

## SUPREME COURT OF ONTARIO.

FIRST APPELLATE DIVISION.

MARCH 9TH, 1914.

## KOHLER v. THOROLD NATURAL GAS CO.

6 O. W. N. 67.

*Contract—Purchase of Natural Gas—Terms—Evidence—Damages—  
Measure of—Profits—Reference—Appeal.*

SUP. CT. ONT. (1st App. Div.) held, that defendants had not committed a breach of their contract to take certain natural gas from the plaintiffs upon the terms therein stated.

That in any case the measure of damages was not the contract price of such gas, but the profits lost by plaintiffs.

*Silkstone and Dodsworth Coal and Iron Co. v. Joint Stock Coal Co.*, 35 L. T. R. 668, followed.

Judgment of BOYD, C., reversed.

Appeal by defendants from a judgment of HON. SIR JOHN BOYD, C., dated 13th October, 1913, affirming the report of His Honour Judge Douglas, the Local Master at St. Catharines, dated 9th August, 1913, by which the appellants were held liable for breach of contract to take and pay for natural gas to the extent of 44,853,170 cubic feet.

Damages were assessed on the basis of the price contracted to be paid, namely, at 16 cents per cubic foot, which, after crediting the amount (\$197) received by the respondents for some 1,300,000 cubic feet sold with defendants' consent, amounted to \$6,979.50.

H. H. Collier, K.C., for appellant.

W. T. Henderson, K.C., for respondent.

The appeal to the Supreme Court of Ontario (First Appellate Division) was heard by HON. SIR WM. MEREDITH, C.J.O., HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MAGEE and HON. MR. JUSTICE HODGINS.

HON. MR. JUSTICE HODGINS:—The appellants maintain that they committed no breach of contract but that if they did, damages are not properly proved, are excessive, and are based upon an erroneous principle.

The respondents are gas producers, and had, when the contract was made, 15 wells in Canboro field extending over 1,000 acres and own an 8-inch pipe line from the field to