There are other cases in which the right to take oil and gas has been restricted, as in *Winkler v. Anderson* (1919), 104 Kan. 1, 177 Pac. 521, which held a statute prohibiting drilling within a certain distance from any railroad, to be a reasonable use of the police power. In another case, *Oxford Oil Co. v. Atlantic Producing Co.* (C. C. A. 5, 1927), 22 F. (2d) 597, the Texas Railroad Commission under authority of the legislature prohibited drilling of wells close to property lines or to completed wells. The court held the regulation reasonable, since "the right to regulate the drilling of wells for oil and gas in order to conserve the rights of adjoining owners is too well-settled to admit serious controversy." A statute limiting the production of gas to twenty per cent of the open flow of the well was held constitutional as within the police power to conserve natural resources. "The state has the power to regulate production to complete restriction or suppression." *Herkness v. Irion* (D. C. E. D. La., 1927), 11 F. (2d) 386.

Although these cases are decided on the principle of police power, we find dicta in each that there is a community right in adjoining land owners in oil and gas which can constitutionally be protected by legislation independently of restriction under police power. The ordinance in the principal case allows compensation for the restriction, a concession unusual in police measures. The limitations imposed by the Texas Commission make it practically impossible to take oil except that which is beneath the driller's own land. The validity of such restrictions also suggests the modes of regulation which might at least partially solve the problem of overproduction and waste in the oil industry. H. V. C., '31.

SUNDAY LAWS—CONSTRUCTION AS JURY QUESTION.—Is a motion picture show to be considered an opera house, the operation of which on Sunday is an indictable offense under Code Pub. Gen. Laws Md. (1924) art. 27, sec. 485? This is the question which was presented for determination by the jury in *Callan v. State* (Md. 1929), 144 Atl. 350. The court in leaving this issue to the discretion of the jury said: "It was for the jury to say what the Legislature in using the language employed in this Statute intended to prevent, and having determined the legislative intent, they were then required to say whether or not the act of Callan was a violation of the Statute." The jury found the defendant guilty.

It is a fundamental doctrine that the proper construction of a statute is a question of law for the court and should not be submitted to the jury. *Boston v. Boston Elevator Ry. Co.* (1913), 213 Mass. 407, 100 N. E. 1134; *Booth Fisheries Co. v. Kendall* (1924), 111 Ore. 377, 227 Pac. 99; *Sunday Telegram Co. v. Board of Superiors of Albany County* (1929), 233 N. Y. S. 110. This rule has been followed in the majority of cases involving the construction of a so-called Sunday Statute. *Hegman v. State* (1921), 88 Tex. Cr. R. 548, 227 S. W. 954 and *City of Clinton v. Wilson* (1913), 257 Ill. 580, 101 N. E. 192 present typical situations. The former held that the question of whether a moving picture theater constitutes a theater or

circus within the meaning of the Sunday Statute is one for the court. The latter case held that the issue whether a statute forbidding the operation on Sunday of billiard rooms, pin alleys, or "other places of amusement," applies also to moving picture shows is a judicial question and for the court. However, the principal case is not without support. *Manning v. State* (1909), 6 Ga. App. 240, 64 S. E. 710; *Pirkey Bros. v. Commonwealth* (1922), 134 Va. 713, 114 S. E. 764; *Heigart v. State* (1905), 37 Ind. App. 398, 75 N. E. 850; *Whittaker v. State* (1920), 17 Ala. App. 624, 88 So. 188. Where that view is followed there can be no uniformity in the application of the statute, since no jury is bound by the construction arrived at by any other jury.

Obviously when the Maryland Legislature in 1834 enacted the Statute in the case at bar, it had no intent with regard to motion picture theaters, inasmuch as such theaters were non-existent. Thus the so-called question of fact relating to that intent was entirely unreal. The difficult process of construction and interpretation frequently is legislative in character and does not fall within the function of the jury. H. J. A., '31