

Courts of equity cannot, any more than Courts of law, make a new agreement for the parties: *Seaton v. Mapp* (1846), 2 Coll. C.C. 556; Sugden on Vendors and Purchasers, 14th ed., p. 268. But the parties can modify or change their agreement as often as they will, and the right of the Court to look at all the circumstances is the same, notwithstanding recent decisions, as it was 50 years ago, when *Tilley v. Thomas* (1867), L.R. 3 Ch. 61, was decided.

*Judgment for the plaintiff for specific performance with costs.*

MASTEN, J.

JULY 8TH, 1920

KRANZ v. McCUTCHEON.

*Contract—Option for Purchase of Oil-leases—Undertaking of Purchaser to Drill Wells and Develop Property during Option-period—Failure to Implement—Misrepresentations—Failure to Prove—Construction of Contract—Obligation to Fulfil Undertaking—Breach—Damages—Measure of—Evidence—Reference to Master to Assess Damage—Costs.*

Action for damages for breach of a contract; and counterclaim by the defendant for damages for deceit.

The action and counterclaim were tried without a jury at Kitchener and Toronto.

G. Bray, for the plaintiff.

R. S. Robertson and R. Bradford, for the defendant.

MASTEN, J., in a written judgment, said that the action was brought on behalf of the members of an oil syndicate, who were the holders of certain oil-leases on lands in the township of Mosa, and by the agreement in question they gave the defendant an option for the purchase of the leases and other property owned by them, as described in the agreement (exhibit 1).

The defendant contended that the agreement was unenforceable because founded on misrepresentations, and, in the alternative, counterclaimed for damages for deceit. In regard to this contention, the learned Judge finds as a fact that the defendant did not enter into the contract relying on the representations made to him as to the production of the oil-wells upon the property, but did enter into it relying on the inspection made by himself, and