors have drained the pool. It is clear that this competitive production is wasteful. Generally, oil pools are composed of a gas dome, below which lies the oil, with water below the oil. The gas pressure is valuable in forcing out the oil.<sup>5</sup> Unregulated drilling dissipates the gas pressure, because too many wells are drilled, and many are improperly located, draining from the gas rather than from the oil level. Legislative regulation of drilling has proceeded slowly. In 1900, the Supreme Court of the United States upheld an Indiana statute making it unlawful for a producer to allow a well to flow freely for more than two days after the striking of oil or gas.<sup>6</sup> The statute was held to be a reasonable exercise of the state police power, in that it prevented inequitable taking from a common source of supply, as well as waste of a natural resource. In 1929, a city ordinance which effected a compulsory plan of unit operation within the limits of a city was upheld.<sup>7</sup> Other statutes designed to prevent waste have been upheld.<sup>8</sup> From the standpoint of engineering and conservation, a well-spacing act of the type involved in the principal case, with provision for compulsory pooling of small interests, is most likely to serve the desired ends.<sup>9</sup> The chief problem in regulation aimed at conservation and preservation of the various owners' correlative rights is what plan to adopt. Oklahoma appears to have selected the best known

<sup>2</sup> Okla. Sess. Laws (1935), c. 59, art. 1, § 3 (c); Stat. Ann. (Supp. 1938), § 11574d (c).

<sup>3</sup> *Patterson v. Stanolind Oil & Gas Co.*, 182 Okla. 155, 77 P. (2d) 83 (1938), noted 16 TEX. L. REV. 597 (1938).

<sup>4</sup> Walker, "Property Rights in Oil and Gas and Their Effect upon Police Regulation of Production," 16 TEX. L. REV. 370 (1938).

<sup>5</sup> Ford, "Controlling the Production of Oil," 30 MICH. L. REV. 1170 (1932).

<sup>6</sup> *Ohio Oil Co. v. Indiana*, 177 U. S. 190, 20 S. Ct. 576 (1900).

<sup>7</sup> *Marrs v. City of Oxford*, (C. C. A. 8th, 1929) 32 F. (2d) 134, cert. den. 280 U. S. 573, 50 S. Ct. 29 (1929).

<sup>8</sup> See annotations in 67 A. L. R. 1346 (1930) and 99 A. L. R. 1119 (1935).

<sup>9</sup> Ely, "The Conservation of Oil," 51 HARV. L. REV. 1209 at 1234 to 1240 (1938); German, "Compulsory Unit Operation of Oil Pools," 20 CAL. L. REV. 111 (1932); Walker, "The Problem of the Small Tract under Spacing Regulations," 17 TEX. L. REV. (Bar Assn. No.) 157 (Oct. 1938).

at present. That such legislation cannot be seriously attacked on constitutional grounds is clear from the decision in the principal case that no substantial federal question had been raised.

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