

At the date of this deed, January 22nd, 1867, the winning of mineral oil through gas wells was a comparatively new industry. This natural gas, according to a witness, did not become commercially valuable till 1880. And, according to the evidence of others, the accuracy of which did not appear to have been questioned, though gas might be found without the presence of oil, some gas was always found where oil was found, but the gas was regarded as a dangerous and destructive element to be got rid of as it best could. It did not begin to be utilized till 1890, over 20 years after the date of the deed. The inference to be drawn appeared to their Lordships to be that the idea of preserving the ownership of this product, whose presence was regarded in 1867, and for many years after, as a dangerous nuisance, never occurred to the parties to the deed. If in the attempt to exclude from the grant and preserve to the granting company what was then esteemed a valuable subject of property believed to be in the soil parted with, namely, oil, a term was used which in its wide sense would cover this then worthless product, gas, the parties never intended, their Lordships thought to use that term in this wide sense.

The company are clearly entitled to search and work for oil in these springs of oil, and to win and carry it away from them, provided they do so in a reasonable manner, and do as little injury as is practicable. While the point does not arise in this appeal for decision, their Lordships think that the company would not be responsible for any inconvenience or loss which might be caused to the respondent or to the owners of the estate of the grantee in the conduct of their operations in the manner mentioned. But, however that may be, their Lordships, are on the whole, of opinion that on the only question raised for their decision, the construction of the excepting clause in the company's deed of January 22nd, 1867, the decision appealed from was right and should be affirmed, and this appeal should be dismissed, and they will humbly advise His Majesty accordingly. The appellants must pay the costs of the appeal.

Freshfields; Blake and Redden, solicitors.