

G. Lynch-Staunton, K.C., for plaintiff.

J. W. Nesbitt, K.C., for defendants.

The Court (MEREDITH, C.J., MACMAHON, J., TEETZEL, J.), allowed the appeal and directed judgment to be entered for plaintiff for \$1,000, the damages assessed by the jury, less amounts paid by defendants for or on account of plaintiff, and costs of the action and appeal.

OSLER, J.A.

JANUARY 27TH, 1909.

C.A.—CHAMBERS.

SMITH v. ENGLEFIELD OIL AND GAS CO.

Appeal to Court of Appeal — Leave to Appeal from Judgment at Trial — Amount Involved Less than \$1,000 — Title to Land or Future Rights not Involved—Action for Money Demand—Construction of Lease—Petroleum Bounty Act, 1904.

Motion by the defendants for leave to appeal from the judgment at the trial, direct to the Court of Appeal.

Shirley Denison, for defendants.

F. S. Mearns, for plaintiff.

OSLER, J.A.:—The judgment is for less than \$1,000. The action is by lessor against lessee upon the *reddendum* clause in an "oil lease," which, so far as material to be noted, is in the following terms: "Yielding and paying to the lessor during the continuance of this lease, delivered in tanks free of expense, the one-eighth part or share of all oil, coal, salt, or other substance or deposit produced or raised from the said lands, except gas. . . ."

The statement of claim alleges that the custom between the parties had been for the defendants to market the oil produced from the land, including the plaintiff's share, and, after deducting the cost of sale, &c., to pay the plaintiff the net proceeds of his share. This course the parties followed until 10th August, 1904.

The market price of crude petroleum fell in consequence of the removal of customs duties, and, by the Petroleum Bounty Act, 1904, 4 Edw. VII. ch. 28, a bounty of 1½ cents per gallon became payable on all crude petroleum produced