

Louisiana Law Review

Volume 2 | Number 1
November 1939

Constitutional Law - Well-Spacing Legislation

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Repository Citation

J. M. S., *Constitutional Law - Well-Spacing Legislation*, 2 La. L. Rev. (1939)
Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol2/iss1/24>

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of consideration is a matter of defense as against any person not a holder in due course."¹⁵

In the instant case, it was stated that, if the University had failed to fulfill its contractual obligations, it might be liable in a subsequent suit for damages. Denial of the defense of failure of consideration, then, results in complete circuity of action and additional court costs. In view of the express provisions of the Negotiable Instruments Law, the general contract principles embodied in the Code,¹⁶ and the previous decisions in analagous cases,¹⁷ the holding of the court in the instant case seems unsound. When, as in the present case, the action is brought by one who is not a holder in due course, a more satisfactory result would be reached by sustaining the defense of failure of consideration. In this way, the entire controversy would be settled in a single action, whether brought on the note or the contract, and justice could be attained for the maker without violating any of the provisions enacted for the protection of the sanctity and integrity of negotiable instruments.

A. R.

CONSTITUTIONAL LAW—WELL-SPACING LEGISLATION—Plaintiff, the owner of six and one-quarter acres of a ten acre "drilling unit," sought to recover the entire royalty from a producing well located on his property. He contended that the Oklahoma "well-spacing" act,¹ providing for a proportionate distribution of the royalty among the owners of royalty interests in each "drilling unit,"² was unconstitutional as a violation of "due process" and "separation of powers." *Held*, (1) the act is a reasonable exercise of the police power; (2) the Corporations Commission, which administers it, is excepted by the Oklahoma constitution itself from the operation of the "separation of powers" clause. *Patter-*

15. Therefore, the failure of the payee of a note to fulfill the obligation which constitutes the consideration for which it was given extinguishes the obligation of the maker of the note to pay it. *Bonnet-Brown Sales Service v. The Bunkie Record*, 3 La. App. 410 (1926); *Parks v. Cilluffa*, 7 La. App. 749 (1928); *Hick's v. Levett*, 19 La. App. 836, 140 So. 276 (1932); *Stamm Scheele, Inc. v. Loewer*, 149 So. 908 (La. App. 1933).

16. See notes 6, 9 and 10, *supra*.

17. See notes 14 and 15, *supra*.

1. Okla. Laws 1935, c. 59, art. 1 [Okla. Stats. Ann. (1937) tit. 52, §§ 85-87].

2. Okla. Laws 1935, c. 59, art. 1, § 3 [Okla. Stats. Ann. (1937) tit. 52, § 87].

son v. Stanolind Oil & Gas Co., 182 Okla. 155, 77 P. (2d) 83 (1938).³

Many conservation acts have been attacked on the ground that they violated the due process clause of the federal constitution and the doctrine of separation of powers. Most of them have been upheld on the authority of *Ohio Oil Co. v. Indiana*.⁴ In that case the United States Supreme Court held that protection of the natural resources of the state is a valid exercise of the police power. The decision of the present case further makes clear the fact that measures designed to protect the correlative rights of unit owners are within the constitutional power of the legislature.⁵

The often-unsuccessful argument that statutes granting quasi-legislative powers to executive or administrative agencies violate the doctrine of separation of powers was renewed in the *Schechter*⁶ and *Hot Oil*⁷ cases; and the Supreme Court of the United States for the first time held that there had been an unconstitutional delegation of congressional power. It declared that conformity to the vague requirements of a "legislative standard" is not sufficient. It is necessary that the legislation have a "definiteness of subject matter"⁸ and all administrative orders must be based on express "findings of fact."⁹ Since some provision relative to separation of powers appears in most state constitutions,¹⁰ the above stated requirements likely will be persuasive in future attacks on legislation granting rule-making authority.

Louisiana jurisprudence has followed the general principles regarding delegation of power. The legislature may not delegate its power;¹¹ but, after prescribing a definite standard, it may

3. On appeal, the Supreme Court of the United States held that no substantial federal question had been raised, and the appeal was dismissed for want of jurisdiction. *Patterson v. Stanolind Oil & Gas Co.*, 305 U.S. 376, 59 S. Ct. 259, 83 L. Ed. 314 (1939).

4. *Ohio Oil Co. v. Indiana*, 177 U.S. 190, 20 S. Ct. 576, 44 L. Ed. 729 (1900).

5. The principle of correlative rights was first announced in *Ohio Oil Co. v. Indiana*, 177 U.S. 190, 20 S. Ct. 576, 44 L. Ed. 729 (1900). For correlative rights in Louisiana see: *Higgins Oil & Fuel Co. v. Guaranty Oil Co.*, 145 La. 233, 82 So. 206 (1919); *McCoy v. Arkansas Nat. Gas. Co.*, 184 La. 101, 165 So. 632 (1936).

6. *Schechter Poultry Corp. v. United States*, 295 U.S. 495, 55 S. Ct. 837, 79 L. Ed. 1570 (1935).

7. *Panama Refining Co. v. Ryan*, 293 U.S. 388, 55 S. Ct. 241, 79 L. Ed. 446 (1935).

8. *Schechter Poultry Corp. v. United States*, 295 U.S. 495, 55 S. Ct. 837, 79 L. Ed. 1570 (1935).

9. *Panama Refining Co. v. Ryan*, 293 U.S. 388, 55 S. Ct. 241, 79 L. Ed. 446 (1935).

10. La. Const. of 1921, Art. II, §§ 1, 2.

11. A statute which purports to vest arbitrary discretion in a public officer without prescribing a definite rule for his guidance is unconstitutional.

delegate the authority to ascertain facts which invoke the operation of the law.¹² Where it is impracticable to lay down a definite or comprehensive standard, an exception to this principle has been recognized.¹³

No problem of separation of powers was presented in the present case. The Corporations Commission of Oklahoma, which administers the well-spacing act, is excepted by constitutional provision from the separation of powers clause.¹⁴ However, the Louisiana act¹⁵ is administered by an executive officer;¹⁶ and should the validity of the legislation be contested, objections based on the doctrine of separation of powers undoubtedly will be raised. The Louisiana act empowers the Commissioner of Conservation to adopt rules fixing the spacing of wells.¹⁷ The Commissioner is also authorized to allow or require pooling.¹⁸ The act contains no detailed procedure upon which to base the spacing of wells and fixes no maximum limits.¹⁹

The courts in other states apparently have felt that the necessity for conservation outweighs the possibility of evils of maladministration. In upholding the validity of conservation laws, the courts have stressed the impossibility of fixing a definite standard of administration.²⁰ The concept of "definite standard," as employed by the courts, is flexible enough to permit upholding the Louisiana act without an undue straining of terms.

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State v. Mahner, 43 La. Ann. 496, 9 So. 480 (1891); State v. Dubarry, 44 La. Ann. 1117, 11 So. 718 (1892); State v. Kuntz, 47 La. Ann. 106, 16 So. 651 (1895); New Orleans v. Palmisano, 146 La. 518, 83 So. 789 (1920); State v. Carter, 159 La. 121, 105 So. 247 (1925).

12. State v. Guidry, 142 La. 422, 76 So. 843 (1917); State v. Carson Carbon Co., 162 La. 781, 111 So. 162 (1927); State v. Grace, 184 La. 443, 166 So. 133 (1936). Cf. State v. Billot, 154 La. 402, 97 So. 589 (1923).

13. See New Orleans v. Sanford, 137 La. 628, 645, 69 So. 35, 41 (1915).

14. The Corporation Commission is vested by Art. 9 of the Constitution of Oklahoma with executive, legislative and judicial powers. Extension by the legislature of the field over which these powers can be exercised is authorized by Art. 9, § 35. Russell v. Walker, 160 Okla. 145, 16 P. (2d) 114 (1932).

15. La. Act 225 of 1936 [Dart's Stats. (1939) §§ 9482.1-9482.16].

16. La. Const. of 1921, Art. V, § 1, providing for the office of Commissioner of Conservation.

17. La. Act 225 of 1936, § 6(3) [Dart's Stats. (1939) § 9482.6].

18. La. Act 225 of 1936, § 6(6) [Dart's Stats. (1939) § 9482.6].

19. The Oklahoma act (see note 1, supra) provides for comprehensive fact finding and a maximum spacing of ten acres, except by agreement, in which case the maximum is forty acres.

20. People v. Associated Oil Co., 211 Cal. 93, 294 Pac. 717 (1930); Brown v. Humble Oil Ref. Co., 126 Tex. 296, 83 S.W. (2d) 935, 99 A.L.R. 1107 (1935). As to definiteness of subject matter: Bandini Petroleum Co. v. Superior Court, Los Angeles County, Calif., 284 U.S. 8, 52 S. Ct. 103, 76 L. Ed. 136, 78 A.L.R. 826 (1931); Champlin Ref. Co. v. Corporation Commission of Okla., 286 U.S. 210, 52 S. Ct. 559, 76 L. Ed. 1062 (1932).