

as stated in Rule 312, to require the first action to be discontinued and all the proceedings already taken to be thrown away.

In accordance with that last mentioned Rule, I think an order may be made for consolidation, and that all proceedings in the first action may stand for all purposes in the consolidated action.

The costs of this order and all other costs either lost or occasioned thereby must be to the defendants in the consolidated action in any event.

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DIVISIONAL COURT.

NOVEMBER 10TH, 1909.

SMITH v. ELGINFIELD OIL AND GAS DEVELOPING CO.

*Deed—Construction—“Oil Lease”—Lease or License—Dominion Petroleum Bounty Act, 1904 — Right of Lessor to Share in Bounty—“Producer.”*

Appeal by the defendants from the judgment of CLUTE, J., who tried the action without a jury, in favour of the plaintiff.

By the provisions of sec. 2 of the Dominion Petroleum Bounty Act, 1904, the Governor in council is empowered to authorise the payment out of the Consolidated Revenue Fund of a bounty of one and one-half cent per imperial gallon on all crude petroleum produced in wells in Canada on and after the 8th June, 1904, the bounty to be paid to the producer of the petroleum.

The action was brought to recover from the defendants the amount of the bounty received by them under the authority of this Act in respect of petroleum which belonged to the plaintiff and was sold by the defendants practically as his agents.

The plaintiff was a farmer and the owner of part of lot 14 in the 10th concession of the township of Dunwich, in the county of Elgin, and on the 11th November, 1907, he executed to the defendants what is popularly termed an oil lease of part of it.

This instrument was in the form of a lease, and by it the plaintiff granted, demised, and let to the defendants, “for the purpose and the exclusive right of drilling, boring, digging, excavating, and operating for,” among other substances, petroleum, and “for laying pipes under or on top of the surface for transporting oil or gas and erecting tanks, derricks, pumping rig, and all necessary plant for pumping and storing such oil, gas, or other substance or deposit as aforesaid,” that part of his land lying north-westerly of a road running through it, “to have and to