

DIVISIONAL COURT.

OCTOBER 22ND, 1912.

SUNDY v. DOMINION NATURAL GAS CO.

4 O. W. N. 167.

*Contract — Construction — Supply of Natural Gas — Breach —
Continuing Breach — Damages — Costs.*

Action by plaintiffs for an order compelling defendants to supply them with gas for use in their private dwellings for domestic purposes, free, and for damages for breach of their contract to do so. Plaintiffs, who were the original owners of certain gas wells situate at Attercliffe Station, Ont., had sold their interests to certain predecessors in title of defendants, taking from them an agreement to supply them with gas free, "for ordinary purposes for use in their private dwellings at or adjacent to Attercliffe Station." Defendants and their predecessors in title had supplied plaintiffs with gas, free, down to April, 1911, but ceased at this date, claiming, that as the operation of the Attercliffe Station gas field was no longer profitable or possible, from a commercial standpoint, any obligation to plaintiffs was at an end.

SUTHERLAND, J., *held*, 22 O. W. R. 743; 3 O. W. N. 1575, that, "when a party, by his own contract, creates a duty or charge upon himself he is bound to make it good, notwithstanding any accident or inevitable necessity, because he might have provided against it by his contract," and that, therefore, the commercial failure of the gas wells did not absolve defendants from their obligation to plaintiffs.

Clifford v. Watts, 40 L. J. C. P. 36; L. R. 5 C. P. 586, and other cases referred to.

Judgment for plaintiffs for \$60 and High Court costs, same to be without prejudice to plaintiffs' right to bring other actions in future for future damages.

An appeal by the defendants from a judgment of HON. MR. JUSTICE SUTHERLAND, 22 O. W. R. 743; 3 O. W. N. 1575.

The appeal to Divisional Court was heard by HON. SIR JOHN BOYD, C., HON. MR. JUSTICE LATCHFORD and HON. MR. JUSTICE MIDDLETON, on the 22nd October, 1912.

J. Harley, K.C., for the defendants, appellants.

J. A. Murphy, for the plaintiffs, respondents.

THEIR LORDSHIPS (V.V.), dismissed the appeal with costs.