

their delivery of gas was subject to the deliveries of gas under the two contracts," etc.

The respondents' pleading in the action makes no charge that the placing of the regulator was a breach of contract, or had that result, but claimed that subsequent contracts were made under which the appellants took gas to the exclusion of that of the respondents. The learned county Judge, however, in his report, allowed an amendment, alleging that the regulator was so operated as to prevent delivery by the respondents.

It is contended that the respondents were only to deliver against the line pressure and not against an obstruction like the regulator. That is true in one sense, but it is the line pressure, having regard to the contracts, under which the maintenance of a greater pressure than 50 pounds would or might discriminate against Waines. Up to 50 pounds pressure, the respondents had, subject to the earlier contracts and to the situation created by them, the right to enter. I cannot agree with the learned County Court Judge that the placing of the regulator was a breach of contract, and there is no evidence that the regulator was out of order or was fixed at more than 50 pounds. Aikens' complaint is that it was so far shut that only the quantity they took could get through.

I cannot help feeling, from an examination of the later events and of the records filed, that the claim is more or less an afterthought. It would appear that no difficulty occurred until April, 1912, although the regulator was on from the beginning in the November previous (p. 51) on the 26th of which month Aikens says delivery began (p. 4).

During all the time previous to April, 1912, two lines with regulators, the one under the contract sued on, and one under the earlier Aikens, Lalor & Beck contract, on both of which Aikens was concerned, were being used, and in both cases daily reports are provided for, and the respondents were paid monthly on the basis of these reports. Presumably this was the case with the earlier contract too. Between June 1st and 8th, 1912, Aikens says he directed the turning off of eight wells (out of 15), because the regulator had raised pressure to such a high figure that he thought it better to keep it down for the purpose of safety (pp. 12 and 30). This corresponds with the record of pressure for May, because the average pressure on two days in the respondents' line in that month reached 101 and