

pellants from cutting off their supply of natural gas, a threat so to do having been made on account of the non-payment of the appellants' claim for gas supplied during July and August, 1918, at the rate of 35 cents per 1,000 cubic feet.

The contest was now practically reduced to a question whether the amount to be charged for those two months should be at the rate of 12 cents per 1,000 cubic feet, according to the contract, or at the rate of 35 cents, as the appellants contended, or, under an order of the Ontario Railway and Municipal Board of the 28th November, 1918, at the rate of 25 cents, and whether the orders made by the Board were not contrary to natural justice and should be disregarded so far as they purported to interfere with the contract.

The question whether the respondents were justified in moving for the interim injunction was also raised. Upon the order being obtained, the respondents submitted to pay at the rate of 12 cents and to deposit in Court a sum equal to 23 cents per 1,000 cubic feet, all without prejudice to their contentions.

Reference to the Natural Gas Act, 1918, 8 Geo. V. ch. 12 (Ont.), and resumé of its provisions.

That Act (sec. 3) puts the Board in full control of the "production, transmission, distribution, sale and disposal and consumption of all natural gas produced in Ontario," and enables it to exercise its powers "notwithstanding the provisions of any agreement, franchise, bargain, or arrangement." Its orders, where followed, are declared to afford a good defence to any one obeying them, if sued; and (sec. 7) a heavy penalty is imposed, payment of which may be enforced by imprisonment, for any refusal or neglect to obey the Board's orders or directions. This made the performance of the contract in question, and any other similar agreement, illegal.

Reference to *Brightman & Co. Limited v. Tate*, [1919] 1 K.B. 463.

If it became illegal to supply gas pursuant to the contract, it also became illegal to pay for it, or to exact or sue for payment pursuant to its terms. If then the performance of the contract became, by Act of the Legislature, illegal, there was no foundation for saying that, before granting a permit for sale to the appellants, the Board should have notified the respondents so that they might set up the provisions of a void agreement in an endeavour to get some of its provisions reinstated or regard had to the bargain it embodied. The agreement was, for the time being at least, dead, and the rights of the parties were gone for that time also by a legislative act; and no right survived which would require to be regarded before action could be taken by the Board. The orders of the Board could not, therefore, be disregarded.