market price of oil, but said that the fact that the statute to some extent invaded the field of economic law did not justify avoiding it.[24]

Under the provision of the Act which authorizes operators in the same field to enter into a cooperative agreement for the operation of their holdings without waste, a plan was devised as a basis for such agreements between operators.[25] The obstinate opposition of a few small producers in certain fields, however, prevented the proposal's being adopted there, even though a great majority of owners were ready to sign such agreements.[26]

The Director of Natural Resources has decided that unreasonable waste of gas is any production in excess of 2500 feet of natural gas for each barrel of crude oil produced, because such excess production contributes to the general surplus production of natural gas.[27]

It is now declared that the law of 1929 is ineffective by reason of peculiar conditions that exist in one of the newly discovered fields, which allow uncurtailed production of oil despite the statutory restrictions. Thus renewed evidence is furnished that those in the oil and gas industry believe the Act of 1929 had for its primary purpose the curtailment of the production of oil and stabilization of the petroleum industry.[28] The old Gas Conservation and Water Infiltration Act of 1915 lent itself to the purpose of the oil interests, and by the Amendment of 1929 became in effect a restriction on production without being so in name. The reasons for this well-meant deception were the belief that the state could not legally restrict production of oil, and the pressing need for such restriction. But the decision of *People v. Associated Oil Co.* seems to have cleared the way for appropriate legislative action on the regulation of the petroleum industry. It is apparent that the act as amended in 1929 will continue to render good service in preventing the waste of gas in spite of its hinted failure as an oil-production restriction.

NOEL F. DELPORTE, '31.

THE REGULATION OF OIL AND GAS PRODUCTION BY THE RAILROAD COMMISSION OF TEXAS

The State of Texas, by the act of March 31, 1919, adopted a unique system for oil and gas conservation by delegating to the State Railroad Commission the authority to make rules and

[24] People v. Associated Oil Co., n. 14, above.
[25] OIL AND GAS J., Sep. 5, 1929, p. 60.
[26] OIL AND GAS J., Jan. 8, 1931, p. 46.
[27] OIL AND GAS J., Sep. 19, 1929, p. 54.
[28] OIL AND GAS J., Feb. 12, 1931, p. 54.

regulations upon the subject.[1] The act contains a general grant of power to the Commission, giving it authority over all common-carrier pipe lines and oil and gas wells in Texas and the owners of the same. The Attorney General is authorized to enforce the provisions of the law by injunction or other adequate remedy. The Commission also has power to institute suits, hear and determine complaints, require the attendance of witness, etc. Finally appears the general grant of power to the Commission to make rules and regulations for the conservation of oil and gas. Other sections of the statute provide for the plugging of abandoned wells, the shooting of new wells in a specified manner, and the keeping of certain records by oil producers.

The constitutionality of this legislative delegation of authority to the Railroad Commission has been disputed on the ground that the Texas Constitution created the Railroad Commission for the regulation of railroads and that any attempted additions to its powers are void. The cases,[2] however, uphold the delegation as constitutional on the basis that the Railroad Commission was not created by the Constitution of Texas but by the Legislature. The Constitution authorizes the Legislature to regulate freight and passenger tariffs, to correct abuses, to prevent unjust discrimination in rates, and to provide all requisite means and agencies for enforcement, thus merely *authorizing* the Railroad Commission, which was in fact *created* by the Legislature. Therefore the Legislature can impose additional powers and duties upon the Commission.

On May 1, 1921, the Commission promulgated 40 rules and regulations applicable to oil and gas production. From time to time since then it has added others.[3] In February, 1928, A. W. Walker, Jr., of the University of Texas, made the following statement: "It is a splendid tribute to the fair and efficient work of the Railroad Commission that the appellate courts have in only one case been directly asked to pass upon the constitutionality of any particular rule or regulation."[4] The case referred to is *Oxford Oil Co. v. Atlantic Oil Producing Co.*[5] In this case the plaintiff challenged the constitutionality under the Fourteenth Amendment of a rule of the Commission prohibiting the drilling of an oil well within 300 feet of another well or within 150 feet of a property line, provided, however, that the Commission might make exceptions in special cases. Plaintiffs

[1] Tex. Rev. Civ. Stat. (1925) arts. 6023, 6024, and 6029.

[2] City of Denison v. Municipal Gas Co. (Tex. Civ. App. 1924) 257 S. W. 616; Oxford Oil Co. v. Atlantic Oil Producing Co. (1926) 16 F. (2d) 639; *Id.* (C. C. A. 1927) 22 F. (2d) 597, applying Const. Tex., art. 10 sec. 2.

[3] *Oil and Gas Circular No. 13*, issued by the Railroad Commission.

[4] 6 Tex. L. Rev. 138.

[5] N. 2, above; (1927) 5 Tex. L. Rev. 328.

owned a strip of land 3000 feet long but nowhere wider than 56 feet. The Commission gave them special permission to drill four wells and enjoined them from drilling others. The Circuit Court of Appeals sustained the validity of the rule as a proper exercise of the police power of the State in controlling the development of natural resources. The court said:

> The right of a state to so regulate the drilling of wells for oil and gas as to protect the rights of adjoining owners is too well settled to admit of serious controversy. *Ohio Oil Co. v. Indiana,* 177 U. S. 190; *Lindsley v. Natural Carbonic Gas Co.,* 220 U. S. 61. It was within the power of the legislature to lay down a general rule for the protection of mineral rights to the owners of adjoining lands, and to leave the details of enforcing the rule to an administrative agency or board. *Plymouth Coal Co. v. Pennsylvania,* 232 U. S. 531.[6]

In *Railroad Commission of Texas v. Bass*[7] the same property as that in the *Atlantic Oil Co.* case was involved. The proper test of the reasonableness of the Commission's rule was said to be whether, taking into consideration the position of plaintiff's land and its relation to the proven field, the plaintiff would have an equal opportunity with adjoining leaseholders for developing his leasehold. The court found that the rule promoted conservation by reducing hazard and minimizing the danger of water percolating into the oil stratum from wells drilled in close proximity. Taking these considerations and the fact that the plaintiff was allowed to drill four wells into account, the action of the Commission was found to be fair and reasonable. The court stated: "The Commission is an administrative body, and its orders and rulings must be upheld unless they are clearly shown to be unreasonable or unjust."

In February, 1930, the same rule of the Commission was involved under different circumstances, in the case of *State v. Jarmon.*[8] This was a suit by the Commission to enjoin Jarmon from drilling on a narrow strip of land without securing permission to do so. The defendant had filed an application with the Railroad Commission for a permit to drill an oil well on a narrow strip of land. The Commission's chief supervisor had ascertained all the facts necessary to a ruling on the application. Defendant waited four months for a ruling, and since his land was being drained by nearby wells, proceeded to drill without per-

[6] For constitutionality of statutes limiting or controlling exploitation or waste of natural resources see annotations in 24 A. L. R. 307 and 51 A. L. R. 279.

[7] (1928) 10 S. W. (2d) 586, followed in Gilmore v. Stroughan (1920) 10 S. W. (2d) 589.

[8] 25 S. W. (2d) 936.

mission. The court held for the defendant on the ground that the Commission had failed to do equity, its conduct toward defendant being so arbitrary and unreasonable that it was in no position to demand relief through a court of equity and thereby cause the defendant to suffer for its own dereliction.[9]

The Railroad Commission has adopted a drastic rule, restraining production of gas to 50 per cent of capacity. This rule was passed on directly in the case of *Magnolia Petroleum Co. v. Strand.*[10] Appellee, by a contract consisting of several letters, was entitled to one-eighth of the gas of a particular well. He contended he was entitled to one-eighth of the 100 per cent flow, and appellant contended that he was only entitled to one-eighth of the 50 per cent flow. The court held for the appellant, saying that the construction contended for by the appellee would render the contract illegal, unlawful, and contrary to the public policy of the State of Texas. The court declared: "These constitutional and statutory provisions, rules, and regulations declare the law of the state of Texas and its public policy."[11]

But we have been concerned with the attempts of the Railroad Commission to prevent *actual* waste of natural resources. Now, because of economic conditions it has become necessary to go still further and endeavor to cope with economic waste. This might be done by the passing of proration statutes. Although Texas has no proration statute, the same effect is obtained by orders from the Railroad Commission. The chief form that proration has taken in the past in Texas has been that the operators of a field voluntarily meet, formulate a plan of proration for their field, and request the Commission to incorporate the new plan in an official order. The Commission then meets with the operators and an advisory and administrative committee of operators is appointed by the operators to aid the Commission in carrying out the program and to select an umpire to be in charge of the plan and be the agent of the Commission.

The fact is, however, that in a very few months we will have an appellate court decision on this very question in the case of *Danciger Oil and Refining Co. v. The Railroad Commission of Texas*, which has been appealed to the Court of Civil Appeals and will undoubtedly go to the Supreme Court regardless of what decision is reached by the Court of Civil Appeals.

Recently, however, it has been necessary to resort to more drastic measures. Prior to July 30, 1930, a joint committee of

[9] Where an application is rejected, the applicant has a remedy at law under Tex. Laws 1929, c. 313 sec. 6, which provides that if any person in interest is dissatisfied with any action of the Commission he may file a petition setting forth his objections thereto in a Court of competent jurisdiction in Travis County.

[10] (Tex. Civ. App. 1927) 3 S. W. (2d) 462.

[11] *Ibid.*, p. 465.

the Independent Petroleum Association and the Texas Division of the Mid Continent Oil and Gas Association, filed an application with the Railroad Commission of Texas asking for a hearing for the purpose of curtailing production in the state. The Commission, pursuant to this application and hearing thereon, promulgated a general proration order.[12] This order prohibited the production of more than 644,253 barrels of oil within the state of Texas within any given day, stating the amount that each of the seven districts in Texas could produce. The order has been challenged in a suit which has not yet been decided by the appellate courts.

The plaintiff, Danciger Oil and Refining Co., owner of oil leases in the Panhandle district, claims the production allotted to this district is too small, making it impossible for the company to comply with contracts entered into prior to the enactment of the order and reducing the potential output of the wells, which are in the Granite Wash formation, since the original flow of such wells can never be reattained. The Commission's order is said to be in violation of the Fourteenth Amendment and corresponding provisions of the Constitution of Texas, partly because it constitutes an attempt on the part of the Commission to deal with economic waste as distinguished from physical waste. An injunction against the Commission's order was at first granted by the District Court of the Fifty-third District at Austin. A change of judges, however, resulted in a final denial of relief. The court said: "The orders of the Railroad Commission are fully authorized by the Legislature and . . . . such orders are reasonable in their intent and application and will, if carried out, prevent waste of oil and gas and will conserve these two great natural resources for the benefit of future generations." The case is now being appealed.[13]

The Texas act, conferring blanket powers upon an administrative body, is an interesting experiment. It would seem that such a statute is better than one setting forth definitely the powers of the Commission. Under the general statute changes in procedure are easier and the Commission is allowed more elasticity in making rules and regulations to meet new conditions as they arise. The writer does not feel, nor does the history of such procedure in Texas justify the view, that under such grant the Commission would become too arbitrary and aggressive in its action. Furthermore there is always present the "check" of judicial review.

LYNDEL O. CONREUX, '31.

[12] See the Commission's Oil and Gas Docket No. 112.

[13] The writer is indebted to Leslie McKay, Chief Deputy Supervisor, Oil and Gas Division of the Railroad Commission of Texas, for information concerning this case.