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STATE REGULATION—PROPERTY IN OIL AND NATURAL GAS.

As illustrating how far a State can go in protecting rights of the public at the expense of individuals, and in marking out the peculiar nature of property rights in oil and natural gas, *Ohio Oil Co.* v. *Indiana*, 20 Sup. Ct. Rep. 526, is an important case. It was held that a statute prohibiting the free escape of gas or oil, was not a taking of private property within the 14th amendment, although the Oil Company was interested solely in getting oil, and to do so with profit, it was necessary to permit the gas to escape.

Natural gas and oil are practically minerals *feræ naturæ*, and until reduction to physical possession the surface owners have no actual property therein; merely the right to reduce. *Brown* v. *Vandegrift*, 80 Penn. St. 142; *People's Gas Co.* v. *Tyner*, 131 Ind. 271. But the analogy is not complete, for then the right being in the public, could be withheld. *Greer* v. *Connecticut*, 161 U. S. 519. Consequently there being no property, there could be no taking without due process as claimed. The fact that the company, engaged solely in extracting oil, suffers a hardship, goes to the wisdom and not the power of the Legislature, in passing such an act.

The importance of the object sought after—the preservation of a source of great wealth—seems to amply justify such legislation, as courts have held waste by one surface owner did not give an action to another suffering loss thereby. *Hague* v. *Wheeler*, 157 Penn. St. 324; *Jones* v. *Forest Oil Co.*, 44 Atl. Rep. 1074; the State ought to have the power by legislation to curb indiscriminate waste which might involve the loss of entire oil and gas deposits.

ASSOCIATED PRESS—DUTY TO PUBLIC—ILLEGAL CONDITIONS.

The recent case of the *Inter-Ocean Pub. Co.* v. *Associated Press Co.*, 56 N. W., Rep. 822, makes a new application of the law of monopolies which is of great importance. The *Inter-Ocean* was a member of the Associated Press Co., under contract to receive its news upon condition that it was neither to furnish nor receive news from outside companies deemed antagonistic. It violated its covenant by receiving from the Sun Printing and Publishing Co. news which the Associated Press was unable to furnish. By its agreement this rendered it liable to suspension from the Associated Press. An injunction is granted to prevent this, on the ground that the business of the Associated Press is impressed with a public interest, and must be carried on without discrimination, and that the provision in its by-laws requiring the exclusive use of its news as a condition of membership is void, as tending to create a monopoly.

This puts associations for collecting and vending news upon a plane with common carriers, telephone and telegraph companies as to their duty to treat all impartially; and news is deemed a commodity of public necessity which, like coal, gas, water, etc., it is illegal to monopolize. The justice and logic of this view can hardly be denied and is well supported by authority. A board of trade cannot withhold market quotations after a compliance with reasonable rules. *N. Y. & Chicago Exchange* v. *Chicago Board of Trade*, 127 Ill. 153. And telegraph and telephone companies must serve indiscriminately, their duty to the public being superior to any contract which they may have with an owner, whose patent they use. *Com. Union Tel. Co.* v. *N. E. Teleg. & Telp. Co.*, 6 Vt. 241; *Chesapeake Co.* v. *B. O. Tel. Co.*, 66 Md. 399; though this is denied in *Amer. Tel. Co.* v. *Conn. Tel. Co.*, 49 Conn. 352.

The duty of the Associated Press to the public is paramount to the rights it had under contract against the *Inter-Ocean*, and a provision compelling the exclusive use of its news is there-

fore against public policy and void. It undoubtedly tends to create a monopoly and gives to its possessor the power to dictate what news the public shall receive, regardless of what it ought to have. This is a power too dangerous and vital to be above public control, and is not such a reasonable regulation as all quasi-public corporations have the right to prescribe. *Smith* v. *Tel. Co.*, 42 Hun. 454. Nevertheless, a similar restriction was held good in New York on the ground that a coöperative society had the right to make rules governing its members.

Had the court decided in the present case that such was a reasonable regulation as only a partial restraint of trade, it might then have presented the interesting Federal question as to whether it would not come under the Anti-Trust Act of 1890, declaring combinations in restraint of interstate commerce void without regard to their reasonableness. From what Chief Justice Marshall said in *Gibbons* v. *Ogden*, 9 Wheat. 1, it might be that interstate news which is bought and sold is included within interstate commerce.

TRUSTS—PRACTICAL OPERATION OF THE REMEDY ADOPTED BY TEXAS.

The amount of discussion and divergence of opinion expressed in recent magazine publications, more than any complication of legal principles involved, induces us to review the recent decision of the Federal Supreme Court in the case of *Waters-Pierce Oil Co.* v. *State of Texas*, 20 Sup. Ct. Rep. 518, in which proceeding the defendant company has been forbidden doing business in the State of Texas, being held to have violated certain provisions of the Texas anti-trust law, and thereby having forfeited its license. The principles of law announced are extremely important, though they seem quite well settled.

The usual law exists in Texas (Acts of 1889, p. 87) whereby a foreign corporation, upon filing a certified copy of its articles of incorporation with the Secretary of State, secures a licence to do business in the State. The Waters-Pierce Oil Co., complying with these provisions, obtained such a license for a period of ten years, and engaged in active business. Subsequent to the issuance of this license an anti-trust law was passed, and this proceeding was brought against the plaintiff in error, alleging a violation of this law, and praying that its license be revoked.

It is clear, construing the statute according to the interpretation given it by the Texas courts, that no question of interstate commerce is involved; commerce consisting in the trans-

portation of commodities, and not in their sale. *Ex parte Koehlier*, 30 Fed. Rep. 869. And as the construction placed upon a State statute by the courts of the State is held in the present case not open to review by the Federal Courts, inquiry into the interpretation of the statute, its construction and the question of interstate commerce are summarily disposed of. *Tullis* v. *L. E. & W. R. R. Co.*, 275 U. S. 348; *R. R.* v. *Paul*, 173 U. S. 404.

The really serious question involved is this: "Can a State license a foreign corporation to do business within its limits, and after money, time and labor are expended by the company, in good faith, pass such legislation, after the granting of the license, as will produce such a result as that involved in the present case? The consideration of this proposition is not indispensable to a review of the case, as at the time the license was issued to the Waters-Pierce Oil Co. an anti-trust law existed, which was as much violated by the company as the one subsequently passed was; but we consider the question, for the reason that it has been so persistently discussed in connection with the present case. A license issued to a foreign corporation for valuable consideration, even though construed as a contract, is always subject to such reasonable violation, at the hands of the State, as a proper exercise of the police power may effect. *Metropolitian Board of Excise* v. *Barrie*, 34 N. Y. 657; *Stone* v. *Mississippi*, 101 U. S. 814. A State cannot by any grant estop itself from a free and unrestricted exercise of its police power. *Beer Co.* v. *Mass.*, 97 U. S., 25, and the passage of an anti-trust law is held to be such an exercise of this power. *Munn et al.* v. *State of Ills.*, 94 U. S. 77. Hence the passage of an anti-trust law affecting the rights held by a foreign corporation under a license previously granted is valid.

And further, the law seems clear to the effect that the word citizen as used in the Federal Constitution, § 2, Art. IV, and in the XIV amendment does not apply to corporations, hence the plea respecting equal privileges and immunities is of no avail. *Paul* v. *Virginia*, 8 Wall. 168, *Pembina Co.* v. *Pennsylvania*, 125 U. S. 181. The great questions involved in this case are comparatively free from controversy among the authorities. The surprise manifested in current publications at the decision arises chiefly for the reason that exactly such facts have not occurred before to which our supreme tribunal could apply the well established rules of law.