

HAY v. COSTE—MIDDLETON, J.—JUNE 4.

Contract—Construction—Scope—Partnership—Contemplated Profits from Oil Leases and Agreements—“Extensions”—Profits from Natural Gas Leases and Agreements—“Oil and its Products.”—Action to compel the defendant to account to the plaintiff for all profits resulting from oil and gas discoveries made by the defendant directly or indirectly, upon the theory that there was a partnership agreement under which the plaintiff was entitled to all profits derived from leases, rights, agreements, or franchises for or connected with oil or gas. A memorandum of the agreement between the parties, dated the 20th July, 1905, recited negotiations looking to the development of oil-fields in western Canada, along the line of the Canadian Pacific Railway, and that these negotiations had reached a point where an agreement was likely to be entered into with the railway company for the purpose of drilling for oil in the Northwest, on or near the line of the railway; the basis of the agreement being set forth in a letter a copy of which was attached. Then followed this recital: “Whereas the parties hereto have agreed that they shall mutually benefit in any and all profits which may result from the conclusion of these negotiations and from any agreement which may be entered into by them or either of them as a result of the same.” It was then agreed, in consideration of the assistance and services each had rendered to the other in conducting the negotiations, “that all profits which may accrue to the parties hereto or to either of them, whether in cash or in stock in any company or companies which may be found as the outcome of the negotiations which have led up to the agreement contemplated to be made as above referred to and of any extensions of the same shall be equally divided between the parties hereto.” The defendant found natural gas, but no oil. The railway company refused to enter upon any gas project. The defendant ultimately (in 1910) arranged for the flotation by others of a gas enterprise, and secured gas leases and entered into agreements with relation to gas, which made him a considerable profit; and in that profit the plaintiff claimed a half interest. The learned Judge said that, looking solely at the agreement, as he must, he was satisfied that this profit was not within its scope. The agreement itself spoke of oil; both parties agreed that that was deliberate. The only thing upon which an argument could be hung was the expression in the agreement which gave the plaintiff a half interest in the