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Comment, Developments in the Law of Coerced Confessions

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4. The requirement of one year's residence and bona fide domicile does not apply to a cross-complainant to an action for divorce instituted by a resident plaintiff. Consequently, a non-resident cross-complainant can get affirmative relief on his cross-action without alleging and proving bona fide residence for the statutory period, provided that bona fide residence of the original plaintiff is shown. This is true notwithstanding any attempt by the plaintiff to discontinue or dismiss his original action. Conversely, if the defendant can satisfy the jurisdictional requirement, he can file a cross-complaint even though the original plaintiff lacks the required period or fact of domicile and the court can retain jurisdiction until the equities of both parties are determined.

5. The proviso in the Colorado statute that the one year residence requirement does not apply to extreme cruelty or adultery committed within the state does not mean, as the express words seem to indicate, that the court will take jurisdiction as long as the specified offenses are committed in Colorado, regardless of residence. The logical and valid construction of this proviso, it is submitted, would be this: Where extreme cruelty or adultery committed within the state is the ground for invoking jurisdiction in Colorado, the one year residence period is not applicable, but the requirement of bona fide domicile, implicit in the word "residence," must still be met.

6. Where the ground for divorce is extreme cruelty or adultery committed within the state, it is submitted that the plaintiff need not meet the requirement of one year's residence nor the requirement of bona fide domicile, provided that the defendant is a bona fide resident of Colorado. The residence of the defendant in this situation would satisfy the minimum requirement of domicile required by the full faith and credit and due process clauses.

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DEVELOPMENTS IN THE LAW OF COERCED CONFESSIONS

In recent years two problems in the law of coerced confessions have received increasing attention. The first of these problems is the scope of review which the United States Supreme Court will exercise in reviewing a state criminal proceeding in which an allegedly coerced confession has been introduced. The second is the constitutionality of the various procedures utilized by the state courts in admitting confessions into evidence and submitting them to the jury. With respect to the constitutionality of state procedures three questions are of

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note: (1) the constitutionality of the rule which prevails in some states that a confession is prima facie voluntary and that the burden is on the defendant to show its incompetency, (2) the constitutionality of holding the preliminary hearing on the admissibility of the confession in the presence of the jury, and (3) the constitutionality of allowing the jury to redetermine the character of the confession after the trial court has ruled it to be voluntary for the purpose of admitting it into evidence.

It is the purpose of this article to determine to what extent the United States Supreme Court will review a state criminal record in which an allegedly coerced confession has been introduced, and to evaluate, in terms of their constitutionality, the various state procedural practices pertaining to the admissibility of confessions.

STEIN V. NEW YORK

The most recent United States Supreme Court pronouncements relating to these problems are set out in *Stein v. New York*.[1] This case involved three defendants charged with first degree murder. Two of the defendants while being held incommunicado confessed after a period of interrogation. After holding a preliminary hearing in the presence of the jury, the trial court admitted these confessions into evidence. Following New York procedure, the trial court then instructed the jury that they were to consider the confessions only after they had found beyond a reasonable doubt that the confessions had been made voluntarily.

The defendants contended that they were denied due process[2] in two respects: (1) that the trial court erred in admitting the confessions and (2) that the trial court erred in not instructing the jury to acquit the defendants if they found the confessions to have been made involuntarily. In affirming the convictions the Court held:[3] (1) since the trial court could properly find on the undisputed facts that the confessions were voluntary, there was no violation of due process in admitting the confessions; (2) no constitutional rights were violated in submitting the issue of voluntariness on the disputed facts to the jury and (3) since the confessions were properly admitted and there was other sufficient evidence to support the conviction, the jury could without violating due process reject the confessions as involuntary and convict the defendants.

With regard to the scope of review, the Court concluded: "When the issue [*i.e.*, the character of the confession] has been fairly tried and reviewed, and there is no indication that constitutional standards

[1]346 U.S. 156 (1953).
[2]U.S. CONST. AMEND. XIV, § 1.
[3]Justices Black, Frankfurter and Douglas dissented primarily on the ground that on the undisputed facts the confessions were involuntary.

of judgment have been disregarded, we will accord to the State's own decision great, and, in the absence of impeachment by conceded facts, decisive respect."[4]

The scope of review is particularly important in relation to trial procedures because differences in such procedures will often require different trial techniques in placing of record those matters desired to have reviewed.

Scope of Review by the Supreme Court

It is a well accepted principle that for a state court to base a conviction upon an involuntary confession is a violation of the due process clause of the Fourteenth Amendment.[5] Further, the admission into evidence of an *involuntary* confession constitutes a violation of due process even though there is other sufficient evidence on which to base the conviction.[6]

In reviewing a state court decision the Court has uniformly held that it will review only the *undisputed* facts appearing of record in determining the correctness of the trial court's finding on the ultimate fact of the character of the confession for purposes of admissibility.[7] What is meant by the *undisputed* facts are those facts, whether presented by the prosecution or the defendant, which are "conceded,"[8] "admitted,"[9] or "those that can be classified . . . as without substantial challenge."[10] A fact is undisputed when it stands on the record free from any other conflicting evidence as to its existence or non-existence. On the other hand a disputed fact is one upon which there is any conflicting evidence.

The Court has repeatedly said that its duty was to make an independent examination[11] of the undisputed facts in determining whether or not the confession was involuntary. Consistently, the Court has declined to review any disputed facts.[12] As to these facts the Court has always accepted the finding of the triers of fact, whether judge or jury.[13] As a corollary, the Court in making its independent

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[4]346 U.S. 156, 182 (1953).
[5]Brown v. Mississippi, 297 U.S. 278 (1936).
[6]Malinski v. New York, 324 U.S. 401 (1945).
[7]Stroble v. California, 343 U.S. 181 (1952); Gallegos v. Nebraska, 342 U.S. 55 (1951); Malinski v. New York, 324 U.S. 401 (1945); Ashcraft v. Tennessee, 322 U.S. 143 (1944).
[8]Lyons v. Oklahoma, 322 U.S. 596 (1944).
[9]Gallegos v. Nebraska, 342 U.S. 55, 61 (1951).
[10]*Id.* at 61.
[11]Stroble v. California, 343 U.S. 181 (1952); Malinski v. New York, 324 U.S. 401 (1945); Ashcraft v. Tennessee, 322 U.S. 143 (1944); Lisenba v. California, 314 U.S. 219 (1941).
[12]Gallegos v. Nebraska, 342 U.S. 55 (1951); Watts v. Indiana, 338 U.S. 49 (1949); Lyons v. Oklahoma, 322 U.S. 596 (1944).
[13]See note 12 *supra*. *But see* Lisenba v. California, 314 U.S. 219, 238 (1941) in which the Court said such finding would be accepted "unless it is so lacking in support of the evidence that to give it effect would work that fundamental unfairness which is at war with due process."

examination of the undisputed facts has never deemed itself foreclosed from such examination by the finding of the trial court or jury as to these undisputed facts.[14]

A problem has arisen, however, because the undisputed facts themselves may give rise to conflicting inferences.[15] In a few of the earlier cases, the Court indicated that it would resolve such inferences according to its own judgment without reference to the finding by the trial court.[16] However, in a later case the Court indicated that the decision of the trial judge as to these inferences would be accorded some weight upon review.[17] The *Stein* case appears to follow this view.

In view of such limited review by the United States Supreme Court, several questions arise as to the constitutionality of the various state procedures by which the facts surrounding the procurement of the confession will be placed of record.

Constitutionality of State Procedures

The procedure by which a confession may be admitted into evidence in any state may vary in two respects: (1) the presumption which is given to the character of the confession on its being offered into evidence and (2) the method of conducting the preliminary hearing on the question of admissibility. The procedure by which the confession after being admitted into evidence may be submitted to the jury will also vary depending on the jurisdiction.

Presumptions

Several states have imposed the rule that a confession is prima facie involuntary and the burden is on the state to show its voluntary character before it will be admitted into evidence.[18] In fact, one state has gone to the extent of compelling the prosecution to establish beyond a reasonable doubt that the confession was made voluntarily.[19] Other states, however, have imposed the contrary rule that a confession is prima facie voluntary and the burden is on the defendant to show the incompetency of the confession.[20]

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[14]Haley v. Ohio, 332 U.S. 596 (1948); Ashcraft v. Tennessee, 322 U.S. 143 (1944); Ward v. Texas, 316 U.S. 547 (1942).

[15]See *e.g.*, Lyons v. Oklahoma, 322 U.S. 596 (1944).

[16]Watts v. Indiana, 338 U.S. 49 (1949); Haley v. Ohio, 332 U.S. 596 (1948); Ward v. Texas, 316 U.S. 547 (1942); Chambers v. Florida, 309 U.S. 227 (1940). *But see* Lyons v. Oklahoma, 322 U.S. 596, 602 (1944).

[17]Gallegos v. Nebraska, 342 U.S. 55, 67-68 (1951).

[18]People v. Jones, 24 Cal.2d 601, 150 P.2d 801 (1944); Bruner v. People, 113 Colo. 194, 156 P.2d 111 (1945); People v. Sloss, 412 Ill. 61, 104 N.E.2d 807 (1952); Linkins v. State, 96 A.2d 246 (Md. 1953). *See* Thomas v. State, 257 Ala. 124, 57 So.2d 625, 627 (1952); Jackson v. Commonwealth, 193 Va. 664, 70 S.E.2d 322, 328 (1952).

[19]State v. Green, 221 La. 713, 60 So.2d 208 (1952). *But see* People v. Lettrich, 413 Ill. 172, 108 N.E.2d 488, 490 (1952).

[20]McGee v. State, 230 Ind. 423, 104 N.E.2d 726 (1952); State v. Crisham, 57 N.W.2d 207 (Iowa 1953); State v. Rogers, 233 N.C. 390, 64 S.E.2d 572 (1951); Flowers v. State, 251 P.2d 530 (Okla. 1952). This rule is favored by Professor Wigmore. 3 Wigmore, Evidence § 860 (3d ed. 1940).

Obviously, if the state imposes the former rule and holds a confession to be prima facie involuntary, no due process question would arise. Similarly, while there is no case so holding, the latter rule which places the burden on the defendant to show the incompetency of the confession would not, in and of itself, appear to constitute a denial of due process.[21] Regardless of any presumption, the burden is upon the defendant to raise any constitutional objection that the confession is involuntary.[22] In those states where the burden is on the defendant to show incompetency, he would of course as a practical matter need only produce such evidence as has been held by the United States Supreme Court to render a confession inadmissible.[23] If such evidence remains uncontradicted by the state, the trial court would of necessity have to hold the confession inadmissible.[24]

Preliminary Hearing

More serious constitutional objections may arise from the procedure employed in holding the preliminary hearing on the question of admissibility. The customary procedure in most state courts is to hold the preliminary hearing in the absence of the jury.[25] However, in practice, many trial courts hold the hearing in the presence of the jury. When this is done, the trial court must declare a mistrial if it subsequently rules that the confession is involuntary.[26] On the other hand, if the trial court correctly finds that the confession is voluntary as a matter of law, by the rule in most states, it is not reversible error that the preliminary hearing was conducted in the presence of the jury.[27]

Would it be a denial of due process if the trial court, after hold-

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[21]*See* Ward v. Texas, 316 U.S. 547, 550 (1942) wherein the Court stated: "Each state has the right to prescribe the tests governing the admissibility of a confession. . . ."

[22]Wright v. United States, 159 F.2d 8 (8th Cir. 1947). *See* Ward v. Texas, 316 U.S. 547, 550 (1942). It is of interest to note that in Lee v. Mississippi, 332 U.S. 742 (1948), the defendant was not precluded from raising the constitutional issue by his insistent denial of ever having made the alleged confession.

[23]*E.g.*, physical torture, lack of sleep, deprivation of food, unrelenting interrogation, threats, promises, etc. See Watts v. Indiana, 338 U.S. 49 (1949); Ward v. Texas, 316 U.S. 547 (1942).

[24]See note 16 *supra*. *But see* Gallegos v. Nebraska, 342 U.S. 55 (1951), wherein the Court rejected the defendant's uncontradicted testimony because of its uncertainty and lack of definiteness.

[25]See, *e.g.*, Linkins v. State, 96 A.2d 246 (Md. 1953); Commonweath v. Landin, 326 Mass. 551, 95 N.E.2d 661 (1950); Holmes v. State, 56 So.2d 815 (Miss. 1952); State v. Rogers, 233 N.C. 390, 64 S.E.2d 572 (1951); Flowers v. State, 251 P.2d 530 (Okla. 1952); Taylor v. State, 191 Tenn. 670, 235 S.W.2d 818 (1950). In New York, however, the defendant is not entitled to have the jury excluded. People v. Brasch, 193 N.Y. 46, 85 N.E. 809 (1908).

[26]*See* Cahill v. People, 111 Colo. 29, 37, 137 P.2d 673, 677 (1943); Hearn v. State, 54 So.2d 651, 652 (Fla. 1951); State v. Green, 221 La. 713, 60 So.2d 208, 214 (1952). For the federal rule *see* Ramsey v. United States, 33 F.2d 699, 700 (8th Cir. 1929).

[27]Cahill v. People, 111 Colo. 29, 137 P.2d 673 (1943). The same rule prevails in the federal courts. Tyler v. United States, 193 F.2d 24 (D.C. Cir. 1951); Ramsey v. United States, 33 F.2d 699 (8th Cir. 1929).

ing the preliminary hearing in the presence of the jury and finding that the confession was involuntary, denied its admissibility without declaring a mistrial? As to this question, the United States Supreme Court has not given a definitive answer. To date the Court has reversed on the ground that a conviction may not be *based* on an involuntary confession.[28] In the situation posed, the Court might not deem the conviction as one *based* on the involuntary confession. However, it is arguable from the holding in *Malinski v. New York*[29] that such procedure would result in a violation of due process. While the involuntary confession itself was not admitted into evidence in the *Malinski* case, several references were made to it during the course of the preliminary hearing on the admissibility of a second confession. The hearing was held in the presence of the jury. The Court held that these facts warranted a reversal.

With respect to the procedure used in conducting the preliminary hearing, another constitutional question might arise if the trial court refuses the defendant's motion to exclude the jury during the preliminary hearing or denies the defendant's motion to limit cross examination. The granting of the first of these motions will of course assure the fullest protection of the defendant's constitutional rights, for, without placing any risk on the defendant, he will be able to place of record all the facts surrounding the confession. The argument that refusal to grant either of the motions would result in a denial of due process was made in the *Stein* case. The preliminary hearing in this case was conducted in the presence of the jury; and in New York the defendants, by taking the stand, would have been subject to general cross examination. The defendants in the *Stein* case having failed to make either motion, however, the Court rejected the argument.[30]

Denial of the motion to exclude the jury would seem to be a denial of due process,[31] although an obiter dictum in the *Stein* case indicates otherwise.[32] Logically, to deny the defendant a fair opportunity to raise the constitutional issue by denying the motion to exclude the jury would itself appear to be a denial of due process.[33] Particularly would this appear to be so in those states which hold a confession to be prima facie voluntary and place the burden on the defendant to show incompetency.

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[28]Watts v. Indiana, 338 U.S. 49 (1949); Ward v. Texas, 316 U.S. 547 (1942); Brown v. Mississippi, 297 U.S. 278 (1936).

[29]324 U.S. 401 (1945).

[30]Stein v. New York, 346 U.S. 156 (1953).

[31]Such refusal is at least reversible error in the federal courts. United States v. Carigan, 343 U.S. 36 (1951). It has also been held to be reversible error where the trial court declined to allow the defendant the right to argue the character of the confession before the jury. Linkins v. State, 96 A.2d 246 (Md. 1953).

[32]Stein v. New York, 346 U.S. 156, 179 (1953).

[33]*Cf.* Lee v. Mississippi, 332 U.S. 742 (1948).

Procedures Used in Submitting a Confession to the Jury

There are two rules prevailing among the states as to the proper procedure to be used in submitting a confession to the jury after it has been admitted into evidence. In some states the trial court alone has the responsibility for determining as a matter of admissibility the character of the confession both from the undisputed as well as the disputed facts.[34] Under this procedure the jury has only to determine the weight and credibility to be accorded the confession. No constitutional problem other than the correctness of the trial court's finding on the character of the confession has ever been raised in those cases arising from the jurisdictions applying this procedure.

The other procedure, which prevails in many states,[35] as well as in the federal courts,[36] allows the trial court, after finding on the undisputed facts that the confession was voluntary, to submit the disputed facts and the confession to the jury.[37] Under this procedure, the jury is instructed to disregard the confession unless they find beyond a reasonable doubt that the confession was voluntarily made. The *Stein* case clearly establishes the constitutionality of this procedure.[38]

As to the propriety of the instruction, the United States Supreme Court in *Lyons v. Oklahoma*[39] held that when the issue of voluntariness is submitted to the jury the requirements of due process are met if the instruction fairly raises the question of whether the confession was or was not voluntary.

A more perplexing constitutional problem may arise when the final determination of the character of the confession is left to the jury and when there is other sufficient evidence to convict the defendant exclusive of the confession. In *Malinski v. New York*[40] the Court had held that even if there was other sufficient evidence on which to base a conviction, it was in derogation of the defendant's constitutional rights to admit a confession which on its *undisputed*

[34]Roberts v. State, 258 Ala. 534, 63 So.2d 584 (1953); McGee v. State, 230 Ind. 423, 104 N.E.2d 726 (1952); Holmes v. State, 56 So.2d 815 (Miss. 1952); State v. Vaszorich, 13 N.J. 99, 98 A.2d 299 (1953).

[35]Howell v. State, 220 Ark. 278, 247 S.W.2d 952 (1952); People v. Gomez, 258 P.2d 825 (Cal. 1953); Bruner v People, 113 Colo. 194, 156 P.2d 111 (1945); Denson v. State, 209 Ga. 355, 72 S.E.2d 725 (1952); State v. Crisham, 57 N.W.2d 207 (Iowa 1953); Commonwealth v. Landin, 326 Mass. 551, 95 N.E.2d 661 (1950); State v. Pierce, 236 S.W.2d 314 (Mo. 1951); Commonwealth v. Johnson, 372 Pa. 266, 93 A.2d 691 (1953). See also Linkins v. State, 96 A.2d 246 (Md. 1953); People v. Leyra, 302 N.Y. 353, 98 N.E.2d 553 (1951); State v. Livingston, 223 S.C. 1, 73 S.E.2d 850 (1952).

[36]Wilson v. United States, 162 U.S. 613 (1896); Tyler v. United States, 193 F.2d 24 (D.C. Cir. 1951).

[37]A federal court has suggested that this need not be done where there is no substantial evidence indicating that the confession was involuntary. *See* Williams v. United States, 189 F.2d 693, 694 (D.C. Cir. 1951).

[38]346 U.S. 156 (1953).

[39]322 U.S. 596 (1944).

[40]324 U.S. 401 (1945).

facts was involuntary.[41] The *Stein* case on the other hand establishes the rule that if the trial court has correctly found on the *undisputed* facts that the confession was voluntary it is not a violation of due process for the trial court to submit the *disputed* facts to the jury and allow the jury to convict even after finding that the confession was involuntary.

Together the two cases merely restate the general rule that it is a violation of due process for the trial court to admit a confession which is involuntary on the undisputed facts. This rule is applied whether or not there is other sufficient evidence upon which the jury might convict. The applicability of the rule has not been changed by the *Stein* case for it simply holds that as long as the confession has been properly admitted, the jury may, although it has found the confession to be involuntary on the disputed facts, convict the defendant on the other sufficient evidence.

The one question which remains unanswered is the rule to be applied in the case where the trial court has properly admitted the confession but has found as a matter of law that there is insufficient other evidence in absence of the confession to convict the defendant. In such a situation, is the defendant entitled as a constitutional right to an instruction that the jury must acquit the defendant if they find that the confession was involuntary?[42] The *Stein* case does not purport to answer the question for in that case there was other sufficient evidence. It would seem, however, that had there been no such evidence, the refusal to grant such an instruction would result in a violation of due process. This would seem to be the only conclusion which can be drawn if the basic rule[43] that a conviction may not be based on a coerced confession is to be given full application.

Aside from the problems which have just been considered, it would seem that as long as the United States Supreme Court limits its review to only those facts which are undisputed, the procedure by which the final determination of the character of the confession is made, whether by the court or by the jury, will have little effect upon the defendant's constitutional rights. Conceivably, the difference in state procedure might make a substantial difference in the protection of the defendant's constitutional rights were the Court ever to review the disputed facts and find, as a matter of law, that the trier of those facts, either court or jury, could make no other finding

[41]The rule has often been reiterated as *dicta*. *See* Strobble v. California, 343 U.S. 181, 190 (1952); Gallegos v. Nebraska, 342 U.S. 55, 61 (1951); Haley v. Ohio, 332 U.S. 596 (1948).

[42]In at least two cases such an instruction has been given. See Ashcraft v. Tennessee, 322 U.S. 143 (1944); Commonwealth v. Johnson, 372 Pa. 266, 93 A.2d 691 (1953).

[43]See note 28 *supra*.

than that the confession was involuntary.[44] The Court might be more hesitant to reverse on this ground if the final determination were made by the jury than it would if the determination were made solely by the trial court. The Court in dicta, however, has indicated that it would reverse in either case.[45] This would seem to be the logical rule if only one permissible inference, that is, that the confession was involuntary, could be drawn from the disputed facts. In such a case, it would seem to be a violation of due process under either procedure for the trial court to admit the confession regardless of the manner in which the confession might thereafter be submitted to the jury.[46]

Of course, as a practical matter in most cases, the difference in procedure will result in different advantages to be gained by the defendant. If the disputed facts are to be tried by the jury, the defendant has one more opportunity to remove the confession from consideration in the case. However, to exercise this opportunity effectively the defendant will often need to offer his own testimony, which will clearly subject him to impeachment[47] as a witness and may, in some states, even subject him to a general cross examination.[48] On the other hand, if the disputed facts are to be considered by the trial court alone in determining the character of the confession as a question of admissibility, the defendant will be able to give his testimony without fear of revealing prior convictions and other matter affecting reputation, since in most states such testimony is not given in the presence of the jury.[49]

CONCLUSION

This article has attempted to answer some of the questions in the law of coerced confessions which were left open by the United States Supreme Court in the recent case of *Stein v. New York*. These questions, in time, will undoubtedly be given more definitive answers by the Court. And as these questions are answered, there will probably be no change made in the basic principles which have evolved since the decision of *Brown v. Mississippi*[50] concerning the facts upon which the Court will hold a confession to be involuntary. However, as is suggested by the language of the Court in the *Stein* case, the policy underlying these basic principles may shift back from a policy

[44]Such a review was intimated as a possibility in Lisenba v. California, 314 U.S. 219, 238 (1941).

[45]*Ibid.*

[46]The language of the Court in Malinski v. New York, 324 U.S. 401 (1945); Lisenba v. California, 314 U.S. 219 (1941) and Brown v. Mississippi, 297 U.S. 278 (1936) indicates such a conclusion.

[47]3 WIGMORE, EVIDENCE § 890 (3d ed. 1940).

[48]5 WIGMORE, EVIDENCE § 1890 (3d ed. 1940). See People v. Trybus, 219 N.Y. 18, 113 N.E. 538 (1916). *See,* also, Bruner v. People, 113 Colo. 194, 218, 156 P.2d 111, 122 (1945).

[49]See note 25 *supra.*

[50]297 U.S. 278 (1936).

of police deterrence in the use of "third degree"[51] to the more fundamental policy of preventing the admission of untrustworthy evidence.[52]

It is submitted that such a shift may work substantially different results in determining these unanswered questions relating to the constitutionality of various state criminal procedures in the use of confessions.

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OIL AND NATURAL GAS RIGHTS UNDER UNION PACIFIC RESERVATIONS

With the discovery of valuable oil and natural gas deposits in Colorado, problems relating to their ownership have arisen. One such problem has recently been brought to light by a somewhat unorthodox practice followed by the Union Pacific Railroad Company in the granting of licenses for exploration and development upon lands which the railroad had previously conveyed and reserved "coal and other minerals," or "oil, coal, and other minerals." Litigation has been carefully avoided, thus far, in this jurisdiction as to whether the wording of the above reservations is sufficiently inclusive so as to include oil and natural gas in a reservation of "coal and other minerals" and natural gas in a reservation of "oil, coal and other minerals."

The practice followed by the Union Pacific has consisted of requiring a prospective licensee to enter into an agreement with the surface owner prior to the issuance of a license. This "Surface Owner's Agreement" is a long and carefully drawn instrument which contains detailed provisions relating to uses of the surface in the exploration and development of oil and natural gas. The preamble, in part, states:

> It is desired at this time to avoid any further dispute as to what surface uses are permissible with respect to the described premises under said right of entry and surface uses express or implied, and as to what uses would or might be considered excessive thereunder, and to provide consideration to the land owner for the right to make such uses. (Consideration is paid wholly by the Union Pacific out of royalties it receives.)

Nowhere, within the instrument, does it expressly state that the railroad company is the owner of the oil and natural gas rights under

[51]See Watts v. Indiana, 338 U.S. 49 (1949); Lisenba v. California, 314 U.S. 219, 236 (1941).

[52]Lyons v. Oklahoma, 322 U.S. 596 (1944).

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