

BOYD, C.

MAY 29TH, 1912.

WELLAND COUNTY LIME WORKS CO. v. AUGUSTINE.

Res Judicata—Contract—Supply of Natural Gas—Non-fulfilment of Condition—Joint Contract—Forfeiture—Relief from—Parties—Judgment in Previous Action.

Action for an injunction and damages in respect of an alleged breach of an agreement.

W. M. German, K.C., and H. R. Morwood, for the plaintiffs.
S. H. Bradford, K.C., and L. Kinnear, for the defendants.

BOYD, C.:—The plaintiffs' rights in this case depend upon an agreement made between them and the defendants on the 20th November, 1903. By this the defendants agreed to give to the plaintiffs the usual oil and gas leases of their respective farms, "to continue so long as the plaintiffs continue to comply with the conditions agreed upon." The condition was, mainly, to supply, free of charge, sufficient gas to heat the defendants' houses.

A well was made and gas procured from it on the lands of one of the defendants, Shurr. From this source gas was supplied by the plaintiffs to both defendants down to June, 1911, when the plaintiffs cut off the supply of gas to the house of the defendant Augustine, and thereafter called upon Shurr to execute a lease of the gas wells as to his land. The defendant Shurr refused; and, in conjunction with Augustine, cut off the plaintiffs' pipes on his land and so stopped the supply of gas from the well in question so far as the plaintiffs were concerned. Then an action was brought by the company, in July, 1911, against Shurr alone, to restrain him from interfering with the gas well, and that he be ordered to carry out the terms of the agreement (i.e., as to the granting of a lease).

This action was tried before Mr. Justice Sutherland, who granted the relief sought, and referred it to the Master to settle the terms of the lease (see ante 398). Upon appeal to a Divisional Court this decision was reversed and the action dismissed (see ante 775). The Court held that the agreement was a joint one and not severable as to Shurr; that both were entitled to be supplied with gas; that the plaintiffs had no right to cut off Augustine and retain a right or claim as against Shurr; and it was further held that the plaintiffs had no right to demand a