

lease from Shurr because the plaintiffs had ceased to supply gas to Augustine; and, therefore, the term for which the lease was to be granted had been ended by the action of the plaintiffs. This last ground of decision clearly indicates the opinion of the Court that the plaintiffs had by their own act forfeited their rights under the agreement, and had no locus standi in Court. That judgment of the Divisional Court has been taken to the Court of Appeal, but the appeal has not yet been argued.

In this state of affairs, the present action was brought by the plaintiffs against both defendants, on the 9th April, 1911, based, as the other, upon the written agreement between the parties as to the gas, made in 1903. There is the further allegation that, on the 1st March last, the defendants, without legal authority, took possession of the gas wells and have since prevented the plaintiffs from taking gas therefrom. This is explained in the evidence as being done upon faith of the judgment in the Divisional Court by the defendants. The relief asked is by way of injunction and damages. No evidence was given materially affecting the situation other than that taken on the first trial, which was put in as evidence in this case.

Among other defences, the plea of *res judicata* is relied on. That appears to be a sufficient defence; for, substantially, what was determined by the Divisional Court is, that the plaintiffs have forfeited their contract by non-compliance with its conditions; and the former judgment did not simply decide that the action could not be maintained on account of the absence of parties. Non-joinder was pleaded in the former action, but the three Judges held upon the merits that the plaintiffs had lost their right to claim a lease from the defendant Shurr of the oil well on his premises. Apart from a lease or the right to a lease, the plaintiffs have no right to or ownership over the well sunk on Shurr's land, though the plaintiffs may have been at several thousand dollars' expense in sinking it.

While the forfeiture declared by the Court continues, it is not competent for the plaintiffs now to litigate as if they were the aggrieved party. They must, by some means, if possible, get rid of this disability before they can be rightly in Court as to the gas well. It may be that a proper application to the Court of Appeal would result in opening up the controversy by adding the co-contractor Augustine on that record and by obtaining relief from the forfeiture upon proper terms. But this is, of course, merely a suggestion: for, if that former judgment stands, it is a complete bar to the relief now sought by the plaintiffs;