

Shurr to execute a lease of the gas well as to his land. The defendant Shurr refused, and, in conjunction with Augustine, cut off the company's pipes on the defendants' land and so stopped the supply of gas from the well in question so far as the company was concerned. Then an action was brought by the company in July, 1911, against Shurr alone to restrain him from interfering with the gas well, and that he be ordered to carry out the terms of the agreement (*i.e.*, as to the granting of a lease).

This action was tried before Mr. Justice Sutherland, who granted the relief sought and referred it to the Master to settle the terms of the lease (see case reported, 20 O. W. R. 637). Upon appeal to the Divisional Court this decision was reversed and the action dismissed (see report in 21 O. W. R. 481). The Court held that the agreement was a joint one and not severable as to Shurr; that both were entitled to be supplied with gas; that the plaintiffs had no right to cut off Augustine and retain a right of claim as against Shurr; and it was further held that the company had no right to demand a lease from Shurr because the company had ceased to supply gas to Augustine, and therefore the term for which the lease was to be granted had been ended by the action of the company. This last ground of decision clearly indicates the opinion of the Court that the company had by its own act forfeited its rights under the agreement and had no *locus standi* in Court. That judgment of the Divisional Court has been taken to the Court of Appeal, but it has not yet been argued.

In this state of affairs the present action was brought by the company against both defendants on 9th April, 1911, based as the other upon the written agreement between the parties as to the gas, made in 1903. There is the further allegation that on the first March last the defendants, without legal authority, took possession of the gas wells and have since prevented the plaintiffs from taking gas therefrom. This is explained in the evidence as being done upon faith of the judgment in the Divisional Court by the defendants. The relief asked is by way of injunction and damages. No evidence was given materially affecting the situation other than that taken on the first trial, which was put in as evidence in this case. Among other defences the plea of *res judicata* is relied on.