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The Constitutionality of Wyoming's Oil and Gas Compulsory Pooling Provision

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which has little meaning in the absence of a fact situation, there is little profit in trying to form a rule in the abstract. The district court in Minnesota has said that a defendant cannot keep a plaintiff from dismissing just because defendant has discovery proceedings pending and would lose his right to discovery if the action were brought in the state court.³¹

The Federal Rules set the pattern from which the Proposed Wyoming Rules were cut, and from that fact comes the chief value in a discussion of this sort. The Proposed Rules differ only in that the provision of 41 (a) (2) permitting the court no discretion in dismissing when a counterclaim is pleaded which cannot remain pending for independent adjudication is omitted. This proviso was not necessary for it was designed to solve a problem which could only come up in a federal court. Without it a plaintiff with a claim within the jurisdiction of the federal courts could dismiss and deprive the court of jurisdiction over a counterclaim that did not have within itself grounds for federal jurisdiction.

To review the difference between the Code and the Proposed Rules is to point out the advantages of the later. At present plaintiff can drop out at any time whether or not that inconveniences the defendant and the court. If controlled by rule 41 (a), the absolute right to dismiss exists only until an answer has been filed; thereafter there is no inflexible rule but one which is applied by the court to fit the circumstances in arriving at a fair answer to the problem of conflicting rights. Under our present code the plaintiff may dismiss any number of times while the rules limit him to one unless the defendant agrees to second without prejudice. Plaintiff may now dismiss regardless of the cost he imposes on the defendant at each attempt without having to pay these expenses, but a court guided by the Rules would be authorized, and in most cases compelled, to make him pay costs to the defendant.

R. S. STURGES

THE CONSTITUTIONALITY OF WYOMING'S OIL AND GAS COMPULSORY POOLING PROVISION

Lack of understanding of the nature of oil and gas in the early history of its production has led to some seemingly difficult propositions in reconciling common law property concepts with conservation and regulation of the production of oil and gas. The old rule of capture laid down in 1907¹ that the owner of a tract could drill as many wells wherever he wished without regard to others and the consequent competitive drilling resulted in such waste and expense that need for some regulation became imperative. Stemming from this need a variety of conservation statutes

31. Fed. R. Civ. P. 41 (a) (1).

1. *Barnard v. Monongahela Natural Gas Co.*, 216 Pa. 362, 65 A. 801 (1907).

have been enacted in the oil producing states. These statutes include provisions for proration of production, well spacing, pooling, and unitization.

Most recent of these statutes are of two types: one type provides that a commission may compel two or more separately owned tracts to form a drilling unit; a unit being the maximum area which can be efficiently and economically drained by one well.² These statutes vary slightly from state to state. The other type of statute authorizes a commission upon the request of a certain percentage of interested parties to unitize an entire producing area or pool embracing a common source of supply for the purposes of secondary recovery of the oil and gas within a particular pool.³ Most states having the first of these two types of statutes permit voluntary unitization agreements for the entire pool for purposes of secondary recovery and specifically exempt them from the effect of anti-trust laws.

Wyoming's statute passed in 1951 is of the first type. It provides for the creation of an Oil and Gas Conservation Commission comprised of the Governor, Commissioner of Public Lands, and the State Geologist.⁴ This Commission has authority to establish drilling units throughout any given pool.⁵ The acreage and shape of the unit is determined from evidence presented at a hearing but shall not be smaller than the maximum area that can be drained by one well.⁶ No more than one well shall be drilled on any one unit.⁷ When two or more separately owned tracts or separately owned interests are involved in the same unit the persons owning such interests may pool their interests for the development and operation of the unit. "In the absence of voluntary pooling, the commission, upon application of any interested person, may enter an order pooling all interests in the drilling unit for the development and operation thereof."⁸ Provision is also made for notice and hearing and for a proportional distribution of production according to the various interests involved. The scope of this article is limited to a discussion of the constitutionality of this compulsory pooling provision.

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2. States having this type statute are: Arizona, *Ariz. Laws 1951, c. 123, sec. 6*; *Ariz. Code P. Supp. 1951, 11-1706*; Arkansas, *Ark. Acts 1951, No. 134*; Alabama, *Ala. Laws 1945, p. 8, sec. 12*; Colorado, *Colo. Laws 1951, c. 230, H.B. 347*; Georgia, *Ga. Code Ann. sec. 43-117, Supp. 1947*; Florida, *Fla. Stat. Ann., sec. 377.28 (Supp. 1947)*; Illinois, *Ill. Laws 1951, p. 1500, Ill. Rev. Stat., c. 104, sec. 83*; Indiana, *Ind. Laws 1951, c. 137, sec. 5*; *Rev. Stat. 1951 Supp., sec. 46-1714*; Louisiana, *La. S.A. Re. Stat. Tit. 30, secs. 9-10*; Michigan, *Mich. Pub. Laws (1939) No. 61, Mich. Comp. Stat. 319.70*; Mississippi, *Miss. Stat. 6132-22 (40 acre maximum)*; New Mexico, *N.M. Stat., sec. 69-213*; North Carolina, *N.C. Stat., sec. 113-392 to 113-393*; Washington, *Wash. Laws 1951, c. 146, sec. 26*; Wyoming, *Session Laws of Wyo. 1951, c. 94, sec. 3, Wyo. Comp. Stat., secs. 57-1111 to 57-1122*.
 3. Oklahoma, *Okla. Stat. Ann. c. 3 sec. 286.1 to 286.17 (1945)*; Amended, *Okla. Laws 1951, S.B. No. 203 Approved May 26, 1951* The Federal Government has a statute providing for compulsory unitization of public domain and federally acquired lands, *30 U.S.C. 226 P. Supp. 1947*.
 4. *Session Laws of Wyo. 1951, c. 94, sec. 12 (a), Wyo. Comp. Stat., secs. 57-1111 to 57-1122*.
 5. *Ibid., sec. 3 (a), Wyo. Comp. Stat., sec. 57-1113 (a)*.
 6. *Ibid., sec. 3 (b), Wyo. Comp. Stat., sec. 57-1113 (b)*.
 7. *Ibid., sec. 3 (c), Wyo. Comp. Stat., sec. 57-1113 (c)*.
 8. *Ibid., sec. 3 (f), Wyo. Comp. Stat., sec. 57-1113 (f)*.

Two propositions warrant consideration. First, where all the owners within the unit are desirous of drilling, but each wishes to drill upon his own tract, can the Commission constitutionally compel these separate owners to join into units in the interest of conservation of the oil and gas? Second, suppose any owner of a particular tract, for reasons best known to himself, does not want to develop his tract at the present time, can be constitutionally be compelled against his will to join with others in the proposed unit in its development?

Possible avenues of attack upon such a statute are that this is a taking of property without due process of law,⁹ an impairment of the obligation of contracts,¹⁰ an unlawful delegation of power to the commission by the legislature,¹¹ a denial of equal protection of the laws,¹² that such regulation interferes with interstate commerce,¹³ and that it is void for want of definiteness.¹⁴ The statute, if justifiable at all must come under the police power of the state.¹⁵ The tests for the proper exercise of police power placed against constitutional guarantees are, briefly, that the statute must not be arbitrary or unreasonable, and the regulation must have a direct, substantial and reasonable relation to a proper legislative purpose.¹⁷

By way of analogy in support of the first proposition, the Wyoming Supreme Court held that a statute creating a board of control with power to supervise water in the state did not violate the due process clause. The court said, ". . . All property is held subject to such restraints and regulations as the state may constitutionally make in the exercise of the police power."¹⁸ Other statutes have reached similar results. A statute creating a corporate drainage district was held not an unlawful delegation of legislative authority.¹⁹ Another statute creating a water storage district for storage, conservation and distribution of water for irrigation with power in a board to describe boundaries, areas and number of persons in

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9. Fifth and Fourteenth Amendments U.S. Constitution; Art. I, Sec. 6 and 7, Const. of Wyo.
 10. Art. I, Sec. 10, U.S. Const.; Art. I, Sec. 35, Const. of Wyo.
 11. Art. I, Sec. 8, Par. 18, U.S. Const.; Art. III, Sec. 37, Const. of Wyo.; Art. XV, Sec. 14, Const. of Wyo.
 12. Fifth and Fourteenth Amendments U.S. Const.; Art. I, Sec. 3, Const. of Wyo.
 13. Art. IX, Sec. 10, U.S. Const.
 14. *Smith v. Cahoon*, 283 U.S. 553, 51 S.Ct. 582, 75 L.Ed. 1264 (1931); *Chicago v. Chicago & N. W. Ry. Co.*, 275 Ill. 30, 113 N.E. 849 (1916); *Patterson v. Stanolind Oil & Gas Co.*, 305 U.S. 376, 59 S.Ct. 259, 83 L.Ed. 231 (1939).
 15. *C. B. & Q. Ry. v. Ill.*, 200 U.S. 561, 26 S.Ct. 341, 50 L.Ed. 596 (1906); *Gorich v. Fox*, 274 U.S. 603, 47 S.Ct. 675, 71 L.Ed. 1228 (1927); *Zahn v. Board of Public Works*, 274 U.S. 325, 47 S.Ct. 594, 71 L.Ed. 1074 (1927); *Eubank v. Richmond*, 226 U.S. 137, 33 S.Ct. 76, 57 L.Ed. 156 (1912); *Nebbia v. N.Y.*, 291 U.S. 502, 54 S.Ct. 505, 78 L.Ed. 940 (1934); *State v. Langley*, 53 Wyo. 332, 84 P.2d 767 (1938); Art. X, Sec. 3, Const. of Wyo.
 16. *Gorich v. Fox*, 274 U.S. 603, 47 S.Ct. 675, 71 L.Ed. 1228 (1927); *Zahn v. Board of Public Works*, 274 U.S. 325, 47 S.Ct. 594, 71 L.Ed. 1074 (1927); *Eubank v. Richmond*, 226 U.S. 137, 33 S.Ct. 76, 57 L.Ed. 156 (1912).
 17. *State v. Langley*, 53 Wyo. 332, 84 P.2d 767; *Weaver v. Palmer Bros.*, 207 U.S. 402, 46 S.Ct. 320, 70 L.Ed. 654 (1926).
 18. *Hamp v. State*, 19 Wyo. 377, 118 Pac. 653 (1911).
 19. *State ex rel. Spencer Co. Atty. v. Drainage District No. 1 of Lynn Co.*, 123 Kan. 191, 254 Pac. 372 (1927).

sub-districts was held not to be a violation of the due process clause, nor was it undue delegation of legislative power.²⁰

The police power is designated to protect one owner against undue and unreasonable use of property by another.²¹ When property in which several persons have a common interest cannot be fully and beneficially enjoyed in its existing condition, the law often provides a way in which they may compel one another to submit to measures necessary to secure its beneficial enjoyment, making equitable compensation to any whose control or interest in the property is thereby modified.²² Contract and property rights have been held subject to the fair exercise of police power.²³

We are not limited to analogies. In the field of oil and gas law ample authority exists for upholding the constitutionality of such conservation statutes. As early as 1900 the right of a state to regulate the drilling of wells for oil and gas to conserve the rights of adjoining owners was established.²⁴ Since that time the courts have upheld oil and gas conservation statutes providing for proration,²⁵ gas waste prevention,²⁶ well spacing,²⁷ and pooling.²⁸ A number of cases have held that the natural reservoir energy, regardless of its character, rightly belongs to the whole pool, and conservation statutes to protect this energy are a valid exercise of the police power.²⁹ Specific cases hold that oil and gas conservation statutes

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20. *Tarpey v. McClure*, 190 Cal. 593, 213 Pac. 983 (1923).
21. *Slaughterhouse Cases*, 16 Wall. 36, 21 L.Ed. 394 (1872); *Zahn v. Board of Public Works*, 274 U.S. 325, 47 S.Ct. 594, 71 L.Ed. 1074 (1927); *Block v. Hirsh*, 256 U.S. 135, 41 S.Ct. 458, 65 L.Ed. 865 (1921); *Champlin Ref. Co. v. Corp. Comm.*, 286 U.S. 210, 52 S.Ct. 559, 76 L.Ed. 1062 (1932).
22. *Head v. Amoskeag Mfg. Co.*, 113 U.S. 9, 5 S.Ct. 441, 28 L.Ed. 889 (1885); *Wurts v. Hoagland*, 114 U.S. 606, 5 S.Ct. 1086, 29 L.Ed. 229 (1884); *Fallbrook Irrig. Dist. v. Bradley*, 164 U.S. 112, 17 S.Ct. 56, 41 L.Ed. 369 (1896).
23. *Manegault v. Springs*, 199 U.S. 437, 26 S.Ct. 110, 50 L.Ed. 261 (1905); *Home Bldg. & Loan Assn. v. Blaisdell*, 290 U.S. 398, 54 S.Ct. 234, 78 L.Ed. 413 (1934); *Treigh v. Acme Homestead Assn.*, 297 U.S. 189, 56 S.Ct. 387, 80 L.Ed. 581 (1936).
24. *Ohio Oil Co. v. Indiana*, 177 U.S. 190, 20 S.Ct. 576, 44 L.Ed. 729 (1900); *Lindsay v. Natural Carbonic Gas Co.*, 220 U.S. 61, 31 S.Ct. 337, 55 L.Ed. 369 (1911).
25. *R.R. Comm. v. Rowan & Nichols Oil Co.*, 310 U.S. 573, 60 S.Ct. 1021, 84 L.Ed. 1368 (1940); *Champlin Ref. Co. v. Corp. Comm.*, 286 U.S. 210, 52 S.Ct. 559, 76 L.Ed. 1062 (1932); *Corzelleus v. Harrell*, 143 Tex. 509, 186 S.W.2d 961 (1945); but see *Thompson v. Consol. Gas Utilities Corp.*, 300 U.S. 55, 57 S.Ct. 364, 81 L.Ed. 510 (1937) proration order not upheld.
26. *Ohio Oil Co. v. Ind.*, 177 U.S. 190, 20 S.Ct. 576, 44 L.Ed. 729 (1900); *Walls v. Midland Carbon Co.*, 254 U.S. 300, 41 S.Ct. 118, 65 L.Ed. 276 (1920); *Bandini Petrol Co. v. Superior Court*, 284 U.S. 8, 52 S.Ct. 103, 76 L.Ed. 136 (1931); *People v. Assoc. Oil Co.*, 211 Cal. 93, 294 Pac. 717 (1930).
27. *Buford v. Sun Oil Co.*, 319 U.S. 315, 63 S.Ct. 1098, 87 L.Ed. 1424 (1934); *Oxford Oil Co. v. Atlantic Oil Prod. Co.*, 22 F.2d 597 (1927); certiorari denied 277 U.S. 585, 48 S.Ct. 432, 72 L.Ed. 1000 (1928); *Brown v. Humble Oil and Ref. Co.*, 126 Tex. 296, 83 S.W.2d 935 (1935). But see *Bernstein v. Bush*, 29 Cal.2d 773, 177 P.2d 913 (1947) well spacing statute held invalid.
28. *Hunter Co. Inc. v. McHugh*, 320 U.S. 222, 64 S.Ct. 19, 88 L.Ed. 5 (1945); *Mars v. City of Oxford*, 32 F.2d 134, certiorari denied 280 U.S. 573, 50 S.Ct. 29, 74 L.Ed. 625 (1929); *Patterson v. Stanolind Oil & Gas Co.*, 305 U.S. 376, 59 S.Ct. 259, 83 L.Ed. 231 (1939); *Croxton v. State*, 186 Okla. 249, 97 P.2d 11 (1939).
29. *Walls v. Midland Carbon Co.*, 254 U.S. 300, 41 S.Ct. 118, 65 L.Ed. 276 (1920); *Bandini Petrol Co. v. Superior Ct.*, 284 U.S. 8, 52 S.Ct. 103, 76 L.Ed. 136 (1931); *Champlin Ref. Co. v. Corp. Comm.*, 286 U.S. 210, 52 S.Ct. 559, 76 L.Ed. 1062 (1932); *Lindsay v. Assoc. Oil Co.*, 211 Cal. 93, 294 Pac. 717; *Quinten Ref. Oil and Gas Co. v. Corp. Comm.*, 101 Okla. 164, 224 Pac. 156 (1924); *Julian Oil and Royalty Co. v. Capshaw*, 145 Okla. 237, 292 Pac. 841 (1930); *Russel Petrol Co. v. Walker*, 159 Okla. 156, 15 P.2d 114 (1932); *Peterson v. Grayce Oil Co.*, (Tex.) 37 S.W.2d 367 (1931).

are not a violation of due process,³⁰ nor do they constitute impairment of obligation of contracts.³¹ The creation of a commission to administer the statute is not an unconstitutional delegation of legislative power,³² nor do they violate the equal protection clause so long as everyone of the same class, i.e. all lessors, lessees, or royalty holders, is treated alike,³³ nor does regulation under these statutes interfere with interstate commerce.³⁴ A similar statute was held not to be so indefinite that it was invalid even though it left broad discretion with the commission since the commission was best informed with the technical information necessary to determine the size and shape of units.³⁵

As to the second proposition, suppose that any particular owner, for reasons best known to himself, does not want to drill at the present time. Can he be compelled against his will to join into a unit without invading his constitutional rights? He may argue that the basis for such statutes is for purposes of conservation and that he is conserving the natural resources by leaving them in their natural deposit. The courts have held that an unwilling landowner may be compelled upon proceedings of some of the proprietors of lands to contribute to the expense of draining the land as a just and constitutional exercise of the power of the legislature to establish regulation by which adjoining lands held by various owners severally and in the improvement of which all have a common interest, but which, by reason of the peculiar natural condition of the whole tract cannot be improved or enjoyed by them without the concurrence of all, may be reclaimed and made useful to all at their joint expense.³⁶ The same is true of an ordinance which compels an unwilling property holder to contribute to paving the street abutting his property.³⁷ The police power not only includes regulation to promote public health, good morals, and good order but also the right to legislate to promote

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30. *Oxford Oil Co. v. Atlantic Oil Prod. Co.*, 16 F.2d 639 (1927); certiorari denied 277 U.S. 585, 48 S.Ct. 432, 72 L.Ed. 1000 (1928); *Palmer Oil Corp. v. Phillips Petrol Co.*, —Okla.—, 231 P.2d 997 (1951).
 31. *Walls v. Midland Carbon Co.*, 254 U.S. 300, 41 S.Ct. 118, 65 L.Ed. 276 (1920); *Oxford Oil Co. v. Atl. Oil Prod. Co.*, 22 F.2d 597 (1927); certiorari denied, 277 U.S. 585, 48 S.Ct. 432 (1928); *People v. Assoc. Oil Co.*, 211 Cal. 93, 294 Pac. 717 (1930); *Crichton v. Lee*, 209 La. 561, 25 So.2d 229 (1946); *Patterson v. Stanolind Oil & Gas Co.*, 305 U.S. 376, 59 S.Ct. 259, 83 L.Ed. 231 (1939); *Palmer Oil Corp. v. Phillips Petrol. Co.*, —Okla.—, 231 P.2d 997 (1951).
 32. *Bandini Perol. Co. v. Superior Court*, 284 U.S. 8, 52 S.Ct. 103, 76 L.Ed. 136 (1931); *Oxford Oil Co. v. Atl. Oil Prod. Co.*, 22 F.2d 597 (1927); certiorari denied, 277 U.S. 585, 48 S.Ct. 432, 72 L.Ed. 1000 (1928); *People v. Assoc. Oil Co.*, 211 Cal. 93, 294 Pac. 717 (1930); *Hunter Oil Co. v. McHugh*, 202 La. 97, 11 So.2d 495 (1942); *Patterson v. Stanollind Oil & Gas Co.*, 305 U.S. 376, 59 S.Ct. 259, 83 L.Ed. 231 (1939); *Palmer Oil Corp. v. Phillips Petrol. Co.*, —Okla.—, 231 P.2d 997 (1951).
 33. *Champlin Ref. Co. v. Corp. Comm.*, 286 U.S. 210, 52 S.Ct. 559, 76 L.Ed. 1062 (1932); *Walls v. Midland Carbon Co.*, 254 U.S. 300, 41 S.Ct. 118, 65 L.Ed. 276 (1920); *Danciger Oil & Ref. Co. v. R.R. Comm.*, 49 S.W.2d 837 (1932); *Hunter Oil Co. v. McHugh*, 202 La. 97, 11 So.2d 495 (1932).
 34. *Champlin Ref. Co. v. Corp. Comm.*, 286 U.S. 210, 52 S.Ct. 559, 76 L.Ed. 1062 (1932); *Danciger Oil & Ref. Co. v. R.R. Comm.*, 49 S.W.2d 837 (1932).
 35. *Chrichton v. Lee*, 209 La. 561, 25 So.2d 229 (1946).
 36. *Wurts v. Hoagland*, 114 U.S. 606, 5 S.Ct. 1086, 29 L.Ed. 229 (1884); *Head v. Omskeag Mfg. Co.*, 113 U.S. 9 (1885).
 37. *Field v. Barber Asphalt Paving Co.*, 194 U.S. 168, 24 S.Ct. 784, 48 L.Ed. 1142 (1904).

development of industry and utilization of natural resources³⁸ in order to add to the wealth and prosperity of the state.³⁹ The Oklahoma Supreme Court recently held valid a statute which provided that upon petition of fifty per cent of the lessees up to fifteen per cent of the other lessees over a given pool or common source of supply could be compelled against their consent to join in the unitization and operation of the entire area.⁴⁰

The conclusion to be drawn from these cases is that the state under the police power may regulate the production of oil and gas for purposes of conservation. If as a reasonable conservation measure and in the interest of protecting the correlative rights of the landowners the state feels it necessary to unitize the entire common source of supply or any part thereof and develop the same as a single unit this is within the valid exercise of the police power even against the opposition of an unwilling landowner.

One criticism might be offered—that is, why did Wyoming not adopt a statute similar to Oklahoma's which takes a step beyond merely creating a unit for one well for conservation of oil and gas during the primary production stage, but unitizes the whole pool for the sake of secondary recovery. If conservation is the real objective it can be best accomplished under such a statute as Oklahoma's. Engineers have long agreed that from fifty to over ninety per cent more oil and gas could be recovered by working the whole common source of supply as a single unit without paying attention to surface boundaries, or from which particular hole the oil and gas from the pool is brought to the surface.

If the old concepts of property that the owner of the surface owned everything vertically above and below the surface were abandoned with regard to oil and gas, and a concept that the surface owners had an undivided interest in the whole pool in proportion to the surface owned over the particular pool were adopted, this would not do violence to established constitutional guarantees. This latter concept seems more realistic in the light of our present understanding of the characteristics of oil and gas. Engineers have long agreed that the natural pressure and oil and gas belong to the whole pool.⁴¹ These pressures cannot be separated and confined into nice parcels as can the surface and other minerals. Oil and gas rights are severable for other purposes; therefore, why not sever them in such a way that the surface owners have an undivided interest in the whole pool in proportion to the surface owned over the particular pool.

38. *Barbier v. Connoly*, 113 U.S. 27, 5 S.Ct. 357, 28 L.Ed. 923 (1885); *Quenton Relieve Oil & Gas Co. v. Corp. Comm.*, 101 Okla. 164, 224 Pac. 156 (1924); *Julian Oil & Royalty Co. v. Capshaw*, 145 Okla. 237, 292 Pac. 841 (1930).

39. *C. B. & Q. Ry. v. Ill.*, 200 U.S. 561, 26 S.Ct. 341, 50 L.Ed. 596 (1906).

40. *Palmer Oil Corp. v. Phillips Petrol Co.*, —Okla.—, 231 P.2d 997 (1951). The statute has since been amended changing the number of petitioners to 63% of the lessees, and omitting the provision which gave the right to 15% of the lessees to nullify the order. Since this amendment 63% of the landowners over the pool can compel 37% to unitize and develop their lands against their will. Okla. Laws 1951, S.B. No. 203. Approved May 26, 1951.

41. *Secondary Recovery of Oil in the United States*, Am. Petrol. Institute, *Glossary of Terms and Definitions*, p. 255; *Petroleum Engineer*, Nov. 1948, p. 530.

This proposition immediately poses many problems beyond the scope of this article, but it is apparently the best solution to date of conserving present oil and gas resources.

MEIVIN M. FILLERUP

QUITCLAIM HOLDER AS A BONA FIDE PURCHASER

On the question whether one claiming under a quitclaim is entitled to the protection of the recording acts there is a wide range of authority. Text writers have divided the authorities into so-called majority and minority rules, with the majority giving the quitclaim grantee the protection of the recording acts.¹ Also the majority view is gaining favor constantly, the minority rule denying such protection being an outdated viewpoint.² However, beneath the facade of majority and minority labels, there appears to be a large number of subsidiary rules, with no such clear-cut differences as would seem indicated. This article will attempt to point out the barely discernible basic reasoning behind the welter of conflicting rules.

A theory which can be disposed of initially is one finding that presence or lack of warranties in a deed has bearing upon the problem, whether we shall recognize the good faith of a quitclaim holder by granting him protection against outstanding unrecorded interests. The difference in warranties is, of course, a basic distinction between quitclaim and warranty deeds, so it seems that many courts feel constrained to mention it, either to point out that lack of warranties indicates outstanding claims, or to minimize their importance in that connection. Indeed, some courts have been so worried about the warranty argument that an ingenious one has been thought up in rebuttal, to the effect that a purchaser requiring warranties for his protection must have a greater doubt as to the validity of his grantor's title.³ In practice, however, even those courts which deny protection to a quitclaim holder will give protection to a holder of a deed of bargain and sale without warranties.⁴ Therefore, as the warranty argument, though often mentioned, is never relied upon as the true basis for the distinctions made between quitclaims and other deeds, its elimination in the following discussion should not be too great a loss.

The real basis for the distinction made by the minority is the well-settled concept that a quitclaim deed purports to convey only such right, title or interest as the grantor has at the time the deed is made.⁵ The

1. 55 Am. Jur. 1112.

2. Compare note, 105 Am. St. Rep. 854 (1903), and annotation, 59 A.L.R. 632 (1927).

3. Babcock v. Wells, 25 R.I. 23, 54 A. 596, 105 Am. St. Rep. 848 (1903).

4. Taylor v. Harrison, 47 Tex. 454, 26 Am. Rep. 304 (1887); American Mortg. Co. v. Hutchinson, 19 Ore. 334, 24 Pac. 515 (1890); Smith v. Branch Bank, 21 Ala. 125 (1852); Pierson v. Bill, 138 Fla. 104, 189 So. 679 (1939); Southern Ry. v. Carroll, 86 S. C. 56, 67 S.E. 4, 138 A.S.R. 1017 (1910).

5. 16 Am. Jur. 624; 8 Thompson, Real Property, sec. 4301 (perm. ed. 1940).