

HON. SIR JOHN BOYD, C.

MAY 29TH, 1912.

WELLAND COUNTY LIME WORKS COMPANY v.
AUGUSTINE.

3 O. W. N. 1329.

Contract — Breach — Action for Damages — Injunction — Supply of Natural Gas — Non-fulfilment of Conditions—Joint Contract —Relief from Forfeiture — Parties — Judgment in Previous Action—Res Judicata.

An action for an injunction to restrain defendants from interfering with certain gas wells claimed by plaintiffs and damages for alleged wrongful taking possession of said wells by defendants. The plaintiffs' rights in this case depended upon an agreement made between them and the defendants on Nov. 20, 1903. By this the defendants agreed to give to the plaintiffs the usual oil and gas leases of their respective farms "to continue so long as the plaintiffs continue to comply with the conditions agreed upon." That condition was mainly to supply free of charges sufficient gas to heat the defendants' houses. In *Welland Co. Lime Works v. Shurr*, Divisional Court, 21 O. W. R. 481, 3 O. W. N. 775, reversed judgment of Sutherland, J., 20 O. W. R. 637, 3 O. W. N. 398, holding that the agreement was a joint one and not severable as to Shurr. The Court also held that the company had by its own act forfeited its rights under the agreement and had no *locus standi* in Court.

BOYD, C., held that the plea of *res judicata* relied on was a sufficient defence. The company must by some means if possible get rid of the forfeiture declared by the Court before they could be rightly in Court as to the gas well. The present action was not well advised and should be dismissed with costs.

Action to recover damages in respect of an alleged breach of an agreement and for an injunction.

W. M. German, K.C., and H. R. Morwood, for the plaintiffs.

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

HON. SIR JOHN BOYD, C.:—The plaintiffs' rights in this case depend upon an agreement made between them and the defendants on the 20th November, 1903. By this the defendants agreed to give to the plaintiffs the usual oil and gas leases of the respective farms "to continue so long as the plaintiffs continue to comply with the conditions agreed upon." That condition was mainly to supply free of charge sufficient gas to heat the defendants' houses.

A well was made and gas procured from it on the lands of one of the defendants, Shurr. From this source gas was supplied by the company to both defendants down to June, 1911, when the company cut off the supply of gas to the houses of the defendant Augustine, and thereafter called upon