

tended by the parties and what is expressed in the document is the right of plaintiffs, for their use as mentioned, to get gas created or formed, or found, in the wells sold by plaintiffs, from which and in the manner defendants were getting gas; and so the reservation is not restricted to gas "in esse" at the time the agreement was made. See *Vancy v. Scott*, 2 M. & R. at p. 337.

To whatever length refinement may go in attempting to elicit the precise meaning of particular words, the words now under consideration clearly shew that the intention of the parties was that plaintiffs should get, of the gas available to the defendants from the property conveyed by the plaintiffs, sufficient to supply the plant then operated or to be operated by the plaintiffs, on said property. Some of the cases to which I was referred shew that, if necessary for the purpose of carrying out the real intention of the parties, a "reservation" may be construed as an "exception," and vice versa.

The best evidence of what the parties intended is in what the parties did. From 20th April, 1891, down to 18th July, 1894, the plaintiffs continued to get gas for their plant, just as they had done prior to 20th April. Upon the sale by the Erie County Natural Gas and Fuel Co. to the Provincial Natural Gas and Fuel Co., which was carried out on 18th July, 1894, the latter company cut plaintiffs off. Until that time there was not any doubt or difficulty about the true construction of the agreement.

The Master's finding that the plant for the supply of which plaintiffs were entitled to gas, was upon the property of plaintiffs, within the meaning of the agreement, is, in my opinion, right. There was a good deal of argument before me about the plaintiffs getting their supply, or a part of their supply, from the Schussler No. 1 well. That was a matter of contention at the trial. The defendants contended strongly that the plaintiffs were not entitled to the reservation claimed, as, instead of and in lieu of that, the real agreement was that plaintiffs should hold as their own Schussler No. 1: see p. 49 of the appeal book. The trial Judge dealt with that contention: see p. 76 of the appeal book. The Master could not go behind the judgment. The defendants argue that the agreement, as it stands, must be interpreted, and the damage, if any, measured, having in view the fact that plaintiffs, when the agreement was made,