

SECOND DIVISIONAL COURT.

MAY 12TH, 1916.

*HAMILTON GAS AND LIGHT CO. AND UNITED GAS
AND FUEL CO. v. GEST.

*Negligence—Construction by Contractor of Conduit in City Street—
Break in Pipe of Gas Company—Duty of Contractor—Res-
toration of Pipe to Proper Condition—Failure to Perform—
Change in Ownership of Pipe after Break—Continuing Duty
to Restore—Right of both Owners to Recover—Damages—
Search for Leak—Repair—Labour and Material—Loss by
Escape of Gas—Period of Time—Price of Gas—Appeal
Partly Successful—Costs.*

Appeal by the defendant from the judgment of the Judge of the County Court of the County of Wentworth in favour of the plaintiffs in an action brought in that Court to recover damages for injury to the gas-pipes of the plaintiffs laid in the streets of the city of Hamilton, by the negligence of the defendant, a contractor for the construction of a conduit for the transmission of Hydro-Electric current. In the course of the defendant's work, it was alleged, he caused the plaintiffs' pipes to sag and leak. The judgment against the defendant was for \$1,323.05 and costs.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

A. O'Heir, for the appellant.

S. F. Washington, K.C., for the plaintiffs, respondents.

MEREDITH, C.J.C.P., read a judgment in which he referred, first, to the argument of the appellant's counsel that the appellant was not liable for loss sustained after the sale of the property in question by the one company of plaintiffs to the other. The gas company and the Hydro-Electric Department, the Chief Justice said, had each a right to place and maintain pipes and conduits in the public street where the injury was done. The right to lay the pipes or conduits of the Department was subject to the duty to disturb the other pipes as little as reasonably could be, and to restore them, after disturbance, as nearly as possible to their former condition. Through some want of care, one of the pipes of the gas company was broken, and through that fracture a large quantity of gas escaped, both before and after the sale by the one company of all its property to the other; and damages had been awarded to each company for the loss thus caused. The