

ask, in consequence, "an order restraining the defendants from the continuance of the said breach," and damages therefor.

It appears that, while the main pipe line from Attercliffe station to Dunnville has been taken up, the defendant company are still drawing gas from wells in the Attercliffe field, which they still own, and piping it by another line along the Dilks road to Dunnville. The defendants say that these wells are not wells which were owned by the plaintiffs or the Imperial company, but wells put down by the Dunnville company before the merger. These wells are about a mile east of the Attercliffe station, and there was a line from the Dilks road to Attercliffe station formerly, which is said to have been taken up after the main pipe line from Attercliffe station to Dunnville was taken up.

The plaintiffs contend that, as the contract to supply them with free gas is an unconditional one, the defendant company must continue to supply them or else pay damages consequent upon their failure. The defendants, on the other hand, contend that, so long as the company could do so on a commercial basis and without loss to themselves, they had lived up to the contract, and that the moment they could not do so the contract was at an end.

The effect of the contract entered into on the 16th December, 1902, between the plaintiffs and the defendant company, is, I think, as follows: that the company would supply to the plaintiffs gas free for use in their private dwellings so long as they lived at and adjacent to Attercliffe station and gas was obtainable in the Attercliffe station field sufficient for that purpose. It is clear that, when the defendants refused further to supply the plaintiffs, there was still gas in that field, from wells owned by the defendants, sufficient to supply the plaintiffs for use in their private dwellings. It is clear that there is still gas in that field which the defendants are at the present piping to Dunnville by way of the Dilks road. It is said that the pressure in the wells in that field, still owned by the defendants, fluctuates, and at times it might be difficult to pipe any gas from these wells to Attercliffe station. It appears that at other times it would be quite practicable. It is plain, also, that, if the defendant company had not parted with the wells which they owned, they would have been in a position ever since they cut off the supply from the plaintiffs to supply them, as the present owners of those wells are now doing. The defendant company might have qualified their contract with the plaintiffs by the introduction of a clause such as that they were only to continue to supply so long as gas continued to be found in the Attercliffe station field