

And in this case the peculiar frame of the instrument and the nature of the interests dealt with make it essentially a case where, in construing it, careful reference should be had to every part.

But, for the purpose of ascertaining the plaintiff's position with reference to his aliquot part of the oil gained or obtained through the medium of the processes which the defendants are authorised to adopt, it is not essential whether the instrument be regarded as a demise or a license. So far as these operations are concerned, the plaintiff is an actor, in that, by the very terms of the instrument, they take place with his authority and by his leave. The object was to extract for marketing and consumption the oil lying beneath the surface of the plaintiff's lands. The plaintiff desired this to be done, but, not being able or willing to adopt measures by means of which he might obtain all the oil for his own purposes, he arranged with the defendants to carry on the operations, giving or rather reserving to the plaintiff a certain aliquot part of the oil produced by means thereof which is to be delivered to him in specie. Why is he not the producer of this aliquot part which comes to him as his share of the work done under and in pursuance of the agreement?

The word "procedure," as remarked by Meredith, C.J., is not a technical one. It is of wide signification, capable of many meanings.

The Act 4 Edw. VII. ch. 28 contains no definition of the term as therein used, and it should be read as expressive of that sense in which it was most likely to have been understood by Parliament, that is, as applied to persons engaged in bringing forth the oil from lands under which they lay and so converting it into an article of commerce.

In order that an owner of land under which there is oil or gas or similar substance may become a producer thereof, it cannot be essential that he should labour with his own hands in order to bring it to the surface. It is surely sufficient if he puts, or is instrumental in putting, into operation the agencies by which the result is accomplished.

In this case the plaintiff by the means adopted by him secures the bringing to the surface of quantities of oil, a one-eighth part of which he is entitled to receive as his own property. This part the defendants were not entitled to, nor at liberty to deal with except with the plaintiff's consent.

Obviously this was the intent of the parties, and I find nothing in the instrument to prevent that effect being given to it. Nor do I see any good reason why the plaintiff is not to be considered the