

## CHAMPLIN REFINING COMPANY V. CORPORATION COMMISSION OF THE STATE OF OKLAHOMA: A CASE STUDY OF PRORATION OF PETROLEUM PRODUCTION IN OKLAHOMA

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*This article relates the principal aspects of a celebrated constitutional law case whereby the United States Supreme Court decided that the State of Oklahoma, by legislation based upon its police power and acting through the instrumentality of the Oklahoma Corporation Commission, could limit the amount of petroleum produced by various individuals taking from a common source of supply in order to prevent waste of valuable natural resources.*

In the present crisis of increased demand for the diminishing resources of our "plundered planet" amid the cries of the environmentalists for control of pollution and the popular recognition of the undoubted need for the prevention of waste of our natural resources, valuable legislative and legal precedents may be found along with considerable historical perspective in a study of certain aspects of state regulatory developments which were hammered out in Oklahoma over a third of a century ago. Oklahoma led all of the other states of the nation during part of the 1920's in the production of both crude petroleum and natural gas. When the Great Depression came with its debilitating economic effects, the United States was deluged in a veritable flood of oil to which Oklahoma contributed mightily.

While a number of prolific pools still spewed out their treasures of black gold, the oil market in Oklahoma was flooded by the opening of the greater Seminole field. Economic and physical waste was the great danger of substantial over-production of petroleum in Oklahoma. The regulation of petroleum and natural gas production had been placed in the State Corporation Commission by an act passed in 1915 by the Oklahoma Legislature. This statute embraced

... three essential features, namely, (a) a definition of waste as including "economic waste, underground waste, surface waste, and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands;" (b) the limitation of production from any common source of supply of oil

wherein the full production could only be had under conditions of waste . . . ; and (c) a standard for the proration of the over-all pool limitation among the wells in the pool, namely, allowing each well to produce that percentage of its potential which the total pool allowable was of the total of the potentials of all the wells in the pool (1, pp. 126-127).

The 1915 oil statute was the legislative ratification of policies that the Corporation Commission had previously advocated. The Sooner State was the first state to enact such a petroleum conservation statute. Kansas was second in 1931, then came Texas and others. A natural gas act also enacted in 1915 applied similar rules to the production of gas and "was the first elaborate gas conservation measure to be enacted by any state" (1, p. 134).

In 1927, at the instigation and with the assent of the perspicacious and somewhat conservative operators of the greater Seminole field, the Oklahoma Corporation Commission issued an historic proration order. This famous fiat — Order No. 3944—placed all portions of the greater Seminole field under proration and began the period of continuous proration of oil in Oklahoma, a practice which has continued to the present. With additional flush pools being developed, the Commission, on September 9, 1928, issued its first state-wide proration order. This decree "set the allowable output of various fields and limited the production of new wildcat wells to 100 barrels a day" (2, p. 20).

Three months later the most significant epoch in Oklahoma's oil and gas conservation history began; the great Oklahoma

City field was discovered! The record of this magnificent pool

is as colorful and dramatic as any great industrial epic in fact or fiction. Its story literally has everything; awesome gushers, town lot drilling, the mad rush to be first, prolific production in the face of world-wide depression, Governor Murray's twice calling out the National Guard to take charge of the field until the price of oil improved, the "hot oil runners," and the most intense legal maneuvering that money, talent and conviction could command on both sides of the oil conservation issue. Indeed, the Oklahoma City field virtually became the crucible in which the state's oil and gas conservation policies were hammered out and tested (2, p. 20).

Invoking its substantial powers under the 1915 oil and gas acts, the Corporation Commission sought to prevent the waste of crude oil and natural gas in the greater Seminole and Oklahoma City pools as well as others throughout the state. Strong-willed and resourceful oil men rebelled at such regulatory innovations as proration, regardless of the reason, and launched a number of legal attacks upon the Commission's orders and the constitutionality of the 1915 oil and gas acts. In a law suit brought against the members of the Corporation Commission by the C. C. Julian Oil and Royalty Company, the Oklahoma State Supreme Court upheld the oil statute's validity and the Commission's power to enforce it. Another Oklahoma oil man marshaled his forces and took a different tack to defeat pesky proration. He was H. H. Champlin of Enid and he was a worthy adversary, indeed.

H. H. Champlin, the guiding genius behind the Champlin Refining Company, was truly one of Oklahoma's great self-made men. He was a consummate business man who had the happy faculty of placing himself in the right place at the right time and of knowing how to take full advantage of opportunities that came his way.

His life was a classical American success story. Born at Rockford, Illinois, in 1868, while Andrew Johnson still sat precariously in the White House, Champlin moved with his family to the vicinity of Newton, Kansas, in 1876. After graduating from McPherson High School, he completed a course of study at Hills Business College in Wichita, Kansas. After working in a bank for five years, Champlin succumbed to the lure of free land and made the run

into "Old Oklahoma" and settled at Kingfisher. In 1893, he participated in the greatest horse race in history, the colorful opening of the far-famed Cherokee Strip. He opened a bank in Enid and then sold it to enter the lumber business. Subsequently, he was active in a number of business enterprises and in 1908 purchased the First National Bank of Enid. A pillar of the community, he served his town in a number of public positions. He was a member of the Enid School Board, a delegate to National Republican Conventions and a member of the Oklahoma Legislature (3, pp. 1-2).

At the age of 48, he embarked upon a completely different entrepreneurial endeavor: he became an oil man! In 1916, Champlin, for the sum of \$11,500.00, purchased an oil and gas lease on the farm of George Beggs in the prolific Garber Pool, Garfield County's first great oil strike. Electing to develop the lease himself rather than broker it to oil developers, Champlin retained L. W. Winkler, "a rough and ready driller," to be his lease superintendent and purchased a small Enid refinery from Victor Bolene. From this modest beginning, H. H. Champlin built his oil operation into one of the "largest of individually owned integrated oil companies," complete with its own production, pipeline subsidiary, refining facility and distribution outlets (3, pp. 3-4).

In the due course of business, Champlin Refining Company came to hold producing wells in both the Greater Seminole and Oklahoma City fields, wells which were connected to its Enid refinery by its own pipeline. The Champlin company had a formidable test case in reference to its attack on proration orders in the Oklahoma City field. It had its own refinery at Enid which was connected by a large pipeline to its wells located on small town-lots in the Oklahoma City pool; "it had not wasted and would not waste on the surface any oil at the wells, along the pipe line or at the refinery" and in order to meet the demands of its formidable marketing business, it required more production from its Oklahoma City wells than the six per cent of potential it was permitted to produce under the orders of the Commission. Since it owned its own production, none of which it would physically waste, why should it

have to purchase oil from others to meet its needs?" (4, p. 280).

Retaining as its forensic champions some of the most able legal counsel to be found anywhere, Champlin initiated one of the most thorough, complicated, exciting and exhausting law suits recorded in the annals of American jurisprudence. The legal pleadings, arguments and maneuvers are too complicated to be unraveled in short compass. Suffice it to state that Champlin filed suit in the Federal District Court for the Western District of Oklahoma praying for a number of injunctions against the Corporation Commission, the State Attorney General and others to restrain temporarily and permanently the enforcement of the Commission's proration orders in the Oklahoma City pool. A three-judge federal district court heard innumerable motions and arguments pro and con and finally, after a spate of hearings, findings and interlocutory orders, at Guthrie, on August 5, 1931, by a 2 to 1 vote, it concluded that the 1915 oil statute, except for Section 2 and the penalty provisions, was valid and that the Commission's proration orders were lawful (4, pp. 280-282).

Champlin promptly appealed the case to the United States Supreme Court which acknowledged the complexity and the importance of the controversy by extending the time for oral argument from the customary one hour to two hours for each side. The cause was argued on March 23, 1932, only a few days after Justice Benjamin N. Cardozo had joined the high court. The dispute was decided by the honorable justices on May 16, 1932, and Associate Justice Butler was selected to write the decision for an unanimous court (5).

Pierce Butler was, like H. H. Champlin, a self-made man who had risen from humble origins. Born in 1866 in a log farmhouse near Northfield, Minnesota, he was the progeny of poor but proud Irish immigrant parents. Reared on the family farm and educated at nearby Carleton College, Butler developed his undoubted intellectual talents and was admitted to the Minnesota bar in 1888. In St. Paul he served first as assistant county attorney and then as county attorney and in 1897 began a general practice of the law.

In time he came to head one of the most

successful and respected law firms of the nation and became an acknowledged expert in representing railroad companies in rate cases. "Butler was a dominating figure in a court of law; a strong mind in a strong body, directness and candor, Irish wit, and extraordinary command of facts gave him power with juries and with judges." A Cleveland Democrat in political convictions, Butler became president of the Minnesota Bar Association in 1908 and frequently served as political adviser to Minnesota governors (6, pp. 79-80). As a member of the Board of Regents of the University of Minnesota, he clashed with non-conformist professors and more than one hapless academician who felt Butler's wrath found himself sending out professional resumes in search of a position to replace the one he had lost.

In 1922 when Justice William R. Day retired because of poor health, the millionaire lawyer from St. Paul was one of the leading contenders to fill the Supreme Court vacancy. Chief Justice William Howard Taft, who powerfully influenced President Harding in all four of the Supreme Court appointments Harding made, urged Butler's selection. Taft argued that the Court has become too Republican; only McReynolds and Brandeis were Democrats. The selection of an ultra conservative Irish Catholic Democrat who was a self-made man also appealed to Harding. Organized labor and Senate Liberals such as LaFollette and Norris delayed but could not prevent Butler's appointment which was confirmed by a vote of 61 to 8 while 27 other senators either abstained or were absent.

On the Court Butler became, as Justice Oliver Wendell Holmes described him, a "monolith" of conservative strength. He joined McReynolds, Sutherland and Van Devanter in a quartet of ardent conservatives who were derisively known by liberal critics as "the Four Horsemen." Considered a "failure" by liberal hued students of the Court, Butler fully justified every expectation of the conservatives who selected him (7, pp. 177-179).

A biographer of Charles Evans Hughes has described Butler as "the most difficult man on the court" in Hughes' time. "Tough-minded and unshakable in his convictions, he was always ready for intellectual battle" with ready Irish wit and frequent bursts of

eloquence. "Authoritarian by instinct, he brought all the powers of an indefatigable and fearless personality to the support of his views." When the New Deal came, Butler fought the Roosevelt Administration and virtually all of its works, as did H. H. Champlin, and died in conservative harness in November, 1939 (6, p. 80).

In the main, Champlin's attorneys attacked the 1915 statute and the Corporation Commission's orders on the following grounds: 1. that the act violated the due process and the equal protection clauses of the 14th amendment to the U.S. Constitution; 2. that the act and the proration orders constituted a burden to interstate commerce and thus violated the federal commerce clause (Art. I, Sec. 8, clause 3); 3. that no waste would attend the producing of its wells; and, 4. that the proration orders were unauthorized, lacking basis in fact and arbitrary.

In a cogent and well written opinion, Butler rejected all of Champlin's contentions. He found the 1915 oil act, except for Section 2 and the penalty provisions, to be a legitimate exercise of a state's police power and the Commission's orders to be based upon sound scientific and legal foundations. Butler espoused the then accepted legal view that the production of oil was similar to mining and thus was not involved in interstate commerce which depended upon transportation rather than production. He found that the disproportionate taking of crude oil by one owner from a common source of supply constituted waste by failing to utilize fully the gas drive in the formation thus leaving unproduced petroleum beneath the property of other well owners who were not connected to a pipe line or some other ready market (5).

Butler's clear and forceful opinion for the unanimous court firmly established Oklahoma's innovative proration policies. Other states proceeded to adopt similar measures to prevent waste of their petroleum and natural gas resources in large measure upon the legal basis of the Champlin case. Thus, Oklahoma contributed significantly to the constitutional development of state police power as a viable legal method for the prevention of the waste of valuable natural resources even though privately owned.

Some years later, not long before the final beckoning overtook him, H. H.

Champlin demonstrated his philosophical acceptance of the hated proration against which he had fought so hard. During World War II the fabulous West Edmond field was discovered partly through the efforts of Champlin Refining Company which held 2,000 acres of leases around the discovery well. A vast drilling program would have to be effectuated by Champlin to develop its leases. One day Henry Bass of Enid, a most distinguished Oklahoman in his own right, was visiting with Mr. Champlin and recorded their conversation.

"So great were the Champlin holdings in the new field it became a matter of urgent necessity to drill some sixty offsetting wells at the earliest practicable moment. I commiserated with Mr. Champlin on what a tremendous task it would be to get so many wells drilled with war-time material and labor shortages. It seemed to me competing companies would drain away much of his oil before all those wells could be completed. With the old-time twinkle in his eyes the oil man smiled and said, "We have nothing to worry about. Proration will keep other companies from getting very much of our oil until we are able to get our own wells drilled." After years of fighting proration with everything at his command, at last he had discovered something beneficial in the detested regulations" (3, p. 118).

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