done in granting this lease so-called, and defendant was willing to accept the penalty if it had been tendered in proper time. The contention thus seems to be reduced to a narrow issue—was defendant right in refusing to take the second $50, tendered early in August, 1905?

The "lease" is for 5 years; a well is to be begun in 6 months; if not a yearly payment of $50 is to be made for delay. If no well, the first payment is to be made "thereafter," that is, after the expiry of the 6 months, or after 16th June, 1904. Defendant put an interpretation upon the clause as to time when he received the first penalty payment on 10th August, 1904. The payment of $50 is to be made "per year" and "yearly." The $50 is for the whole of the first year in which default is made—it will cover from December, 1903, to December, 1904. Then $50 is to be paid for the next year, not in advance, and, if not so provided for, then at any time during the year. The tender early in August, 1905, was within a year of the first payment, and it was within the second year of the lease, and might have been validly made at any time during that second year. I think defendant's position and contention is untenable, that this second payment should have been made before 16th June, 1905, and he acted unadvisedly in granting another lease while yet the first was current. As to the time of payment when something is to be paid per year or yearly, see Nowery v. Connolly, 29 U. C. R. 39; Turner v. Allday, Tyrw. & G. 819; Lynch v. Versailles Fuel Gas Co., 165 Pa. St. 518.

Much argument was directed to the position that this document was a one-sided or unilateral contract of revocable nature at the option of the maker. I cannot take this view. The legal effect of this instrument (by whatever name it may be called) is more than a license; it confers an exclusive right to conduct operations on the land in order to drill for and produce the subterraneous oil or gas which may be there found during the period specified. It is a profit à prendre, an incorporeal right to be exercised in the land described: Duke of Sutherland v. Heathcote, [1892] 1 Ch. 473, 483. . . . Gowan v. Christie, L. R. 2 Sc. App. 273, 284 . . . Funk v. Haldeman, 53 Pa. St. 229, 243.

It is said in Sharp v. Wright, 28 Beav. 150, that when only a royalty rent is reserved and not a rent certain, there