

Central Oil and Gas Co., to whom defendant Campbell had purported to make a subsequent lease.

M. Wilson, K.C., and A. T. Boles, Leamington, for plaintiffs.

W. H. Blake, K.C., for defendants.

MACMAHON, J.:—The defendant Campbell, who is the owner of the lands hereinafter referred to, signed the following agreement:—

“Memorandum of agreement made and entered into this 23rd day of September, 1905, by and between the Acme Oil Company and James Campbell.

“For valuable consideration I hereby agree to lease to the Acme Oil Company of Detroit, Michigan, at such time as said company shall remove a drilling rig into this immediate district preparatory to drilling for oil, &c., 49 acres of land more particularly described as follows: south parts of lots 5 and 6, concession 10 township of Tilbury East, county of Kent, Ontario, with the exclusive right of operating for oil, gas, or mineral.

“The terms of lease to be as follows:—Should oil be found in sufficient quantities to be utilized, the Acme Oil Company agrees to give one barrel in every ten barrels produced or obtained on said premises. Should gas be found in sufficient quantities to utilize, said company to allow me the privilege of using sufficient gas to heat and light one dwelling house.

“Should a well not be completed on my premises within one year from date, said company agrees to pay an annual rental of 25 cents per acre, in advance, for each year such completion is delayed.

“It is understood between the parties to this agreement that all conditions between the parties hereto shall extend to their heirs, executors, assigns, and administrators.

“In witness whereof the parties have hereunto set their hands and seals the day and year first above written.

“This agreement shall be null and void if a well is not started in the district within 60 days from date.”

After the signing of the agreement it was altered by the following being written in the margin thereof and as forming part of the agreement, by John Kerr, the witness thereto:

“This contract is given with understanding that the first well is put down on north half 10, or on lot mentioned in this contract.”