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INTEGRATION OF LEASED AND UNLEASED INTERESTS

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INTEGRATION OF LEASED AND UNLEASED INTERESTS

The scope of this paper, notwithstanding its title, is limited to the area of what is now commonly referred to as "compulsory" or "forced" pooling or integration. In view of the fact that the legal problems which are involved in that subject include, in one way or the other, a substantial portion of the field of oil and gas law, this paper is further limited to a consideration of the present Arkansas statutes on compulsory pooling, with some discussion and speculation as to the reason for the amendment of the former statutes on that subject. For other articles and discussions of compulsory pooling in general and of particular aspects thereof, reference is made to the table of authorities.

Before entering into the discussion of the subject, I believe it will be worth while to consider, from an historical viewpoint, certain rules of law and principles which evolved over the years in the field of oil and gas, and which contributed to the advent of compulsory pooling.

During the period that the law of oil and gas was in its formative state, it is now apparent that the courts were ignorant of the nature of oil and gas. Of course, the courts were not alone in their ignorance. One authority<sup>2</sup> in discussing the evolution of the law or rule of capture, states:

"The judges knew no more about the true nature of oil and gas reservoirs than did the oil operators and geologists of the time, so the judges were hard put to decide what was right or wrong in the case of this strange mineral. . . . . No precedent being known, they looked for analogies and found them in percolating waters and in game."

In one of the leading cases announcing what has become known as the "law of capture" or the "rule of capture", decided in 1907 by the Pennsylvania Supreme Court, an example of the admission by the courts of their lack of knowledge of the true nature of oil and gas wells and reservoirs is found. There the Court states:

"An oil or gas well may draw its product from an indefinite distance and in time exhaust a large space. Exact knowledge on this subject is not at present attainable, but the vagrant character of the mineral and the porous sand rock in which it is found and through which it moves fully justify the general conclusion we have stated above and have led to its general adoption by practical operators. The right of every landowner to drill a well on his own land at whatever spot he may see fit certainly must be conceded. If, then, the landowner drills on his land at such spot as best subserves his purpose, what is the standing of the adjoining landowner whose oil or gas may be drained by the well? He certainly ought not to be allowed to stop his neighbor from developing his own farm. There is no certain way of ascertaining how much of the oil and gas that comes out of the well was when in situs under this farm and how much under that. What, then, has been held to be the law? It is this,

as we understand it, every landowner or his lessee may locate his wells wherever he pleases, regardless of the interests of others. He may distribute them over the whole farm or locate them only on one part of it. He may crowd the adjoining farms so as to enable him to draw the oil and gas from them. What, then, can the neighbors do? Nothing; only go and do likewise. He must protect his own oil and gas. He knows it is wild and will run away if it finds an opening and it is his business to keep it at home. This may not be the best rule; but neither the Legislature nor our highest Court has given us any better. No doubt many thousands of dollars have been expended 'in protecting lines' in oil and gas territory that would not have been expended if some rule had existed by which it could have been avoided." 3

The rule of capture has been more distinctly defined by the Supreme Court of Texas as follows:

" . . . . That rule simply is that the owner of a tract of land acquires title to the oil or gas which he produces from wells on his land, though part of the oil or gas may have migrated from adjoining lands. He may thus appropriate the oil and gas that have flowed from adjacent lands without the consent of the owner of those lands, and without incurring liability to him for drainage." 4

Under the rule of capture, as exemplified by the above cases, in the absence of any kind of regulation or of any agreement among all the producers and royalty owners in a pool, it is obvious that, once a pool was discovered, a competitive race to drill wells and produce the oil and gas was a practical necessity, for the owner who delayed in drilling, or who failed to get as much production from his wells as his neighbors produced from their wells, would lose oil by drainage to the adjacent properties. Each well was drilled and exhausted as rapidly as was physically possible in the effort by each producer to get his oil and gas to the surface and reduced to possession. Under these circumstances waste was inevitable.

As sufficient technological understanding of the behavior of oil and gas pools was developed, it became apparent that one of the fundamental causes of waste was unrestricted production, but it was equally as apparent that because of the multiplicity of ownership in most oil and gas fields and the resultant conflicts of interest, efforts of individual producers alone could not effectively prevent waste. Thus it was from necessity that a system of law evolved under which oil and gas could be produced in a relatively efficient manner and under which a better method than unrestricted drilling and production would be devised to protect property rights.

It was during this same period of time that the conservation movement in the United States was gaining momentum. One of the conservation devices which evolved is the restriction on the drilling of wells, since it is partly through the location of wells that fluid movements within a reservoir are controlled, and since the cost of drilling and equipping the wells is usually the most substantial part of the total cost of developing a pool, the number of wells drilled directly affects the economics of the operation. <sup>5</sup> One of the ways that a restriction of drilling can be accomplished is through the outright limitation of the right to drill, which takes the form of the specification of the minimum acreage on which a well will be permitted, such as one oil well on each 40-acre tract, or one gas well on each 640-acre tract. However, difficulty is presented when the minimum acreage for which only one well is permitted consists of a number of separately owned tracts. If the owner of a tract is not permitted to have a well on his tract and thereby a means of participating in the total production from a pool, the oil and gas under his tract will be drained. Therefore, it is necessary that he be given an opportunity to recover his share of the oil and gas within the pool. If his tract is

smaller than the established minimum size for a well, and he is denied the right to drill, he is directly deprived of his property. It is at this point that the topic of integration of leased and unleased interests becomes pertinent.

In the case of Ohio Oil Company v. Indiana,<sup>6</sup> decided in 1900 by the Supreme Court of the United States, it was established that the states in the exercise of their police powers could place restrictions upon the rule of capture. While that case of course had nothing to do with compulsory pooling, it did set the stage for further legislative encroachments upon the rule of capture.

Even though the advocates of conservation were becoming more vocal and were gaining the attention<sup>7</sup> of high authorities of the United States in the early 1920's, the first restrictive drilling and compulsory pooling enactments were not motivated by the prevention of waste but resulted from the nuisance and safety factors caused by drilling in incorporated cities. In 1927 the City of Oxford, Kansas enacted an ordinance which prohibited the drilling of more than one well to each city block and provided that if the person obtaining the drilling permit for a block did not hold leases on all of the lots in such block, the permit would be conditioned so that the drilling party would deliver to each owner whose lot was not so leased a proportionate share of 1/8th of the oil, such proportion being on a square foot basis. Provision was also made for issuance of the permit to the party having under lease the largest area in the block and for participation as a working interest owner of lessees and owners of unleased lots who owned the smaller area in the block by the posting of appropriate guarantees for their share of costs. This ordinance was the subject of the first case before the courts

which concerned compulsory pooling and was considered first in the Federal District Court of Kansas <sup>8</sup> in 1928 and then by the U. S. Circuit Court of Appeals for the 8th Circuit <sup>9</sup> in 1929. The latter Court, in affirming the validity of the ordinance, states:

"But looking to the substance of things, as equity does, what are the rights of plaintiffs that will be encroached upon or denied to them by the enforcement of this ordinance? It is not the mere right to drill a well on one or two lots at great cost and stop with that, or to take the proportionate part of the oil and gas in the pool that might be said to lie under or be fairly attributed to those lots. The obvious purpose was to reach the pool as quickly as possible and take all of the oil and gas obtainable before others could get it, thus seriously encroaching upon and probably destroying the same rights of adjoining lot owners. If one or more lot owners have given a lease for which no permit is obtainable their lessee may join a lessee who has a permit in the same block on terms that are fair to both lessor and lessee. If a lot owner has not given a lease he is protected by the asking in a fair proportion of the mineral produced by a permittee. The regulations make every effort to protect, rather than to destroy rights. They extend equal opportunity to all who have an interest and eliminate the race between those having equal rights in a common source of wealth, so that some may not take all and leave others with nothing."

Subsequently the validity of similar ordinances of other cities was sustained by the courts. <sup>10</sup>

The States were not far behind in adopting statutes providing for the creation of drilling or spacing units and the compulsory pooling of interests therein in the absence of agreement. <sup>11</sup> At the present time there are some 29 states that have some form of compulsory pooling. <sup>12</sup> The most notable exception of states that have substantial production with no provision for compulsory pooling are Kansas and Texas.



To digress for a moment from compulsory pooling, for a vivid illustration of the inequities resulting from statutes and regulations thereunder which fix spacing units permitting only one well to be drilled thereon but at the same time do not provide for compulsory pooling of separately owned interests within the spacing unit, it is not necessary to look any farther than our neighboring state of Texas. An illustration of this is the recent case of Hitchcock v. Sojourner Drilling Corporation,<sup>13</sup> decided in 1962 by the Texas Court of Civil Appeals. In that case the plaintiff executed an oil and gas lease on 156 acres, including 24 acres which he subsequently conveyed to one of the defendants. After the conveyance, oil was discovered and produced from the 24-acre tract so conveyed, under a 40-acre spacing rule fixed by the Railroad Commission. Plaintiff, as the owner of the other 16 acres in the spacing unit and there being no possibility of a well being allowed thereon, contended that he was entitled to 16/40ths of the royalty from the well on the spacing unit, notwithstanding that it was not located on his land, and that the spacing arrangement constituted a forced pooling of plaintiff's 16 acres with the 24 acres. The Court, in denying the claim of plaintiff, reaffirmed the traditional and long-standing rule of property that royalties belong to the owner of the particular tract upon which the well is located and that the regulations of the Railroad Commission in fixing spacing units cannot effect a change of property rights.

Of course the compulsory pooling statutes met with fierce resistance since the methods used and results derived under the statutes differed materially from the relatively unfettered rule of capture. Following the enactment of the Oklahoma law in 1935 its validity was first challenged in Patterson v. Stanolind Oil & Gas Co.,<sup>14</sup>

and the Oklahoma Supreme Court rendered its decision thereon on March 1, 1938 sustaining the constitutionality of the law. Except for one case involving a California statute <sup>15</sup> which prohibited drilling more than one well to an acre, but which did not provide for the participation by the owners of lands upon which no well could be drilled under the statutory limitations, the courts have upheld the validity of compulsory pooling laws <sup>16</sup> in every case in which they have been in issue.

The validity of Arkansas laws on compulsory pooling has not been at issue in any reported court decision, although prior to the recent amendment the statute had been utilized numerous times in hearings before the Oil and Gas Commission. As a matter of fact, it appears that the Court has made reference to the statute in only a few cases, one of these cases being Poindexter v. Lion Oil Refining Co., <sup>17</sup> decided by the Arkansas Supreme Court in 1943, a case involving lease cancellation for failure to offset and develop, and the defendant apparently contended that it was precluded from drilling on one of the tracts involved because its lease only covered one-half of the minerals. The Court made short work in disposing of that objection, stating:

"This presents no serious difficulty. Our laws provide means whereby the entire mineral interest can be leased for the benefit of all concerned. See. . . . § 15 of Act 105 of 1939. No effort has been made to invoke the benefit of such laws." <sup>18</sup>

Again, in Yelvington v. Alston, Trustee, <sup>19</sup> decided in 1944, the Court's dicta invited a party to utilize the compulsory pooling laws. This was a rather peculiar case which has been cited by some authorities <sup>20</sup> as a rejection by Arkansas of the theory of equitable pooling which has been approved by the Courts of Mississippi and Louisiana. <sup>21</sup> However, it is my opinion that the case did not go that far and the

question has not yet been determined in Arkansas. In that case a well was drilled pursuant to a drilling permit and the number of acres covered thereby was indicated as twenty. Yelvington owned one-half of the minerals in seven acres in the 20-acre tract but he did not own under the drill site. The evidence showed that the drilling permit was issued on the basis of 10-acre spacing and Yelvington's mineral interest was not in the 10 acres in which the well was located. Thus there was no diverse ownership of separate tracts within the drilling unit and the prerequisite for pooling, either compulsory, voluntary or equitable, was not present. The Court pointed out that when the other 10-acre drilling unit was drilled it might require an integration order because of the diverse ownership, but the question was not then before the Court.

Let us now turn to a discussion of the statutes concerning compulsory pooling, with particular reference to the old Arkansas statute, since prior to its revision it was the pattern for a substantial number of statutes in other states.

By Act 105 of 1939 the Arkansas Legislature enacted a comprehensive conservation statute. It is now codified as Section 53-101 et seq. of the Arkansas Statutes of 1947. The declaration of policy for the Act states:

"In recognition of past, present and imminent evils occurring in the production and use of oil and gas, as a result of waste in the production and use thereof in the absence of co-equal or correlative rights of owners of crude oil or natural gas in a common source of supply to produce and use the same, this law is enacted for the protection of public and private interests against such evils by prohibiting waste and compelling ratable production."<sup>22</sup>

A broad definition of waste is provided<sup>23</sup> including the inefficient, excessive or improper use or dissipation of reservoir energy; the locating, spacing or producing of wells in a manner which results, or tends to result, in reducing the quantity of oil or gas ultimately to be recovered; and abuse of correlative rights due to drainage because of nonuniform, disproportionate and unratable withdrawals. Waste is prohibited.<sup>24</sup> The Oil and Gas Commission is vested with general authority to regulate the spacing of wells and to establish drilling units,<sup>25</sup> and in addition the statute specifically provides that the Commission shall provide drilling units for each pool, and each drilling unit so established shall comprise the maximum area which may be efficiently and economically drained by one well.<sup>26</sup> The term "owner" is defined as the person who has the right to drill into and to produce from any pool, and to appropriate the production either for himself or for himself and another, or others.<sup>27</sup> Section 53-115A provided for the integration of drilling units. That section, before the 1963 amendment, provided to the effect that when two or more separately owned tracts of land are embraced within an established drilling unit and the owners thereof do not agree to integrate their interests, the Commission shall require them to do so and the operator designated by the Commission was given the right to charge the other owners for their share of costs, and the operator was given the right to receive the production of any non-paying owner to secure the payment of such costs.

Over the years since the enactment of that Act, many questions concerning its construction and operation have been raised. While none of these questions were presented to the Arkansas Supreme Court, some questions under almost identical statutes in other states were answered by the Courts of those states. One of the

first of these questions which occurs to a reader of the statute, is just what is a separately owned tract of land? In Smith v. Holt,<sup>28</sup> decided by the Louisiana Supreme Court in 1953, the defendant Holt owned a 40-acre tract in fee. In October 1939 he sold the east half to plaintiff's predecessor in title and the west half to another party, reserving all minerals in both of the conveyances. Thereafter, Holt executed an oil and gas lease covering the entire 40-acre tract, and subsequently the Louisiana Conservation Department established the 40-acre tract as a drilling unit and a producing well was completed at a location on the west half of the drilling unit. Plaintiff brought suit to establish that prescription had extinguished the mineral servitude on the east half of the drilling unit since no drilling has occurred thereon. One of the contentions of plaintiff was that the order creating the spacing unit was not intended to operate as a pooling order but merely laid the foundation for, and must be implemented by, a second order effecting a voluntary or forced pooling of each particular unit. The Court held that, under the definition of "owner", that is the person who has the right to drill into and produce and to appropriate the production either for himself or for others, defendant Holt's lessee alone could qualify as owner, and since there was only one owner of the drilling unit, to require the lessee to go through the procedure of obtaining a forced pooling order would be a vain and useless act, neither favored in law nor contemplated by the statute.

Let us now take a slightly different set of facts. Suppose that a 40-acre drilling unit has been established and A is the mineral owner of the east half of that forty and B is the mineral owner under the west half, and by separate leases

which do not contain pooling clauses, both A and B grant leases to C. Under the authority of Smith v. Holt, forced pooling is not permissible since there is only one owner under the statutory definition. But what are the rights of A or B if the only well which is permitted to be drilled is drilled on the west half of the drilling unit which is subject to a lease from B? Under the rule of capture B would be entitled to receive all royalties from the unit well and A would get nothing. In addition, no drilling could be done on the tract of A since only one well may be drilled on each drilling unit. Louisiana and Mississippi <sup>29</sup> have applied what is now commonly referred to as "equitable pooling" to this situation, in holding that the effect of the drilling under those circumstances was the unitizing of the drilling unit to the end that all royalty owners therein share the royalty from the oil and gas produced from the well thereon, with the decisions being based on equity and not on the provisions of the compulsory pooling statutes. Myers, The Law of Pooling and Unitization, indicates however, that the weight of authority is to the contrary. <sup>30</sup>

While still considering the question of what is a separately owned tract of land, let us change our assumption and assume that in our hypothetical 40-acre drilling unit, Mr. A is the mineral owner of an undivided one-half interest in the entire forty which he leases to C, and Mr. B is the mineral owner of the remaining undivided one-half interest which he leases to D. Under those circumstances, are there separately owned tracts of land to which the compulsory pooling statute may be applied? That question was presented to the Oklahoma Supreme Court in Denver Producing and Refining Co. v. Meeker, <sup>31</sup> decided in 1947 and the Court answered in the negative, holding that the lessees were tenants in common and not the separate owners of two

or more separate tracts embraced within a spacing or drilling unit. The Oklahoma statutes have been amended to provide for the compulsory pooling of undivided interests. <sup>32</sup>

Other questions occur but have not been presented for a judicial determination. For instance, if a drilling unit has not been created when the well is drilled, could the Commission thereafter require that other "Owners" who did not participate in such drilling and who are compelled to pool their interests, pay a portion of the drilling costs? This question would be pertinent each time that a wildcat well is drilled, since the authority of the Oil and Gas Commission is to establish units consisting of the maximum area that can be efficiently and economically drained by one well, <sup>33</sup> and of course that cannot be determined until the well is drilled. I raise this question because the statute provided that in the event integration was required, the operator designated by the Commission to develop and operate the unit shall have the right to charge each other interested owner the actual expenditures required for such purposes. Of course, in the question presented, the development had already occurred and the Commission would appear to be limited to designating the operator for production purposes, and the right of the operator to make expenditures to be borne by the forced pooled owners would be expenditures for operation.

The statute also provided that the designated operator shall have the right to receive the first production which otherwise would be delivered or paid to "the other parties jointly interested in the drilling of the well," so that the amount due by each of them for his share of the expenses of drilling, equipping and operation of the well

may be paid to the operator out of production. I would assume that the reference to "the other parties jointly interested in the drilling of the well" actually meant "forced pooled owners" and of course they may or may not have been "jointly interested in the drilling of the well." I believe if the compulsory pooling order was issued prior to the drilling of the well, the "forced pooled owners" would be "jointly interested" parties, but if the well was already drilled before the issuance of the compulsory pooling order, it is rather difficult to see just what the "joint interest" was. In that connection, you will recall that the statute provided that operator shall have the right to receive the first production which otherwise would be delivered to the "forced pooled owners" (here again I assume that means the same as "the other parties jointly interested in the drilling of the well"), to the end that the operator would be reimbursed out of production. At that stage we have the operator receiving all production attributable to the interest of the "forced pooled owner", but at the same time the "forced pooled owner" does have certain obligations to his lessor, one of the primary obligations being to pay royalty, and it follows that if the operator is to receive all production which otherwise would be paid to the "forced pooled owner" (and a portion thereof in turn paid by him to his lessor), then the forced pooled owner must satisfy his contractual royalty obligations out of pocket.

You will also recall that under the statute the owner desiring to take the initiative and drill a well upon the drilling unit was required to assume the entire risk if any other owner therein, no matter how affluent he might be, decided for any reason whatsoever not to participate in the drilling. Of course if the well was dry or did not repay out of production the entire costs of drilling, then the drilling party sustained the loss, and



if the well was successful the drilling party was only entitled to be reimbursed out of production for the portion of the costs which would have otherwise been borne by the other owner, with no increment for assuming the risk or for use of his money.

In an attempt to answer and anticipate some of the questions posed above, the Arkansas Legislature in 1963 enacted Act No. 563.<sup>34</sup> This Act amended the prior statute on compulsory integration of drilling units. As so amended the statute now provides (1) that separately owned tracts or separately owned interests in all or part of an established drilling unit may be integrated; (2) that if, at the time of the effective date of the integration order, a well has not been completed as a commercial producer, all owners in the drilling unit shall have an opportunity to participate in the drilling thereof but that upon the failure by any such owner to participate therein he shall transfer his rights in the drilling unit to the participating parties for a reasonable consideration and on a reasonable basis, which the Commission shall determine in the absence of agreement. Such transfer of right may be either a permanent transfer or may be for a limited period pending recoupment by the participating parties of an amount equal to that which would have been borne by the non-participating party, plus an additional sum to be fixed by the Commission; (3) if at the time of the integration order a well has already been completed, then the non-participating party may either reimburse the drilling party in cash or the drilling party may receive all of the production of the non-participating party until the drilling party has been reimbursed an amount equal to the share of costs which would have been borne by the non-participating party, plus an additional sum to be fixed by the Commission; (4) unleased mineral interests shall be considered a royalty to the extent of 1/8th of such unleased interest; (5) royalty, overriding royalty, production

payments or similar interests in the drilling unit are integrated without the necessity of an order of compulsory integration; (6) provision is made for allocation of production to tracts and the distribution of the portion so allocated to the parties entitled to royalty, overriding royalty, etc., therein; and (7) all operations upon a well on any portion of the drilling unit shall be deemed for all purposes as if conducted upon each separately owned tract and interest in the drilling unit.

In the relatively short time since the enactment of that legislation, no question thereunder has been presented to the Arkansas Supreme Court. However, this Act, in the results sought to be achieved, is similar to the Oklahoma statute and the Oklahoma courts have had various questions before it which concern that statute. Of particular interest are the decisions pertaining to the sharing of costs by owners in the drilling unit and the participation in production therefrom. In three cases, all involving the same well and parties, and all styled Wood Oil Company et al v. Corporation Commission et al,<sup>35</sup> those questions were considered. Wood Oil Company in early 1947 completed and started producing oil from a well it drilled in accordance with appropriate well spacing requirements. This well, pursuant to a Commission Order (No. 19,890), was subsequently incorporated into a 40-acre spacing unit in which Toklan Production Company owned a portion of the leasehold interest, so that Toklan was entitled to participate in production from the well. On July 1, 1947, Toklan filed its application with the Commission requesting an adjudication of the respective rights of all owners in the unit and pursuant thereto, by order of December 2, 1947, the Commission issued its order (No. 20,690) requiring that Toklan pay its proportionate part of the costs and participate in production from date of first production. The first case, decided

July 18, 1950, upheld the spacing unit. The second case, decided on the same day as the first case, modified the order of the Commission insofar as it had granted Toklan the right to participate in production prior to the date that the order creating the spacing unit issued. Thus the case establishes the effective date of participation in production as the date that the order creating the spacing or drilling unit issues and not the date of the order force pooling the unit. The third case, decided December 22, 1953, merely affirmed certain findings of the Commission regarding participation in production and costs, and in so doing established (1) that an owner who is forced pooled is required to share only in actual expenditures and then only to the extent that the same are reasonable; (2) no interest can be charged to the forced pooled owner unless interest is a part of the actual expenditure and was paid; and (3) all such actual expenditures are to be borne by all on an acreage basis.

Another aspect of these cases was that the forced pooled owner was required to pay a proportionate part of the original well cost, although he was not entitled to participate in production therefrom for several months after its completion.

In Anderson v. Corporation Commission and Kenneth A. Ellison,<sup>36</sup> decided by the Oklahoma Supreme Court in 1957, the constitutionality of that portion of the Oklahoma statute permitting the Commission to require that a forced pooled owner either participate in drilling or transfer his rights was sustained. In that case the plaintiff owned approximately 40% in fee in a 40-acre tract. Defendant Ellison owned a leasehold interest in the adjoining 40 acres, and the Commission had designated the two 40-acre tracts as a single drilling unit. On application of defendant Ellison the Commission entered an

order finding that all other owners except plaintiff in the drilling unit had agreed upon a plan of development of the unit and authorized defendant Ellison to drill a well. The order also provided that plaintiff have the option either to participate in the drilling of the well by paying his share of the costs, or of leasing his interest to defendant Ellison for \$800 per acre, which the Commission found to be a reasonable bonus. Plaintiff contended that a co-tenancy relationship existed between himself and Ellison by reason of the pooling and unitization order, and the order requiring him to participate in paying the costs or to lease to Ellison was in violation of the rights of co-tenants, and that the statute was unconstitutional in that it amounted to a taking of private property for private use and without due process of law.

The Court, in upholding the order and the validity of the statute, stated that consideration of the correlative rights of owners became a necessary part of statutes curtailing drilling, and the statute complained of was a necessary and integral part of securing those various rights. The Court further held that the order complained of did not deprive plaintiff of his property, as he was granted the right to participate in oil produced from another's well.

In Wakefield v. State of Oklahoma et al, <sup>37</sup> decided in 1957 by the Oklahoma Supreme Court, the plaintiffs also asserted the co-tenancy theory but carried it a step forward to the end that as in all co-tenancies, the right of partition existed and that the partition proceeding should culminate in a forced sale. The Court stated that to follow that reasoning another step, instead of a "develop or sell" situation as provided by the statutes, there would be a "buy or sell" situation, and of course that was not within the scope of the statute.

Another case of interest arising out of Oklahoma is *Youngblood v. Seewald*, 38 decided by the U. S. Court of Appeals for the 10th Circuit in 1961. The facts of this case are that the Oklahoma Corporation Commission established 640-acre drilling units for gas for the reservoir in question. Defendant owned or otherwise had arrangements for control of all but approximately 64 acres in one of these units. Plaintiff owned a lease on the 64-acre tract, which lease provided for a 3/16 royalty and was also burdened by a 1/8 of 7/8ths overriding royalty reserved by plaintiff's assignor. Defendant and plaintiff couldn't reach an agreement to drill a well and defendant made application for an order pooling the lessee interest. The Corporation Commission issued its order authorizing defendant to drill and operate the unit well, fixing the cost of drilling and completing the well and giving the owners of outstanding leasehold interests (plaintiff) one of three options, the first being to participate in the well by paying a proportionate part of the cost, the second being to transfer his interest for \$50 per acre bonus, and the third being to receive an overriding royalty of 1/8 of 8/8ths. Plaintiff elected to take an overriding royalty of 1/8 of 8/8ths. Defendant contended that he acquired plaintiff's leasehold interests burdened only with the usual 1/8th lessor's royalty and the overriding royalty of 1/8th of 8/8ths provided for in the order. (Of course that would leave plaintiff holding an empty sack, since in effect there would be an "oversale" if defendant's position were sustained). In question was 52 Okla. St. Ann § 87.1(d) which, among other things, provides as follows:

"Where a lease covering any such separately owned tract or interest included within a spacing unit stipulates a royalty in excess of 1/8 of the production, or . . . shall be subject to an overriding royalty . . . then the lessee of said lease out of his share of the working interest from the well drilled on said unit, shall sustain and pay said excess

royalty, overriding royalty, or production payment, and therefrom meet any other obligation due in respect to the separately owned tract or interest held by him."

Defendant contended that the effect of that statute is that when one designated to drill the well on a drilling unit acquires the working interest on other leases within the unit by virtue of the pooling order, the owner of excess or overriding royalty in those leases must look to the person who owned the leases just prior to the pooling order for payment of their royalties.

The Court, in overruling defendant's contention, was undoubtedly, influenced by plaintiff's predicament in that he would have been excluded from participating in the production as a working interest owner, and still the share he had elected to receive would be insufficient to satisfy the remaining overriding burdens. Under those conditions the Court had no difficulty in determining that the statute does not specify whether the "lessee of the lease" should be determined before or after the pooling order and that the Commission did not undertake to disturb the excess royalty or the prior overriding royalty and those burdens, in addition to the 1/8 of the 8/8ths pooling order overriding royalty must be satisfied by defendant, who is now the "lessee" referred to in the statute.

While I have no quarrel with the Court's conclusion, it would seem that room for chicanery and manipulation now exists under this and similar statutes. For instance, the owner of an unleased mineral interest in lands comprising a spacing unit which in all probability will be drilled, can execute a 1/4 or 1/2 royalty lease to his son or brother, etc., or the owner of a lease under the above circumstances could assign to a friendly third party and reserve a substantial override - the result would either be a free ride for all time or non-development.

Even though the Arkansas Supreme Court was not called upon to decide upon the constitutionality of our old law on compulsory pooling or any matters arising thereunder in the twenty-three years of its existence, and even though the new law was designed to answer many of the questions and eliminate many of the apparent shortcomings of the old law, it would appear that the subject of compulsory integration remains a fertile field for litigation, and I would suspect that in the not too distant future we will be privileged in hearing some leading authority discuss the latest cases under the Arkansas compulsory unitization law.