

JUNE 15TH, 1910.

SMITH v. ELGINFIELD OIL AND GAS DEVELOPING CO.

Deed—Construction—“ Oil Lease ”—Lease or License—Dominion Petroleum Bounty Act, 1904 — Right of Lessor to Share in Bounty—“ Producer.”

Appeal by the defendants from an order of a Divisional Court, ante 147, affirming the judgment of CLUTE, J., at the trial.

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, and MEREDITH, JJ.A.

Shirley Denison, for the defendants.

W. H. Barnum, for the plaintiff.

Moss, C.J.O.:—The sole question is, to which party, the plaintiff or the defendants, belongs the bounty paid by the Government of the Dominion in respect of the one-eighth part of the oil which, under the agreement between the plaintiff and defendants, contained in the instrument of the 11th November, 1907, was to be delivered by the defendants to the plaintiff?

The trial Judge and the Divisional Court answered this question in favour of the plaintiff, and, in my opinion, that is the proper conclusion.

Upon the appeal there was much argument as to whether, upon the proper construction of the instrument, it is a demise of the lands from which the oil is obtained or merely a license to enter upon them by drilling, boring, digging, or excavating, and, operating by the means specified, gain or obtain the oil and other substances enumerated in it.

The instrument is framed very inartificially, and, although there are many terms and expressions employed that are apt for the purposes of a demise of the land, there are also many that consist with an intention to confer a license.

None of these is conclusive one way or the other, and, if the question had to be determined, other considerations would necessarily enter into the question: *Oberlin v. McGregor*, 26 C. P. 460; *Daly v. Edwards*, 82 L. T. R. 372, 83 L. T. R. 548, 85 L. T. R. 650.

It is, of course, undoubted law that an instrument is not a demise or lease, though it contain the usual words of demise, if its contents shew that such was not the intention of the parties: *Woodfall on Landlord and Tenant*, 18th ed., p. 144 et seq.