

spect and bore for mineral oil and natural gas upon the land in question and other adjoining lands. By the terms of the agreement it was provided that, in the event of oil or gas being found on the premises, a lease was to be issued by the Canada Company to the oil company or to those claiming under the last named company.

In the latter part of July, 1907, the oil company obtained oil in the north-west half of lot 6 in the 8th of Tilbury (being the north-west half of the lot of which the land in question forms the south-east half), and thereupon the Canada Company leased the whole of lot 6 to the oil company on the 3rd August, 1907, embracing all the mineral oil and natural gas, whether already discovered or not, lying or being in or under the lot, with liberty to enter, etc., and providing for a royalty to be paid to the Canada Company, and pursuant thereto the defendants entered upon the plaintiff's land against his will, and began to operate for oil and gas and to remove the same therefrom. This alleged trespass began on the 10th August, 1907, and subsequently continued, forming the present cause of action.

When the grant was made to Farquharson in 1867, there was no oil issuing from the ground on this lot, and between 1867 and the 10th August, 1907, there was no entry on the land by the Canada Company, or those claiming under that company, for the purpose of searching or boring for oil or gas—and the first drilling or mining of any kind done on the land was on the said 10th August, 1907. This closes the list of material facts admitted.

Some issues were raised and disposed of during the argument, and I now adhere to those rulings.

The first was that, as the Canada Company obtained its charter for the expressed purpose of purchasing, holding, improving, clearing, settling, and disposing of waste and other lands in the province of Upper Canada (granted in October, 1841), the company was not empowered to engage in the business of searching for, winning, and carrying away, selling or trafficking in, minerals, and that the exception and reservation contained in the Farquharson deed was inconsistent with the powers of the company, and is, therefore, null and void.

I thought it was not open to the purchaser, claiming under the grant of the company and having his *locus standi* in Court based thereon, to make this direct attack, whatever might be the rights of the Crown to intervene. But I thought, further, that there was no inconsistency, as the plaintiff had occupied, farmed, and cultivated the property without molestation for forty years, and that the exercise of the mining rights did not destroy the *solum*, though