

and that the defendants' rights should be confined to those expressly mentioned in the instrument.

Instead of the plaintiff receiving in specie the one-eighth of the petroleum to which he became entitled, by arrangement between him and the defendants the latter marketed the whole of it and accounted to the plaintiff for one-eighth of the net proceeds of the sale of it.

The defendants made application for the bounty payable for the whole of the petroleum, and received it, but refuse to account to the plaintiff for that part of it which was received in respect of his one-eighth, claiming that they and not the plaintiff were the producers of it and entitled to the bounty in respect of it.

Contrary to the impression I had upon the argument, I have reached the conclusion that the judgment of my brother Clute is right and should be affirmed.

The term "producer" is not a technical one, and is, I think, sufficiently elastic to warrant our holding that, on the facts of this case, the plaintiff was, within the meaning of the Act, the producer of the one-eighth of the petroleum to which he became entitled.

Although the provision as to the one-eighth is in form a redendum clause, and the one-eighth is spoken of as something to be paid, yet, looking at the whole of the provisions of the instrument, I see no reason why it may not properly be held that the parties were tenants in common of the petroleum obtained from the plaintiff's land, the defendants being entitled to seven-eighths and the plaintiff to one-eighth of it.

The defendants were to have the land for the purpose of winning or producing the petroleum, but when the parties or the draftsman came to deal with the ownership of it, the provision is not that the defendants are to have, hold, remove, and dispose of the whole of it, but the whole of it "except as hereinafter excepted," referring plainly to the subsequent provision as to the plaintiff's one-eighth.

It is not, I think, an unreasonable view to treat the instrument as having constituted the parties co-adventurers in the undertaking, the plaintiff furnishing the land and the petroleum and other substances to be found in it, and the defendants furnishing the plant and machinery for and performing the work of searching for and winning them, and the petroleum or substance won, except the gas, as the property of the co-adventurers divisible between them in the proportions mentioned in the instrument, and in that view the plaintiff was the producer of the one-eighth of the petroleum to which he became entitled under its provisions.