

Elliot, 13 Ch. D. 277, 279; Thornton on Oil and Gas, p. 10; Genesis, ch. xxvi., v. 9; Tomlinson's Cyclopædia of Useful Arts (1886), vol. 3, p. 495; Brande and Cox's Dictionary of Science, new ed. (1866), p. 710; North British R. W. Co. v. Budhill Coal and Sandstone Co., [1910] A. C. 116, 126; Hext v. Gill, L. R. 7 Ch. 699, 719; MacSwinney on Mines (1907), pp. 16, 17.]

The present case will turn, not on the chemical or mineralogical signification of the terms used in the reservation, but on the meaning of them at the time as used by ordinary persons concerned with the subject, and especially as to the meaning understood and accepted by the parties. . . .

[Reference to the testimony of witnesses at the trial; also to Murray's Oxford Dict., "mine," "mineral;" Lord Provost and Magistrates of Glasgow v. Farie, 13 App. Cas. 657, 683, 689.]

The evidence in this case leads to the conclusion that neither oil nor gas in the petroleum beds was regarded as a mineral by the parties when the deed was executed in 1867. . . .

The conclusion of the whole matter is that, in my opinion, there is a valid reservation of all oil upon the lot, which is to be possessed and enjoyed by the defendants, but that there is no reservation of natural gas, which remains the property of the landowner.

There is no legal difficulty in allocating the different strata bearing gas and oil to different owners—no difficulty in making the legal distinction of ownership as to gas and oil in the same well—with this limitation, however, that where the well is distinctively an oil well, and the amount of gas merely a subsidiary concomitant, the gas element should be disregarded and the whole go under the reservation; and the like limitation as to a distinctively gas well, where the clear preponderance of gas should carry the whole well to the owner. There may be cases of mixed gas and oil where each has a commercial value and may be profitably worked by separate adjustments, as indicated in the evidence; in which cases it may be that mutual concessions will have to be made by the co-owners in order to the economic utilisation of the joint products. But this and other details, I understood, would be subject to arrangement between the parties if once respective rights were judicially determined. . . .

[Reference to Coniagas Mines Limited v. Town of Cobalt, 20 O. L. R. 622, remarks at p. 632, beginning, "The parties may find it to be to their mutual advantage to come to terms."]