

That appears to be a sufficient defence, for substantially what was determined by the Divisional Court is that the plaintiffs have forfeited their contract by non-compliance with its conditions, and the former decision did not simply decide that the action could not be maintained on account of the absence of parties. Non-joinder was pleaded in the former action, but the three Judges held upon the merits that the company had lost its right to claim a lease from the defendant Shurr of the oil well on his premises. Apart from a lease or the right to a lease the company has no right to or ownership over the well sunk on Shurr's land, though the company may have been at several thousand dollars expense in sinking it.

While the forfeiture declared by the Court continues it is not competent for the company now to litigate as if it was the aggrieved party. They must by some means if possible get rid of this disability before they can be rightly in Court as to the gas well. It may be that a proper application to the Court of Appeal would result in opening up the controversy by adding the co-contractor, Augustine, on that record and by obtaining relief from the forfeiture upon proper terms. But this is, of course, merely a suggestion; for if that former judgment stands it is a complete bar to the relief now sought by the plaintiff company, and if it is reversed the company will obtain all that is sought permanently which they had only temporarily under the judgment of Mr. Justice Sutherland. In either view the present action seems to be not well-advised, and I see no other course but to dismiss it with costs.