

hold unto the said lessees for and during the term of five years "from the date of the instrument, and as much longer as petroleum or any other of the substances mentioned in it should be found in paying quantities.

Following this was a provision as follows: "The said lessees to have the right at all times during the continuation of this lease to bring upon, erect, and remove off said lands all teams, tools, implements, machinery, pipes, fixtures, or plant necessary for the purpose aforesaid or in any way connected therewith, and for all such purposes to have the right of ingress, egress, and regress to and from said lands."

Then followed this provision: "The said lessees to have, hold, remove, and dispose of, for their own use and benefit, all such petroleum, rock, or carbon oil, coal, salt, gas, or other substance or deposit as aforesaid, except as hereinafter excepted."

Then came what was in form a *reddendum*, which read: "Yielding and paying to the said lessor during the continuance of this lease, delivered in tanks free of expense, the one-eighth part of all such oil, coal, salt, or other substance or deposit as aforesaid produced or saved from the said lands except gas, the lessees to pay to the lessor in full consideration for each well yielding gas and being operated by the lessees the sum of \$50 per annum."

The appeal was heard by MEREDITH, C.J.C.P., MAGEE and LATCHFORD, JJ.

Shirley Denison, for the defendants.

W. H. Barnum, for the plaintiff.

The judgment of the Court was delivered by.

MEREDITH, C.J.:—Exactly what the legal effect of this instrument is, it may be difficult to say. Does it operate as a demise of the land, as the draftsman appears to have thought, or only as a license to enter upon it for the purposes mentioned in the instrument, and to take and remove what it provides may be taken and removed by those who are termed the lessees?

I am inclined to think that the latter is its true nature; the limitation which it contains as to the purpose for which the land is granted, demised, and let, and the right which it confers of ingress, egress, and regress, seem inconsistent with the demise of the land, and look more like provisions appropriate to a license. They seem to contemplate, as I have no doubt was the intention of the parties, that the plaintiff should remain in possession of the land,