

Reference to McCall v. Canada Pine Timber Co. (1914), 7 O.W.N. 296, and Erie County Natural Gas and Fuel Co. v. Carroll, [1911] A.C. 105, 116.

The defence based upon the rule against perpetuities can have reference only to clause 5, giving a right of entry, at the plaintiff company's option, to bore for gas. Whether clause 5 is void or not, the rest of the contract is effective and binding. The Maple City company, when the right arises, may be willing to perform the covenant or allow the exercise of the plaintiff company's rights under it; and it is, therefore, unnecessary now to decide the point raised.

Appeal allowed with costs, judgment below set aside, and a judgment pronounced declaring that the contract in question, as now construed, is in full force and effect between the defendant the Maple City Oil and Gas Company Limited and the plaintiff company, and directing that the plaintiff company pay the costs of the action and counterclaim to the defendants.

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SECOND DIVISIONAL COURT.

DECEMBER 22ND, 1915.

HOCKEN v. SHAIDLE.

*Fraud and Misrepresentation—Sale of Land—Damages—Failure to Prove—Contract for Return of Purchase-money—Notice not Given within Reasonable Time—Dismissal of Action—Leave to Bring New Action for Damages for Deceit—Terms—Costs.*

Appeal by the defendant Shaidle from the judgment of CLUTE, J., 8 O.W.N. 619; and cross-appeal by the plaintiff from the same judgment in so far as it dismissed the action as against the defendant Slater.

The appeal and cross-appeal were heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

G. Lynch-Staunton, K.C., and S. H. Slater, for the appellant Shaidle and the respondent Slater.

John W. McCullough and James McCullough, for the plaintiffs.

RIDDELL, J., delivering judgment, said that the defendant Shaidle was agent for Messrs. Ivey & Ivey to sell lots in a Win-