

Clause 3 in effect concedes to the Maple City company the right to supply others with gas after the plaintiff company "shall be supplied as aforesaid with the gas (1) required by it, or (2) to which it may be entitled for supply, for marketing and sale or use by the plaintiff company as aforesaid." It is not seriously disputed that the Maple City company has provided all the gas required by the plaintiff company as in (1); and the plaintiff company is entitled under (2) only to what it actually requires and demands from time to time, and not to the creation and preservation of a reserve fund of untapped or unexhausted gas, which, in the meantime, costs them nothing, although it might cost the Maple City company a very considerable expenditure; and the enforced retention would deprive them of the right given by the contract of selling "subject to the right of the Tilbury company." That expression would be meaningless if its import was, that what it could sell would be nothing at all because of possible future demand. There was nothing in the contract which made against this construction.

Reference to *Dolan v. Baker* (1905), 10 O.L.R. 259, at p. 270.

The plaintiff company had suffered no wrong at the hands of the defendants; and that finding would dispose of the action, were it not for the other defences raised. The defendants pleaded that the whole contract was void as transgressing the rule against perpetuities, and set up the vesting of the properties in the Glenwood company and the subsequent cancellation of the gas-leases.

The Glenwood company had the right to buy the fee; and, having done so, it could forfeit or accept a surrender of the leases, unless its doing so interfered with the rights of the plaintiff company under the contract. In this case, the natural gas was dealt with only as a chattel; and the contract to deliver it into the pipes of the plaintiff company was in no way different from a contract to deliver logs or timber when cut by the vendor, which is not an agreement for the sale of or concerning an interest in land: *Smith v. Surman* (1829), 9 B. & C. 561; *Marshall v. Green* (1875), 1 C.P.D. 35, 40. So that the plaintiff company had no right, except that arising out of the contract, to receive the gas when collected and ready for delivery in the pipes of the Maple City company. The plaintiff company was not entitled, in point of law, to the relief given by the judgment in appeal, viz., setting aside the surrenders and forfeitures, so far as they might affect the rights of the plaintiff company in the premises.