

3032.

WELLS—OIL AND GAS—DRILLING OF BY CONTRACTOR FOR OWNER—  
LIABILITY OF BOTH FOR PROSECUTION WHEN ABANDONED  
WITHOUT COMPLYING WITH CERTAIN REQUIREMENTS.

*SYLLABUS:*

1. *When an owner has been granted a permit to drill an oil or gas well under the provisions of Section 973 of the General Code, and employs or engages a contractor to drill such well for him, and the contractor abandons the well without complying with the provisions of said section relative to notifying the Industrial Commission of his intent to abandon the well, and abandons said well without an inspector of the industrial Commission being present, when permit has not been given to do so by the Industrial Commission, such owner may be prosecuted for abandoning said well without notifying the Industrial Commission and for abandoning said well without an inspector being present.*

2. *Under such circumstances the contractor is subject to being prosecuted for abandoning said well without an inspector of the Industrial Commission being present, when consent to do so was not given by the Industrial Commission.*

COLUMBUS, OHIO, December 17, 1928.

HON. HERMAN R. WITTER, *Director Department of Industrial Relations, Columbus, Ohio.*

DEAR SIR:—A recent communication submitted by Hon. Jerome Watson, Chief of the Division of Mines in the Department of Industrial Relations, reads:

“On November 9, 1927, A. R., Cleveland, and associates, applied to the Division of Mines for permission to drill an oil, gas or test well on the I. A. E. farm, Washington Township, Guernsey County, Ohio, and filed a map showing the location of same, as required by Section 973 of the General Code, such permit forthwith being granted to the above parties by the Division of Mines and drilling started immediately.

On September 6, 1928, Inspectors E. W. Smith and J. C. Wilson made an inspection of the well, due to complaints being made by the land owners in the near vicinity claiming that the well was not properly plugged and abandoned as required by Section 973, General Code.

The findings in this investigation are as follows: Verbal contract to drill the well was made by C. R. and A. R., representing the oil company, and McC. and S., drilling contractors, Cambridge, Ohio. Terms of said contract were not made known other than same was to drill this particular well. About December, 1927, the well was drilled to within 80 feet of the pay sand. Operations were then closed down in order that R. and associates could witness the drilling of the last 80 feet of pay sand and approve or disapprove of the completion of this well.

Due to some financial differences over the compensation for the drilling, operations were not resumed until July, 1928, when the well was completed after a 10 day notice had been served upon the above associates by lawyers representing the contracting company, claiming that owing to the fact that the contractors owned the drilling rig, steel casing and all other drilling equipment used to drill the well, and had been idle for a period of six months, waiting the adjustment of compensation for the drilling of said well, that the contracting company could not afford to have equipment stand idle any longer, same being too expensive.

The well was then completed and abandoned by McC. and S., drilling contractors, without an inspector being present to supervise the plugging of same, also the well was not plugged as required by Section 973 of the General Code. A conference with Mr. S. by Inspectors Smith and Wilson revealed that no steps had been taken to abandon the well in compliance with Section 973 of the General Code.

Section 973, Clause No. 6, page 108, Mining Laws, revised year of 1927, provides that when any oil well, gas well or test well is to be abandoned the person, firm or corporation owning such well shall notify the Division of Mines, or deputy oil and gas well inspector of the district in which the well is located, as many days in advance as will be necessary for the inspector to arrange to be present at such abandonment. No well shall be abandoned without an inspector being present unless permission has been first granted upon good cause shown by the Division of Mines.

Inasmuch as the Division of Mines filed affidavits only against A. R. and associates, representing the oil company, is it possible, in view of the facts herein set forth and under the law as above quoted, to include the drilling contractors? The Division of Mines respectfully asks your opinion concerning the matter."

Section 973 of the General Code, referred to in your communication, in the former part thereof, provides for the making and filing with the Industrial Commission an accurate map, drawn to a scale, by any person, firm or corporation holding coal property in any coal bearing or coal producing township of any county of the State, either in fee, by virtue of a lease for oil or gas, etc., or otherwise when wells have been driven, etc. Many other provisions are contained therein with reference to what said map shall contain and how it shall be filed, etc., which it is believed unnecessary to set forth herein. Said Section 973 further provides in part:

"Any person, firm or corporation before drilling or causing to be drilled any oil well, gas well or test well within the limits of any coal producing township, in any county of the State of Ohio, shall first file an application with the industrial commission of Ohio, division of mines, on blanks to be furnished by said commission for such purpose, and shall show the following: The name and address of the applicant, the proper date, location of the proposed well—giving the name of the property owner, section number, township and county, the number of the proposed well, and signed by an officer or agent of such operator. No well shall be commenced until the applicant or operator has been granted a permit, which shall be granted by the industrial commission of Ohio, division of mines, under the following conditions.  
\* \* \*"

Following the part of said section above quoted, it further provides the duties of the Department of Industrial Relations with reference to issuing permits. It is therein required that the permit shall be granted if the application comes within the requirements therein prescribed "upon receipt of the application providing the applicant is a responsible person, firm or corporation." The section then prescribes the duties, when a well is to be abandoned, in the following language:

"When any oil well, gas well or test well is to be abandoned, the person, firm or corporation owning such well shall notify the industrial commission of Ohio, division of mines, or the deputy oil and gas well inspector of the district in which the well is located, as many days in advance as will be neces-

sary for the inspector to arrange to be present at such abandonment. No well shall be abandoned without an inspector being present, unless permission has been first granted upon good cause shown, by the industrial commission of Ohio, division of mines."

The section further prescribes in detail the manner in which wells are to be plugged, which it is believed unnecessary to discuss for the purposes of this opinion.

Section 976 of the General Code, which prescribes penalties generally for the violation of the sections relating to the mine inspection laws, among other things provides:

"Any person, firm or corporation who violates or willfully refuses or neglects to comply with the provisions of Section 973, shall, upon conviction thereof, be fined not less than one hundred dollars, nor more than five hundred dollars, and for a second or any subsequent offense shall be fined not less than two hundred dollars and not more than one thousand dollars, or imprisoned not less than thirty days nor more than six months, at the discretion of the court. In addition, if the material is pulled out of a well which was not plugged in accordance with the provisions of Section 973, the person, firm or corporation causing such offense may be made to clean out such well and properly plug the same, or pay the entire reasonable cost of such work being done under orders of the industrial commission of Ohio, division of mines, within thirty days."

In analyzing the above provisions of the statutes referred to, it appears to be clear that the duty of notifying the Industrial Commission that the well is about to be abandoned is imposed upon "the firm or corporation owning such well," as referred to in Section 973. It will further be observed that it is the duty of the one owning the lease, or some interest in the proposed well, to make the application for the permit to drill.

While Section 976, standing alone, would seem to be sufficiently broad to include any one who violates the law, it must be construed with Section 973, because both are *in pari materia*. It is a familiar principle of judicial interpretation that criminal statutes are strictly construed and any doubt in reference thereto must be resolved in favor of the accused. It is also a familiar rule that in Ohio there are no common law crimes and there are no offenses except those expressly provided by statute.

From the foregoing, it is apparent that the owner of said well, or the person applying for or receiving the permit to drill, may be prosecuted for failure to notify the Industrial Commission of his intent to abandon the well. However, in analyzing the provisions of Section 973, contained in the last sentence of the last paragraph thereof hereinbefore quoted, the express inhibition is made to the effect that no well shall be abandoned without an inspector being present, unless permission has been granted by the Industrial Commission. It therefore appears clear that the contractor, under the circumstances which you describe, would be in position of abandoning the well in violation of said section, although the duty does not apparently rest upon him in the first instance of notifying the Industrial Commission. Undoubtedly the owner is liable to be prosecuted for his failure to notify the Industrial Commission or for violating the section with reference to abandoning the well without an inspector being present. The contractor, as above indicated, would be liable only for the abandoning of the well without an inspector being present.

It is furthermore believed pertinent to consider herein the provisions of Section 12380 of the General Code, which relate to the subject of one aiding and abetting in crime, which must be construed in connection with the sections heretofore mentioned. Said section provides:

“Whoever aids, abets, or procures another to commit an offense may be prosecuted and punished as if he were the principal offender.”

The third branch of the syllabus of the case of *Black vs. State*, 103 O. S. 434, reads:

“There are aiders and abettors in involuntary manslaughter, naturally and proximately resulting from the commission of an unlawful act. All who have a common purpose to participate in the commission of such unlawful act, and who participate in its commission, would be liable not only for the commission of the act, but for the natural and proximate result therefrom.”

In the case of *Graham vs. State*, 98 O. S. 77, it was held:

“If two or more persons act in concert in resisting a number of others, each of them may be guilty of aiding, abetting and assisting such others in a criminal assault made by one of them.”

It is the established law of this state that a person, if he is present aiding and abetting, or so near the scene of the crime so as to be able to render assistance and intending to render such assistance, may be convicted as a principal. Aiders and abettors may be prosecuted in the same manner as if they were principals in the crime. *Baker vs. State*, 12 O. S. 214; *Warden vs. State*, 24 O. S. 143.

In view of the circumstances, it is apparent that the contractors were fully aware of the fact that a crime was being committed when they abandoned the well without complying with the provisions of the law, and, if not principals in the commission of such crime, were aiders and abettors, and, as such, liable to prosecution in the same manner that the owner may be prosecuted for such abandonment.

You are therefore specifically advised that:

1. When an owner has been granted a permit to drill an oil or gas well under the provisions of Section 973 of the General Code, and employs or engages a contractor to drill such well for him, and the contractor abandons the well without complying with the provisions of said section relative to notifying the Industrial Commission of his intent to abandon the well, and abandons said well without an inspector of the Industrial Commission being present, when permit has not been given to do so by the Industrial Commission, such owner may be prosecuted for abandoning said well without notifying the Industrial Commission and for abandoning said well without an inspector being present.

2. Under such circumstances the contractor is subject to being prosecuted for abandoning said well without an inspector of the Industrial Commission being present, when consent to do so was not given by the Industrial Commission.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*