

less judicial or any the more administrative. Nor should it be adequate to wipe out a distinction that is so embedded in our constitutional history and practice.

The opinion of the Court cuts deep into our judicial fabric. The duty of the judiciary is to exercise the jurisdiction which Congress has conferred. What the Court is doing today I might wholeheartedly approve if it were done by Congress. But I cannot justify translation of the circumstance of my membership on this Court into an opportunity of writing my private view of legislative policy into law and thereby effacing a far greater area of diversity jurisdiction than Senator Norris, as chairman of the Senate Judiciary Committee, was ever able to persuade Congress itself to do.

MR. JUSTICE ROBERTS and MR. JUSTICE REED join in this dissent.

The CHIEF JUSTICE expresses no views as to the desirability, as a matter of legislative policy, of retaining the diversity jurisdiction. In all other respects he concurs in the opinion of MR. JUSTICE FRANKFURTER.

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HASTINGS ET AL. v. SELBY OIL & GAS CO. ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 528. Argued February 9, 1943. Reargued April 15, 1943.—Decided May 24, 1943.

Decided on the authority of *Burford v. Sun Oil Co.*, *ante*, p. 315. Reversed and ordered dismissed.

CERTIORARI, 317 U. S. 621, to review a judgment of the District Court enjoining the enforcement of an order of the Railroad Commission of Texas permitting two of the defendants to drill for and extract oil and gas on a small tract of land in the East Texas Oil Field.

*Mr. W. Edward Lee* for O. L. Hastings et al.; and *Mr. James D. Smullen*, Assistant Attorney General of Texas, with whom *Messrs. Gerald C. Mann*, Attorney General, and *E. R. Simmons*, Assistant Attorney General, were on the briefs, for the Railroad Commission of Texas et al.,—petitioners.

*Mr. Dan Moody* argued the cause on the original argument, and submitted on the reargument, for respondents.

MR. JUSTICE BLACK delivered the opinion of the Court.

This is an action in the nature of an equity proceeding brought by the respondents to cancel an order of the Texas Railroad Commission granting petitioners Hastings and Dodson a permit under Rule 37 of the Railroad Commission to drill an oil well. The respondents contend that the order granting a permit to the petitioners deprives them of property without due process of law, and that the order is invalid as a matter of Texas law. Jurisdiction is rested on diversity of citizenship.

There are no significant differences between the problems presented here and those in *Burford v. Sun Oil Co.*, *ante*, p. 315. For the reasons set forth in that opinion, the decision below is reversed and the cause is remanded with instructions to dismiss the complaint.

*It is so ordered.*

The CHIEF JUSTICE, MR. JUSTICE ROBERTS, MR. JUSTICE REED, and MR. JUSTICE FRANKFURTER dissent for the reasons stated by them in dissent to *Burford v. Sun Oil Co.*, *ante*, p. 315.