

were not acting reasonably under the contract in question. In that letter it is said: "You are not taking gas according to contract. We have put up with this condition during the summer, and it has now reached the stage that we must be assured that you will either take our gas or free us from our contract." In this letter no claim is made for damages, and it seems to acquiesce in the situation as being a reasonable one during the summer. Point is given to this by the subsequent letter of January, in which it is alleged as a grievance that the appellants "have undertaken to accept delivery of gas from a new contractor" (Aikens himself, Lalor & Smith, see p. 21), "the effect of which is to prevent your accepting delivery under our contract." This letter complains of the regulator as creating an artificial pressure against gas. The complaint as to a subsequent contract is repeated by respondents' solicitors on March 3rd, 1913, but the regulator is not mentioned.

I think it may fairly be said that there was acquiescence until the 28th December, 1912. There was complete knowledge, as payments were made up on monthly statements shewing the pressure, there was the closing down of wells by the respondents in June on account of the non-acceptance of the gas now complained of, there was the non-delivery of the usual quantity of gas in the first twelve days of August, a complaint or a request for more in that month, the turning on of one well on September 8th, and the turning off of three the day after gas had begun to be delivered on the subsequent contract, nor was there any complaint until that had been fairly started, and then in a way which leads to the conclusion that the conditions during the summer had been suffered without any real objection.

But if this were not so I do not think the respondents proved their damage by proper or sufficient evidence. The records relied on as proof are average records only, *i.e.*, the average pressure of the 24 hours, and there is no information given in the exhibits as to whether the pressure in the company's pipe was over fifty pounds, when that in the respondents' was also over fifty, which might occur if the regulator were then closed or whether, which is the inference sought to be drawn, the higher pressure of the respondents' gas occurred when that in the appellants' pipe was below fifty pounds. Average tells nothing as to the exact