

18 May, 1896.

Ontario.]

CARROLL v. PROVINCIAL NATURAL GAS & FUEL CO. OF ONTARIO.

Contract—Subsequent deed—Inconsistent provision.

C., by agreement of April 6th, 1891, agreed to sell to the Erie County Gas Company, all his gas grants, leases and franchises, the company agreeing among other things to "reserve gas enough to supply the plant now operated or to be operated by them on said property." On April 20th a deed was executed and delivered to the company transferring all the leases and property specified in said agreement, but containing no reservation in favour of C., such as was contained therein. The Erie Company, in 1894, assigned the property transferred by said deed to the Provincial Natural Gas and Fuel Company, who immediately cut off from the works of C., the supply of gas, and an action was brought by C. to prevent such interference.

Held, affirming the decision of the Court of Appeal, that as the agreement was embodied in the deed subsequently executed, the rights of the parties were to be determined by the latter instrument, and as it contained no reservation in favor of C., his action could not be maintained.

Appeal dismissed with costs.

Aylesworth, Q.C., and *Gorman* for appellants.*McCarthy, Q.C.*, and *Cowper*, for respondents.

24 March, 1896.

Ontario.]

ADAMSON v. ROGERS.

Lessor and lessee—Water lots—Filling in—"Buildings and erections"—"Improvements."

The lessor of a water lot, who had made crib-work thereon and filled it in with earth to the level of adjoining dry lands, and thereby made the property available for the construction of sheds and warehouses, claimed compensation for the works so done under a proviso in the lease by the lessor to pay for "buildings and erections" upon the leased premises at the end of the term.

Held, affirming the judgment of the Court below (22 Ont. App. R. 416) that the crib-work and earth filling became part of the