COURT OF APPEAL.

NOVEMBER 19TH, 1912.

WELLAND COUNTY LIME WORKS COMPANY v. SHURR.

4 O. W. N. 336.

Mines and Minerals — Oil and Gas Leases — Agreement between Farmers and Company for Leases—To be in Usual Form—Company to Supply Farmers with Gas for Heating, Free—Refusal of Farmer to Sign Lease—Action to Compel Signing of Lease—For Injunction Restraining Farmer from Interfering with Company in Taking Gas—Rental for Wells—Costs.

SUTHERLAND, J., 20 O. W. R. 637; 3 O. W. N. 398, granted orders as asked, allowing company to take gas from wells on defendants' lands. If parties cannot agree upon terms of lease within two weeks, there will be a reference to Master at Welland to settle the form. Costs to plaintiff.

DIVISIONAL COURT, 21 O. W. R. 480; 3 O. W. N. 775, reversed above judgment and dismissed action with costs.

COURT OF APPEAL allowed appeal from judgment of Divisional Court, and restored judgment of Sutherland, J., with costs.

Appeal from judgment of Divisional Court reversing judgment of SUTHERLAND, J., and dismissing action for specific performance of an agreement to give a gas and oil lease.

The appeal to Court of Appeal was heard by HON. MR. JUSTICE GARROW, HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MEREDITH, HON. MR. JUSTICE MAGEE and HON. MR. JUSTICE LENNOX.

W. M. German, K.C., for the plaintiffs.

S. H. Bradford, K.C., and L. Kinnear, for the defendants.

HON. MR. JUSTICE MEREDITH:—I agree entirely with the learned trial Judge in his disposition of this case; and can find no cause for the Divisional Court's reversal of it.

The main question is whether the landowners were to give separate leases of their respective farms, or one joint lease of the two farms, though neither had any title or right to or interest in the farm of the other; and, under ordinary circumstances, and even in the case of an agreement quite silent on the subject, one might well ask why not separate leases? Why should each demise a thing which was not his, and in which he had no legal or equitable estate or interest?