

DOMINION NATURAL GAS CO. LIMITED AND UNITED GAS AND  
FUEL CO. OF HAMILTON LIMITED V. NATIONAL GAS CO.  
LIMITED—MIDDLETON, J.—DEC. 6.

*Contract—Supply of Gas—Covenant—Exceptions—Breach—Injunction—Damages.*]—Action to restrain the defendants from selling gas in violation of a covenant to sell no gas, save in a certain restricted area, to any one other than the plaintiffs the Dominion Natural Gas Company Limited. The action was tried without a jury at Hamilton. MIDDLETON, J., in a written judgment, after stating the facts, said that the defendants sought to justify what they had done by reference to a clause in the contract excepting from the gas which they were bound to supply: (1) gas which under the terms of their leases they were bound to supply to their lessors; (2) gas which they were "bound to furnish under the terms of their franchises;" (3) gas required for the purpose of drilling other wells. The contention was, that, under a by-law of the City of Hamilton, the defendants obtained a franchise to supply gas to the inhabitants of that city, and undertook, as a condition of that franchise, to supply gas to the inhabitants of the city, and that, by reason of their failure to do so, their rights may be lost. Assent cannot be given to this contention, for the exception in no ways cuts down the absolute covenant not to supply gas in the city. It is not a modification of this covenant at all, but is a cutting down of the obligation found in another part of the agreement, which calls for delivery of all gas produced save that mentioned in the exceptions. In addition to that, the exception does not refer to this so-called franchise for the city at all, but deals only with gas that the defendants may be bound to supply to individuals or municipalities, where the defendants' pipelines run over the lands of such individuals or municipalities. The parties never understood the agreement to authorise what was now being done, or the defendants would not have made the agreements referred to and have lost 15 cents per thousand for so long. The injunction sought should be granted, but it should not be allowed to operate so as to interfere with the supplying of gas to the National Machinery and Supply Company Limited, so long as their rights under the present contract continue; but as to all such gas the plaintiffs are entitled to recover by way of damages the difference between 20 cents and the plaintiffs' market-price of all gas supplied in the past or which may be supplied in the future, in violation of the covenant—to be from time to time determined by the Master, if not agreed between the parties. George Lynch-Staunton, K.C., and A. M. Harley, for the plaintiffs. George S. Kerr, K.C., for the defendants.