suit. This is an older view and was followed in *Kingan & Co. v. Maryland Casualty Co.* (1917), 65 Ind. App. 182, 115 N. E. 348, in which it was held, contrary to the holding in the more recent cases, that the insurer is not required to settle for a sum within the face of the policy, but that he has an election to defend, settle, or pay the face of the policy. Under this view the insuring company is not subjected to the full risk of the litigation by electing not to settle even though afterwards judgment is rendered in excess of the indemnity provided by the policy. This rule is followed by *McAleenan v. Massachusetts Bond and Casualty Co.* (1916), 173 App. Div. 100, 159 N. Y. S 401. In other instances the insurer was held liable only to the extent of the face of the policy. *Silverstein v. Standard Accident Insurance Co.* (1916), 175 App. Div. 639, 162 N. Y. S. 601; *Wynnewood Lumber Co. v. Travelers Insurance Co.* (N. C. 1917), 91 S. E. 946; *American Indemnity Co. v. Fellbaum* (1924), 114 Tex. 127, 263 S. W. 908. These cases seem to ignore the fundamental purpose of the assured in taking out this indemnity insurance. He takes it as a protection. He would expect at least the same reasonable care from the company in handling questions arising under his policy that he would use himself. It is reasonable to assume that the insurance contract contemplated a complete settlement of the claim if possible in order to save the insured harmless. A more recent and progressive view holds the company liable to the amount of the policy either in case of settlement by the assured or a judgment against him. *Reilly v. Linden* (1921), 151 Minn. 1, 186 N. W. 121. Still it does not go far enough. The company should attempt to make the settlement to the best advantage of all concerned. Reasonable prudence except in the most exceptional case would be a settlement within the amount of the indemnity policy, when it is possible. The insurer owes the insured the duty of settling before suit and is liable for failure to do so after finding that the claim can be settled. *Cavanaugh Bros. v. General Accident, Fire, and Life Assurance Corp.* (1919), 79 N. H. 186, 106 Atl. 604. The company should be bound by the real purpose of the contract to take no needless chances with the insured's funds. Clearly this is being done when the case is allowed to go to a judgment. *Douglas v. U. S. Fidelity and Guaranty Co.* (1924), 81 N. H. 371, 127 Atl. 708. The general trend of cases seems to be in the direction of the New Hampshire and Texas cases cited. It is merely another instance of the increasing practicality of the holdings of the courts. R. H. M., '30.

MARRIAGE—PARENTAL CONSENT—ANNULMENT.—In accordance with the repeatedly-expressed reluctance of American courts to declare void a marriage duly solemnized, though attended with irregularities or misrepresentations in evading statutory regulations, the Supreme Court of North Carolina has declared that a minor, above the age of legal consent, whose marriage was solemnized on the strength of a license procured by fraud and without the parent's consent, cannot maintain an action to annul the marriage. *Sawyer v. Slack* (1929), 196 N. C. 697, 146 S. E. 864.

The decision interpreted a recent statutory amendment, Pub. L. 1923 c. 75 amending Cons. Stat. Ann. (1919) 2494. The original statute provided that unmarried females of fourteen years and upwards might lawfully marry. The amendment changed this age to sixteen, providing further that females between fourteen and sixteen might marry on procurement of a special license which was to be issued only with the consent of the parent. Another statute declares void the marriage of a female under fourteen years. Const. Stat. Ann. (1919) 1495. The court held that the amendment did not change this latter statute, even by implication, and that inasmuch as marriage below sixteen was thus not declared void, the special license requirement is merely directory and will not support an action for annulment.

Practically all states require consent of the parent for issuance of a marriage license to a minor. But, even where common law marriage is not recognized, such statutory requirements are construed as merely directory, unless they expressly declare a marriage contracted without the prescribed consent to be void. *Niland v. Niland* (1924), 196 N. J. Eq. 438, 126 Atl. 530; *Melcher v. Melcher* (1918), 102 Neb. 790, 169 N. W. 720; *Radford v. Radford* (1921), 214 Mich. 548, 183 N. W. 182; *Harris v. Meyers* (1916), 50 N. S. 112, 30 D. L. R. 26.

Generally, the statutory declarations of the age of legal consent declare marriage below that age void, but the statutes relating to parental consent for marriage of minors above the age of legal consent do not. It often appears that the provisions for parental consent, by implication, might be interpreted to raise the age of consent and declare void a marriage contracted without such consent. A dissenting opinion in the principal case so interpreted the North Carolina amendment. But the courts have consistently refused to imply such an intent on the part of the legislature. *Browning v. Browning* (1913), 89 Kan. 98, 130 Pac. 852.

It has been held that the Uniform Marriage Evasion Act does not alter this rule, since that Act is applicable only to a marriage which is declared void by the laws of the state in which the act is in force. Unless the statute expressly declares void a marriage without parental consent, such statute is directory only and the Marriage Evasion Act does not affect it. *Schwartz v. Schwartz* (1925), 236 Ill. App. 336; *Lyannes v. Lyannes* (1920), 171 Wis. 381, 177 N. W. 683.

In Missouri, prior to 1921, the statute requiring that a license be obtained previous to any marriage (R. S. Mo. [1919] sec. 7302) was declared merely directory. *State v. Bittick* (1890), 103 Mo. 183, 15 S. W. 325. An amendment (Mo. Laws 1921, p. 468) to this statute added the words, "—no marriage hereafter contracted shall be recognized as valid unless such license has been previously obtained,—" and expressly declares common law marriage void. The statute requiring parental consent to issuance of a license to a female under eighteen years and a male under twenty-one years does not declare void a marriage without such consent. R. S. Mo. (1919) sec. 7308. (Mo. Laws 1921 p. 399, raising the age of majority of females

to twenty-one years, has been interpreted by the Attorney-General to prohibit issuance of a license to a female under twenty-one without parental consent.) May, MARRIAGE LAWS AND DECISIONS IN THE UNITED STATES (1929) 233. There has been no court interpretation of the effect of the 1921 amendment on the marriage of a minor solemnized on the strength of a license procured without parental consent by fraud or misrepresentation. It appears that the statute requiring parental consent is merely directory, and the amendment does not affect the validity of such a marriage.

T. G. J., '31.

OIL AND GAS—POWER OF CITY TO REGULATE DRILLING OF WELLS.—An ordinance of the City of Oxford, Kansas, prohibits the drilling of a well for oil or gas in certain districts of the city, except by permit issued by the governing body, which is directed to issue only one permit in each block in the restricted area. The property owners in such blocks are given the right to share in the proceeds of that well by contributing to the operating expenses in proportion to the amount of land owned, if they have not leased their oil right to the company securing the permit. By the ordinance wells cannot be drilled within a certain distance from streets or railways, and must be properly walled in when near a residence or business building. A penalty is provided for drilling without a permit and for violations of other clauses of the ordinance. Two cases which arose under this ordinance upon an application for an injunction to restrain the city from enforcing it, were united on appeal to the Circuit Court of Appeals, *Marrs v. City of Oxford* and *Ramsey v. City of Oxford* (C. C. A. 8, 1929), 32 F. (2d) 134. The ordinance was held constitutional as within the police power, since the object was clearly to protect the public safety and convenience of the town's inhabitants. The police power extends not only to the protection of the public safety, health, and morals, but to the protection of common convenience, prosperity, and welfare. *State v. Wilson* (1917), 101 Kan. 789, 168 Pac. 679. See also *Crowley v. Christenson* (1890), 137 U. S. 86. The court also rejected the contention that the ordinance forced property holders into a partnership with the company securing the permit.

The ordinance was well within the power granted to the town in R. S. Kan. (1923) secs. 15-401, 15-440; Kan. Laws 1925 c. 100; Kan. Laws 1927 c. 110, which provided that any city of the second or third class might pass such laws as it deemed expedient for good government, for the benefit of trade and commerce, for zoning the city for the erection of buildings, and for the general welfare of the city.

To support its decision the court quoted from *Ohio Oil Co. v. Indiana* (1899), 177 U. S. 190, to the effect that though property in oil and gas is in the first taker, there is a co-equal right in surface owners to take from a common source. Consequently, legislative power may be exerted "to protect all collective owners, by securing a just distribution, to arise from enjoyment by them, of their privilege to reduce to possession, and to reach a like end of preventing waste."