

Westlaw.

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MAGNOLIA PETROLEUM CO. v. RAILROAD
 COMMISSION
 TEX. 1943.

Supreme Court of Texas.
 MAGNOLIA PETROLEUM CO.
 v.
 RAILROAD COMMISSION et al.
 No. 8040.

March 31, 1943.
 Rehearing Denied April 28, 1943.

Error to Court of Civil Appeals of Third Supreme
 Judicial District.

Suit by the Magnolia Petroleum Company against
 the Railroad Commission of Texas and another to
 cancel and annul a permit to drill two oil wells as an
 exception to spacing rule 37 and enjoin the drilling
 thereof. To review a judgment of the Court of Civil
 Appeals, 163 S.W.2d 446, reversing a judgment of
 the District Court canceling the permit, the plaintiff
 brings error.

Judgments of the District Court and of the Court of
 Civil Appeals reversed and cause remanded.
 West Headnotes

[1] Mines and Minerals 260 ↪51(1)

260 Mines and Minerals

260II Title, Conveyances, and Contracts
 260II(A) Rights and Remedies of Owners
 260k51 Recovery for Trespass or
 Conversion

260k51(1) k. In General. Most Cited
 Cases
 Prior to enactment of conservation statutes, party in
 possession, or any one who could obtain possession
 peaceably, could drill for oil notwithstanding title
 dispute, and if it later developed that he had no title,
 he had to account to true owner for value of oil
 removed.

[2] Mines and Minerals 260 ↪52

260 Mines and Minerals

260II Title, Conveyances, and Contracts
 260II(A) Rights and Remedies of Owners

260k52 k. Injunction and Receivers. Most
 Cited Cases

Prior to enactment of conservation statutes, either
 party involved in suit to determine title to land on
 which each desired to drill for oil might have an
 injunction to preserve the status quo pending
 settlement of the title controversy, or a receiver
 might be appointed to drill well and hold proceeds
 of oil to await outcome of title suit.

[3] Mines and Minerals 260 ↪92.31

260 Mines and Minerals

260III Operation of Mines, Quarries, and Wells
 260III(A) Statutory and Official Regulations

260k92.25 Permits and Exceptions as to
 Location

260k92.31 k. Title or Boundary in
 Dispute. Most Cited Cases
 (Formerly 260k92)

A permit from Railroad Commission to drill for oil
 does not authorize permittee to take possession of
 land and drill where there is a dispute as to title
 thereto.

[4] Mines and Minerals 260 ↪92.31

260 Mines and Minerals

260III Operation of Mines, Quarries, and Wells
 260III(A) Statutory and Official Regulations

260k92.25 Permits and Exceptions as to
 Location

260k92.31 k. Title or Boundary in
 Dispute. Most Cited Cases
 (Formerly 260k92)

The function of Railroad Commission in granting
 permit to drill for oil is to administer conservation
 laws, and in granting permit it does not undertake to
 adjudicate questions of title or right to possession,

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but those questions are to be settled by courts.

[5] Mines and Minerals 260 ↔52

260 Mines and Minerals
 260II Title, Conveyances, and Contracts
 260II(A) Rights and Remedies of Owners
 260k52 k. Injunction and Receivers. Most Cited Cases

Mines and Minerals 260 ↔92.31

260 Mines and Minerals
 260III Operation of Mines, Quarries, and Wells
 260III(A) Statutory and Official Regulations
 260k92.25 Permits and Exceptions as to Location

260k92.31 k. Title or Boundary in Dispute. Most Cited Cases
 (Formerly 260k92)

Where person obtaining permit from Railroad Commission to drill for oil is not in possession of land, he may not drill for oil until his title has been established by courts, and persons in possession may defend their possession by self-help or by injunction proceedings.

[6] Mines and Minerals 260 ↔52

260 Mines and Minerals
 260II Title, Conveyances, and Contracts
 260II(A) Rights and Remedies of Owners
 260k52 k. Injunction and Receivers. Most Cited Cases

A holder of permit to drill oil well who brings suit to establish his title to land on which he desires to drill may have a receiver appointed to drill well and hold proceeds to await final judgment on title issue.

[7] Mines and Minerals 260 ↔52

260 Mines and Minerals
 260II Title, Conveyances, and Contracts
 260II(A) Rights and Remedies of Owners
 260k52 k. Injunction and Receivers. Most Cited Cases

Quieting Title 318 ↔7(1)

318 Quieting Title

318I Right of Action and Defenses

318k7 Cloud on Title

318k7(1) k. In General. Most Cited Cases

Where title to oil land is in dispute, but permittee is in possession, or can obtain possession peaceably, his adversary may resort to court for determination of title dispute and therein ask for injunction or for a receivership.

[8] Mines and Minerals 260 ↔92.31

260 Mines and Minerals
 260III Operation of Mines, Quarries, and Wells
 260III(A) Statutory and Official Regulations
 260k92.25 Permits and Exceptions as to Location

260k92.31 k. Title or Boundary in Dispute. Most Cited Cases
 (Formerly 260k92)

An order of Railroad Commission granting permit to drill oil well grants no affirmative right to permittee to occupy property and does not cloud title claimed by another, but order merely removes conservation laws and regulations as a bar to drilling well and leaves permittee to his rights at common law.

[9] Quieting Title 318 ↔44(2)

318 Quieting Title

318II Proceedings and Relief

318k44 Evidence

318k44(2) k. Admissibility. Most Cited Cases

In suit to determine title to land claimed by holder of permit to drill oil well, fact that a permit has been granted is not admissible in support of permittee's title.

[10] Mines and Minerals 260 ↔92.31

260 Mines and Minerals
 260III Operation of Mines, Quarries, and Wells
 260III(A) Statutory and Official Regulations
 260k92.25 Permits and Exceptions as to Location

260k92.31 k. Title or Boundary in Dispute. Most Cited Cases

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The Railroad Commission should not grant permit to drill oil well to one who does not claim property in good faith, but if applicant makes reasonably satisfactory showing of good faith claim of ownership, fact that title is in dispute will not defeat his right to permit.

[11] Mines and Minerals 260 ⇌ 92.31

260 Mines and Minerals

260III Operation of Mines, Quarries, and Wells

260III(A) Statutory and Official Regulations

260k92.25 Permits and Exceptions as to Location

260k92.31 k. Title or Boundary in Dispute. Most Cited Cases

(Formerly 260k92)

The existence of dispute as to title to land for which permit has been obtained to drill for oil is not ground for suspending permit or abating statutory appeal from Railroad Commission's order pending settlement of title controversy.

[12] Appeal and Error 30 ⇌ 840(1)

30 Appeal and Error

30XVI Review

30XVI(A) Scope, Standards, and Extent, in General

30k838 Questions Considered

30k840 Review of Specific Questions and Particular Decisions

30k840(1) k. In General. Most Cited Cases

Appeal and Error 30 ⇌ 1177(6)

30 Appeal and Error

30XVII Determination and Disposition of Cause

30XVII(D) Reversal

30k1177 Necessity of New Trial

30k1177(6) k. Issues Not Passed on Below. Most Cited Cases

In suit to cancel permit to drill oil wells on ground that tract involved was a voluntary subdivision in derogation of oil spacing rule, where district judge had not passed on question of voluntary subdivision, and there was nothing to show that

larger tract, from which tract in question was segregated, was entitled to no well or that it had all wells to which it would be entitled without regard to subdivision, reviewing court could not determine question, but was required to remand the case.

*97 **190 Wallace Hawkins, of Dallas, Paul A. McDermott, of Ft. Worth, and Dan Moody, J. B. Robertson, and Powell, Rauhut & Gidcon, all of Austin, for petitioner.

*98 Gerald C. Mann, Atty. Gen., E. R. Simmons, Grover Sellers, Lloyd Armstrong, and James D. Smullen, and E. A. Landman, Asst. Attys. Gen., for respondents.

ALEXANDER, Chief Justice.

This is a Rule 37 case. E. A. Landman applied to the Railroad Commission for a permit to drill two oil wells on a narrow strip of 1.26 acres of land in Gregg County as an exception to the Commission's spacing regulations. The application was opposed by Magnolia Petroleum Company on the ground that Landman had no title because the land was within the boundaries of one of its own leases, and on the alternative ground that the 1.26-acre tract was a voluntary subdivision in derogation of Rule 37. The Commission granted the permit, reciting that it was necessary to prevent confiscation and waste. The Magnolia filed a statutory suit in the district court of Travis County to test the validity of said order. In that suit the Magnolia introduced its chain of title, and also showed that the identical land was involved in a trespass to try title suit between the same parties then pending in the district court of Gregg County. It disclaimed any desire to have the title question settled in the Travis County suit, but alleged merely that there was a bona fide title controversy, and prayed that the permit be cancelled on that ground. The Magnolia also alleged that the 1.26-acre tract constituted a part of a voluntary subdivision of a larger tract made subsequent to the spacing regulations, and, therefore, could form no basis for an exception thereto. Upon a trial without a jury, the district court rendered judgment cancelling the permit and restraining the drilling of the well. The judge filed findings of fact in which he traced the claim of title of each party, and also found that the Magnolia had actual possession of both the surface and the

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minerals. He concluded as a matter of law that a bona fide controversy as to the title of the leasehold was shown, and that consequently the Commission had no jurisdiction to grant the permit. He further stated that since this conclusion settled the case, he did not pass on the question of voluntary subdivision. Landman and the Railroad Commission appealed to the Court of Civil Appeals. That court reversed the judgment cancelling the permit and abated the suit, suspended *99 the permit, and remanded the case to the district court with instructions to retain it suspended upon its docket pending determination of the title suit in Gregg County. 163 S.W.2d 446.

[1][2] The effect of a bona fide title dispute on the power of the Railroad Commission to grant a permit as an exception to Rule 37 is a question never before decided by this Court. In order to view the problem in its proper perspective, we must first consider the situation as it was at common law before the conservation statutes were enacted. No permit was then required to drill for oil. If there was a title dispute, the party who had possession, or who could obtain possession peaceably, could drill for oil. If it later developed that he had no title, he had to account to the true owner for the value of the oil removed. *Bender v. Brooks*, 103 Tex. 329, 127 S.W. 168, Ann.Cas.1913A, 559; *Right of Way Oil Co. v. Gladys City Oil & Gas Mfg. Co.*, 106 Tex. 94, 157 S.W. 737, 51 L.R.A.,N.S., 268; *Gulf Production Co. v. Spear*, 125 Tex. 530, 84 S.W.2d 452; 1 *Summers Oil and Gas*, Perm.Ed., s 23, p. 32 et seq.; 31 *Tex.Jur.* 531. Pending settlement of the controversy in a suit brought for that purpose, either party in a proper case might have an injunction to preserve the status quo. 1 *Summers, Oil and Gas*, Perm.Ed., s 29, p. 77; 31 *Tex.Jur.* 534. Or, upon proper showing, in order to prevent waste, a receiver might be appointed to drill the well and hold the proceeds of the oil to await the outcome of the title suit. 1 *Summers, Oil and Gas*, Perm.Ed., s 30, p. 80; *Guffey v. Stroud*, *Tex.Com.App.*, 16 S.W.2d 527, 64 A.L.R. 730; 31 *Tex.Jur.* 534.

[3][4][5][6][7][8][9] In our opinion, the situation is not materially changed by the conservation laws. In cases where the Court of Civil Appeals has considered the matter, it seems to have been

erroneously assumed that such a permit affirmatively authorizes the permittee to take possession of the land and drill. Consequently, it has been held that unless the applicant has an undisputed title to the leasehold, the Commission has no power to grant him a permit. **191 *Tide Water Oil Co. v. Railroad Commission*, *Tex.Civ.App.*, 76 S.W.2d 553; *Altgelt v. Texas Company*, *Tex.Civ.App.*, 101 S.W.2d 1104, writ dismissed. We do not think the permit has this effect. The function of the Railroad Commission in this connection is to administer the conservation laws. When it grants a permit to drill a well it does not undertake to adjudicate questions of title or rights of possession. These questions must be settled in the courts. When the permit is granted, the permittee may still have no such title as will authorize him to drill on the land. If other parties are in possession of the property, as in the present case, they may defend *100 their possession by self-help, or by injunction proceedings. Before the permittee can drill, he must first go to court and establish his title. In that suit, upon proper showing, he may have a receiver appointed to drill the well and hold the proceeds to await the final judgment on the title issue. On the other hand, if the has possession, or can obtain possession peaceably, his adversary may resort to the courts for a determination of the title dispute, and therein ask for an injunction or for a receivership. In short, the order granting the permit is purely a negative pronouncement. It grants no affirmative rights to the permittee to occupy the property, and therefore would not cloud his adversary's title. It merely removes the conservation laws and regulations as a bar to drilling the well, and leaves the permittee to his rights at common law. Where there is a dispute as to those rights, it must be settled in court. The permit may thus be perfectly valid, so far as the conservation laws are concerned, and yet the permittee's right to drill under it may depend upon his establishing title in a suit at law. In such a suit the fact that a permit to drill had been granted would not be admissible in support of permittee's title.

[10][11] Of course, the Railroad Commission should not do the useless thing of granting a permit to one who does not claim the property in good

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faith. The Commission should deny the permit if it does not reasonably appear to it that the applicant has a good-faith claim in the property. If the applicant makes a reasonably satisfactory showing of a good-faith claim of ownership in the property, the mere fact that another in good faith disputes his title is not alone sufficient to defeat his right to the permit; neither is it ground for suspending the permit or abating the statutory appeal pending settlement of the title controversy.

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[12] The Magnolia contends alternatively that even if Landman's title is good, the judgment of the district court cancelling the permit should be affirmed because it appears as a matter of law from the judge's findings of fact that the 1.26-acre tract is a voluntary subdivision in derogation of Rule 37. We find no merit in this contention. The 1.26-acre tract appears to be a part of a voluntary subdivision of the 9-acre tract. Landman alleged in his pleadings that the owners of the remainder of the 9-acre tract joined with him in his application for the permit. There is no statement of facts, and the findings do not show that the 9-acre tract, from which the 1.26-acre tract was segregated, is entitled to no well or that it has all the wells to which it would be entitled without regard to the subdivision. Neither does it appear whether or not the Commission took into consideration *101 the needs of the 9-acre tract as a whole in locating the two wells on the 1.26-acre tract. See in this connection *Railroad Commission v. Magnolia Pet. Co.*, 130 Tex. 484, 109 S.W.2d 967; *Gulf Land Co. v. Atlantic Refining Co.*, 134 Tex. 59, 131 S.W.2d 73; *Humble Oil & Refining Co. v. Potter*, Tex.Civ.App., 143 S.W.2d 135; *Railroad Commission v. Miller*, Tex.Civ.App., 165 S.W.2d 504. The district judge expressly stated that he did not pass on the question of voluntary subdivision. Consequently, the case must be remanded for a new trial.

The judgments of the district court and of the Court of Civil Appeals are reversed, and the cause is remanded to the district court for a new trial.

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