

paragraph in question with the corresponding prayer for relief must be struck out with costs to the moving defendants in any event. M. L. Gordon, for the applicants. Featherston Aylesworth, for the plaintiffs.

WELLAND COUNTY LIME WORKS CO. v. SHURR—DIVISIONAL COURT
—FEB. 29.

Contract—Construction—Supply of Natural Gas—Joint or Several Contract—Oil and Gas Lease—Right to—Enforcement of Contract.]—Appeal by the defendant from the judgment of SUTHERLAND, J., ante 398. The appeal was heard by FALCONBRIDGE, C.J.K.B., BRITTON and MIDDLETON, JJ. The Court was unable to agree with the conclusion of the trial Judge. MIDDLETON, J., said that, in the opinion of the Court, the matter must be determined upon the terms of the written memorandum of the 20th November, 1903. In it must be found the term for which the leases mentioned were to be granted. Augustine and Shurr were to lease their respective farms; but the lease was "to continue so long as the parties of the second part continue to comply with the conditions agreed upon." The condition agreed upon was "to supply, free of charge, sufficient gas to heat the houses of the parties of the first part." This clause could not be read as meaning that each lease was to continue so long as the company supplied to each lessor sufficient gas to heat his house. It was rather an agreement on the part of these two land-owners with the company that the company should be at liberty to sink wells upon the land of either, provided the company should supply sufficient gas to heat the houses of both. On the fact of the agreement, there was a joint venture on the part of these two farmers. They jointly contributed the money necessary for the laying of the pipe line; and the agreement was, that gas should be supplied to both. The plaintiffs were not now entitled to demand a lease from Shurr; they had ceased to supply gas to Augustine; and, therefore, the term on which the lease was to be granted had been ended by the action of the plaintiffs. If the evidence were referred to, it went to shew that this was the true construction and the real agreement between the parties; but the case fell to be determined entirely upon the written document; and it was not necessary to deal with the defendant's claim for the reformation of the agreement, as the agreement accurately expressed the intent. BRITTON, J., gave reasons in writing for the same conclusion. FALCONBRIDGE, C.J., concurred. Appeal allowed with costs, and action dismissed with costs. S. H. Bradford, K.C., for the defendant. W. M. German, K.C., for the plaintiffs.