

The defendants, in justification of their acts, pleaded the terms of a reservation or exception contained in the conveyance by the defendants the Canada Company of the lot in question to one Charles Farquharson, through whom the plaintiff's title is derived.

The action was tried before the learned Chancellor of Ontario, who determined that the defendants were not entitled to take and carry away the natural gas products upon or under the land in question, but were entitled to the oil products.

The appeal is by the defendants from so much of the judgment as negatives their asserted rights in respect of natural gas.

The plaintiff has not appealed. All question with regard to the defendants' rights in respect of the oil products is, therefore, eliminated. The sole question now is, whether they have been properly denied the rights claimed by them in respect of natural gas.

The learned Chancellor has in his judgment stated the facts and summarised the testimony so fully, and, I venture to say, accurately, as to render unnecessary any further statement of them.

The question is an important one, inasmuch as it affects the rights not only of the immediate parties to this action, but, we were told, of a number of other persons who held lands under conveyances from the Canada Company similar to that under which the plaintiff claims.

In my judgment, the decision appealed from is correct. I am so thoroughly in accord with it and the grounds stated by the learned Chancellor that I do not think it would serve any good purpose to add many observations of my own to what has been said in support of his conclusions. But I desire to refer shortly to one or two of the contentions set up by the defendants. One of them is, that under the conveyance the parties took nothing more than a grant of surface rights. Reference to the instrument shews that neither does it purport to be, nor do the words of grant confine it to, a mere grant of that nature. There is an express grant and release to the grantee of the whole parcel of land, and all the right, title, and interest of the Canada Company to and in the same and every part thereof. Then follow the words of reservation, except for which no question could arise as to the possession by the grantee of an absolute title in fee simple to the land and every part thereof.

It is quite plain, as all the surrounding circumstances tend to shew, that there never was an intention on the part of the