

MULOCK, C.J.:—The lease is dated 18th June, 1902, and by it the plaintiff demised the land therein mentioned for 10 years from the date of the lease, the lessor to receive by way of rental a one-eighth part of all oil and minerals obtained by the lessee and his assigns from the demised premises during the continuance of the demise, and also \$50 a year for each gas well from which the lessee should obtain and sell gas to the public.

The lease contains, amongst others, the following clauses and covenants:—

“This lease is made for the purpose of enabling the lessee and his assigns, and he is and they are hereby authorized and empowered, to sink or drill oil wells,” etc.; “and to dispose of all oil,” etc.; “and the lessor hereby grants, assigns, transfers, and sets over to the lessee and his assigns all such oil,” etc.; “subject only to the payment of the rental hereinbefore reserved;” the lessee “covenants with the lessor and his assigns in manner following, that is to say, that the lessee or his assigns, so long as he or they shall be of opinion that any wells sunk by him or them upon the said premises are yielding and will continue to yield, or will, if worked, yield, oil in sufficient quantities in his or their opinion to induce the lessee or his assigns to work and continue working the same, will: (a) pump and work the same faithfully and uninterruptedly unless hindered,” etc.; (b) “he will keep books of account,” etc.; (c) “will deliver to the lessor or his assigns in bulk one-eighth of all oil or mineral removed by the lessee or his assigns,” etc.; and (d) “will commence operations upon the said premises on or before the first day of November, 1902, or will pay to the lessor or his assigns the sum of \$6 per month from the date hereof until operations are commenced on the said premises: provided that the said term hereby granted shall cease and determine if the lessee or his assigns shall wholly cease for the space of 6 months continuously to operate under this lease: proviso for re-entry by the said lessor for non-payment of rent or non-performance of covenants.”

The plaintiff: . . . charges that neither the lessee, nor his assigns, the defendants, ever commenced to operate on the demised lands, or paid to the plaintiff . . . \$6 a month from the date of the lease, and that, by reason of the breach or non-performance of the covenants above quoted