

were obtaining, or could obtain, from Schussler, No. 1 enough gas for their plant, and so, upon failure of that well, the defendants ought not to be liable to make good from other wells the shortage arising from such failure. I do not agree with this argument. It appears in evidence that Schussler No. 1 was not producing in 1894. The Master was right in leaving out of consideration, as I think he has done, anything about what plaintiffs obtained from, or represented could be obtained from, that well.

The Master is right, and for the reasons stated by him, in not allowing any damages for the period between 18th July and 15th November, 1894.

I also agree that if the plaintiffs are entitled to recover, they are entitled once for all; that this is a case within Rule 552, and damages may be assessed down to date of sale by plaintiffs to the Empire company in July, 1902.

I think plaintiffs are entitled to damages. On what principle are such damages to be assessed? It is not disputed that sufficient gas flowed from the wells purchased from plaintiffs, and through the main to which plaintiffs' pipe was attached, to operate plaintiffs' plant. There is evidence that the supply of gas is diminishing in some of the wells. That fact should be borne in mind in determining quantity flowing in earlier years, by tests applied in later years.

So much of the gas as would be sufficient to operate plaintiffs' plant may be regarded as belonging to plaintiffs, and defendants have converted this to their own use. That being so, the measure of damages is the value of the gas at the point where plaintiffs are entitled to get it.

It is argued that, as the plaintiffs obtained new territory, drilled new wells, and operated their plant by gas so obtained, the necessary expense of all this is what, if anything, plaintiffs must recover. This expenditure did result in plaintiffs procuring gas; this gas had a commercial value; and plaintiffs could have sold it, had they not required it in lieu of gas defendants retained, and so the plaintiffs are entitled to the value of the gas. There is evidence of a request by plaintiffs to Mr. Coste, the manager of the Provincial company, for gas, not a formal or specific demand under the agreement, but the writ was a demand as of that date, and, in view of the litigation between the parties, I think a formal demand was not necessary, or was dispensed with. The issue was