

imbursing it for all its expenditures in connection with the experiment. In determining the extent of this right, it must be borne in mind that the experiment and the possible discovery dealt with in the letter of the 8th February, 1906, from the company to the defendant, had reference to oil only. . . .

The learned trial Judge refused to take into consideration and give effect to expressions found in the correspondence between the parties both before and after the agreement, and took the agreement as solely embodying the expression of their rights. In this, I think, he was correct. He adds, however, that he has carefully read the letters submitted, but cannot find in them anything which leads him to modify the views which he expressed as to the effect of the agreement.

Unless it can be held that the enterprise, in the profits of which the plaintiff now seeks to share, is the outcome of the negotiations which preceded the written agreement of the 20th July, 1905, or that it is an "extension" thereof, the plaintiff cannot succeed. The mention of gas as well as oil in the letter of these parties to Sir Thomas Shaughnessy referred to in their agreement of the 20th July, 1905, is pointed to as being of significance in supporting the plaintiff's present claim. The discovery of oil was, alone, the subject of the agreement; and the mention there made of gas, which was only in speaking of the probable necessity of obtaining gas and oil leases, is explained by the fact that gas and oil are not in practice the subject of separate leases. The reference to gas, therefore, was only incidental, and not an essential element of the contract; and its use under these conditions cannot have the effect of enlarging the scope of the agreement so as to include anything beyond the only commodity manifestly in the contemplation of the parties in their negotiations and in the agreement which followed.

The position is also untenable that the enterprise, the profits from which are now in question, is, in the sense contended for by the plaintiff, an "extension" of the agreement for the earlier operations in which the defendant was engaged, or the outcome of the negotiations leading up to that agreement. The only right left to Messrs. Hay and Coste, when the company decided to discontinue experimenting for oil, was to exercise the option of purchase of the company's interests. The option was not exercised—no doubt for the very excellent reason that there did not exist anything of such value as to justify payment of the expenditures the company had made in connection with the experiment—and that undertaking was then at an end.