

Sir Robert Finlay, K.C., Mr. Hellmuth, K.C. (of the Canadian Bar), and Mr. Rowlatt, were counsel for the appellants.

Mr. Danckwerts, K.C., and Mr. C. S. MacInnes, K.C. (of the Canadian Bar), for the respondent.

The arguments were heard recently, when judgment was reserved.

LORD ATKINSON, in delivering their Lordships' judgment to-day, said the Canada Company in 1867, granted to Mr. Farquharson the fee-simple of 100 acres at Tilbury in the province of Ontario. The deed contained an excepting clause in the following terms: "Excepting and reserving to the company their successors and assigns, all mines and quarries of metals and minerals, and all springs of oil in or under the said land, whether already discovered or not, with liberty of ingress, egress and regress to and for the said company their successors, lessees, licensees, and assigns in order to search for, work, win, and carry away the same, and for those purposes to make and use all needful roads and other works doing no other unnecessary damage and making reasonable compensation for all damage actually occasioned."

The sole question for decision was what was the true construction of this clause? Did it or did it not except from the grant the natural gas which impregnated certain underlying strata of these lands. The case did not require that their Lordships should lay down a definition of minerals nor even draw the line between what were and what were not minerals; the only question for decision was what, having regard to the time at which that instrument was executed, and the circumstances then existing, the parties intended to express by the language they had used, or in other words, what was their intention touching the substances to be excepted as revealed by that language.

In one sense, continued his Lordship, natural gas is, as rock oil also is, a mineral, in that it is neither an animal nor a vegetable product, and all substances to be found on, in, or under the earth must be included in one or other of the three categories of animal, vegetable, or mineral substance. It is obvious, however, for several reasons, that in this clause of the grant the word "Minerals" is not used in this wide and general sense. First because two substances are expressly mentioned in the clause which would be certainly covered