

The president of defendants seems to have thought that no obligation to recover the sinker or replace it with a new one rested upon his company, and that the loss occasioned by its being left where it was was one which plaintiff must bear.

On 30th January, 1904, defendants paid \$168 to Bennett for plaintiff, for 14 days' use of the the drilling outfit from 13th to 28th of that month, inclusive, and obtained from Bennett the following receipt:

"\$168. Winchester, Ont., January 30, 1904.

"Received of the Great Northern Oil and Gas Co., Limited, the sum of one hundred and sixty-eight dollars in payment of fourteen days' use of C. N. Oke's drilling outfit from January 13 to January 28, inclusive, on which last mentioned date the company notified me of its decision to cease work and to surrender the drilling outfit to Oke.

"Sumner Bennett,

"for C. N. Oke."

The differences which have resulted in this action being brought then began. Defendants appear to have receded from the position taken by them at the outset, and were willing to pay for all the tools that were in the hole, as appears from telegram from Bennett to plaintiff of 29th January, 1904, but they took the position that if they did this and paid \$100, which plaintiff was entitled to receive on the termination of the hiring in addition to the rent, which they were willing to do, they were under no further liability to plaintiff, because the rental had stopped absolutely on the giving of the notice on 28th January, 1904.

The position taken by plaintiff, as shewn by his telegram of the 8th February, 1904, to C. B. Williams, the secretary of the company, was that he would accept the tools delivered at the rig and hold defendants liable for the hire of the "rig" under the contract "down to date of such delivery of tools."

Defendants procured a new "sinker" and its appliances, and these were delivered upon the ground where the rest of the drilling outfit was. The exact date of the delivery does not appear in the evidence, but it must have been before 26th March, 1904, for on that day the outfit was being used by plaintiff on other work.

The first question to be determined is, whether the rental ceased on 28th January, when notice was given to Bennett of defendants' decision to cease work and surrender the drilling outfit to Oke; and I am of opinion that it did.

It is not open to doubt that if the sinker had not been left in the hole and practically lost, what happened would have put an end to the hiring from the time the notice was received by Bennett.