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Injunction Against Use of Compressors and Pumps on Gas Wells

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professor of law and will give the courses in Torts, Equity, and Constitutional Law formerly given by Mr. Jones. Mr. Van Hecke is a graduate of both the college and law school of the University of Chicago. Following his admission to the bar, he practiced law in Chicago, and during the last three years, was chief legislative draftsman of the Legislative Reference Bureau of Illinois.

Mr. Jones has been granted leave of absence from his teaching duties in order to spend the year in graduate law study. In his absence there will be no acting dean. Administrative matters demanding his attention will be handled by correspondence until he resumes his duties in June, 1921. His address is Langdell Hall, Cambridge, Mass.

Construction work on the new law building has not been started, though the building plans are complete and were approved several months ago. A supplemental appropriation by the next Legislature will be necessary to make possible its completion according to the present plans. This is a matter which needs the active attention of every member of the West Virginia bar.

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**INJUNCTION AGAINST USE OF COMPRESSORS AND PUMPS ON GAS WELLS.**—In a recent case\(^1\) an attempt was made by an oil and gas lessor to restrain his lessee from using gas compressors and pumps in such a way as to reduce the pressure at the wells below the atmospheric pressure thus increasing the flow of gas beyond its natural volume. The contentions of the complainant were as follows: The lease must be construed in the light of the circumstances existing at the time it was executed. Since, at the time the lease was executed, there were no gas compressors and pumps used in that region for the purpose of increasing the flow of gas from the wells, the lessee had no right to make use of such means, if the result would be to decrease the amount of the royalties the lessor would otherwise have received. If gas were so pumped or sucked from the wells it would reduce the total amount of such royalties, for the reason that fewer wells would be necessary to secure all the gas from the premises, and also, because the wells would be exhausted sooner than if gas were allowed to flow from them naturally. In other words, the contention amounted to this: there was an implied covenant in the lease that the lessee would not use any

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\(^1\) Bassell v. West Virginia Central Gas Co., 103 S. E. 116 (W. Va. 1920).
new methods or appliances which would result in exhausting the gas so rapidly as to reduce the total amount of royalties the lessor would have received if the wells were operated by methods in vogue when the lease was executed. This contention is remarkable chiefly because of its novelty. The Supreme Court of Appeals quite properly refused to add another implied covenant to the already too long list of covenants which have been implied in oil and gas leases. It held that the lessee had a right to use such modern methods as would make the leasehold yield gas as rapidly and voluminously as possible.

It is believed this is the first case in which an injunction against the use of gas compressors and pumps was sought by a landowner against his lessee. There seems to be no reasonable argument in favor of granting an injunction in such a case. However, a more difficult case arises where an adjoining landowner seeks to restrain the use of gas compressors and pumps to draw or suck the gas from the wells. In such a case the question is whether such a use of gas compressors and pumps will result in such damage to the adjoining owner as to entitle him to relief. Courts seem to have recognized that pumps are necessary to the successful production of oil and consequently have not looked with favor on attempts by adjoining owners to prevent the use of pumps on oil wells. The right of a landowner to take all the oil he can secure through wells located on his land, even though he drains adjoining lands completely, is generally recognized. It would seem that he ought to have the same right as to gas. On principle, if the result of the use of compressors and pumps is merely to exhaust the oil or the gas which may be beneath the adjoining land, no reasonable distinction can be made between oil and gas. If one has the right to draw out oil by means of suction, though adjoining lands are drained, there seems to be no reason why he should not have a like right as to gas, unless it appears that in the case of gas the adjoining owner will suffer some injury in addition to the mere drainage of the mineral from his land.

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5 "He executed the lease and conferred this right in an age of rapid and startling invention which wrought its wonders and transformations in no department of human activity more suddenly, progressively, and radically than in mining, transportation, and enlargement of enterprises and undertakings. Parties to contracts are held, in the absence of agreements to the contrary, to have contemplated modifications of their relations under their contracts, by the development of improvements and new methods in the progress of science and invention." Poffenbarger, J., ibid., 117.

In Indiana a statute forbidding the use of gas compressors and pumps to increase the natural flow of gas from wells was in force for years, and the constitutionality of this act was upheld by the courts of that state. Furthermore, the courts of Indiana have expressed the opinion that an adjoining landowner has a right at common law to restrain the use of compressors and pumps to increase the flow of gas from the wells. Apparently these decisions are based partially on the following assumptions: The gas in that state is confined under great pressure in one continuous strata of porous rock. Surrounding the gas reservoir is salt water. When the pressure is rapidly reduced at one point by the use of compressors and pumps, this salt water rushes in and drowns the wells on adjoining lands. Seemingly, the idea is that such wells are destroyed before all the gas is exhausted and that there remains in the land a quantity of gas which might otherwise have been produced and utilized. If this is true, then the decisions upholding the statute can be sustained because the use of compressors and pumps to draw gas from the wells would result in the waste of gas by destroying the wells before the gas in the reservoir was actually exhausted. Evidently much of this gas left beneath the land could not be secured at all. Moreover, to secure any of it would necessitate the trouble and expense of drilling new wells. Thus it seems the Indiana decisions are not based alone on the theory that the compressors and pumps merely exhaust the gas, but on the idea that their use results in the waste of gas by destroying the wells on neighboring lands before all the gas has been obtained. Furthermore, it is submitted that this is the only reasonable ground upon which such decisions can be sustained. In so far as the court speaks of a right in the state to make regulations to secure a "joint distribution, to arise from the enjoyment by

4 Acts of Indiana, 1891, 89.
5 Manufacturers' Gas & Oil Co. v. Indiana Gas & Oil Co., 155 Ind. 461, N. E. 922 (1900); Richmond Natural Gas Co. v. Enterprise Natural Gas Co., 31 Ind. App. 222, 66 N. E. 782 (1903); Remle, 110 Oil Co. v. Indiana Natural Gas & Oil Co., 174 Ind. 655, 95 N. E. 1 (1910).
6 Manufacturers' Gas & Oil Co. v. Indiana Gas & Oil Co., supra; also case of same name, 156 Ind. 579, 59 N. E. 169 (1901).
7 "It is charged in the complaint that the appellee is suing in two wells owned by it, and threatens to use in others, pumping machinery and other devices by which the natural flow of the gas is greatly increased, and that the effect of the use of such machinery and devices is to remove the back pressure by which the gas is confined in the Trenton rock, and a vast body of salt water, underneath and surrounding the reservoir, is prevented from rushing into the reservoir and destroying it, and putting an entire stop to the flow of natural gas therein. Certainly such acts are destructive of the common interests in the gas and reservoir and the threatened injury is a proper subject of relief by injunction." Manufacturers' Gas & Oil Co. v. Indiana Natural Gas Co., supra.
them [the landowners] of their privilege to reduce to possession,ʺ if this means that the state can prohibit one landowner from draining oil or gas from the land of others, it is submitted the decisions are unsound. Whether the use of gas compressors and pumps actually has the effect suggested by these cases may be somewhat doubted. Assuming, however, that there is such a result where there are the geological formations found in Indiana, it by no means follows that the same thing would be true in West Virginia or Oklahoma, where the gas may be found in different geological formations. Hence, it would seem that unless the adjoining landowner can show that the use of gas compressors and pumps actually does result in the needless waste of this mineral, he should have no right to object to the use of artificial devices to increase the flow of gas from the wells. It is further submitted that while the state legislature may regulate production of gas so as to conserve the mineral and prevent its needless waste, it has no power to forbid the use of artificial means of increasing the flow either of oil or gas so long as the result is merely to exhaust the mineral beneath the land and not to waste it.

—J. W. S.

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RULES OF COURT LIMITING THE TIME WITHIN WHICH PLEAS MAY BE FILED.—In Teter v. George,1 The Supreme Court of Appeals of West Virginia had occasion to construe the following rule of court promulgated and applied by one of the circuit courts of the State:

"'No pleadings, notices or counterclaims shall be filed in court, in any case, later than the fifth day before the day in which the case is set for trial on the docket, except pleas of the 'general issue' and 'general replication,' unless otherwise expressly provided by law. * * * * * Any failure to observe this rule shall be deemed a waiver of all rights to plead, demur, amend, file any counterclaim or set-off, or otherwise object to the pleadings in the case.'"2

The defendant had filed his "general plea", presumably the general issue, at a term of court held in January, 1919, and the case was set for trial at the following May term. The defendant, less than five days before the date specified on the docket for trial of the case, tendered and asked leave to file a special plea and a notice of set-offs. The trial court refused to file the plea or notice, holding

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1 103 S. E. 275 (W. Va. 1920).
2 Ibid., 277.