In the Priby Council.

No. 37 of 1897.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

BETWEEN

J. T. JOHNSTON and THE TORONTO TYPE FOUNDRY COMPANY (LIMITED), who sue on their own behalf as well as on behalf of all other consumers of gas furnished by the Defendants in the City of Toronto . . . . (*Plaintiffs*) *Appellants*,

AND

THE CONSUMERS' GAS COMPANY OF TORONTO (*Defendants*) *Respondents*.

RECORD OF PROCEEDINGS.

INDEX OF REFERENCE.

In the Privy Council.

No. 37 of 1897.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

BETWEEN

J. T. JOHNSTON and THE TORONTO TYPE FOUNDRY COMPANY (LIMITED), who sue on their own behalf as well as on behalf of all other consumers of gas furnished by the Defendants in the City of Toronto . . . *(Appellants) Plaintiffs,*

AND

THE CONSUMERS' GAS COMPANY OF TORONTO *(Respondents) Defendants.*

RECORD OF PROCEEDINGS.

RECORD.

In the Court of Appeal for Ontario.

No. 1. Statement of Case. Writ issued 22nd Feb., 1894.

In the Court of Appeal for Ontario.

Case on appeal to the Court of Appeal for Ontario.

Between

J. T. Johnston and the Toronto Type Foundry Company (Limited), who sue on their own behalf as well as on behalf of all other consumers of gas furnished by the Defendants in the City of Toronto . . . . . *(Respondents) Plaintiffs,*

and

The Consumers' Gas Company of Toronto . . *(Appellants) Defendants.*

10 Writ issued 22nd day of February, 1894.

Statement of Case.

This action is brought by the Plaintiffs who are consumers of gas furnished by the Defendants, against the Defendants, who are an incorporated gas company, on the ground of the alleged non-compliance by the Defendants with the terms

RECORD.

In the Court of Appeal for Ontario.

No. 1. Statement of Case. Writ issued 22nd Feb., 1894 —*continued.*

of the Act passed by the Legislative Assembly of the Province of Ontario in the 50th year of Her Majesty's reign, chaptered 85, and intituled "An Act to further extend the powers of the Consumers' Gas Company of Toronto." The Plaintiffs alleging that the Defendants by their method of dealing have violated the provisions of the Act 50 Vict., chap. 85, and have used the moneys received by way of premium on the sale of their stock and their profits in a manner not authorised by the said Act and thereby have lost large amounts which should have been applied towards the reduction of the price of gas furnished to the Plaintiffs and other consumers of gas, and have improperly and by *ultra vires* acts deducted from profits large sums of money for depreciation in plant. The Plaintiffs ask for an account and repayment of the moneys alleged to have been overpaid, an injunction, mandamus and other relief.

The Defendants question the status of the Plaintiffs to bring this action and have raised this point by demurrer.

The Defendants deny that they have violated the terms of the Act and state that if they had followed the course the Plaintiffs insist they should have taken, it would have been much less beneficial to the Plaintiffs and other consumers of gas furnished by the Defendants, and that they have voluntarily reduced the price of gas to the consumers to a much greater extent than it would have been incumbent on them to have done had they acted in the premises in accordance with the Plaintiffs' contentions, and that the consumers of gas furnished by them have paid to them less therefor since the passing of the said Act than they (the Defendants) had the right to charge and collect.

This action was tried before the Honourable Mr. Justice Ferguson at Toronto, on the 30th and 31st days of May, 1895, on a special case, and judgment was delivered by him on the 9th day of September, 1895, against the Defendants, and this appeal is brought from such judgment.

In the High Court of Justice, Chancery Division, Ontario.

No. 2. Statement of Claim, delivered 21st March, 1894.

In the High Court of Justice.

Chancery Division.

Writ issued 22nd February 1894.

Between

J. T. Johnston and the Toronto Type Foundry Company (Limited), who sue on their own behalf as well as on behalf of all other consumers of gas furnished by the Defendants in the City of Toronto. . . . . *Plaintiffs,*

and

The Consumers' Gas Company of Toronto . . . . . *Defendants.*

Statement of Claim.

1. The Plaintiff is the managing director of the Toronto Type Foundry, and resides in the City of Toronto, in the County of York, and the Plaintiffs the Toronto Type Foundry Company Limited, are an incorporated company doing business in the said City of Toronto.

2. The Defendants are an incorporated company, doing business in the City of Toronto and its suburbs, as suppliers of gas for lighting and heating purposes.

3. The Defendants were incorporated by an Act of the Parliament of Canada passed in the eleventh year of the reign of Her Majesty Queen Victoria chaptered 14 and intituled " An Act to incorporate the Consumers' Gas Company of Toronto" which Act was assented to on the 23rd day of March, 1848.

4. That thereafter by various Acts of the Province of Canada and the Province of Ontario additional rights, powers, privileges and liberties were given to the said defendant company as follows:—by an Act of the Province of Canada passed in the eighteenth year of the reign of Her Majesty Queen Victoria, chaptered 215 and intituled "An Act to extend the powers of the Consumers' Gas Company of Toronto" and assented to on the 19th day of May, 1855; also by a further Act of the Province of Ontario passed in the 34th year of the reign of Her Majesty Queen Victoria intituled " An Act to amend the Acts incorporating the Consumers' Gas Company of Toronto," and which was assented to on the 15th day of February, 1871.

5. That from the incorporation of the said defendant company as aforesaid, they immediately thereafter began to manufacture gas and to supply the Plaintiffs and a large number of the citizens of the City of Toronto and suburbs with gas for lighting and heating purposes, and for which they were paid large sums of money by Plaintiffs and said citizens.

6. That prior to the 23rd day of April, 1887, the said defendant company being desirous of increasing their capital stock presented a petition to the Legislative Assembly of the Province of Ontario for authority to increase the capital stock of their said company, and the amount of their real estate to meet the requirements of the rapidly increasing population of the City of Toronto, and it was deemed expedient to grant the prayer of said petition, and thereupon an Act was passed in the 50th year of the reign of Her Majesty Queen Victoria, intituled "An Act to further extend the powers of the Consumers' Gas Company of Toronto," and chaptered 85, which said Act was assented to and came into force on the 23rd day of April, 1887.

7. By the first section of the said last mentioned Act it was provided that it should be lawful for the defendant company to add to their capital stock such an amount as should increase the same to a sum not exceeding $2,000,000 divided into shares of $50 each, provided that such increase of capital stock should be first agreed upon by a majority of the votes of the shareholders present at any annual general meeting or meetings, or at any general or special meeting of the shareholders called from time to time for that purpose.

8. That by the second section of the said Act it was further provided that it should not be obligatory upon the defendant company to sell at one time the whole amount of the stock authorised by the said Act, but the said defendant company might from time to time limit the number of shares to be offered for sale, to such an amount as might be from time to time agreed and decided upon by a majority of the votes of the shareholders present at any general or special meeting of the shareholders as aforesaid, called for that purpose.

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In the High Court of Justice, Chancery Division, Ontario.

No. 2. Statement of Claim, delivered 21st March, 1894 —*continued.*

9. By the fourth section of the said Act it was further provided that all shares which should be issued under the provisions of the said Act, should be sold by public auction after three weeks' notice in two of the daily newspapers, published in the city of Toronto, such shares were to be put up in lots of ten shares each, and all surplus realised over the par value of the shares so sold should be added to the rest or reserve fund of the defendant company until the same should be equal to one-half of the paid up capital stock of the defendant company, the true intent and meaning being that the defendant company might at all times have and maintain a rest or reserve fund equal to but not exceeding one-half of the then paid up capital stock of the company, and which rest or reserve fund might be invested in any of the following securities, namely:— Dominion or provincial stock, municipal debentures, school debentures, drainage debentures, debentures of loan companies, and mortgages on real estate.

10. It was further enacted by the sixth section of the said Act that there should be created and maintained by the said defendant company, out of the earnings of the said company another fund to be called the plant and buildings renewal fund to which fund should be placed each year the sum of five per cent. on the value at which the plant and buildings in use by the defendant company should stand in the books of the defendant company at the end of each fiscal year of the defendant company, and all usual and ordinary renewals and repairs should be charged against such fund.

11. By section 7 of the said Act it was further enacted that any surplus of net profits from any source whatever, including premiums on sales of stock, after the rest or reserve fund should have been established and maintained as above mentioned, remaining at the close of any fiscal year of the defendant company after payment of fees to the president, vice-president and directors of the said defendant company (not exceeding in all the sum of $9,000,000 per annum) after payment of dividends at the rate of ten per cent. per annum on the paid up capital stock of the said defendant company, and the establishment and maintenance of the said rest or reserve fund, and providing for said plant and buildings renewal fund, should be carried to a special account to be known as "the special "surplus account" and whenever the amount of such surplus became equal to five cents per thousand cubic feet on the quantity of gas sold during the then preceding year the price of gas should be reduced for the then current year at least five cents per thousand cubic feet to all consumers.

12. That since the passing of the Act above mentioned the Plaintiff and all the other consumers of gas in the City of Toronto and suburbs, have been large consumers of gas, and have paid therefor large sums of money to said defendant company, and as such consumers as aforesaid have a right to the enforcement of the above mentioned Act of 1887 and all provisions in their favour against the said defendant company.

13. That at the time of the passing of the last above mentioned Act of 1887, the said defendant company had a surplus of profits on hand and which was to have formed the nucleus of the rest or reserve fund and which at the time of the passing of the said Act amounted to about the sum of $394,310.

14. That after the passing of the said Act and up to the 19th of August, 1889, the defendant company at divers times and places in the City of Toronto,

after giving due notice as provided by the said statutes offered and sold $493,200 of the increased capital stock for sale, on which was realised the sum of $455,482.26 premiums which, if added to the rest or reserve of $394,310 in the hands of company above mentioned on the passing of the said Act in 1887, would have made a sum of $849,792.26 which, the Plaintiffs submit would have been more than sufficient to establish the rest or reserve fund referred to in the fourth section of said Act, and which should have been invested in any one or more of the securities set out in the said fourth section of the said Act.

15. The Plaintiffs charge that the said Defendants in fraud of the Plaintiffs and contrary to the provisions of the said Act, instead of forming the said rest or reserve fund as directed by the said Act, and investing the same as therein directed used the same for other purposes and invested the same in plant and material contrary to the intention and meaning of the said fourth section of the said Act.

16. The Plaintiffs further say that the said Defendants in fraud of the said Plaintiffs instead of forming and creating a plant and buildings renewal fund as directed by the fifth section of said Act neglected and refused to form the same and used the moneys received by them from premiums and profits for their own uses and other purposes than those directed by the said Act.

17. The Plaintiffs charge that the defendant company (in addition to the two sums of reserve and premiums last above mentioned amounting to the sum of $849,792.26 which have been misapplied as above mentioned) have made large profits in their business from the time of the passing of the said Act down to the present time, amounting in all to about $250,000 net profit which should have been applied by the defendant company in forming the special surplus account to be used in the reduction in the price of gas to the Plaintiffs from time to time as the same was earned since 1887.

18. The Plaintiffs claim that by reason of the misappropriation of the fund above mentioned, the said defendant company have lost the interest which but for such misapplication would have been received from the investment of the reserve fund under the fourth section of the said Act, from the 31st of March, 1887, to the 30th of September, 1893, which amounts to the sum of $317,550.34, and which should have been applied in the reduction of the price of gas to the Plaintiffs as provided by the said Act.

19. That on the 2nd day of October, 1893, the said Defendants under the provisions of the said Act offered about $100,000 of the increased capital stock of said company for sale and realised the sum of $83,040 as premiums which should as the Plaintiffs submit be added to the special surplus account and be used in reduction of the price of gas charged to the Plaintiffs.

20. That prior to the commencement of this action the Plaintiffs requested the defendant company to comply with the provisions of the above-mentioned Act, and for an account, and to repay the money overpaid by said Plaintiffs, but the defendant company refused and still refuse to comply with the same, or to account and repay the Plaintiffs the money overpaid.

21. The said defendant company claims to have the right, and will unless restrained by the order and injunction of this honourable Court, invest the said sum of $83,040.00 received by them as premiums from the sale of stock on the

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In the High Court of Justice, Chancery Division, Ontario.

No. 2. Statement of Claim, delivered 21st March, 1894 —*continued.*

2nd day of October, 1893, in their permanent plant, and the said Defendants threaten and intend to do so, and refuse to add the same to the special surplus account as provided by the said statute so that the same may be applied in the reduction of the charge for gas to the Plaintiffs for the present year.

22. The said defendant company threaten and intend to use the other profits arising from their business in the purchase of permanent or other plant, contrary to the provisions of the said Act.

23. The Plaintiffs submit that by reason of the premises and the misapplication and misappropriation of the profits and premiums above-mentioned by defendant company, they have been compelled to pay and have paid to the said defendant company during the years 1889, 1890, 1891, 1892 and 1893 large sums of gas rents in excess of what was justly due to the defendant company, and which through the wrongful acts of the said company have been paid to them as aforesaid, and claim a return of the same from said defendant company, and that an account may be had for that purpose.

24. The Plaintiffs therefore claim;

1. That a reference may be directed to take an account of the surplus in defendant company's hands at the passing of the Act of 1887, together with an account of the receipts of the defendant company from all sources from the 23rd March, 1887, and all disbursements made by them from that time, and all profits made from time to time since the passing of the said Act.

2. That a mandatory order may be issued directed to the defendant company to compel them to comply with all the obligatory provisions of the said Act not already complied with as above set out.

3. That a mandatory order be issued directed to said defendant company, ordering them to form the reserve fund referred to in the 4th section of the said Act, and to invest the same in some one or more of the securities therein referred to, and that the said defendant company be ordered to pay interest at the rate of 6 per cent. per annum on the said reserve fund from the time when the said defendant company received the same or any portions thereof.

4. That the said defendant company by the like order be directed to create and maintain the plant and buildings renewal fund referred to in the sixth section of the said Act from such time as the funds enabling him to do so came into their hands, and that any expenditure in excess of the amount provided for in said section, be charged against the defendant company.

5. That the said defendant company by a like order be directed to enter all surplus profits from the time they first accrued together with interest on the reserve fund at 6 per cent. per annum in a special surplus account as provided in the said Act, and that all the Plaintiffs be declared entitled to a reduction in the price of gas as provided in said Act as and from such time and to such extent as the said profits including the interest on the said reserve fund shall show them entitled, and that the defendant company be ordered to pay the same into Court to the credit of the Plaintiffs.

6. That the said defendant company be declared to be trustees for the Plaintiffs for all sums of money by them received and misappropriated as above mentioned, and which should have been allowed to the Plaintiffs in the reduction of the price of gas as provided in said Act and that an account be directed to be

taken against said company of all moneys misappropriated by them with rests at the rate of six per cent. per annum from the date at which Plaintiffs shall be found entitled to any reduction in the price of gas under the provisions of the Act of 1887, as above set out.

7. That an order be issued restraining the defendant company, their agents or servants from further misapplying the profits of the said company together with the sum of $83,040, received by them as premiums on the sale of stock, and that the same may be ordered to be paid into Court.

8. That for the purposes aforesaid all proper directions may be given and accounts taken.

9. For such other and further relief as to the said Court shall seem just, or the nature of the case may require.

10. That the defendant company may be ordered to pay the costs of this action.

The Plaintiff proposes that this action should be tried at the City of Toronto, in the County of York.

Filed and delivered this 21st day of March, 1894, by John McGregor of Nos. 28-30 Toronto St., Toronto, solicitor for the Plaintiff.

No. 3. Statement of Defence, 5th April, 1894.

Statement of Defence.

1. The Defendants admit that they were incorporated by the Act of Parliament mentioned in the third paragraph of the statement of claim, and that they are subject to the Act of Parliament and the several Acts of the Legislative Assembly of Ontario, referred to in paragraphs numbered four and six of such statement of claim, but they deny the correctness of the Plaintiff's statements as to the terms and effect of such Acts, and except as herein admitted they deny all the allegations of the statement of claim.

2. The Defendants admit that since their incorporation they have manufactured gas and supplied a large number of the citizens of Toronto with gas for lighting and heating purposes.

3. The Defendants say that by the proper construction of the Acts relating to their rest or reserve fund and plant and buildings renewal fund they are not restricted in making investments to the specified securities but are entitled to invest the same or part thereof in the general business of the company.

4. The Defendants deny that they have ever acquired within the meaning of said Acts a rest or reserve fund amounting at any time to one-half of the paid-up capital of the Defendants.

5. The Defendants deny that their surplus of net profits has ever amounted to such a sum as would impose on the Defendants the duty of reducing the price of gas under the provisions of said Act passed in the 50th year of her Majesty's reign, but the Defendants say that they have from time to time voluntarily reduced the price of gas to a much greater extent than it would have been incumbent on them to do had they acted in the premises in accordance with the Plaintiff's contentions and they say that all consumers of gas furnished by the

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Defendants have paid to the Defendants less therefor since the passing of said Act than the Defendants had the right to charge and collect.

Delivered the 5th day of April, 1894, by Messrs. Mulock, Miller, Crowther & Montgomery, of 99 King Street East, in the City of Toronto, Defendants' solicitors.

Demurrer.

No. 4. Demurrer, 5th April, 1894.

The Defendants demur to the Plaintiff's statement of claim and say that the same is bad in law, on the following grounds:—

1. That the statement of claim shows no cause of action or title to the relief claimed by the Plaintiff against the Defendants.

2. That the Plaintiff has no *locus standi* to bring this action against the Defendants or to claim the relief sought for herein.

3. That the Plaintiff does not represent and cannot sue on behalf of the public or that portion of the public interested in the matters in question.

And on other grounds sufficient in law to sustain the demurrer.

Delivered the 5th day of April, 1894, by Mulock, Miller Crowther & Montgomery, of 99 King Street East, in the City of Toronto, Defendants' solicitors.

No. 5. Joinder of Issue, 7th April, 1894.

Joinder.

The Plaintiff joins issue on the statement of defence delivered by the Defendants the 5th day of April, 1894.

Delivered this 7th day of April, 1894, by John MacGregor, of the City of Toronto, in the County of York, solicitor for the Plaintiff.

No. 6. Order adjourning Demurrer to trial of Action, 17th April, 1894.

Before the Honourable Chief Justice Armour.

Tuesday the 17th day of April, 1894.

Order.

The demurrer of the Defendants to the Plaintiff's statement of claim delivered herein having come on before this Court this day for argument in presence of counsel for the Plaintiff and Defendants, and upon hearing read the pleadings, the demurrer of the Defendants and the affidavit of W. H. Pearson, filed, and upon hearing what was alleged by counsel aforesaid.

This Court doth order that the said demurrer do stand adjourned until the trial of this action.

A. F. MACLEAN,
Clerk Weekly Court.

Entered 14th May, 1894, J.B. 20 p. 89, W.O., N.

Special Case.

The pleadings in the action are hereunto annexed and may be referred to as showing the questions in issue and the parties have agreed upon the following facts which are stated in the form of a special case on which the judgment of the Court is to proceed.

1. The defendant company by petition applied to the Legislature of Ontario in 1886, for an Act empowering them to increase their capital stock by $1,000,000. This was opposed by the City of Toronto. After many discussions before the Private Bills Committee, the Act entitled "An Act to further extend the powers of The Consumers' Gas Company of Toronto," being chapter 85 of 50 Victoria, was passed.

2. The defendant company had prior to the passage of the said Act accumulated $394,310.27 out of the profits after the payment of the dividends to the shareholders of the company. Of this sum $322,830.24 was standing to the credit of "profit and loss" and $71,480.03 to the credit of the "contingent account" as of October 1st, 1886. Of the amount at credit of profit and loss $305,037.92 was at that date invested in municipal debentures and the residue in the business of the company. These sums amounting together to $394,310.27, it is presumed constituted the rest or reserve fund referred to in the 4th section of the said Act.

3. On the 5th of July, 1887, the defendant company sold under the provisions of the Act, stock amounting to $200,000 upon which was realised during that year premiums amounting to $119,473.80. In the following year the sum of $40,863.70 was received, being the balance of the premiums on the said stock. On the 5th of July, 1889, stock to the amount of $125,000 and on the 19th of August in the same year additional stock to the amount of $175,000 making for the year $300,000 was sold, and premiums to the amount of $222,053.25 were realised on account thereof. In 1890, an additional sum of $5,002.50 was received in full of the premiums on the stock sold the preceding year. In 1891, a further sum of $100,000 of stock was sold upon which the sum of $67,924.91 was received as premiums and in 1892 a further sum of $164.10 was also received as a balance of the said premiums. On October 2nd in the year 1893, a further lot of stock, viz., $100,000 was sold, and premiums realised thereon amounting to $83,042.45. The total premiums realised from the sale of the $700,000 par value of stock, amounted to the sum of $538,524.71. But on the 1st of October, 1893, the amount received for premiums was only the sum of $455,482.26, the remaining sum of $83,042.45 being received in the company's financial year commencing on the said 1st of October.

4. The said sums were deposited in the defendant company's general bank account which was drawn upon as required for the payment of land and the erection of buildings and plant, and for the general business of the company, the defendant company keeping but one bank account.

5. There is yet remaining a further sum of $300,000 of the company's stock un-issued.

6. The company after the passage of the Act opened an account in their books called the "Reserve Fund Account" at the credit of which on the 1st day of October, 1893, stood the sum of $742,758.13.

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No. 7. Special Case and Annual Reports annexed, 22nd May, 1895 —*continued.*

7. Of the said sum there was on the said first day of October, 1893, the sum of $221,967.37 invested in municipal debentures, and on the 1st of October, 1894, there was $129,246.53 in debentures. The residue of the said sum of $742,758.13 had prior thereto been invested or expended in the construction or acquisition of lands, buildings and plant for the purposes of its business.

8. The defendant company had invested in plant in actual use on the 30th of September, 1887, the sum of $1,145,543.30, and on that day the sum of five per cent. thereon was credited to an account called the "Plant and Buildings Renewal Fund Account" being the first item entered in the said account. On the 1st of October, 1893, the value of the plant in use was $2,292,465.18 and of the plant not in use the further sum of $94,500, making altogether the sum of $2,386,965.18. And the defendant company have expended in actual, usual, and ordinary repairs and renewals, the sums shown in the first column below, while the amount credited to the plant and buildings renewal fund account were the sums stated in the second column; and the third column gives the value of plant actually in use in each year;—

1887,	$23,107.53	$57,277.17	$1,145,543.30
1888,	21,555.64	63,591.46	1,271,829.31
1889,	24,929.90	95,641.73	1,912,834.71
1890,	54,074.23	54,702.29	1,957,780.92
1891,	55,453.24	68,484.49	1,983,524.98
1892,	49,703.57	102,442.97	2,048,859.51
1893,	88,768.12	114,623.25	2,292,465.18
Totals	$317,592.23	$556,763.36	

9. From the foregoing statement it appears that the company did not in the years 1890 and 1891, carry to the credit of the said fund five per cent. on the plant and buildings in use but merely the sum which after the appropriations was at the balance of profits for these years. The difference is shown by these figures:—

1890.	5 per cent. was	$97,889.04
	Amount credited	54,702.29
1891.	5 per cent. was	99,177.14
	Amount credited	68,484.49

10. The following table shows the amounts invested by the defendant company in works, plant and trade material, their paid up capital stock and the amounts so invested in excess of paid up capital during the years named;—

Years.	Work, plant & trade material	Paid up capital	In excess of paid up capital.
1887,	$1,413,739.72	$1,148,960	$264,779.72
1888,	1,834,536.83	1,200,000	634,563.83
1889,	2,108,256.96	1,493,200	615,056.96
1890,	2,233,863.77	1,500,000	733,863.77
1891,	2,239,096.61	1,599,760	639,336.61
1892,	2,361,817.14	1,600,000	761,817.10
1893,	2,576,360.71	1,600,000	976,360.71

11. The increase in plant between 1887 and 1893 was not at all absolutely necessary for the company's business during the said periods and the additional plant so added has not yet, owing, it is alleged by the defendant company to an unprecedented period of depression, all come into full use. The defendants directors expended the moneys in hand received from the sale of the stock including the premiums to make provisions not merely for the then requirements of the company's business, but for the increased gas consumption anticipated yearly within the next five years, this being in their view a judicious expenditure in the interests of the company.

12. In addition to the various sums charged above in 1890, the defendant company charged against profits the sum of $15,000 "for depreciation in street lamps," and in 1891, a further sum of $43,000 "for a depreciation in street lamps." This latter was charged against the reserve fund account.

13. The depreciation in street lamps took place in a portion of the company's plant that was not intended to be renewed or repaired and which was in fact no longer of any use and was of little if any value to the company.

14. In 1887 the defendant company borrowed from the Dominion Bank the sum of $42,737.43.

In 1888 a further sum which with the amount previously borrowed amounted to . .	$151,727.61
And from the National Bank of Scotland . .	194,000.00
In 1889, from the Dominion Bank . . .	49,857.59
In 1890, from the Dominion Bank . . .	11,982.55
And from the National Bank of Scotland . .	145,333.33
In 1892, the company borrowed from the Dominion Bank	75,453.26
In 1893, from the Dominion Bank . . .	261,105.02

These loans were repaid from time to time and the amounts stated as having been borrowed in any year were the sums appearing as a liability for money borrowed at the end of the company's fiscal year, and the sum borrowed in 1893 has been since paid off.

15. The Plaintiff, Johnston, has been a consumer of gas since 1887 and has paid large sums of money to the Defendants therefor. In the month of January, 1893, the Plaintiffs, the Toronto Type Foundry Company, (Limited), notified the defendant company that they had purchased Johnston's business and that for the future all gas bills were to be charged to the Type Foundry Company. This was not done, and the Plaintiff, Johnston, is and always has been primarily liable to the defendant company therefor, and the Plaintiff Johnston is the managing director and the largest stockholder in the Toronto Type Foundry Company (Limited).

16. The Plaintiff Johnston's solicitor, on the 21st day of February, 1894, before action, wrote to the company the letter, a copy of which is as follows:—

Toronto, Feb. 21st, 1894.

Dear Sir,—

I am instructed by Mr. J. T. Johnston, of this city, on behalf of himself and all other consumers of gas in the city of Toronto, to enforce compliance by your company with the provisions of the Ontario Statute, 50 Vict., chapter 85, which

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No. 7. Special Case and Annual Reports annexed, 22nd May, 1895 —*continued.*

provisions imposed on your company the observance of certain statutory conditions of vital importance to the gas consumers of the city.

My client claims that you have missapplied moneys amounting (including interest) to upwards of $1,500,000; my client also claims that he is entitled to a very considerable amount in respect to over payments in the past.

I am instructed to ask for an account of the receipts and disbursements of your company as and from October, 1886, down to and inclusive of the 2nd October, 1893, and particularly as to the application of $83,040 representing premiums on sale of $100,000 new shares on that date, and also for a mandamus compelling your company to carry out in their integrity the provisions of 50 Vict., cap. 85, and for an injunction to restrain your company its directors and officers from further misapplying the premiums on new shares sold and other profits of the company to purposes unauthorised by and contrary to the said statute.

Yours truly,
JOHN MACGREGOR

W. H. Pearson, Esq.,
Manager Consumers' Gas Co., Toronto.

To which the defendant company replied in the words following, that is to say:—

Toronto, 21st Feby., 1894.

John MacGregor, Esq., Barrister,
28 & 30 Toronto St., City.

Dear Sir,—

I have your favour of the 21st instant, and in reply beg to say that this company has in all respects complied with the provisions of the statute.

Yours truly,
W. H. PEARSON,
General Manager and Secretary.

17. By an order made by the Master in Chambers herein since the commencement of this action, the Type Foundry Company has been added as a party Plaintiff hereto.

18. Both Plaintiffs bring this action on behalf of themselves and all other consumers of gas in the city of Toronto and claim the relief set out in their statement of claim.

19. The figures mentioned are for the purpose of this case only and should a reference be directed are not to be binding on either party on such a reference.

20. Hereunto annexed are the statements showing profit realised by the defendant company for the years 1886 to 1894, both inclusive and their balance sheets for the same years.

Upon the above facts the Court is to determine;—

1. Whether the Plaintiffs or either of them have or has a right to maintain this action.

2. Whether the Defendants were obliged to include in the rest or reserve fund which the Act 50 Vict. cap. 85 directed or authorised them to have (a) the moneys which the company had standing to the credit of profit and loss account

(b) to the credit of contingent account at the time of the passage thereof, and (c) all the moneys received from the premium of stock on the sale of stock authorised by the Act to be sold, until the said fund amounted to fifty per cent. of the paid up capital of the company.

3. Was it *ultra vires* of the company to invest or use the reserve fund or any portion of it in the purchase or construction of their plant or buildings or in their business generally.

4. Was it *ultra vires* of the company to invest the premiums received on the sale of stock or any part thereof, in the erection of buildings, until the rest or reserve fund had been found equal to one-half of the paid up capital of the company?

5. Whether the Defendants did establish, maintain, invest and use the rest or reserve fund in accordance with the provisions of this Act?

6. And if not, in what respect the company failed to comply with the requirements of the Act in that behalf?

7. Has the "Plant and Buildings Renewal Fund" ever been created or maintained within the meaning of the Act?

8. After providing for all usual and ordinary repairs and renewals, was it *ultra vires* of the company to invest and use the surplus of the plant and buildings renewal fund in their general business, or was the fund to be kept separate from the other moneys of the company uninvested?

9. If the usual and ordinary repairs and renewals did not amount to as much as the five per cent. referred to in the Act, should the full five per cent. be carried to the credit of the plant and buildings renewal fund, or only sufficient to cover the usual and ordinary repairs?

10. In addition to keeping the plant and buildings in repair by means of this fund has the defendant company the right to write off sums of money from profits for depreciation in plant?

If the Court should be of opinion that the Plaintiffs had not nor had either of the Plaintiffs a right to maintain this action, then judgment is to be entered for the Defendants with costs.

But should the Court be of opinion that the Plaintiffs or either of them has a cause of action then such judgment is to be entered in their favour or in favour of the Plaintiffs entitled, as the Court may think fit to direct.

The foregoing eight pages together with this page constitute the special case agreed upon between the parties hereto.

Dated this 22nd day of May, 1895.

JOHN MACGREGOR,
Plaintiffs' Solicitor.

Mulock, Miller, Crowther & Montgomery,
Solicitors for Defendants.

RECORD.

In the High Court of Justice, Chancery Division, Ontario.

No. 7. Special Case and Annual Reports annexed, 22nd May, 1895 —*continued.*

Thirty-eighth Annual Report of the Directors of the Consumers' Gas Company of Toronto.

1. The directors, have again with satisfaction, to report another year of gratifying progress in the business of the company, resulting from the continued rapid growth of the city, the liberal policy pursued towards the public, and the high standard of the illuminating power of the gas.

2. The rapid increase in the consumption, has rendered necessary, very considerable additions, alterations and improvements to the works, amongst which are the following:—

3. The erection of a new stack of ten benches of retorts—60 mouthpieces—with new hydraulic mains, &c., upon an improved principle to replace an old stack, from which satisfactory results could not be obtained—two large multitubular condensers—a "Standard" washer-scrubber of 1,000,000 cubic feet per diem capacity—two exhausters with engines—1, 12 ft. by 12 ft. station meter—four purifiers 24 ft. by 20 ft. by 4 ft. deep, with 20 inch centre valve, and the enlargement of the coal gas purifying house to receive these purifiers, which are hereafter to be used for the purification of the water gas.

4. Most of these, with other additions and alterations, have been completed, and were adopted with the view of utilising to the utmost extent, the present works of the company, before undertaking the erection of others, which would involve a largely increased expenditure.

5. The prospect of a continued increase in the consumption of gas, together with the extraordinarily rapid development of the western and north-western portions of the city, impressed upon the directors the importance and necessity, of making adequate provision to meet it. They accordingly determined upon securing property in the west end, for the purpose of erecting a large gas-holder thereon, and have entered into an agreement for the purchase of a suitable lot, which it is expected will be carried out in due course. Meanwhile, a sufficient quantity of 20-inch main pipes has been purchased, for conveying the gas from the works to the new holder, and a considerable portion of it, has been already laid.

6. During the year 14,311 yards of new mains have been laid and 1,140 new services put in.

7. After careful consideration, the directors resolved to make the following reductions per thousand feet in the net prices of gas, taking effect from 1st October, 1885.

To consumers of under 200,000 cubic feet per annum from . .	$1.50 to 1.25
„ „ over 200,000 „ „ „ and under 500,000 from	1.30 „ 1.15
„ „ „ 500,000 „ „ „ from . .	1.30 „ 1.10
For gas for cooking stoves and engines, from	1.25 „ 1.00

thus making the prices for gas sold for illuminating purposes, lower than those charged by any other company in Canada, and as far as could be ascertained, lower than any other place on this continent, with two or three exceptions—

8. Although these reductions have caused a considerable falling off in the amount of gas rental and profit, as compared with the preceding year, still there has been—mainly on account of these reductions—a large increase in the number of consumers and in the quantity of gas consumed.

9. After vexatious and protracted delays and negotiations, a five years' street lighting contract dating from the 1st January last, was entered into with the city corporation, the price charged per lamp being $20.50—a reduction of $3.85 per lamp from the amount charged under the former agreement.

10. Ninety-three large "Lambeth Lanterns" are now in use both for public and private lighting, and those have in numerous instances, superseded or prevented the adoption, of other modes of lighting.

11. The "Standard" washer-scrubber introduced, will enable the company to produce ammoniacal liquor, of sufficient strength to make it of considerable commercial value, and negotiations are now being entered into, for its sale.

12. The illuminating power of gas supplied during the year, has averaged about 18 candles.

13. The quantity of gas used by gas stoves and engines, has been fully 25 per cent. over that of the preceding year.

14. These large extensions and improvements have not been made, without recourse to the bank, and as they cannot be completed without incurring still larger advances, the directors have resolved to apply to Parliament for a further increase of capital, at the next Session of Provincial Legislature, and necessary steps have been taken, for this purpose.

15. The following statement, compared with that, of the preceding year shows:—

	Street lamps.	Consumers.	Gas rental.
For the year ending 30th September, 1886	2,768	7,861	$323,889.04
" " 1885	2,557	6,778	353,498.39
Or, an increase of	211	1,083	and a decrease of $29,609.35

16. The secretary and other officers and employees, have exhibited their usual zeal in promoting the interests of the company, and have discharged their several duties to the entire satisfaction of this board.

All of which is respectfully submitted.

JAMES AUSTIN,
President.

Statement showing profit realised by the Consumers' Gas Company of Toronto, in twelve months, from 1st October, 1885, to 1st October, 1886.

1886	Dr.	$ c.
Oct. 1	To Coal, bituminous	19,711.20
	,, ,, anthracite	46,983.75
	,, Oil	28,734.47
	,, Salaries	15,499.99
	,, Auditors	400.00
	,, Stationery and advertising	1,841.64
	,, Insurance	1,042.16
	,, Rent, Mill St. property	210.00
	,, Supt. works, stokers and engineers	19,862.75
	,, Repairs, renewals, and charges at works	18,803.01
	,, ,, tools	2,405.06
	,, ,, mains and services	11,574.10
	,, ,, street lamps	2,499.07
	,, ,, meters, wear and tear	7,180.36
	,, Purification, lime and wages	6,594.82
	,, Lamplighting	15,064.82
	,, Meter settings and indications	3,697.71
	,, Retorts, renewals and repairs	511.64
	,, Meter inspection	1,300.00
	,, Tank cars	400.00
	,, Directors' compensation	6,780.00
	,, Taxes	4,344.35
	,, Sundries	10,010.84
	,, Balance	109,570.72
		335,022.46

1886	Cr.	$ c.
Oct. 1	By Gas rents	323,889.04
	,, Office rents	3,000.00
	,, Tar	1,560.77
	,, Coke	6,572.65
		335,022.46

1886		
Oct. 1	To Dividends	100,000.00
	,, Interest	1,357.19
	,, Depreciation street mains	10,000.00
	,, Balance profit carried down	322,830.24
		434,187.43

1886		
Oct. 1	By Balance brought down	109,570.72
	,, Interest on debentures	15,952.35
	,, Profit to October 1st, 1885	308,664.36
		434,187.43
1886		
Oct. 1	By balance profit Oct. 1, 1886	322,830.24

J. AUSTIN, President.

(L.S.) W. H. PEARSON, Secretary.
J. W. BRENT,
W. G. CASSELS, Auditors.

Toronto, 13th October, 1886.

Balance Sheet of the Consumers' Gas Company of Toronto, 1st October, 1886.

1886	Liabilities.	$ c.
Oct. 1	Capital stock	1,000,000.00
	Contingent account	71,480.03
	Sundry accounts owing	35,272.20
	Dominion Bank	111,726.81
	Profit and loss	322,830.24
		1,541,309.28

1886	Assets.	$ c.
Oct. 1	Works	452,438.55
	Old building and lot, Toronto St.	12,838.67
	New " " "	34,083.76
	Old County Gaol property	20,000.00
	Street mains laid	407,047.31
	Services	51,115.94
	Main pipes and specials	14,687.64
	Service pipes and fittings	3,030.60
	Street lamps	52,613.83
	Tank cars	2,518.00
	Retorts, fire clay and brick	11,229.58
	Meters	72,088.86
	Tools	2,758.29
	Office furniture	1,569.84
	Gas engines and stoves	6,829.39
	Coal	30,748.97
	Oil	1,026.88
	Coke	250.00
	Tar	3,455.00
	Oxide of iron	804.35
	Cash	41.51
	Debentures	305,037.02
	Gas accounts owing	52,000.00
	Sundry accounts owing	3,095.29
		1,541,309.28

J. AUSTIN,
President.

(L.S.) W. H. PEARSON,
Secretary.

Having made the usual necessary examination of the company's books we beg to report that we find them quite correct and very satisfactory.

J. W. BRENT,
W. G. CASSELS,
Auditors.

RECORD.

In the High Court of Justice, Chancery Division, Ontario.

No. 7. Special Case and Annual Reports annexed, 22nd May, 1895 —*continued.*

Thirty-ninth Annual Report of the Directors of the Consumers' Gas Company of Toronto.

1. For many years past, the directors have been enabled to report a steady and gratifying increase in the business of the company. In now presenting their annual report, with the accompanying statements, they have pleasure in stating that the ratio of increase has been more than maintained during the past year. That this has been so, is a gratifying evidence to them of the wisdom of the course pursued in dealing liberally with their customers, in placing the price of gas at so low a figure as to make it cheaper than any other illuminant.

2. The negotiations to secure a lot in the west end of the city—referred to in the last annual report—resulted in the company's purchasing from Mr. John Doty the property on the west side of Bathurst, opposite to Front Street. On this lot, the excavating for a brick gasholder tank, 150 feet in diameter by 35 feet 10 inches deep, was commenced in February last, and the whole work has just been completed by the contractor, Mr. E. A. Smyth, of St. Catharine's, from the plans and specifications prepared by the secretary, and under his supervision.

The contract for the gasholder has been awarded to the well known firm of Messrs. C. & W. Walker, of Donnington, England. A considerable portion of the material is now on the ground and the construction of the holder is to be commenced about 1st April next, to be finished by about 1st August. This holder will have a capacity of about 1,200,000 cubic feet, and will be by far the largest in Canada, and amongst the largest on this continent.

3. The rapid increase in the consumption of gas has rendered it imperative to erect an entirely new works, as well as to make provision for the erection of another coal shed; the capacity of the present works being barely sufficient for the coming winter. To provide space for these works, it has been found necessary to acquire additional property. Accordingly, two very suitable lots on the west side of Berkeley Street south of Front Street, immediately opposite to the company's property on the east side of Berkeley Street have been purchased. On this additional property it has been decided to build a new purifying house and coal shed, and to erect a retort house, and the other buildings, on the company's property on the east side of Berkeley Street. The walls of the purifying house are nearly finished, the retort house is well advanced, and it is expected that these buildings will be completed by the end of the present year. The plans for these buildings, with the exception of the iron roof for the retort house, were prepared by Messrs. Strickland & Symons, architects, in which they were aided by the practical experience and suggestions of the secretary and superintendent of the works; the erection of the buildings being carried on under the superintendence of the architects. The iron roof is to be constructed by Messrs. R. & J. Dempster, of Manchester, England, from their designs. The erection of the other buildings is to be commenced as early in the spring as possible. A contract for the erection of some benches with regenerative furnaces has been entered into, arrangements are being made for the erection of the

various apparatus required, and it is hoped that before this time next year the works will be in operation. It is intended that these works shall be amongst the most complete, as they will be amongst the largest, in America. Their capacity will be 4,000,000 cubic feet per diem. This, added to that of the present works, will make a total of 6,000,000 cubic feet per diem. It is intended, in the first instance, only to erect a sufficient number of benches of retorts for the manufacture of about 1,000,000 feet, with other plant of 2,000,000 feet capacity and to add thereto hereafter as it may be found necessary.

4. During the year 24,051 yards, or about 13⅔ miles, of new mains have been laid, and 1,550 new services put in.

5. The increase in the consumption of gas for cooking, heating and motive power, has been very satisfactory, the quantity being nearly double that of two years ago. There has also been a very considerable increase in the number of high candle power gas lamps used.

6. Application was made to the Legislature of Ontario, at its last session, for power to increase the capital stock of the company to $2,000,000, the new stock to be allotted to the stockholders, as had been usual, *pro rata* at par. This last provision was most strenuously opposed by the City of Toronto, represented by the mayor and by other members of the legislative committee of the city council, principally on the ground that it would be a bonus to the stockholders, which, it was claimed, was not contemplated when the company obtained its Charter. After many protracted discussions, at which the representatives of the company strongly advocated and supported the right of the company to such an allotment, it was finally considered prudent, rather than to withdraw the bill, to consent to a compromise, and at the same time settle for ever the vexed question of the company's right to accumulate a reserve fund, and by so doing pursue a conciliatory course with the city, between whom and the company, the directors consider the most harmonious relationships should always exist. A bill, drawn out in accordance with the terms agreed upon, was ultimately passed by the legislature, a copy whereof has been mailed to all the stockholders.

At a special meeting of the stockholders, held on 26th May last, the action of the directors in consenting to this amendment, was unanimously approved of, as the best arrangement which, under the circumstances, could possibly have been made.

At this meeting a by-law was passed adding to the company's stock $1,000,000, and the directors were then authorised to sell and dispose of, in manner provided by the Act, any amount of such stock up to $500,000, and they decided to dispose of $200,000, which was sold by public auction, on 5th July, at the average premium of 80.33 per cent.

The directors have to regret the loss, during the past year, of one of their most useful members by the death of Mr. Samuel Platt, a gentleman of long standing at the board, whose thorough integrity and honesty of purpose had won for him the cordial esteem and respect of all his associates.

RECORD.

In the High Court of Justice, Chancery Division, Ontario.

No. 7. Special Case and Annual Reports annexed, 22nd May, 1895 —*continued.*

The following statement, compared with that of the preceding year, shows:

	Street Lamps.	Consumers.	Gas Rental.
For the year ending 30th September, 1887	3,002	9,004	$378,705.37
„ „ „ 1886	2,768	7,861	323,889.04
Showing an increase of	234	1,143	$54,816.33

The large increase in the company's business, in addition to the great extent of the works in progress, has naturally added materially to the work imposed upon all the officers of the company, besides requiring the exercise of more than usual vigilance, judgment and care on the part of the secretary, and the heads of departments; and the directors have much pleasure in testifying to the very efficient manner in which their several duties have been performed.

All of which is respectfully submitted.

JAMES AUSTIN, President.

Statement showing profit realised by the Consumers' Gas Company of Toronto, in twelve months, from 1st October, 1886, to 1st October, 1887.

1887	Dr.	$ c.
Oct. 1	To Coal, bituminous	52,377.74
	„ „ anthracite	43,678.16
	„ Oil	26,933.91
	„ Salaries	16,170.83
	„ Auditors	400.00
	„ Stationery and advertising	1,255.45
	„ Insurances	1,110.68
	„ Rent, Mill St. property	210.00
	„ Supt. works, stokers and engineers	29,839.88
	„ Purification, lime and wages	7,002.90
	„ Lamplighting	17,306.72
	„ Meter settings and indications	4,903.20
	„ Meter inspection	1,625.00
	„ Directors' compensation	7,030.00
	„ Charges at works	24,007.32
	„ Solicitor's account	1,334.95
	„ Sundries	10,151.51
	„ Balance	163,928.46
		409,266.71

1887	Cr.	$ c.
Oct. 1	By Gas rents	378,705.37
	„ Office rents	2,867.00
	„ Tar	14,072.72
	„ Coke	12,368.51
	„ Ammoniacal liquor	1,253.11
		409,266.71

1887		
Oct. 1	To Dividends	100,000.00
	„ Contingent account—carried to reserve fund	5,138.00
	„ Plant and buildings—renewal fund	57,277.17
	„ Interest	8,150.93
	„ Balance carried to reserve fund	331,671.70
		502.237.80

1887		
Oct. 1	By balance brought down	163,928.46
	„ Interest on debentures	15,279.10
	„ Tank cars	200.00
	„ Profit, October 1st, 1886	322,830.24
		502,237.80

J. AUSTIN, President.

(L.S.) W. H. PEARSON, Secretary.
W. G. CASSELS,
J. W. BRENT,
Auditors.
per GEORGE B. HOLLAND,
Auditor *pro tem.*
W. A. SAMPSON, Auditor.

Toronto, 26th October, 1887.

Balance Sheet of the Consumers' Gas Company of Toronto, 1st October, 1887.

1887	Liabilities.		$ c.
Oct. 1	Capital stock		1,148,960.00
	Reserve fund—		
	Transferred from contingent account	$71,480.03	
	Premium on stock	119,473.80	
	Transferred from profit and loss account	331,671.70	
			522,625.53
	Plant and buildings renewal fund	57,277.17	
	Less amount charged for repairs and renewals	23,107.53	
			34,169.64
	Dominion Bank		42,737.43
	Sundry accounts owing		23,427.42
			1,771,920.02

1887	Assets.	$ c.
Oct. 1	Works	519,528.08
	Old Building and lot, Toronto St.	12,838.67
	New „ „	34,397.17
	Old County Gaol property	18,414.50
	Lot, Berkeley Street	10,000.00
	Lot, Front and Berkeley St.	23,977.00
	Lot, Bathurst Street	26,155.41
	Street mains laid	465,207.13
	Services	61,787.33
	Main pipes and specials	28,076.23
	Service pipes and fittings	2,665.00
	Street lamps	63,518.37
	Tank cars	2,518.00
	Retorts, fire clay, etc.	7,057.79
	Meters	85,197.55
	Tools	3,134.44
	Office furniture	1,634.84
	Gas engines and stoves	5,304.07
	Coal	25,884.85
	Oil	1,097.39
	Coke	2,400.00
	Tar	11,351.60
	Oxide of iron	1,029.30
	Cash	30.11
	Debentures	297,294.46
	Gas accounts owing	58,000.00
	Horses and conveyances	565.00
	Sundry accounts owing	2,855.73
		1,771,920.02

J. AUSTIN, President. (L.S.) W. H. PEARSON, Secretary.

We beg to report that we have examined the books of account, which have been very carefully kept, of the Consumers' Gas Company of Toronto, for the year ending 30th September, 1887, and have found the same correct, and that the balance sheet, which has been verified, represents the actual position of the company at that date.

October 26th, 1887.

W. G. CASSELS,
J. W. BRENT,
Auditors.
per G. B. HOLLAND,
Auditor *pro tem.*

Verified by me in conformity with the Statute of Ontario, 50 Vict., ch. 85, sec. 9.

W. A. SAMPSON, City Auditor.
Appointed under foregoing statute *pro hac vice.*

Fortieth Annual Report of the Consumers' Gas Company, of Toronto.

In presenting to the stockholders the fortieth annual report, the directors have much satisfaction in being able to again state, as on many former occasions, that the company's business has continued to increase, and that its affairs are in a prosperous condition.

The large gasholder, to which reference was made in the last report, was completed early in this month, and on testing it, it was found to be gas-tight, and the workmanship and construction in all respects of a most satisfactory character. Gas was drawn into the holder and distributed therefrom for the first time on Thursday, October 18th. It has fulfilled the expectations of the company's officers in affording an ample supply of gas to those portions of the city where it had been defective, and in addition, it will give sufficient storage capacity for the company to tide over the period of the highest consumption during this winter, with its present manufacturing capacity.

Of the other works referred to in the last annual report, the retort and purifying houses have been completed for some time, the condenser, exhauster, meter, pumping and engine houses are well forward, and it is expected that they and the various apparatus will be ready for supplying gas early in the coming year, the purifiers and retort stack being already completed.

The station meter has been furnished by Messrs. William Parkinson & Company, London, England; the Kloenne-Bredel regenerative furnaces by Mr. Fred. Bredel, of New York; the iron stage floor for the retort house by the St. Lawrence Foundry Company, Toronto, and all the other apparatus by Messrs. R. & J. Dempster, Manchester, England.

The gasholder and new works were visited and inspected with much interest by the members of the American Gas Light Association, who met here for the first time in Canada, on the 17th, 18th and 19th inst. They were without exception loud in their praises of all they saw, and freely expressed their conviction that the buildings were unequalled on the continent of America, and the workmanship of the various apparatus, including the gasholder, to be unsurpassed. This association comprises within its membership, the engineers and managers of the gas companies of nearly all the principal cities and towns in America, and commendation coming from such a source cannot but be highly gratifying to the directors and officers of the company, and satisfactory to the stockholders.

Applications for no less than 464 new street lamps from the City of Toronto, Parkdale and West Toronto Junction have been received during the year, in most instances new pipes having to be laid for them. The company have supplied Parkdale with gas for a considerable period, and they have recently consented to supply the rapidly growing suburb of West Toronto Junction, some six miles distant from their works. The mains of the company are therefore spread over a very largely extended area, the number of miles now laid being over 160, $14\frac{1}{2}$ miles of which have been put down during the past year, including larger, substituted for smaller ones previously used. In addition 1,441 new services have been put in.

The gas supplied during the year has at all times more than complied with the requirements of the Gas Inspection Act, both as to illuminating power and purity.

The demand for gas for other than lighting purposes continues to increase at a rapid ratio.

Owing to the state of the money market, and having arranged with their bankers to advance the money required at a very low rate of interest, the directors have not considered it expedient to issue any more of the new stock authorised, but will await a more favourable opportunity for doing so.

The secretary having had for a number of years the general supervision of the company's affairs, the directors considered that the time had arrived to give him his full designation, and accordingly during the year appointed him general manager and secretary.

Since the last annual meeting the directors have again to regret the loss of one of their fellow directors by the death of Mr. James Crowther, one of Toronto's oldest and most respected citizens, who for many years gave his valuable assistance to the board, and the vacancy has been filled by the appointment of Mr. G. S. C. Bethune.

A comparative statement with that of the previous year shows:—

	Street Lamps	Consumers.	Gas Rental.
For the year ending 30th September, 1888 .	3,272	10,020	$433,829.32
" " " " 1887 .	3,002	9,004	$378,705.37
Increase . .	270	1,016	$55,123.95

The directors in conclusion have to express their high appreciation of the valuable services of the general manager and of the superintendent of works, in carrying so successfully toward completion the extensive works now in progress, and at the same time to recognise the efficient services rendered by the chief clerk, superintendent of street mains, and the whole of the staff of the company.

All of which is respectfully submitted.

JAMES AUSTIN,
President.

Statement showing profit realised by the Consumers' Gas Company of Toronto, in twelve months, from 1st October, 1887, to 1st October, 1888.

1888	Dr.	$ c.
Oct. 1	To Coal, bituminous	83,089.78
	„ „ anthracite	45,229.53
	„ Oil	26,261.15
	„ Salaries	20,344.99
	„ Auditors	400.00
	„ Stationery and advertising	1,578.85
	„ Insurances	2,065.28
	„ Rent, Mill St. property	210.00
	„ Supt. works, stokers and engineers	36,663.99
	„ Purification lime and wages	9,518.01
	„ Lamplighting	19,439.14
	„ Meter settings and indications	5,539.59
	„ Meter inspection	1,850.00
	„ Directors' compensation	8,905.25
	„ Charges at works	23,055.05
	„ Taxes	12,270.69
	„ Sundries	10,069.71
	„ Balance	160,827.09
		467,318.10

1888	Cr.	$ c.
Oct. 1	By Gas rents	433,829.32
	„ Office rents	3,631.71
	„ Tar	7,019.49
	„ Coke	19,956.29
	„ Ammoniacal liquor	2,881.29
		467,318.10

1888.		$ c.	
Oct. 1	To Dividends	147,546.11	
	„ Less over-credited to reserve fund, 30th Sept., 1887 (being reserve for dividend No. 150, Oct. 1st, 1887) re-transferred to profit and loss	27,938.15	
			119,607.96
	„ Interest		8,769.63
	„ Balance profit and loss carried to reserve fund		53,567.91
			181,945.50

1888		
Oct. 1	By Balance brought down	160,827.09
	„ Interest on debentures	21,118.41
		181,945.50

J. AUSTIN, President.

(L.S.) W. H. PEARSON, Gen. Manager and Secretary.
W. A. SAMPSON,
W. G. CASSELS,
Auditors.
per GEO. B. HOLLAND,
Auditor *pro tem.*
J. H. MENZIES, F.C.A.

Toronto, 24th October, 1888.

Balance Sheet of the Consumers' Gas Company of Toronto, 1st October, 1888.

1888	Liabilities.	$ c.	$ c.
Oct. 1	Capital stock		1,200,000.00
	Reserve Fund—		
	Balance October 1st, 1887	522,625.53	
	Premium on stock	40,863.70	
	Profit and loss	53,567.91	
		617,057.14	
	Less dividend 150 re-transferred . . $27,938.15		
	Plant and buildings renewal fund . . 63,591.46		
		91,529.61	
			525,527.53
	Plant and buildings renewal fund, balance Oct. 1st, 1887	34,169.64	
	Plant and buildings renewal fund, from Oct. 1st, 1887, to Oct. 1st, 1888	63,591.46	
		97,761.10	
	Less repairs and renewals	24,929.90	
			72,831.20
	Dominion Bank		151,727.61
	National Bank of Scotland		194,000.00
	Profit and loss reserved for dividend 154		30,000.00
	Sundry accounts		30,775.36
			2,204,861.70

1888	Assets.	$ c.
Oct. 1	Works	840,103.24
	Old building and lot, Toronto St.	12,838.67
	New „ „	34,897.17
	Old County Jail property	18,414.50
	Lot, Berkeley and Front Streets	23,977.00
	Lot, Berkeley Street	10,000.00
	Lot, Bathurst Street	26,635.41
	Street mains, laid	532,148.54
	Services	72,356.04
	Main pipes and specials	10,555.55
	Service pipes and fittings	4,524.46
	Street lamps	78,614.34
	Tank cars	2,586.33
	Retorts, fire clay, etc.	9,409.39
	Meters	102,201.60
	Tools	4,883.51
	Office furniture	1,634.84
	Gas engines and stoves	3,687.34
	Coal	30,672.66
	Oil	574.64
	Coke	3,040.00
	Tar	8,625.60
	Oxide of iron	1,167.50
	Cash	30.11
	Debentures	288,239.47
	Gas accounts owing	71,000.00
	Horses and conveyances	988.50
	Sundry accounts owing	11,055.29
		2,204,861.70

J. AUSTIN, President. (L.S.) W. H. PEARSON, General Manager and Secretary.

We beg to report that we have examined the books and accounts—which have been very well and carefully kept—of the Consumers' Gas Company of Toronto, for the year ending 29th Sept., 1888, and have found the same correct, and the balance sheet, which has been verified, represents the actual position of the company at that date.

Toronto, October 24th, 1888.

(Signed) W. A. SAMPSON,
W. G. CASSELS,
Auditors.
per G. B. HOLLAND,
Auditor *pro tem.*
(Signed) J. H. MENZIES, F.C.A.,
Auditor for the city.

Verified by me in conformity with the Statute of Ontario, 50 Vict., chap. 85.

Forty-first Annual Report of the Consumers' Gas Company of Toronto.

In presenting their forty-first annual report, the directors are pleased to be able again to congratulate the stockholders on the satisfactory results of another year's business.

The various buildings and apparatus referred to in the last annual report, have been completed without accident, and on the 11th June last, gas was first made in the new works, which have continued, to the present time in satisfactory operation. The results have been much better than those obtained from the old works and the anticipation of a considerable saving in the cost of gas produced has been realised.

Notwithstanding the competition from electric lighting, the progress in the company's business, as a whole, has fully kept pace with that of preceding years. The unprecedentedly large number of 1,959 new services have been put in; over 17½ miles of new mains have been laid, increasing the total length to the present time to upwards of 180 miles, a mileage probably not equalled in any city of the same population on this continent.

Feeling satisfied, after careful inquiry and investigation, that it would be to the interests of the company to combine electric with gas lighting, the directors secured the right to operate the Westinghouse Incandescent System for the City of Toronto. The directors regret to say that, although other companies have been granted the privilege, yet, through the strong and persistent opposition of certain members of the city council, this company have been unable to obtain the consent of that body to wire the streets of the city, and consequently have not been able to enter into the business. The directors cannot but feel that the policy of the city corporation is a short-sighted one, as this company is in a position to supply electric lighting more cheaply than any other company.

Taking advantage of the favourable state of the money market, the directors disposed of $125,000 of new stock on the 8th of July last, at the average premium of 76.8 per cent., and on the 19th August following of $175,000, the balance of the amount authorised to be disposed of by the stockholders on 26th May, 1887, at the average premium of 75.11 per cent. Out of the proceeds of these sales the directors were enabled to pay off the balance due upon the new works and their indebtedness to the banks, with the exception of about $50,000 which will be wiped out on the receipt of the January gas rents.

On ascertaining the results of the year's business the directors decided to reduce the net price per thousand feet for gas consumed from October 1st inst., as below:

To consumers of under 200,000 cubic feet per annum, from	$1 25 to $1 12½
To consumers of from 200,000 to 500,000 cubic feet per annum, from	1 15 to 1 05
To consumers of over 500,000 cubic feet per annum, from	1 10 to 1 00
The price for gas for stoves and engines remaining as at present	1 00

The above prices are the lowest charged in Canada, and with the exception of three or four places in the United States bituminous coal region, lower than any on the continent.

A comparative statement with that of the preceding year shows:

	Street Lamps.	Consumers.	Gas Rental.
For the year ending September 30th 1889 .	3,640	11,532	$476,291.80
" " " " 1888 .	3,272	10,020	433,829.32
Or an increase of .	368	1,512	$42,462.48

The directors have again much pleasure in testifying to the zeal and ability displayed by their manager in the performance of his difficult and arduous duties, and to the valuable support afforded him by a diligent and efficient staff.

All of which is respectfully submitted.

JAMES AUSTIN,
President.

Statement showing profit realised by Consumers' Gas Company in twelve months, from 1st October, 1888, to 1st October, 1889.

1889	Dr.	$ c.
Oct. 1.	To Coal, bituminous	88,850.18
	„ „ anthracite	40,203.34
	„ Oil	28,194.15
	„ Salaries	19,824.70
	„ Auditors	500.00
	„ Stationery and advertising	2,651.88
	„ Insurances	2,627.30
	„ Rent, Mill St. property	210.00
	„ Supt. works, stokers and engineers	44,410.99
	„ Purification, lime and wages	7,834.19
	„ Lamplighting	22,051.45
	„ Meter settings and indications	6,950.39
	„ Meter inspection	2,100.00
	„ Directors' compensation	9,000.00
	„ Charges at works	14,438.44
	„ Taxes	7,297.25
	„ Horse board and expenses	1,437.50
	„ Sundries	9.047.19
	„ Balance	215,321.03
		522,949.98
1889		
Oct. 1.	To Dividends	124,581.40
	„ Interest	19,074.76
	„ Profit and loss—balance carried to reserve fund	86,544.18
		230,200.34

1889	Cr.	$ c.
Oct. 1	By Gas rents	476,291.80
	„ Office rents	4,314.66
	„ Tar	14,585.77
	„ Coke	24,313.70
	„ Ammoniacal liquor	3,444.05
		522,949.98
1889		
Oct. 1.	By Balance brought down	215,321.03
	„ Interest on debentures	14,879.31
		230,200.34

J. AUSTIN,
President.

(L.S.) W. H. PEARSON,
Gen. Manager and Secretary.

W. G. CASSELS,
W. A. SAMPSON,
Auditors.

Toronto, 23rd October, 1889.

In the High Court of Justice, Chancery Division, Ontario.

No. 7.
Special Case and Annual Reports annexed, 22nd May, 1895
—continued.

Balance Sheet of the Consumers' Gas Company of Toronto, October 1st, 1889.

1889	Liabilities.	$ c.	$ c.	1889	Assets.	$ c.
Oct. 1	Capital stock		1,493,200.00	Oct 1	Works	994,396.97
	Reserve fund—				Old build'g and lot, Toronto St.	12,838,67
	Bal. Oct. 1st, 1888	525,527.53			New " " "	36,866.02
	Premium on stock	222,053.25			Old County Gaol property	18,414.50
	Profit and loss	86,544.18			Lot, Front and Berkeley St.	23,977.00
		834,124.96			Lot, Berkeley Street	10,000.00
	Less plant and buildings renewal fund	95,641.73			Lot, Bathurst Street	26,635.41
			738,483.23		Street mains laid	615,437.22
	Plant and buildings renewal fund, balance Oct. 1st, 1888	72,831.20			Services	83,988.57
	Plant and buildings renewal fund, from Oct. 1st, 1888, to Oct. 1st, 1889	95,641.73			Main pipes and specials	10,633.29
		168,472.93			Service pipes and fittings	4,505.37
	Less repairs and renewals	21,555.64			Street lamps	88,345.30
			146,917.29		Tank cars	2,586.33
	Dominion Bank		49,857.59		Retorts, fire clay, etc.	4,788.61
	Profit and loss—				Meters	116,911.37
	Reserved for dividend 158		34,581.40		Tools	4,964.26
	Sundry accounts owing		18,853.06		Office furniture	1,738.89
					Gas engines and stoves	3,704.29
					Coal	30,088.60
					Oil	1,636.19
					Coke	4,480.00
					Tar	7,671.60
					Oxide of iron	2,500.00
					Cash	32.72
					Debentures	280,134.54
					Gas accounts owing	66,000.00
					Horses and conveyances	1,148.50
					Sundry accounts owing	27,468.35
			2,481,892.57			2,481,892.57

J. AUSTIN, President. (L.S.) W. H. PEARSON, General Manager and Secretary.

We have to report that we have examined the books and accounts of the Consumers' Gas Company of Toronto, for the year ending 1st October, 1889, and have pleasure in certifying to their correctness.

The balance sheet, which has been verified, represents the actual position of the company at that date.

W. G. CASSELS,
W. A. SAMPSON, Auditors.

Toronto, 23rd October, 1889.

The undersigned hereby certifies that he has examined the books and accounts of the Consumers' Gas Company of Toronto, and that the above statements of profits and loss, and assets and liabilities, agree therewith.

(Signed) WM. R. HUGHES, Auditor for the city.

Forty-second Annual Report of the Consumers' Gas Company of Toronto.

The directors beg to submit to the stockholders the forty-second annual report, with the accompanying statements of the financial position of the company.

Notwithstanding the additional competition from electric lighting owing to the Toronto Incandescent Electric Light Company having commenced operations in February last, the directors have pleasure in being able to state that the percentage of increase in the output of gas during the past year over that of 1889, exceeded the increase of that year over the preceding one. This increase during the past year is partly to be attributed to the reductions made in the prices of gas, at the commencement of the year partly to the growth of the city, and partly to the more general use of gas for cooking, heating, manufacturing purposes and motive power. This branch of the company's business has increased until it has become an important source of the company's revenue, the consumption for the purposes named being over three times that of 1885, which was five times greater than that of 1882. The business is as yet in its infancy, is capable of almost indefinite expansion, and will go far towards making good whatever loss in consumption the company may sustain by the competition of other methods of lighting if it does not entirely do so.

Two sets of improved Lowe water gas apparatus, of a capacity of 800,000 cubic feet per diem, for which a contract was entered into with the United Gas Improvement Company of Philadelphia have just been erected and have been in operation for a few days. A considerable saving in the cost of gas as compared with that manufactured by the superseded apparatus, has been guaranteed by the manufacturers. Larger boilers and engines of improved construction have also been introduced to meet the increased requirements of the company.

1,844 new services have been put in, and over 13 miles of new mains laid, making the total length upwards of 193 miles. In addition, considerable lengths of small mains have been replaced by larger ones.

The stockholders will notice that, notwithstanding the reduction made in the prices of gas, the receipts from gas rent considerably exceed those of the preceding year, and that the profit shown by the working statement is almost as large.

In response to an advertisement for tenders, the company recently put in very low bids for the street lighting of the whole or part of the city. The city council have decided to light the principal portion of the city by electricity, and have only awarded the company a contract for five years from 1st January next for 1,000 lamps upon the line of the present mains, and for such other lamps as may hereafter be required on these mains or new ones laid for the purpose. This decision of the council will do away with about 2,300 gas lamps, for which the company will have no use.

On account of lamps already dispensed with, including a number of the expensive "Lambeth" lamps, the directors have considered it proper to write off from the street lamp account the sum of $15,000 and charge it against the profits of the past year.

RECORD.

In the High Court of Justice, Chancery Division, Ontario.

No. 7.
Special Case and Annual Reports annexed, 22nd May, 1895
—*continued.*

To pay off loans from banks temporarily used on capital account, and to meet other legitimate requirements from time to time, the directors have decided to ask the stockholders to authorise them to issue in such allotments as they may consider it advisable, in manner provided by Act of the Legislature of Ontario, $500,000 being the balance yet unissued, authorised by said Act.

A comparative statement with that of the preceding year shows:

		Street lamps		Meters in use	Gas rental
For the year ending 30th September,	1890	3,448		13,242	$499,997.03
" " " "	1889	3,640		11,532	476,291.80
Or a decrease of . . .		192	and an increase of	1,710	$23,705.23

The manager and his efficient staff have continued to give the directors entire satisfaction in the performance of their various duties.

All of which is respectfully submitted.

JAMES AUSTIN, President.

Statement showing profit realised by Consumers' Gas Company of Toronto, in twelve months, from October 1st, 1889, to October 1st, 1890.

1890	Dr.	$ c.
Oct. 1	To Coal bituminous	120,061.23
	„ „ anthracite	14,363.55
	„ Oil	30,905.73
	„ Salaries	22,289.56
	„ Auditors	525.00
	„ Stationery and advertising	2,048.94
	„ Insurances	2,840.09
	„ Rent, Mill St. property	210.00
	„ Supt. works, stokers and engineers	50,355.05
	„ Purification, lime and wages	9,253.99
	„ Lamplighting	22,511.33
	„ Meter settings and indications	7,212.23
	„ Meter inspection	2,250.00
	„ Directors' compensation	9,000.00
	„ Charges at works	11,195.28
	„ Taxes	10,839.60
	„ Horse board and expenses	1,717.92
	„ Sundries	12,018.03
	„ Balance	210,383.09
		539,980.02
1890		
Oct. 1	To Dividends	149,888.04
	„ Interest	4,231.55
	„ Depreciation street lamps	15,000.00
	„ Profit and loss—balance carried to plant and building renewal fund	54,702.29
		223,821.88

1890	Cr.	$ c.
Oct. 1	By Gas rents	499,979.03
	„ Office rents	4,138.00
	„ Tar	10,682.01
	„ Coke	22,089.17
	„ Ammoniacal liquor	3,091.81
		539,980.02
1890		
Oct. 1	By Balance brought down	210,383.09
	„ Interest on debentures	13,438.79
		223,821.88

J. AUSTIN,
President.

(L.S.) W. H. PEARSON,
Gen. Manager and Secretary.

Examined and found correct.
W. A. SAMPSON,
W. R. HARRIS,
Auditors.

Toronto, 22nd October, 1890.

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Balance Sheet of the Consumers' Gas Company of Toronto. October 1st, 1890.

1890	Liabilities	$ c.	$ c.
Oct. 1	Capital stock		1,500,000.00
	Reserve fund—		
	Balance October 1st, 1889	738,483.23	
	Premium on stock	5,002.50	
			743,485.73
	Plant and buildings renewal fund, balance October 1st, 1889	146,917.29	
	Profit and loss	54,702.29	
		201,619.58	
	Less repairs and renewals	54,074.23	
			147,545.35
	Dominion Bank		11,982.55
	National Bank of Scotland		145,333.33
	Profit and loss—		
	Reserved for dividend 161		37,500.00
	Accounts owing		21,770.58
			2,607,617.54

1890	Assets	$ c.
Oct. 1	Works	1,008,257.61
	Old building and lot, Toronto St.	12,838.67
	New " " " "	36,866.02
	Old county jail property	18,414.50
	Lot, Front and Berkeley Streets	23,977.00
	Lot, Berkeley Street	10,000.00
	Lot, Bathurst Street	26,635.41
	Street mains, laid	663,211.43
	Services	98,599.55
	Main pipes and specials	21,501.95
	Service pipes and fittings	8,526.90
	Street lamps	76,515.18
	Tank cars	2,586.33
	Retorts, fire clay, &c.	4,018.61
	Meters	132,401.64
	Tools	5,004.49
	Office furniture	1,738.89
	Coal	76,000.08
	Oil	2,047.71
	Coke	80.00
	Tar	1,268.30
	Oxide of iron	2,225.00
	Cash	174.43
	Debentures	274,490.18
	Gas accounts owing	75,000.00
	Horses and conveyances	1,148.50
	Sundry accounts owing	24,089.16
		2,607,617.54

J. AUSTIN, President. (L.S.) W. H. PEARSON, General Manager and Secretary.

We beg to report the completion of the audit of the books and accounts of the Consumers' Gas Company of Toronto, for the year ending 1st October, 1890, and certify to their correctness.

The balance sheet, which has been verified, represents the actual position of the company at that date.

(Signed) W. A. SAMPSON,
W. R. HARRIS,
Auditors.

Toronto, October 22nd, 1890.

The undersigned hereby certifies that he has examined the books of the Consumers' Gas Company, and that the above statements of profits and loss, and assets and liabilities agree therewith.

(Signed) WM. R. HUGHES, Auditor for City.

Forty-third Annual Report of the Consumers' Gas Company of Toronto.

In presenting to the stockholders the forty-third annual report, the directors are pleased to be able to lay before them a satisfactory statement of the business of the company for the past year.

1,578 new services have been put in, and nearly 14 miles of new mains laid, making the total mileage of mains over 207.

Early in the year, the city corporation carried out their decision referred to in the last report, and discontinued the use of nearly 2,200 street lamps. It is gratifying to report that notwithstanding the serious loss in consumption entailed thereby, and the competition from electric lighting, the output of gas for the past was slightly in excess of that of the preceding year, and the profits shown by the working statement somewhat larger, although there is a decrease in the gas rental. This decrease has been caused by the reduction in the price of gas supplied for street lamps, and by a larger proportion sold at a lower price for cooking and heating purposes.

The sale of gas for cooking, heating and motive power, where separate meters have been supplied, shows an increase over that of the preceding year of about 23 per cent.—the consumption being about 40,000,000; while a large quantity has been consumed where no separate meters have been put in for the purpose.

The average illuminating power of the gas has been over 20 candles, being 25 per cent. above the Government standard.

The action of the city council in discontinuing so many street lamps has rendered them valueless, as the company has no use for them; nor can they be disposed of. The directors have therefore considered it their duty to write off the cost of these lamps from the street lamp account, and charge it against the reserve fund. It will be seen that the course taken by the city has not only caused a heavy loss to the company, but has placed so much further off, the boon to the citizens of another reduction in the price of gas.

In accordance with the powers conferred upon them, the directors, on 20th April last, disposed, in manner provided by statute, of $100,000 of new stock. This stock was sold at an average premium of 68 per cent., which, in accordance with the Act of the Legislature, has been placed to the credit of the reserve fund.

The directors regret having to record the loss by death during the year, of two gentlemen, who for nearly a quarter of a century worthily occupied seats at the board—Messrs. Arthur Lepper and John Eastwood. The former having died early in the year, his place was filled by the directors, who appointed Mr. G. R. R. Cockburn, M.A., M.P. Mr. Eastwood having died so recently, the board decided to leave the vacancy unfilled until the annual meeting.

A comparative statement with that of the preceding year shows:

	Street lamps.	Meters.	Gas rental.
For the year ending 30th September, 1891	1,287	14,838	$488,946.25
" " " 1890	3,448	13,242	499,979.03
	Decrease 2,161	Increase 1,596	Decrease $11,032.78

The directors have pleasure in again recognising the continued efficiency and zeal displayed by the manager and his staff in the performance of their duties.

All of which is respectfully submitted.

JAMES AUSTIN, President.

Statement showing profit realised by Consumers' Gas Company of Toronto, from October 1st, 1890, to October 1st, 1891.

1891	Dr.	$ c.
Oct. 1	To Coal, bituminous	103,461.20
	„ „ anthracite	28,862.10
	„ Oil	40,338.06
	„ Salaries	23,200.00
	„ Auditors	600.00
	„ Stationery and advertising	2,064.90
	„ Insurances	2,819.84
	„ Rent, Mill St. property	210.00
	„ Supt. stokers and engineers	45,219.86
	„ Purification, lime and wages	8,900.33
	„ Lamplighting	13,905.15
	„ Meter settings and indications	9,578.50
	„ Meter inspection	2,170.00
	„ Directors' compensation	8,981.25
	„ Charges at works	10,233.37
	„ Taxes	13,418.71
	„ Horse board and expenses	1,348.26
	„ Sundries	17,550.00
	„ Balance	217,700.49
		550,562.02

1891	Cr.	$ c.
Oct. 1	By Gas rents	488,946.25
	„ Office rents	3,726.00
	„ Tar	19,439.68
	„ Coke	33,838.11
	„ Ammoniacal liquor	4,611.98
		550,562.02

1891		
Oct. 1	To Dividends	154,387.80
	„ Interest	7,989.22
	„ Profit and loss—balance carried to P. & B. renewal fund	68,484.49
		230,861.51

1891		
Oct. 1	By Balance	217,700.49
	„ Interest on debentures	13,161.02
		230.861.51

J. AUSTIN,
President.

(L.S.) W. H. PEARSON,
Gen. Manager and Secretary.

Examined and found correct—W. A SAMPSON,
C. C. BAINES,
Auditors.

Toronto, 20th October, 1891.

Balance Sheet of the Consumers' Gas Company of Toronto, October 1st, 1891.

1891	Liabilities.	$ c.	$ c.	1891	Assets.	$ c.
Oct. 1	Capital stock		1,599,760.00	Oct. 1	Works	1,021,612.51
	Reserve fund—				Old building and lot, Toronto Street	12,838.67
	Balance Oct. 1st, 1890	743,485.73			New ,, ,,	36,866.02
	Premium on stock	67,924.91			Old county gaol property	18,414.50
		811,410.64			Lot, Front and Berkeley St.	23,977.00
	Less depreciation in street lamps	43,000.00			Lot, Berkeley Street	10,000.00
			768,410.64		Lot, Bathurst Street	26,635.41
	Plant and buildings renewal fund,				Street mains laid	705,671.27
	balance Oct. 1st, 1890	147,545.35			Services	112,200.54
	Profit and loss	68,484.49			Main pipes and specials	12,499.08
		216,029.84			Service pipes and fittings	5,097.63
	Less repairs and renewals	55,453.24			Street lamps	33,929.54
			160,576.60		Tank cars	2,586.33
	Profit and loss—				Retorts, fire clay, etc.	4,572.14
	Reserved for dividend No. 166.		39,994.00		Meters	144,833.61
	Accounts owing		13,234.32		Tools	5,004.49
					Office furniture	2,017.44
					Coal	49,773.76
					Oil	1,497.32
					Coke	2,700.00
					Tar	3,409.15
					Oxide of iron	1,811.70
					Cash	176.87
					Debentures	250,545.97
					Gas accounts owing	77,500.00
					Horses and conveyances	1,148.50
					Dominion Bank	2,597.57
					Accounts owing	12,058.54
			2,581,975.56			2,581,975.56

J. AUSTIN,
President.

(L.S.) W. H. PEARSON,
General Manager and Secretary.

We beg to report the completion of the audit of the books and accounts of the Consumers' Gas Company of Toronto, for the year ending 1st October, 1891, and certify to their correctness.

(Signed) W. A. SAMPSON,
C. C. BAINES, Auditors.

Toronto, October 20th, 1891.

The undersigned hereby certifies that he has examined the books of the Consumers' Gas Company and that the above statements of profits and loss, and assets and liabilities, agree therewith.

(Signed) WM. R. HUGHES, Auditor for City.

RECORD.

In the High Court of Justice, Chancery Division, Ontario.

No. 7. Special Case and Annual Reports annexed, 22nd May, 1895 —*continued.*

Forty-fourth Annual Report of the Consumers' Gas Company of Toronto.

The directors have satisfaction in presenting to the stockholders, the forty-fourth annual statement, and to report an increase in the number of consumers, and in the amount of gas-rental and profits for the year, notwithstanding business depression, and the competition from electric lighting.

1,403 new services have been put in, and nearly 7½ miles of new mains laid, making the total mileage of mains over 214.

The consumption of gas for cooking and heating, has continued to increase at a rapid ratio and now amounts to about one-eighth of the total quantity sold.

The high standard of the illuminating power of the gas, has been fully maintained during the year, at an average of nearly 21 candles, or more than 25 per cent. over the Government standard of 16 candles.

To provide for the increasing consumption of gas, contracts have been entered into, during the year, for the erection of a new stack of 20 benches of "sixes" retorts, with the necessary hydraulic mains and connections, together with stage floors and hydraulic elevators; also for two sets of improved water gas apparatus, all of which are nearly completed.

The gasholder capacity not being sufficient for the output of gas, excavation for a new brick gasholder tank, of 150 feet diameter, by 35 feet 9 inches deep, was commenced in May last, on the company's lot on Bathurst Street, and adjoining the other gasholder, and the tank is now just about completed, the contractor for the work being Mr. W. C. Whyte, of New York.

The contract for the gasholder, has been awarded to Messrs. R. D. Wood & Co., of Philadelphia. This holder will be a three-lift one (each lift being 35 feet high), and will have a capacity of 1,750,000 cubic feet. It is to be completed by October 1st, 1893 and will be the largest gasholder yet constructed for this company.

In conjunction with nearly all the other gas companies in the dominion and supported by a number of leading manufacturers, this company, during the last session, petitioned the Finance Minister to remove the duty from gas oil, crude petroleum and benzine; and a large deputation subsequently waited upon him and forcibly presented their views.

The principal arguments presented were, that the prices of gas oil, had steadily and greatly advanced, for the past five years; that the production was not equal to the present and increasing demand, for manufacturing purposes, and that the duty and other charges amounting to 9 1-5 cents per gallon upon crude and gas oil, were the same as those charged upon refined oil, so that the latter, being worth about 9 cents per gallon, the duty thereon amounted to about 100 per cent. *ad valorem*, while upon crude and gas oil, worth about a cent a gallon, it amounted to fully 900 per cent.

The directors regret that the petitioners did not succeed in obtaining the removal, or even a reduction of the duty.

A comparative statement with that of the preceding year shows:

	Street Lamps.	Meters.	Gas Rental.
For the year ending 30th September, 1892 . . .	1,201	16,164	$512,554.17
„ 1891 . . .	1,287	14,838	488,946.25
Decrease . .	76	Increase, 1,326	Increase $23,607.92

The directors have pleasure in testifying to the thorough and increased efficiency of the company's works, in every department, the principal credit for which is due to the able management and untiring energy of the General Manager, aided by an intelligent and competent staff.

All of which is respectfully submitted.

JAMES AUSTIN, President.

Statement showing profit realised by Consumers' Gas Company of Toronto.
October 1st, 1891, to October 1st, 1892.

1892	Dr.	$ c.	1892	Cr.	$ c.
Oct. 1	To Coal, bituminous	100,561.24	Oct. 1	By Gas rents	512,554.17
	„ „ anthracite	20,156.54		„ Office rents	3,113.50
	„ Oil	45,300.00		„ Tar	13,568.07
	„ Salaries	24,418.33		„ Coke	20,783.58
	„ Auditors	600.00		„ Ammoniacal liquor	4,496.48
	„ Stationery and advertising	1,751.02			
	„ Insurances	2,540.19			
	„ Rent, Mill St. property	210.00			
	„ Superintendent, stokers and engineers	49,068.22			
	„ Purification lime and wages	9,982.57			
	„ Lamplighting	10,323.82			
	„ Meter settings and indications	10,983.76			
	„ Directors' compensation	8,968.75			
	„ Charges at works	11,339.23			
	„ Taxes	11,867.23			
	„ Meter inspection	3,573.50			
	„ Horse board and expenses	1,558.60			
	„ Sundries	9,922.50			
	„ Balance	231,390.30			
		554,515.80			554,515.80
1892			1892		
Oct. 1	To Dividends	159,992.00	Oct. 1	By Balance	231,390.30
	„ Interest	476.06		„ Interest on debentures	11,637.37
	„ Profit and loss—	82,559.61			
		243,027.67			243,027.67

J. AUSTIN, President.

(L.S.) W. H. PEARSON, Gen. Manager and Secretary.

Examined and found correct.

W. A. SAMPSON,
C. C. BAINES,
Auditors.

Toronto, 20th October, 1892.

Balance Sheet of the Consumers' Gas Company of Toronto, October 1st, 1892.

1892	Liabilities.	$ c.	$ c.
Oct. 1	Capital stock		1,600,000.00
	Reserve fund—		
	Balance October 1st, 1891	768,410.64	
	Premium on stock	164.10	
	Profit and loss	82,559.61	
		851,134.35	
	Less plant and buildings renewal fund	102,442.97	
			748,691.38
	Plant and buildings renewal fund, balance Oct. 1st, 1891	160,576.60	
	Plant and buildings renewal fund, from Oct. 1st, 1891, to Oct. 1st, 1892	102,442.97	
		263,019.57	
	Less repairs and renewals	49,703.57	
			213,316.00
	Dominion Bank		75,453.26
	Profit and loss—		
	Reserved for dividend 170		40,000.00
	Sundry accounts owing		16,541.33
			2,694,001.97

1892	Assets.	$ c.
Oct. 1	Works	1,068,546.56
	Old building and lot, Toronto Street	12,838.67
	New " " "	36,866.02
	Old County Jail property	18,414.50
	Lot, Berkeley and Front Sts.	23,977.00
	Lot, Berkeley Street	10,000.00
	Lot, Bathurst Street	27,935.41
	Street mains, laid	735,122.24
	Services	124,451.60
	Main pipes and specials	10,975.64
	Service pipes and fittings	5,501.18
	Street lamps	34,079.85
	Tank cars	2,586.33
	Retorts, fire bricks, etc.	3,009.01
	Meters	154,882.00
	Tools	5,004.49
	Office furniture	2,017.44
	Coal	76,554.24
	Oil	2,043.25
	Coke	1,600.00
	Tar	3,358.35
	Oxide of iron	904.86
	Cash	203.90
	Debentures	229,500.32
	Gas accounts owing	79,000.00
	Horses and conveyances	1,148.50
	Sundry accounts owing	23,480.61
		2,694,001.97

J. AUSTIN, President. (L.S.) W. H PEARSON, General Manager and Secretary.

We beg to report the completion of the audit of the books and accounts of the Consumers' Gas Company of Toronto, for the year ending 1st October, 1892, and certify to their correctness.

(Signed) W. A. SAMPSON,
C. C. BAINES,
Auditors.

Toronto, 20th October, 1892.

The undersigned hereby certifies that he has examined the books of the Consumers' Gas Company, and that the above statements of profits and loss, and assets and liabilities agree therewith.

(Signed) WM. R. HUGHES, Auditor for city.

RECORD.

In the High Court of Justice, Chancery Division, Ontario.

No. 7. Special Case and Annual Reports annexed, 22nd May, 1895 —*continued.*

Forty-fifth Annual Report of the Consumers' Gas Company of Toronto.

The directors are pleased to be able to lay before the stockholders, a very satisfactory statement of the business and progress of the company, for the past year.

1,131 new services have been put in, and six miles of mains have been laid, making the total mileage, over 220.

The additions to the works, referred to in the last annual report as being under construction or contracted for, were all satisfactorily completed within the specified times, and have all been paid for; and the manufacturing and storage capacity of the company, is now ample for several years to come.

Having been satisfied, from the estimates of the general manager, that they could afford to do so, and believing in the policy of selling gas at the lowest price consistent with the security of the stockholders, the directors made the following reductions in the prices, which took effect 1st April last:—

To consumers of 200,000 cubic feet and under, per annum	from \$1.12½ to \$1.05 per 1,000
To consumers of over 200,000 and up to 500,000 cubic feet per annum	from 1.05 to 1.00 „ „
To consumers of over 500,000 cubic feet per annum	from 1.00 to 0.90 „ „
For gas stoves, grates and engines, supplied by separate meters	from 1.00 to 0.90 „ „

They are pleased to be able to report that these reductions have resulted in a largely increased consumption, especially for fuel purposes, the percentage of which, upon the total consumption, is becoming larger year by year.

That so large a profit as that shown by the statement, has been realised, notwithstanding these reductions, is matter for congratulation. This result is to be attributed partly to the increased consumption, but principally to the introduction of improved manufacturing plant, by which a large saving in material and labour has been effected.

To reduce the company's large indebtedness to their bankers, incurred to pay for the recent additions to the company's works, the directors decided to put on the market, \$100,000 of the new stock, as authorised by amendment to their Act of Incorporation. This stock was sold by public auction, on the 2nd October instant, and it cannot but be gratifying to the stockholders, to learn that the average premium realised was 83.04 per cent., being the highest yet obtained for the stock sold in this manner.

A comparative statement with that of the preceding year shows:

	Street Lamps	Meters	Gas Rental
Year ending 30th September, 1893	1,189	17,702	\$551,617.90
Year ending 30th September, 1892	1,201	16,164	512,554.17
	Decrease 12	Increase, 1,538	Increase, \$39,063.73

The directors feel that they are only doing justice to the general manager, to state that the prosperous condition of the company's business, and the efficient working of every department, are largely due to his ability, energy and careful supervision; at the same time, due credit should be accorded to the capable superintendents, chief clerk and accountant, and the office staff, who, in their various departments, have so ably supported him.

All of which is respectfully submitted. JAMES AUSTIN, President.

Statement showing profit realised by Consumers' Gas Company, from October 1st, 1892, to October 1st, 1893.

1893	Dr.	$ c.	1893	Cr.	$ c.
Oct. 1.	To Coal, bituminous	121,511.14	Oct. 1.	By Gas rents	551,617.90
	„ „ anthracite	26,899.24		„ Office rents	2,575.75
	„ Oil	47,527.13		„ Tar	26,139.13
	„ Salaries	27,100.00		„ Coke	39,336.44
	„ Auditors	600.00		„ Ammoniacal liquor	7,823.29
	„ Stationery and advertising	2,606.93			
	„ Insurances	2,759.19			
	„ Rent, Mill St. property	210.00			
	„ Supt. works, stokers and engineers	47,157.43			
	„ Purification, lime and wages	10,830.32			
	„ Lamplighting	9,889.50			
	„ Meter settings and indications	11,193.87			
	„ Directors' compensation	9,000.00			
	„ Charges at works	12,951.31			
	„ Taxes	14,378.75			
	„ Meter and gas inspection	4,304.00			
	„ Horse board and expenses	1,913.62			
	„ Sundries	12,388.36			
	„ Balance	264,271.72			
		627,492.51			627,492.51
1893			1893		
Oct. 1.	To Dividends	160,000.00	Oct. 1.	By Balance	264,271.72
	„ Interest	5,895.15		„ Interest on debentures	10,313.43
	„ Profit and loss	108,690.00			
		274,585.15			274,585.15

J. AUSTIN,
President.

(L.S.)

W. H. PEARSON,
General Manager and Secretary.

Examined and found correct—

C. C. BAINES,
W. E. SAMPSON,
Auditors.

Toronto, 18th October, 1893.

Balance Sheet of the Consumers' Gas Company of Toronto, October 1st, 1893.

1893	Liabilities.	$ c.	$ c.	1893	Assets.	$ c.
Oct. 1	Capital stock		1,600,000.00	Oct. 1	Works, general outlay	2,285,871.20
	Reserve fund—October 1st, 1892	748,691.38			Main pipes and specials	12,552.18
	Profit and loss, Oct. 1st, 1893	108,690.00			Service pipes and specials	4,921.73
		857,381.38			Street lamps	13,922.06
	Less plant and buildings renewal fund.	114,623.25			Retorts, firebricks, etc.	1,532.69
			742,758.13		Meters	168,016.27
	Plant and buildings renewal fund, Oct. 1st, 1892	213,316.00			Coal	74,541.65
	Plant and buildings renewal fund, Oct. 1st, 1892, to Oct. 1st, 1893	114,623.25			Oil	919.17
		327,539.25			Coke	3,600.00
	Less repairs and renewals	88,768.12			Tar	7,789.30
			239,171.13		Oxide of iron	639.46
	Dominion Bank		261,105.02		Cash	327.88
	Profit and loss—				Debentures	221,967.37
	Reserved for dividend 174		40,000.00		Gas accounts owing	85,200.00
	Sundry accounts owing		19,009.22		Horses and conveyances	2,055.00
					Sundry accounts owing	18,187.54
			2,902,043.50			2,902,043.50

J. AUSTIN,
President.

(L.S.) W. H. PEARSON,
General Manager and Secretary.

We beg to report the completion of the audit of the books and accounts of the Consumers' Gas Company of Toronto, for the year ending 1st October, 1893, and certify to their correctness.

(Signed) C. C. BAINES,
W. E. SAMPSON,
Auditors.

Toronto, 18th October, 1893.

Forty-sixth Annual Report of the Consumers' Gas Company of Toronto.

In presenting to the stockholders the forty-sixth annual report, the directors are pleased to be able to say that the business of the company has continued in a satisfactory condition.

929 services have been put in, and over four and a quarter miles of mains have been laid, making the total mileage nearly 225.

There has been but a moderate increase in the quantity of gas sold, over that of the previous year. Notwithstanding this fact, and the reduction in prices made in April, 1893, the profit for the year has not fallen far short of that of 1893. Decreased prices for coal and oil, and further improvements in manufacture, have enabled the company to secure this satisfactory result.

The company, in addition to a large assessment on its real property, has recently been assessed upon its street mains to the extent of $500,000. This extra assessment has been confirmed by the County Judge, and the tax has been paid under protest, pending an appeal to a higher tribunal. Should this further expenditure be imposed it will lessen the company's ability to reduce the price of gas, which the directors would exceedingly regret.

The directors, can with much satisfaction, refer to the fact that the prices for gas in Toronto, averaging 98 cents per thousand, are—considering the circumstances of the company as to location and the cost of materials—as low as in any place in America, and lower than in many large cities where coal, oil and other materials are considerably cheaper; and the directors would recommend to their successors the advisability of continuing to carry out the policy of supplying the gas at the lowest figures, having due regard to the interests of the stockholders and the efficiency of the service.

The general manager has had the distinguished honour of being unanimously elected president of the American Gas Light Association, and is the first Canadian who has been appointed to that position.

A comparative statement with that of the preceding year:—

	Street lamps	Meters	Gas rental
Year ending 30th September, 1894 . . .	1,164	19,304	$544,325.59
Year ending 30th September, 1893 . . .	1,189	17,702	551,617.90
	Decrease 25	Increase, 1,602	Decrease $7,292.31

The directors have pleasure in again testifying to the value of the services of their able manager, and to the continued efficiency of his staff.

All of which is respectfully submitted.

JAMES AUSTIN, President.

Statement showing profit realised by Consumers' Gas Company from October 1st, 1893, to October 1st, 1894.

1894	Dr.	$ c.
Oct. 1	To Coal, bituminous	104,861.30
	„ „ anthracite	23,320.00
	„ Oil	45,075.80
	„ Salaries	29,156.67
	„ Auditors	600.00
	„ Stationery and advertising	2,493.83
	„ Insurances	2,644.64
	„ Superintendent, works, stokers and engineers	46,966.60
	„ Purification lime and wages	11,986.86
	„ Lamplighting	9,822.00
	„ Meter settings and indications	11,277.83
	„ Directors' compensation	9,000.00
	„ Charges at works	10,970.16
	„ Gas and meter inspection	4,854.00
	„ Horse board and expenses	1,778.54
	„ Taxes	23,005.78
	„ Sundries	9,419.71
	„ Balance	262,668.51
		609,902.23

1894	Cr.	$ c.
Oct. 1	By Gas rents	544,325.59
	„ Office rents	2,082.42
	„ Tar	20,940.71
	„ Coke	36,050.54
	„ Ammoniacal liquor	6,502.97
		609,902.23

1894		
Oct. 1	To Dividends	168,746.65
	„ Interest	4,573.69
	„ Profit and loss—	47,344.82
	„ Depreciation of plant	50,000.00
		270,665.16

1894		
Oct. 1	By Balance	262,668.51
	„ Interest on debentures	7,728.96
	„ Interest	267.69
		270,665.16

J. AUSTIN,
President.

(L.S.) W. H. PEARSON,
Gen. Manager and Secretary.

Examined and found correct.

C. C. BAINES,
Per THOMAS MCCRAKEN, *pro tem.*
W. E. SAMPSON,
Auditors.

Toronto, 26th October, 1894.

Balance Sheet of the Consumers' Gas Company of Toronto, October 1st, 1894.

1894	Liabilities	$ c.	$ c.
Oct. 1	Capital stock		1,700,000.00
	Reserve fund, October 1st, 1893	742,758.13	
	Premium on stock	82,866.93	
		825,625.06	
	Profit and loss, October 1st, 1894	47,344.82	
		872,969.88	
	Less plant and buildings renewal fund	47,344.82	825,625.06
	Plant and building renewal fund, October 1st, 1893	239,171.13	
	Plant and building renewal fund, from October 1st, 1893, to October 1st, 1894	47,344.82	
		286,515.95	
	Less repairs and renewals	68,892.74	217,623.21
	Profit and loss—		
	Reserved for dividend No. 178		42,493.89
	Accounts owing		25,387.73
			2,811,129.89

1894	Assets	$ c.
Oct. 1	Works, plant and general outlay	2,461,024.19
	Main pipes and specials	19,486.34
	Service pipes and fittings	4,685.52
	Retorts, fire bricks, etc.	3,607.39
	Coal	34,044.82
	Oil	835.31
	Coke	2,700.00
	Tar	3,360.30
	Oxide of iron	39.46
	Cash	281.25
	Dominion Bank	44,708.33
	Debentures	129,246.53
	Gas accounts owing	91,000.00
	Horses and conveyances	2,146.58
	Accounts owing	13,963.87
		2,811,129.89

J. AUSTIN,
President.

(L.S.)

W. H. PEARSON,
General Manager and Secretary.

We beg to report the completion of the audit of the books and accounts of the Consumers' Gas Company of Toronto, for the year ending 1st October, 1894, and certify to their correctness.

Signed, C. C. BAINES,
Per THOMAS MCCRAKEN, *pro tem.*
W. E. SAMPSON,
Auditors.

Toronto, 26th October, 1894.

RECORD.

In the High Court of Justice Chancery Division, Ontario.

No. 8. Notice of setting down Cause on Special Case, 28th May, 1895.

Notice of setting down Cause on Special Case.

Take notice that I have, pursuant to consent filed, set this action down to be heard on a special case before this Court, for Thursday, the 30th day of May, 1895, at eleven o'clock in the forenoon.

Dated this 28th day of May, 1895.

Yours &c.,

JOHN MACGREGOR,
Plaintiffs' Solicitor.

To Messrs. Mulock, Miller & Co.
Solicitors for Defendants.

No. 9. Judgment of the Hon. Mr. Justice Ferguson.

Judgment.

The Plaintiffs, who are Johnston and The Toronto Type Foundry Company, Limited, bring the action on their own behalf as well as on behalf of all the consumers of gas furnished by the Defendants in the City of Toronto.

The matters in difference come before me in the form of a special case, and not upon evidence in the ordinary way. This case, however, provides that the pleadings which are said to be annexed to it, may be referred to as showing the questions in issue.

The 15th paragraph of the case states and admits that the Plaintiff Johnston has been a consumer of gas since 1887, and has paid large sums of money to the Defendants therefor; that in January, 1893, the Plaintiffs, The Toronto Type Foundry Company, Limited, notified the defendant company that they had purchased Johnston's business, and that for the then future, all gas bills were to be charged to the Type Foundry Company; that this, however, was not done, and the Plaintiff Johnston, is, and always has been liable to the defendant company therefor, and that the Plaintiff Johnston, is the managing director and the largest stockholder in the Type Foundry Company.

The Plaintiffs in their statement of claim say, and it is not questioned, that the Defendants are an incorporated company, doing business in the City of Toronto and its suburbs, as suppliers of gas for lighting and heating purposes. They then refer to the Act of Parliament under which the Defendants were incorporated, which is an Act of the Parliament of Canada, passed in the eleventh year of the reign of Her Majesty, chaptered 14, and several other Acts of the late Province of Canada, and the Province of Ontario, by which additional rights, powers, privileges and liberties were (as the Plaintiffs say) given to the defendant company.

The Plaintiffs say that immediately after the incorporation of the defendant company, they began to manufacture gas, and to supply a large number of the citizens of Toronto, and suburbs with gas for lighting and heating purposes for which they were paid large sums of money by the citizens, and that prior to the 23rd day of April, 1887, the defendant company being desirous of increasing their capital stock presented a petition to the Legislative Assembly of the Province of Ontario for authority so to increase their capital stock, and the amount of their

real estate, to meet the requirements of the rapidly increasing population of the City of Toronto, and that thereupon an Act was passed in the 50th year of the reign of Her Majesty, entitled "An Act further to extend the powers of the "Consumers' Gas Company of Toronto" and chaptered 85, which Act came into force on the 23rd day of April, 1887. The Plaintiffs then set forth in a general way, the provisions of the first, second, fourth, sixth and seventh sections of this Act, and say that since the passing thereof they, the Plaintiffs and all other consumers of gas in the City of Toronto and suburbs, have been large consumers of gas and have paid therefor large sums of money to the defendant company, and as such consumers have a right to the enforcement of the provisions of the aforesaid Act of 1887 in their favour as against the defendant company. The Plaintiffs then state that at the time of the passing of this Act in 1887 the defendant company had a surplus of profits in hand which was to have formed the nucleus of the rest or reserve fund which at that time amounted to the sum of $394,310.

They then refer to certain sales by the defendant company of the increased capital stock made under the provisions of the Act of 1887, on which was realised a very large sum of premiums (above the par value) which, if added to the rest or reserve fund in hand as aforesaid, would have been more than sufficient to establish the rest or reserve fund mentioned in the fourth section of the Act, and which should have been invested in some one or more of the securities mentioned in the fourth section of the Act.

The Plaintiffs then charge that the Defendants in fraud of them and contrary to the provisions of the said Act of 1887, instead of forming the rest or reserve fund as directed by the Act, and investing the same as therein directed, used the money for other purposes and invested the same in plant and material contrary to the intention and meaning of the fourth section of the Act. The Plaintiffs further say that the Defendants in fraud of them, instead of forming and creating a "plant and buildings renewal fund" as directed by the fifth section of the Act, neglected and refused to form the same and used the moneys received by them from premiums and profits for their own uses and other purposes than those directed by the Act.

The Plaintiffs then charge that the defendant company (in addition to the two sums of reserve and premiums aforesaid which they say have been misapplied) have made large profits in their business from the time of the passing of the said Act of 1887 down to the present time, amounting to about $250,000, which should have been applied by the defendant company in forming the special surplus account to be used in the reduction in the price of gas to the Plaintiffs from time to time as the same was earned since 1887. The Plaintiffs claim that by reason of such misappropriation of funds the Defendants have lost the interest which, but for it would have been received from the investment of the reserve fund under the fourth section of the Act, from the 31st of March, 1887 to the 30th of September, 1893, which amounts to a very large sum and which should have been applied in the reduction of the price of gas to the Plaintiffs as provided by the said Act.

The Plaintiffs also say that on the 3rd day of October, 1893, the Defendants under the provisions of the Act offered another $100,000 of the increased capital

RECORD.

In the High Court of Justice, Chancery Division, Ontario.

No. 9. Judgment of the Hon. Mr. Justice Ferguson —*continued.*

stock for sale and received the sum of $83,040 premiums thereon which should be added to the special surplus account and used in reduction of the price of gas charged to them, the Plaintiffs.

There is then alleged a request before action by the Plaintiffs of the Defendants to comply with the provisions of the Act, for an account and repayment of sums overpaid by the Plaintiffs and a refusal by the Defendants.

It is then alleged that the Defendants claim to have the right to use and will unless enjoined from so doing, use the said sum of $83,040 in their business, and in the purchase and construction of plant, and that they threaten and intend to use the profits arising from their business in the purchase of permanent or other plant contrary to the provisions of the Act of 1887.

The Plaintiffs then claim a return of sums that they say have been overpaid in the past to the Defendants, and ask an account of the receipts and disbursements of the Defendants since the 23rd day of March, 1887. A mandatory order directing the Defendants to comply with the provisions of the Act. A declaration of right—a declaration that the defendant company are trustees, &c., &c., &c., and an order restraining the Defendants from misapplying the said sum of $83,040. By their defence the Defendants admit that they were incorporated as stated by the Plaintiffs and that they are subject to the Acts of Parliament and the several Acts of the Legislative Assembly referred to by the Plaintiffs, but do not admit the correctness of the Plaintiffs' statement as to the terms and effect of the same.

They admit that since their incorporation they have manufactured gas and supplied a large number of citizens of Toronto with gas for lighting and heating purposes.

They say that by the proper construction of the Acts relating to their rest or reserve fund, and plant and building renewal fund, they are not restricted in making investments to the specified securities, but are entitled to invest the same or part thereof in the general business of the company.

They deny that they have ever acquired within the meaning of the Acts referred to, a rest or reserve fund at any time amounting to half the paid-up capital of the Defendants.

They deny that their surplus of net profits has ever amounted to such a sum as would impose on them the duty of reducing the price of gas under the provisions of the Act of 1887 above referred to, but say that they have voluntarily from time to time reduced the price of gas to a much greater extent than it would have been incumbent on them to do had they acted in the premises in accordance with the Plaintiffs' contentions; and they say that all consumers of gas furnished by the Defendants have paid to the Defendants less therefor since the passing of the Act of 1887, than the Defendants had a right to charge and collect.

The Defendants also demur to the statement of claim on the grounds (1) That it shews no cause of action. (2) That the Plaintiffs have no *locus standi* to bring the action against the Defendants or to claim the relief sought for. (3) That the Plaintiffs do not represent and cannot sue on behalf of the public or that portion of the public interested in the matters in question and on general grounds sufficient in law to sustain the demurrer.

Such is the record (somewhat abbreviated, though still very long) to which I am to look to discover the issues between the parties. And it is owing to the questions discussed at the bar as to whether or not the Attorney-General should have been a party, as to whether or not the Plaintiff can sustain an action of this character, and even assuming that they can do so, then do the Plaintiffs sufficiently represent the others on whose behalf they profess to sue, to enable them to sustain the action in this form, that I have referred to the pleadings at so great length.

By the Defendants' original charter their capital stock was a comparatively small sum. But by the various intermediate Acts referred to, this had been increased till before the application for the Act of 1887, it was one million dollars. By the 8th section of the original charter 11 Vic. cap. 14, dividends exceeding ten per cent. per annum could not be declared out of the profits of the undertaking and this restriction or limitation still continues to exist. Only ten per centum per annum can be paid to the stockholders. Up to the time of the application for the Act of 1887, there does not seem to have been any restriction upon the Defendants as to the price they might charge for gas or the amount of profits they might actually derive from their operations under their charter, except so far as a restriction may be implied from the limitations of the dividends to be paid. At that time, as stated and admitted in the special case, the Defendants applied for an Act empowering them to increase their capital stock by one million dollars. (Such an increase bringing it up to two million dollars.) It is admitted that the application was opposed by the City of Toronto, and that after many discussions before the Private Bills Committee the Act was passed.

As the real position of affairs at that period before the legislature may be considered of some importance, I set forth a clause from the 39th annual report of the Defendants having relation to it. This report, amongst others, is attached to the special case, and they were all, so far as considered needful, freely referred to on the argument. It is this:—

"Application was made to the Legislature of Ontario at its last session for "power to increase the capital stock of the company to $2,000,000, the new stock "to be allotted to the stockholders as has been usual *pro rata* at par. This last "provision was most strenuously opposed by the City of Toronto, represented "by the mayor and by other members of the legislative committee of the city "council, principally on the ground that it would be a bonus to the stockholders "which it was claimed, was not contemplated when the company obtained its "charter. After many protracted discussions at which the representatives of the "company strongly advocated and supported the rights of the company to such "an allotment, it was finally considered prudent, rather than to withdraw the "Bill, to consent to a compromise and at the same time to settle for ever the "vexed question of the company's rights to accumulate a reserve fund, and by "so doing pursue the conciliatory course with the city between whom and the "company the directors consider the most harmonious relationship should always "exist. A Bill drawn out in accordance with the terms agreed upon was "ultimately passed by the Legislature, a copy whereof has been mailed to all the "stockholders."

Such seem to be, according to the statements of the Defendants themselves, the circumstances in which the Act of 1887 was passed.

RECORD.

In the High Court of Justice, Chancery Division, Ontario.

No. 9. Judgment of the Hon. Mr. Justice Ferguson —*continued.*

The case admits and states that at the time of the passing of this Act (1887) the Defendants had accumulated $394,310.27 out of their profits, after payment of the dividend to the stockholders, that of this sum $322,830.24 was standing to the credit of "profit and loss" and $71,480.03 to the credit of "contingent account" as of October 1st, 1886, that of the amount at the credit of profit and loss $305,037.92 was at that date invested in municipal debentures and the residue in the business of the company, and that these sums amounting together to the sum of $394,310.27, it is presumed, constituted the rest or reserve fund referred to in the fourth section of the Act of 1887.

The case also admits and states (giving the figures somewhat in detail) that after the passing of the Act of 1887 and up to and inclusive of the year 1891, the Defendants sold of the new stock, issued in pursuance and under the authority of the Act of 1887, $600,000, and that the premiums upon such sales over and above the par value of the stock so sold amounted to $455,482.26, and that on the second day of October, 1893, a further lot of such stock of $100,000 was sold by the Defendants in respect of which the premiums above the par value amounted to $83,042.25, the total premiums realised by the Defendants from the sales of the $700,000 of this new stock being the sum of $533,524.71. But that on the 1st day of October, 1893, the amount received from premiums was only the sum of $455,482.26 the remaining sum the $83,042.45 having been received in the Defendants' financial year commencing on the said 1st day of October, 1893. And it is by the case stated and admitted that these sums were deposited in the Defendants' general bank account, which was drawn upon as required for the payment of the purchase money of land and the erection of buildings and plant and for the general business of the company, the Defendants, they keeping but one bank account.

This action was commenced on the 22nd day of February, 1894.

Only the above referred to sum of $700,000 of the new stock authorised by the Act of 1887 has been issued, the remaining $300,000 so authorised is yet unissued.

The case also states and admits that the Defendants after the passage of the Act of 1887 opened an account in their books called the "Reserve Fund Account," at the credit of which on the 1st day of October, 1893, stood the sum of $742,758.13, that of this amount there was at this date $221,967.37, invested in municipal debentures; that on the 1st October, 1894, there was $129,246.53, in debentures and that the residue of the said sum of $742,758.13 had prior thereto been invested or expended in the construction or acquisition of land, building and plant, for the purposes of the Defendants' business.

The second question asked by the case, is whether the Defendants were obliged to include in the rest or reserve fund which the Act of 1887 directed or authorised them to have, (a) The moneys which the Defendants had standing to the credit of profits and loss account. (b) To the credit of contingent account at the time of the passage thereof, and (c) All the moneys received from the premiums of stock on the sale of stock authorised by the Act to be sold until the said fund amounted to fifty per cent. of the paid up capital of the Defendants.

The answer to this question must, I think, be in the affirmative, as it appears

to me that the fourth section of the Act of 1887 provides for this being done, and makes it obligatory upon the Defendants to do it.

The sums referred to under (a) and (b) in this question taken together are the sum of $394,310.27, which, it is said in the second paragraph of the case, it was presumed constituted the rest or reserve fund referred to in this fourth section of the Act, and, after a perusal of all that has been brought before me, I do not entertain any doubt that such presumption is correct. There can, I think, be no other fund designated or even imagined, to which the language of the section could be made to apply, and I think the language used in the circumstances then existing plainly refers to this fund as "the rest or reserve fund of the company," and the fourth section, after providing for the manner of the sale of the stock issued under the provisions of the Act, says:—"And all surplus realised over the par value of the shares so sold, shall be added to the rest or reserve fund of the company until the sum shall be equal to one half of the paid up capital stock of the company, the true intent and meaning being that the company may at all times have and maintain a rest or reserve fund equal to, but not exceeding one half of the then paid up capital of the company."

It will be observed that in the earlier part of this provision, the words "shall be added" are employed, and in the latter part of it "that the company may at all times have and maintain" are the words used. It will be borne in mind that at the passing of the Act, the right of the company to accumulate a "reserve fund" was in their own opinion a "vexed question" which was settled by the provision permitting them to have and maintain such fund, defining the extent of it by saying that it should not exceed a certain amount, but the words providing for the moneys that should go into and constitute such fund are, as it seems to me, positive and obligatory as language can be, and any surplus of such moneys there might be over the amount permitted as a rest or reserve fund is (amongst other things) provided for by the seventh section of the Act, the eighth section providing for the only case in which this rest or reserve fund should be drawn upon.

I am not impressed with the contention that the difference between $322,830.24, the amount standing to the credit of profits and loss, and $305,037.92 the amount at the time of the application for the Act of 1887, invested in municipal debentures, a sum of something over $17,000 of profits, having been used in and then being in the business of the company, affords a reason for the conclusion that the company were at liberty to use the reserve fund contemplated by the Act in their business generally. The provisions of the statute seem to me to entirely forbid such a conclusion.

I repeat, and it seems to me clear, that this second question must be answered in the affirmative.

The third question is:—Was it *ultra vires* of the company to invest or use the reserve fund, or any portion of it in the purchase or construction of their plant or buildings or in their business generally?

This question must, I think, also be answered in the affirmative. The eighth section of the Act of 1887, provides as I think, plainly for the application of the reserve fund and provides in words that the fund shall not otherwise be drawn upon. The fund is, I think a fund that, according to the scope and provisions of

RECORD.

In the High Court of Justice, Chancery Division, Ontario.

No. 9. Judgment of the Hon. Mr. Justice Ferguson —*continued.*

this Act, should be kept in hand for the purpose of meeting, if need should be, the contingency or contingencies referred to in this eighth section. However, unreasonable it may appear to some, that so large a fund should be kept for purposes that may not and probably will not come into existence, the provisions of the Act on the subject seem to me clear and positive and according to the view expressed by Lord Watson in the case, Countess of Rothes *v.* Kerkcaldy, W. W. Comrs. 7 App. Cas. foot of p. 707 (a view that is also found stated in other decisions), the provisions of an Act such as this one, must be regarded as a contract between the parties, whether made by their mutual agreement or forced upon them by the Legislature. I am of the opinion that the company had not power or right to use the reserve fund or any portion of it in the purchase or construction of their plant or buildings, or in their business generally, and that the answer to this third question must, as already said, be against the Defendants.

The fourth question is: Was it *ultra vires* of the company to invest the premiums on the sale of stock or any part thereof in the erection of buildings until the rest or reserve fund had been found equal to one half of the paid up capital of the company?

The answer to this question should as I think, also be in the affirmative. The premiums meant, are the premiums on the sale of the new stock. These were, by the provisions of the Act, as I understand them, to be added to the fund then in hand, and called the rest or reserve fund of the company until the same should equal one half of the paid up capital of the company, to form the contemplated rest or reserve fund, the position of which I have before spoken of as fully as I think necessary.

A question I am not, so far as I see, asked, is whether or not such premiums could be so employed after the reserve fund had been found equal to one half of the paid up capital, and as to this I only call attention to the second line of section 7 of the Act.

The fifth question is whether the Defendants did establish, maintain, invest and use the rest or reserve fund in accordance with the provisions of the Act?

The answer to this should be, I think, in the negative? What the case says in this regard is that the company, after the passage of the Act, opened an account in their books called the "Reserve Fund Account" at the credit of which on the first of October, 1893, stood the sum of $742,758.13, that of this sum there was on that day $221,967.37 invested in municipal debentures, and on the first day of October, 1894 there was $129,246.53 in debentures, and the residue of the said sum of $742,758.13 had prior thereto been invested and expended in the construction or acquisition of land, buildings and plant for the purposes of the business.

Further than the amount represented by debentures in hand, this was not in my opinion a compliance with the requirements of the Act at all. From what I have before said regarding the contemplated reserve fund, my reason for saying this will appear. Opening the account and making entries and figures thereto are no compliance with the requirements of the Act respecting the rest or reserve fund, except so far as there may be in hand the cash or securities of the kind mentioned in the last clause of section four of the Act. The Act does not authorise, and in my opinion it forbids the so called "investment of the reserve

fund or any part of it in the construction or acquisition of land, buildings and plant for the purposes of the business of the Defendants. As to the investment of the contemplated reserve fund, the language is that it *may* be invested in dominion or provincial stock, in municipal debentures, school debentures, drainage debentures, debentures of loan companies and mortgages on real estate. Last clause of section four.

By the interpretation Act the word "*shall*" is to be construed as imperative and the word "*may*" as permissive.

It was contended that here the word "*may*" should be read "*shall*" and that the company was bound to invest this contemplated reserve fund when it came into their hands in the securities mentioned, or some of them.

It is true that the word "*shall*" is sometimes substituted for the word "*may*" as in the People *v.* Brooklin, 22 Barbour 412, where it was considered that the good sense of the whole enactment required the change. In Kent's Commentaries, volume 1, 467, it is said the word "*may*" in a statute means must or shall when the public interest or rights are concerned or the public or third persons have a claim *de jure* that the power shall be exercised, the author referring to many decided cases, some of which are English and some American. In the King *v.* Barlow, 2 Salk, 608, it is said that where a statute directs the doing of a thing for the sake of justice or the public good, the word "*may*" is the same as the word "*shall.*" The illustration given is: where, by a statute, a sheriff may take bail, the construction is that he must take it, for he is compelled so to do.

When, however, I look at the situation of this contemplated fund and the purposes of its existence, the object to which it is, by the provisions of the Act, to be applied and so far as I can understand it, the scope of the Act, I do not think that the present instance falls under any of the authorities on the subject that I have seen, or that I should be guaranteed in saying that the company was bound by the Act to invest this fund or any part of it. I think the statute left it in the discretion of the company to say whether they would do so or not. But if the company should invest the fund or any part of it, they would be bound to make the investment in the securities mentioned or some of them.

As to the sixth question, I am of the opinion that so far as an answer to it does not already appear, I am not properly called upon to answer it.

The seventh question is:—Has the plant and building renewal fund ever been created or maintained within the meaning of the Act?

I am of the opinion that it does not appear that this fund has been created or maintained as required by the sixth section of the Act. There seems to me to be a vast difference between creating a fund and opening an account in a book and making entries thereat, and even if the contrary view were taken, the fund as appears by paragraph 9 of the case was not maintained even by credit entries at the account.

The eighth and ninth questions may be conveniently dealt with together.

The eighth question is :—After providing for all usual and ordinary repairs and renewals, was it *ultra vires* of the company to invest or use the surplus of the plant and buildings renewal fund, in their general business, or was the fund to be kept separate from the other moneys of the company uninvested?

RECORD.

In the High Court of Justice, Chancery Division, Ontario.

No. 9. Judgment of the Hon. Mr. Justice Ferguson —*continued.*

The ninth question is:—If the usual and ordinary repairs and renewals did not amount to as much as the five per cent. referred to in the Act, should the full five per cent. be carried to the credit of the plant and buildings renewal fund or only sufficient to cover the usual and ordinary repairs?

The answer to these questions, as I think is this: The statute provides and requires that this fund shall be created and maintained by the company out of the earnings of the company. The fund appears on the face of the Act to be a measured fund, limited to the five per cent. mentioned in the sixth section, no more and no less and looking at the circumstances in which the Act was passed, which I have before alluded to, it would appear to be a fund, the amount of which to answer the purposes intended and expressed, was estimated and agreed upon. The positive provision of the statute is that the fund should be created and maintained in the way pointed out in the Act, and I find no guarantee for saying that this fund may, for any reason, be more or less than the amount prescribed by the Act, or that the fund or any portion of it may properly be used in the general business of the company, or diverted from the purposes mentioned in the Act, and used for any other purposes whatever. Owing, however, to the manner in which section seven of the Act is framed, and the positive provisions of section six, I do not see that the Plaintiffs, or those whom they profess to represent, have any interest in any surplus there may be of this fund. As to whether or not any part of this fund remaining unemployed should be invested, the Act seems to be entirely silent. As I have before said, I apprehend it was an estimated fund supposed to be sufficient for its intended purposes, and no more than sufficient therefor, and the subject of any investments of it was probably not considered important. All that I am in a position to say on this subject is, that I do not perceive any objection to the investment of any portion of this fund remaining unemployed, in such securities as would be readily available in case the funds should be required, but I do not see any obligation resting upon the company so to invest.

The tenth question is:—In addition to keeping the plant and buildings in repair by means of this fund (the plant and building renewal fund) has the defendant company the right to write off sums of money from profits for "depreciation in plant"?

The 12th paragraph of the case states that the defendant company had charged against profits the sum of $15,000 in the year 1890 for "depreciation in street lamps," and in 1891 a further sum of $43,000 for a "depreciation in street lamps" was charged against the reserve fund account.

The 13th paragraph of the case states that the depreciation in street lamps took place in a portion of the company's plant that was not intended to be renewed or repaired and which was in fact no longer of any use and was of little, if any value, to the company.

These were the items in respect of which the argument took place, and, it was said that the company had ceased to use a large number of street lamps, owing to other lights taking their place, and that without any fault on the part of the company these lamps became useless and of little, if any value. I am now of the opinion that these sums should have been charged, if at all, against the plant and building fund. And my answer to the tenth question is in the negative.

I think the plant and building renewal fund was, as I have before stated, an estimated fund considered sufficient to keep the plant and buildings in a proper condition, and that the company are not authorised after the employment of this fund or in addition to having the fund for this purpose to write off sums from the profits for any "depreciation in plant."

I have chosen to reserve the first question asked to be last one answered.

The first question is:—whether the Plaintiffs or either of them has or have a right to maintain this action.

The Defendants, I will assume, were and are bound to adhere to the powers conceded to them by the Act. They were permitted to increase their capital stock as stated in the Act, but upon the terms and conditions also stated in the Act. Their right to have a reserve fund was affirmed by the Act, but that they have upon the terms and conditions stated in the Act, and in regard to that part of their business falling under the provisions of the Act, they were bound to adhere to the powers given them and do no more than the Act sanctioned and to proceed only in the mode pointed out by the Act. Yet as pointed out by Lord Cranworth in Mayor of Liverpool *v.* Chorley Water Works Co., 2 De. G. M. & G. at p. 859, it does not follow that any one has a right to complain whenever powers of this nature have not been strictly followed or are intended to be transgressed. In such cases a Plaintiff seeking assistance by way of injunction is bound to shew that he has an interest in preventing the Defendants from doing what is in fact, or may well be called, a violation of their contract with the Legislature. He must shew not only that the Defendants are committing or intend to commit a wrong, but also that the wrong complained of does occasion or will occasion loss or damage to him, that he has a special or private interest in confining the Defendants within the limits of their parliamentary power.

Then looking at the provisions of the Act, especially those of the seventh section of it, the allegations in the statement of claim and the admissions of the special case in respect to the position of the Plaintiffs as consumers of gas furnished by the defendant company, I am of the opinion that the Plaintiffs have a special or private interest in confining the Defendants within the limits of the powers given them by the Act, and without saying more, that the Plaintiffs fall within the boundaries of the law on the subject as stated as above by Lord Cranworth. The Act is a private Act and the matters in question are not matters in which the whole public have concern. The Plaintiffs are, I think in a position to maintain the action. Then are the Plaintiffs in a position to maintain the action as well on their own behalf as on behalf of those whom they profess to represent namely, all other consumers of gas furnished by the Defendants in the City of Toronto.

It does not appear to me that in respect to an action of this character, rule 315 adds anything to the law or practice as it existed in the Court of Chancery before the passing of the Judicature Act. In the 5th Edition (1871) of Daniels Practice, the author, after stating observations of Lord Cottenham in the cases Halnorth *v.* Holt, 4 M. & G. 619, and Mosley *v.* Ashton, 1 Phil. 790 and referring to some other cases says: "It is generally necessary in order to enable a Plaintiff to sue on behalf of himself and others who stand in the same relation with him to the subject of the suit, that it should appear that the relief sought

RECORD.

In the High Court of Justice, Chancery Division, Ontario.

No. 9. Judgment of the Hon. Mr. Justice Ferguson —*continued.*

by him is beneficial to those whom he undertakes to represent, and when it does not appear that all persons intended to be represented are necessarily interested in obtaining the relief sought. Such a suit cannot be maintained."

The Plaintiffs here seek to have the Defendants compelled to observe the provisions of the Act of the Legislature that I have so often referred to, to the end that under the provisions of the seventh section of it, he may obtain a benefit by the reduction, or a reduction in the price of gas consumed or to be consumed by them and furnished by the Defendants. And in regard to this it seems to me quite plain that after Plaintiffs obtain this relief it will necessarily be an advantage to other consumers of gas in the city, furnished by the Defendants, and that they in this respect stand in the same position as do the Plaintiffs. I do not see that this is a case in which any general interests of the public at large are concerned, or any rights or interests of the Crown are directly or incidentally brought in question. I am of the opinion that the Attorney General is not a necessary party, Plaintiff or Defendant, and that the action as it stands is properly constituted. See also Mayor of D. *v.* Plymouth &c. Co., 52 L. T. N. S. 161.

The 19th paragraph of the special case states that the figures mentioned in the case are for the purposes of the case only, and should a reference be directed they are not to be binding upon either party on such references.

The 10th paragraph of the special case shows, amongst other things, that in the year 1893, while the paid up capital of the Defendants was $1,600,000 the amount invested by them in work, plant and trade materials was $2,576,360.71, a sum exceeding the paid up capital by no less an amount than $976,360.71.

If it should finally appear that the ability to make this very large investment in works, plant, &c., has arisen by neglecting to observe the provisions of the statute directing the creation establishing and maintenance of the fund therein mentioned and neglecting to apply the profits as therein directed, and that this was intended to or should ultimately be to the advantage of the shareholders over and above the advantages given them by the various Acts of Parliament mentioned and referred to in the pleadings and case defining the position and powers of the Defendants, it will be found that what cannot be done directly, the law will not permit indirectly or by any indirect means or by any indirect and circuitous contrivance.

Booth *v.* Bank of England 7 Cl. & F. 509 at 540, referred to in Pollock on Contracts 280.

If an affirmative statute which is introductive of a new law, direct a thing to be done in a certain manner, that thing shall not, even though there are no negative words, be done in any other manner. 12 Abbotts P. R. 36 & 37. D. Warris p. 641.

A company incorporated by Act of Parliament cannot exercise its powers or apply its capital except in strict conformity with the Act. Atty. Gen. *v.* G. N. Ry. Co., Dr. & S. 154.

The powers of a corporation established for certain specified purposes must depend on what these purposes are, and except so far as it has express powers given to it, it will have such powers only as are necessary for the purpose of enabling it in a reasonable and proper way, to discharge the duties or fulfil the purposes for which it was constituted. The Queen *v.* Reid, L. R. 5 Q. B. Div. at 488.

The last clause in the special case provides that if the Court be of opinion that the Plaintiffs or either of them has a cause of action, then such judgment is to be entered in their favour or in favour of the Plaintiff entitled as the Court may think fit to direct.

In this case I do not distinguish between the Plaintiffs. They are for the purposes here, as it appears to me, one, the name of the other being added or employed for greater security against technical obligations.

I am, as I have already indicated, of opinion that the Plaintiffs have a cause of action against the Defendants and this action is well and properly constituted.

The Case comes before me in a manner that is unusual. As I understand it, I am not for the purpose of any final judgment especially if there is to be a reference, which I think there must be, to employ the figures in the special case. The Case stated seems to stand in the place usually occupied by the evidence and yet the statements made are not to be entirely conclusive. This may almost be said to be unique.

The judgment will be in favour of the Plaintiffs, declaring that they, the Plaintiffs, are entitled to have accounts taken substantially as asked by the first paragraph of the prayer of the statement of claim, and an account respecting what, if anything, has been done in or towards creating and maintaining the respective funds mentioned or referred to in the Act of 1887.

The accounts to be taken will, as I think, necessarily be accounts comprehending the whole business of the Defendants done since the passing of that Act, including the surplus profits in the hands of the Defendants at the time that Act was passed to the end that it may appear what sums would, if the Defendants had rendered strict obedience to the provisions and requirements of that Act, have been carried to the special account to be known as the "special surplus account" mentioned in the seventh section of the same Act.

It will, as I think, be necessary and convenient to direct that several accounts, each designated or described shall be taken so as to manifest what is above said as to the special surplus account.

I do not delay here to define these several accounts, but, if need be, I will hear counsel upon the settling of the minutes of the judgment in respect to them.

If the Defendants still have in hand the $83,040 received by them as premiums on the last sale of stock under the Act, I think they should not employ it or any part of it otherwise than as directed by the Act, but it is probably not necessary or prudent to make a restraining order with regard to this. Nor do I think it prudent at present to make any of the mandatory orders that are asked. All these may stand to be discussed on further directions when it may be hoped that there will be more light and accurate knowledge than at present, there being liberty to apply meantime in case any now unforeseen matters should come to light.

The demurrer will be overruled with costs, and I think the Defendants should pay the Plaintiffs' costs of the action down to this judgment.

Further direction and all subsequent costs will be reserved till after the report.

The reference will be to the Master-in-Ordinary.

RECORD.

In the High Court of Justice, Chancery Division, Ontario.

No. 10. Formal Judgment, 9th Sept., 1895.

In Court, the Hon. Mr. Justice Ferguson.

Monday, the 9th day of September, 1895.

1. This action coming on to be heard before this Court on the 30th and 31st days of May, 1895, upon a special case agreed to by the parties hereto and filed by the Plaintiffs herein.

2. Upon opening of the matter and upon hearing read the Defendants' demurrer and the pleadings and other proceedings with the special case in which the following questions are submitted for the opinion of the Court:—

(1) Whether the Plaintiffs or either of them have or has a right to maintain this action.

(2) Whether the Defendants were obliged to include in the rest or reserve fund which the Act 50 Victoria, chapter 85 directed or authorised them to have (a) the moneys which the company had standing to the credit of profit and loss account, (b) to the credit of contingent account at the time of the passage thereof, and (c) all the money received from premium of stock on the sale of stock authorised by the Act to be sold until the said fund amounted to fifty per cent of the paid up capital of the company.

(3) Was it *ultra vires* of the company to invest or use the reserve fund or any portion of it in the purchase or construction of their plant or buildings or in their business generaliy?

(4) Was it *ultra vires* of the company to invest the premiums received on the sale of stock or any part thereof in the erection of buildings until the rest or reserve fund had been found equal to one half of the paid up capital of the company?

(5) Whether the Defendants did establish, maintain, invest and use the rest or reserve fund in accordance with the provisions of this Act?

(6) And if not, in what respect the company failed to comply with the requirements of this Act.

(7) Has the plant and buildings renewal fund ever been created or maintained within the meaning of the Act?

(8) After providing for all usual and ordinary repairs and renewals, was it *ultra vires* of the company to invest or use the surplus of the plant and buildings renewal fund in their general business, or was the fund to be kept separate from the other moneys of the company uninvested?

(9) If the usual and ordinary repairs and renewals did not amount to as much as the five per cent. referred to in the Act, should the full five per cent. be carried to the credit of the plant and buildings renewal fund, or only sufficient to cover the usual and ordinary repairs?

(10) In addition to keeping the plant and buildings in repair by means of this fund, has the defendant company the right to write off sums of money from profits for depreciation in plant?

And upon hearing what was alleged by counsel for the Plaintiffs and Defendants, this Court did order that this action should stand over for judgment, and the same coming on this day for judgment:

3. This Court doth declare in answer to the first question submitted by the special case herein that the Plaintiffs have a cause of action against the Defendants,

and that this action is well and properly constituted, and the Defendants' demurrer to the Plaintiffs' statement of claim be and the same is hereby overruled, and doth order and adjudge the same accordingly.

4. This Court doth further declare in answer to the second question submitted by the said special case, that the said defendant company, were obliged to include in the rest or reserve fund of the company which the Act of 50 Victoria chapter 85 of the Province of Ontario directed or authorised them to have, (a) the moneys which the company had standing to the credit of profit and loss account, (b) to the credit of contingent account at the passing of the Act, and (c) together with all the money received from premium on the sale of stock authorised by the Act to be sold until the said fund amounted to fifty per cent. of the paid up capital of the company and doth order and adjudge the same accordingly.

5. This Court doth further declare by way of answer to the third question submitted by the said special case that it was *ultra vires* of the defendant company to invest or use the rest or reserve fund, or any portion of it, in the purchase or construction of their plant and buildings or in their business generally, and doth order and adjudge the same accordingly.

6. This Court doth further declare by way of answer to the fourth question submitted by the said special case that it was *ultra vires* of the company to invest or use the premiums so far received on the sale of stock or any part thereof, in the erection of buildings or in plant, and doth order and adjudge the same accordingly.

7. This Court doth further declare in answer to the fifth question submitted by the said special case that the defendant company did not, save as stated in the said special case, establish, maintain, invest and use the rest or reserve fund in accordance with the provisions of the said Act of 50 Victoria chapter 85 of the Province of Ontario, but it was not compulsory upon said company to invest the said reserve fund in any one or more of the securities mentioned in the said Act, and doth order and adjudge the same accordingly.

8. This Court doth further order in answer to the sixth question submitted by the said special case, that in so far as an answer to it does not already appear, they are not properly called upon to answer it.

9. This Court doth further declare in answer to the seventh question submitted by the said special case that the plant and buildings renewal fund has not been created or maintained within the meaning of the said Act 50 Victoria chapter 85 of the Province of Ontario, and doth order and adjudge the same accordingly.

10. This Court doth further declare in answer to the eighth question submitted by the said special case that it was *ultra vires* of the company to invest or use the surplus of the plant and buildings renewal fund in their general business or divert it from the purposes mentioned in the said Act or to use it for any other purpose whatever, and doth order and adjudge the same accordingly.

11. This Court doth further declare in answer to the ninth question submitted for the opinion of the Court in the said special case that the defendant company had the right to add the full five per cent. upon the plant properly purchased by their capital stock and actually in use under the provisions to the said Act to the plant and buildings renewal fund, whether the same was required

RECORD.

In the High Court of Justice, Chancery Division, Ontario.

No. 10. Formal Judgment 9th Sept., 1895 —*continued.*

or not, and there was no obligation on them to invest in any security whatever any unemployed portion of said fund.

12. This Court doth further declare in answer to the 10th question submitted by the said special case, that it was *ultra vires* of the defendant company to write off sums of money from profits or the reserve fund for depreciation in plant, and doth order and adjudge the same accordingly.

13. And this Court doth declare that the Plaintiffs are entitled to an account from the defendant company of their dealings with the moneys received by them for premiums from sale of stock and in their business from all sources whatever, and their disposition thereof from the 23rd day of April, 1887 down to the date hereof.

14. And this Court doth order and adjudge that it be referred to Edward Morgan, Esquire, one of the junior judges of the County Court of the County of York, to take the following accounts:—

(a) An account of all moneys received by the Defendants from all sources from the 23rd of April 1887 until the date hereof.

(b) An account of all moneys disbursed by the defendant company in their business and in the purchase of buildings and plant (1st) from and out of their paid up capital (2nd) from and out of the reserve fund (3rd) from and out of the plant and buildings renewal fund (4th) from and out of all other moneys including moneys received from premiums on sale of stock from the 23rd April, 1887.

(c) An account of the actual profits made by the defendant company in their business each year since 23rd April, 1887.

(d) An account of the amount standing to the credit of the contingent account on the 1st October, 1886.

(e) An account of amount invested in municipal debenture bonds on 1st October, 1886, and each year since then and the defendant company's disposition and application thereof.

(f) An account of amount standing to credit of profit and loss account on 23rd April, 1887.

(g) An account of amount realized from premiums on sale of stock since 23rd April, 1887, and each year since then until the date hereof.

(h) An account showing amount to be added to the rest or reserve fund from the 23rd April, 1887 until the same was properly formed, and the date or time when the same was fully formed.

(i) An account of how much if any of the value of the plant and buildings as entered in the books of the company at the end of each financial year since the 23rd April, 1887, represents the value thereof not in actual use.

(j) An account of moneys properly invested from the company's paid up capital in plant and buildings in actual use on 23rd April, 1887 and each year since then.

(k) An account showing the correct amount of the plant and buildings renewal fund on the 1st October, 1887, and each year since then, and actual disbursements properly made from said fund on buildings and plant properly purchased by means of and out of paid up capital, and in actual use on the 1st October, 1887, and each year since then.

(l) An account showing the correct amount if any which should have been carried by the defendant company to the special surplus account referred to in section 7 of the Statute 50 Victoria, chapter 85 from such time since 23rd April, 1887, as there was sufficient to form same, and each and every year since then.

(m) An account showing the amount actually paid for gas rents by the Plaintiffs and the other consumers of the City of Toronto since the 23rd April, 1887, and each year since then, showing thereon the excess if any which has been paid to the defendant company over and above the amount which should have been paid in accordance with the said statute since the 23rd April, 1887, and each year since then.

(n) An account showing amount improperly written off against profits or the reserve fund for depreciation in plant from 23rd April, 1887.

(o) An account showing trade material on hand on 1st October, 1887, and each year since then to the date hereof.

15. This Court doth further order and adjudge that the Defendants do pay to the Plaintiffs the costs of this action down to and including the trial thereof and the hearing of the special case, together with the costs of the motion for injunction and demurrer, forthwith after taxation thereof.

16. And this Court doth reserve further directions and the question of subsequent costs to be disposed of by the Court after the said Edward Morgan, Esq., shall have made his report.

Judgment signed this 16th day of December, 1895.

GEO. S. HOLMESTED
Registrar.

A. F. MACLEAN,
Clerk Weekly Court.

Ent'd J. B. 22 p. 74 ; W. O'N.

In the Court of Appeal for Ontario.

Between

J. T. Johnston and the Toronto Type Foundry Company (Limited) who sue on their own behalf as well as on behalf of all other consumers of gas furnished by the Defendants in the City of Toronto . . . . . (*Respondents*) *Plaintiffs*

and

The Consumers' Gas Company of Toronto. . . . (*Appellants*) *Defendants.*

Reasons for Appeal.

1. It is submitted that the Respondents have no right to maintain this action in their own behalf or in a representative capacity.

Atkinson *v.* Newcastle and Gateshead Waterworks Co., 2 Ex. Div. 441 (1877).

Glossop *v.* Heston & Isleworth Local Board 12 Ch. D. 102, p. 113.

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In the Court of Appeal for Ontario.

No. 11.
Reasons for Appeal to Court of Appeal for Ontario
—*continued.*

Bryce on *Ultra Vires*, 2nd Ed., pp. 292-7.
A. G. *v.* Gr. En. Ry. Co., 11 Ch. Div., pp. 449, 482 and 502.
Mayor, &c., of Liverpool *v.* Chorley Water Works Co., 2 De G. M. & G. 852.
Hinchley *v.* Gildersleeve, 19 Grant, 212.

(a) The only ground upon which the Respondents base their right to sue is by reason of their being consumers of gas furnished by the Appellants. See statement of claim, par. 12.

(b) The Respondents are in the same position as thousands of other consumers of gas who have entered into contracts with the Appellants for the supply of gas. They have no special or private interest different from those of other consumers of gas in having the terms of the Provincial Statute, 50 Vict., cap. 85, complied with.

(c) No one but the Attorney-General on behalf of the public has the right to proceed against a company for disregarding the provisions of an Act of Parliament.
Ware *v.* Regents Canal Co., 3 DeG. & J. 212 (1858).
Attorney-General *v.* Shrewsbury Bridge Co., 21 Ch. D. 752 (1882).
Bain *v.* Ætna Life Insurance Co., 20 O. R., 6. 21 O. R., 232.
Lindley on Companies, 5th Ed., 264.

(d) If it should be considered that the Attorney-General is not a necessary party (by reason of some only of the public being interested in having the terms of such Act complied with or otherwise) the Appellants contend that if any action is sustainable against them, the Corporation of the City of Toronto alone can bring such action.

(e) The sole parties to the alleged bargain resulting in the passing of 50 Vict., cap. 85, were the Corporation of the City of Toronto and the Appellants, and the Appellants submit that the supposed rights of the consumers of gas furnished by the Appellants can only be enforced by an action brought on their behalf by the Corporation of the City of Toronto.

(f) If the Respondents could properly bring this action in their own names, there is nothing to prevent all other consumers of gas furnished by the Appellants from instituting similar actions, and thus the Appellants would be doubly vexed for the same consideration.

2. It is submitted that the Respondents have no right to maintain this action as representing other consumers of gas furnished by the Appellants as well as themselves.

(a) Each consumer of gas furnished by the Appellants has separately entered into a contract with the Appellants for the supply of gas at certain rates to him, and approximately there are as many contracts as consumers.
See Daniels Chy. P. 6th Edn., p. 232, where it is stated that this form of action cannot be adopted when each of the class on behalf of whom it is instituted has a separate demand or equity.
Weale *v.* Middlesex W. W. Co., 1 Jac. & Walk. 368.
Bryce *Ultra Vires*, 3rd Edn., 754.

Sanitary Committee of Gibraltar *v.* Orfila, 15 App. C. pp. 400 & 411.
Judicature Act, Rule 315.
Compare this rule with corresponding English rule.
Wilson Judicature Act, Order XVI.

(b) The Legislature has enacted that when, as the result of certain acts, a sufficient amount of profit has been made, the price of gas is to be reduced, but it has not given these profits to the consumer, nor made the Appellants trustee of such profits for the consumer, nor given to him any remedy for their being withheld or misapplied.

3. The provisions of the statute respecting the formation of and dealing with a reserve fund are not compulsory, but permissive. It simply authorises that which was before questionable and leaves it to the company as a matter of internal economy to deal with such fund in the manner that may be considered by the company in its best interests. The Court will not interfere with such discretion.

Taunton *v.* Royal Insce. Company, 2 Hem. & M. 135.
50 Vict., c. 85, s. 4.

4. Even if these provisions are compulsory, an amount of capital sufficient to equal the limit fixed for the reserve fund has not been realised.

(a) The figures set out in the special case show that unless the sum on hand at the date of the passing of the statute can be treated as part of the reserve fund, this fund has never amounted to fifty per cent. of the paid up capital of the company.

(b) The Appellants contend that the sum on hand at the date of the passing of the Act is not part of the reserve fund.

5. Until the rest or reserve fund has reached the limit authorised by the Act, no sum is required to be carried to the special surplus account.
50 Vict., C. 85, sec. 7.

6. The reserve fund has been established and maintained in accordance with the terms of said Act.

(a) The reserve fund and its investment are distinct matters.

(b) The requirement of the maintenance of the reserve fund does not determine that the fund comprising it should be invested in certain securities.

(c) All the purposes of the said Act were served by keeping an account of the reserve fund so as to ascertain at what times certain profits made by the Appellants from the sale of their stock and otherwise should be applied towards the reduction in the price of gas to the consumer, and by so preserving the fund as to answer all legitimate demands that could be made upon it.

(d) The Legislature by refraining from making it compulsory on the Appellants to invest such reserve fund has left it open to the Appellants to invest it in such way as they see fit, *e.g.* in their business if they so decide.

(e) The provisions as to investing such fund in certain securities set forth in sec. 4 of said Act, is intended to permit the investment in the securities therein specified, but does not exclude other investments.

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In the Court of Appeal for Ontario.

No. 11. Reasons for Appeal to Court of Appeal for Ontario —*continued.*

7. Because the fund in question is called a reserve fund it does not necessarily follow that it cannot be invested in the business of the Appellants. It is submitted that due effect is given to the words "reserve fund," when it is held as the corpus or capital of the company, and is reserved or excluded from the income and from being expended in making payments on such account.

8. Apart from the permission given to the Appellants to invest their premiums and profits in the securities indicated in sec. 4 of said Act, it would be doubtful whether they had the right so to invest them, whereas before such authority was given, they were justified in investing and did invest their surplus in their business. It is submitted that the right to invest in such securities was an authority given to the Appellants in addition to that already possessed by them of investing in their business.

9. The provision in section 8 of said Act that the reserve fund shall not be drawn upon except in certain contingencies therein set forth, and that it should be restored again, does not militate against the construction contended for by the Appellants if the fund is treated as already suggested.

10. If the power given to the Appellants to invest their reserve fund in the securites mentioned in section 4 of the said Act is correctly construed as limiting the Appellants to investing in these securities, it follows that as there is no restrictive enactment in the case of the plant and buildings renewal fund, the Appellants are authorised to invest it in their business.

11. It is submitted that the learned judge is in error in holding that depreciation in value of assets of the Appellants arising from causes other than wear and tear cannot be written off.

DALTON MCCARTHY,
S. H. BLAKE,
W. N. MILLER.

No. 12. Reasons against Appeal and for Cross Appeal, 5th Dec., 1895.

Reasons against Appeal and for Cross-Appeal.

The judgment of the trial judge in granting the Plaintiffs the relief asked for was right, and should be sustained for the following among other reasons:—

1. The learned judge was right both on principle and authority in sustaining the Plaintiffs' right to sue on behalf of themselves and all other gas consumers of the City of Toronto. See Con. Rule 315.

(a) In 1818 Sir Thomas Plumer, in Meux *v.* Maltby, 2 Swanst. 282, gives the history of the right for one to sue on behalf of many down to that time, and says:—"The subject is no longer open to question, and the only thing to be inquired, as Sir John Leach says in Gray *v.* Chaplin, 2 Sim & St. 267, in order to enable a Plaintiff to sue on behalf of himself and all others who stand in the same relation with him to the subject of the suit, is to show that *the relief sought by him is in its nature beneficial to all those whom he undertakes to represent.*"

(b) In Williams *v.* Salmond, 2 K & J. 463 and 468, it was said that liberty to sue on behalf of one's self and other persons, who were too numerous to be brought on the record, is dependent neither upon the discretion of

the Court, nor upon the disposition of such other persons to concur in the suit. See also Thompson *v.* The Victoria Mutual, 29 Grant 56. And so beneficial was the practice of the Court of Chancery found to be that it was incorporated in the English Rules of the Supreme Court 1875, Order 16, Rule 13. See also Lloyd *v.* Loring 6 Ves. 773; Cockburn *v.* Thompson, 16 Ves. 321; Water Works Co., City of London *v.* Richmond, 2 Vern. 421; Adair *v.* New River Co. 11 Ves. 244; Gray *v.* Chaplin, 2 S. & S. 267; Small *v.* Atwood, 1 Young 407.

2. The objection of non-joinder of parties cannot be raised by demurrer, and has been waived by the defendant company, as it should have been made by substantive motion to add parties earlier in the action. See Young *v.* Robertson, 2 O. R. 439; Werederman *v.* Societie Generale d'Electricitie, 19 Ch. D. 250. See also Con. Rule 324 Holmested & Langton's, J.A. 355; Shehan *v.* Gt. Eastern Ry. Co. 16 Ch. D. 59; Wilson *v.* Furness Ry. Co. L. R. 9 Eq. 28 (in which the demurrer was overruled).

3. The Attorney General is not properly a party to an action to enforce a statute unless the acts required to be done by the statute are of a public nature, or where the non-observance of the statute is of such a character that no one or more of the Queen's subjects are damnified to a greater extent than others. Where any one or more of a class of persons are suffering an injury by the non-observance of the provisions of a statute, then any one or more for himself, or as representing a class, may bring an action to enforce the same.

(a) In Mayor of Davenport *v.* Tramway Co., 52 L. T. N. S. 161, it was held that where an Act of Parliament contains a provision for the special protection or benefit of an individual, he may enforce his rights thereunder without either joining the Attorney-General as a party or showing he has sustained any particular damage. Bowen L. J., at page 164, says, "When a provision is introduced into an Act of Parliament for the benefit of the public alone, you must show you are injured as one of the public before you may sue for damages. But if the section is introduced for your special benefit, it is not necessary to go through the circuitous form of proving exactly how much you are injured; you are entitled to what the Legislature has given you." See Mayor and Burgesses of Liverpool *v.* Chorley Water Works, 2 DeG. M. & G. 860, cited by the learned judge. See also Town of Guelph *v.* Canada Co., 4 Grant 632; Hinckley *v.* Gildersleeve, 19 Grant 212; Fenelon Falls *v.* Victoria Ry. Co., 29 Grant 4; St. Vincent *v.* Greenfield, 15 A. R. 568.

(b) In Stockport *v.* Manchester, &c. 9 Jur. N. S. 267, Lord Westbury L. C. says, "If I had here a party who had a right to restrain the Manchester Corporation within its proper limits, as for example the ratepayers, I could interfere."

(c) A private person may sue alone even although the act may affect the general public, if he can show a special damage. See Cook *v.* Mayor of Bath, L. R. 6 Eq. 180, 181; Winterbottom *v.* Lord Derby, L. R. 2 Ed. 316, 36 L. J. Ex. 194; Wallasey *v.* Gracey, 56 L. J. Ch. 739, where the motion was directed to stand over to add the Attorney-General as a party.

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In the Court of Appeal for Ontario.

No. 12. Reasons against Appeal and for Cross Appeal, 5th Dec., 1895 —*continued.*

4. All that is decided in the cases of Atkinson *v.* Newcastle, &c., Waterworks, 2 Ex. D. 441, and Glossop *v.* Heston, &c., Local Board, 12 Ch. D. 113, cited in the Appellants' First Reason for Appeal, is that the mere imposition of a statutory duty on a Corporation does not necessarily render it liable to individuals damnified by omission to observe it. Both were actions for damages for injuries sustained by reason of the non-observance of statutory provisions by the Corporation, Lord Cairns saying in the first case, "The conclusion is irresistible that the Legislature intended to give no right of action." But see Mayor, &c. Lyme Regis *v.* Henley, 2 Cl. & F. 331, also reported in Campbell's Ruling Cases Vol. 1, page 601. What is said in the Glossop case at page 113 above cited as to mandamus, does not obtain in Ontario. See Holmested & Langton, J. A. page 11.

5. The whole purview of the Defendants' Act of Incorporation passed in 1848, 11 Vic. ch. 14, which provides for a "cheap and effective mode of lighting the streets and places of business" &c., and limiting the dividends to 10 per cent. per annum to shareholders, shows the intention of the Legislature to give the consumers' rights distinct from the general public. The Act 50 Vic. ch. 85, by sec. 7 names the consumers as parties entitled to rights thereunder. The effect of these Acts is to give the consumers such an interest in the profits of the business as would entitle them to an account from the company, and the fact of there being either a large or small number of consumers cannot affect the principle.

6. The objection raised by the Appellants in sub-sec. (F) of the first reason of appeal, to the effect that they would be exposed to a multiplicity of actions, was effectually answered by Lord Langdale in Barker *v.* Walters, 8 Beav. 92, which is cited with approval by Moss, C.J.A. in Smith *v.* Doyle, 4 A. R. 471, who concludes his judgment by saying. "The principle is that it is of the very essence of such a suit that the Defendant should in the opinion of the Court adequately represent the class, and that until satisfied upon this point the Court will not proceed to an adjudication; but that when satisfied the Court will determine the right without requiring every individual in the same interest to be brought before it. In short, the very object of such a bill is to prevent the multiplicity of suits."

7. This action seeks, among other things, to recover back money overpaid by the Plaintiffs and the other consumers to the Defendants, and to restrain the doing of acts alleged to be injurious to them, and to be *ultra vires*, and the learned trial judge was right in holding that the Plaintiffs had a right to maintain this action, and that it was properly constituted.

11 Victoria, chapter 14 (Limitation of Dividend).

8. The defendant company was incorporated under an Act of the Parliament of Canada, passed in 1848, 11 Vic. ch. 14, and intituled "An Act to incorporate the Consumers' Gas Company of Toronto." The preamble sets forth "the great and increasing extent of the City of Toronto and the great demand for a cheap and effective mode of lighting the streets and places of business in the said city," and that "the mayor and citizens of the City of Toronto have

signified their assent to the establishment of the Consumers' Gas Company." By sec. 8, powers are given to make calls &c. "and to declare such yearly or half yearly dividends not exceeding 10 per cent. per annum out of the profits of the said undertaking as they may deem expedient."

9. If this were an ordinary trading corporation, with no limit in its Act as to dividends, the company might in its discretion appropriate its profits either to dividends or the formation of a reserve fund. But when companies obtain special and extraordinary franchises, in derogation of the rights of the common law, such as are granted by this statute, their rights and powers are construed strictly. There is here the right to dig up the public highways, stop traffic, commit acts of trespass over private property by laying mains through intervening properties, together with a grant which is practically a monopoly; and for these extraordinary privileges the company's shareholders agree that no greater dividend than ten per cent. per annum shall be declared out of the profits of the undertaking.

10. It must be conceded that one per cent. greater dividend would be illegal, and a bonus of one per cent. to the shareholders would be equally contrary to the Act. But it is contended that the profits to any extent may in the discretion of the company be invested in plant, which is the property of the shareholders, although this is merely another method of increasing the value of the stock. The Respondents submit that this clearly was not the intention of the Legislature. The capital stock must be invested in plant while nothing is said as to surplus profits. The preamble speaks of providing "a cheap and effective mode of lighting" and the mayor and citizens are parties. The reasonable construction to be implied from this limitation of dividends is that no greater profits should be made out of the consumer than would suffice to pay the large dividend of ten per cent. This is the only burden or charge imposed upon the company in favour of the consumers, and it should be strongly construed in favour of the latter. The limitation must either have this effect or none at all, for if what the shareholders are forbidden to take as dividends out of the profits they may take as a bonus out of the plant, in the event of sale, then what the law forbids to be taken directly can be taken indirectly. But this is clearly forbidden In Pollock on Contracts, at page 280, it is said;—"What the law forbids to be done directly cannot be made lawful by being done indirectly." In Booth *v.* Bank of England, 7 Cl. & F. 509 and 540, upholding Bank of England *v.* Anderson, 2 Keen, 328, a joint-stock bank procured its manager to accept certain bills on the understanding that the bank would find funds, these being bills such as the bank could not have accepted without violating the privileges of the Bank of England. It was held by the House of Lords, following the opinion of the Judges, that this proceeding, "must be equally a violation of the rights and privileges of the Bank of England, upon the principle that whatever is prohibited by law to be done directly cannot be legally effected by an indirect and circuitous contrivance." See also Bank of United States *v.* Owens, 2 Peters 527. The company therefore had no right to accumulate the large sum of $394,000 of surplus profits prior to the passing of the Act, 50 Vic. ch. 85, as set out in paragraph 2 of the special case.

11. The defendant company's Act of Incorporation and the amending Acts

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In the Court of Appeal for Ontario.

No. 12. Reasons against Appeal and for Cross Appeal, 5th Dec., 1895 — *continued.*

are clear as regards the questions involved, but even if doubtful they should be construed strictly as against the promoters of the Acts and liberally in favour of the public, whose rights are prejudicially affected thereby In Scottish Drainage Company *v.* Campbell, in 14 App. Cas. 139 at page 142, Lord Herschell says, "When an Act of this description (19 & 20 Vic. cap. 70) is obtained by a company for the purpose of profit to confer upon them rights and powers which they would not have at common law, the provisions of such a statute must be somewhat jealously scrutinised, and I think that they ought not to be held to possess any right unless given in plain terms." See also Parker *v.* G. W. R., 7 Scott N. R. 835, remarks of Tindal, C. J. at page 870. Also per Lord Cottenham in Webb *v.* Manchester and Leeds Ry. Co. cited in Dowling *v.* Ponty-pool Ry. Co. L. R. 18 Eq. 746, "If there be any reasonable doubt as to the extent of the powers (given to a railway company by a private Act) they must go elsewhere and get enlarged powers; but they will get none from me by way of construction of their Act of Parliament." See also Blakemore *v.* Glamorgan Ry. Co., 1 Mylne & Keene 162; Reg. *v.* York and North Midland Ry. Co., 1 E. & B. at page 868; Lee *v.* Milner 2 Y. & C. Ex. 611, at page 618. See also Rothes *v.* Kirkcaldy, &c. 7 Ap. Cas. 707; per Best C. J. in Scales *v.* Pickering, 4 Bingham at 452; Stourbridge Canal Co. *v.* Wheely, 2 B & Ad. 792.

50 Victoria, chapter 85.

12. This principle applies also to the Statute 50 Vic., ch. 85, which was unquestionably the result of a compromise between the City of Toronto and the defendant company, as found by the learned trial Judge, and it should be liberally construed in favour of the beneficiaries, the consumers, and strictly against the defendant company by whom it was promoted. See per Lord Fitzgerald in Rothes *v.* Kirkcaldy, 7 App. Cas. at page 710, where he in effect says, words are to be taken against the promoters where there is a doubt. The language is the language of the promoters of the bill and should be taken most strongly against them. They drew this Act, by which they procured the rights therein granted from the Legislature upon certain conditions, and the performance of such conditions in favour of the consumers, who are mentioned therein and for whose ultimate benefit they are imposed, should be strictly enforced. See Stockton Ry. Co. *v.* Barret, 11 Cl. & F. 590 and 607.

13. There is no dispute between the parties to this action as to the 1st, 2nd and 3rd sections of the Act, which provide for the issue of new stock to the extent of $1,000,000.

14. By the Act the company obtains three things in addition to the ten per cent. dividend allowed by their original Act of Incorporation:—(a) The permission to have and maintain a reserve fund to the extent of half their paid up capital; (b) the right to create and maintain a plant and buildings renewal fund to keep the plant and buildings in repair, which fund was to be maintained by placing thereto each year a sum equal to five per cent. of the value at which the plant and buildings in use by the company stood in their books at the end of each fiscal year; (c) the payment of $9,000 a year to the president and directors of the company.

15. Two things are secured to the consumers:—(a) All surplus profits after providing for the payments above mentioned are to be placed to an account called the special surplus account, and whenever there is a sufficient amount, as fixed by the Act, the price of gas was to be reduced at an equal rate to each consumer; (b) the appointment of an auditor to audit the company's books in the interest of the consumers.

16. The mode of dealing with the premiums from sales of stock by the defendant company is set out in paragraphs 3, 4 and 6 of the special case, which dealing the Respondents submit is a direct violation of the Act, and the learned trial Judge was right in so finding.

The Rest or Reserve Fund.

17. The first question that arises is under the 4th section of the Act as to the formation of the reserve fund or rest. After providing that the stock shall be sold, it directs "that all surplus realised over the par value of the shares so sold shall be added to the rest or reserve fund of the company until the same shall be equal to one-half of the capital stock of the company, the true intent and meaning being that the company may at all times have and maintain a rest or reserve fund equal to but not exceeding one-half of the then paid up capital of the company, and which rest or reserve fund may be invested in," &c. This provision is plain and imperative. The premiums received *must* be added to the rest or reserve fund of the company, which as stated in sec. 4 of the Act was already in existence, and as admitted by the special case (par. 2) at the time of the passing of the Act amounted to $394,310.27. A reserve fund is money held in reserve for some particular object. The word "fund" primarily signifies money or convertible securities. (See Imperial Dictionary.) This fund is called in the first part of the section, referring to the fund previously in existence, a rest or reserve fund. "Rest" in the Imperial Dictionary is defined as "A surplus or guarantee fund held in reserve by a bank or other such company to equalise its dividend when the profits made fall below the amount required for paying usual dividend to shareholders, or to fall back upon in any great emergency." And sec. 8 clearly shows that this was the intention and meaning of the Legislature with regard to this fund. It provides that, "If in any year the net profits of the company, from all sources, is not sufficient to meet the requirements of the company, for the payment of fees to the president, vice-president and directors, limited as aforesaid, the payment of dividends at said rate of ten per cent. per annum as aforesaid, and to provide for the plant and buildings renewal fund, it shall and may be lawful for the directors of the company in their discretion *to draw upon the said rest or reserve fund to the extent of any such deficiency.*" If invested in plant or in the general business of the company, how could it in any sense be held to be a "fund"? or how could it be "drawn upon"? One could not "draw upon" plant. The words "draw upon to the extent of any such deficiency" mean to take from the fund to that extent. How could the plant be used to make up a deficiency in the shareholders' dividends, or to pay the president and directors their $9,000? Then the words "and to restore any amount so drawn from time to time from said rest or reserve fund, out of the

earnings of the company," make this even more plain. "Any amount" can in no way be applied to plant. And the section concludes, "But the said rest or reserve fund shall not be otherwise drawn upon." This plainly means that the rest or reserve fund must be kept separate from the other moneys of the company until invested in some of the available and convertible securities mentioned in sec. 4 of the Act, which would admit of being "drawn upon" and could be readily converted into money, to be transferred from the fund to the other purposes mentioned in the Act. The intention of the Legislature, clearly indicated from the wording of the statute, is that the only investments that might be made of the fund are in the securities mentioned in the 4th section of the Act.

18. Section 6 says, in referring to the plant and buildings renewal fund, "There shall be created and maintained another fund." Sec. 7, in providing for the special surplus account distinctly affirms in positive terms that the rest or reserve fund is to be established and maintained; it says: "Any surplus profit, etc., after the rest or reserve fund shall have been established and maintained as aforesaid." This being read into sec. 4 shows that the reserve fund or rest must not only have an existence, but must be established and maintained.

19. The drawing upon these premiums while at the credit of the general bank account of the company, for the purpose of investing them in plant, or in the company's business, instead of adding them to the reserve fund, was a direct violation of the very positive prohibition "and the said rest or reserve fund shall not be otherwise drawn upon."

Plant and Buildings Renewal Fund.

20. The Respondents submit that this fund, as provided in the 6th sec. of the Act, was to be created and maintained by the company out of the earnings of the company, and that it was unlawful to draw upon the premiums to make up any alleged deficiency in this fund when there was a large surplus standing to its credit.

21. The history of this fund is outlined in the 8th paragraph of the special case, and shows that the representation made by the company, as to the amount which was necessary to keep the plant and buildings in repair was excessive. Take the third year, for example; there was then standing to the credit of this fund from the preceding year, as appears by the company's report, $72,831.20. The repairs and renewals for that year only cost $21,555.64, while the large sum of $95,641.73 was deducted from premiums and profits and added to this fund, leaving a balance to its credit at the end of the year of $146,917.29. This it is submitted was not within the words of section 8 "to meet the requirements of the company," and was an unlawful and unreasonable exercise of their discretion within the meaning of the Act.

22. The learned trial Judge was right in finding that, as in the case of the reserve fund, this fund had never been created and maintained by the company as required by the Act.

23. It is clear that no portion of this fund was ever to be used in the purchase of new plant except in so far as it was necessary for renewals and

repairs, and the company were not authorised to invest in the purchase of new plant the surplus of this fund, which is only to be charged "with usual and ordinary renewals and repairs."

24. The investing of the surplus of this fund in plant has the effect of compounding it at five per cent. Take for instance, the $239,171.13 standing to the credit of this fund on October 1st, 1893, invest it in plant, and the next year $11,950. being 5 per cent. thereon, will be added thereto, and this sum, if again invested in plant, will also earn 5 per cent. thus compounding it. In this way the fund would eventually absorb profits, premiums and reserve fund.

25. The defendant company had no right to write off sums of money from profits for depreciation in plant in addition to taking the 5 per cent. upon the plant in use for the plant and buildings renewal fund, as the following illustration clearly shows: It is said that the life of street mains is twenty years, say for the sake of argument that they cost originally $700,000, and owing to the depreciation in the market price of iron they are only worth $400,000. Because of this shrinkage in value it is contended that the company should be allowed to write off during the twenty years say $20,000 per year for depreciation, in addition to adding to the plant and buildings renewal fund $35,000 per year, being 5 per cent. on the original cost. At the end of twenty years the company would have to the credit of the fund $700,000, and also have written off against profits $400,000 for depreciation in plant, making a total of $1,100,000. If the mains could be renewed for $400,000 the company would have made a clear gain of $700,000 at the expense of the consumers.

Cross Appeal.

26. It is submitted by the Respondents, by way of cross appeal, that it was to the interest of the consumers that the rest or reserve fund should be invested in some interest bearing security, and that the Act so requires. It is significant that the reserve fund, which was in existence at the passing of the Act, up to $305,000, had been invested in municipal debentures, one of the securities mentioned in the Act, and was kept separate from the other assets of the company, and the premiums realised from the sale of the new issue of stock were, by the 4th sec. of the Act, to be "added" to the rest or reserve fund of the company. It cannot be supposed that this fund was intended to remain uninvested, if the provision for surplus profits to form the special surplus account was ever to be realised in favour of the consumers.

27. It must be remembered that the plant and buildings renewal fund was to be formed, which would be a heavy drain upon the profits. At least $1,700,000 of plant would be in actual use after the whole $2,000,000 had been subscribed (that is allowing $300,000 for plant not in actual use, and moneys otherwise invested in the business, as is indicated in the special case) this would require $85,000 to be annually taken from the profits to be placed to the credit of the plant and buildings renewal fund. But if the $1,000,000 reserve fund were invested say at five per cent., it would earn $50,000, which would only leave $35,000 yearly to be made up out of the profits and the balance of the premiums

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No. 12. Reasons against Appeal and for Cross Appeal, 5th Dec., 1895 — *continued.*

and profits after forming the rest or reserve fund would go to form the special surplus account in which the consumers were directly interested.

28. It could not have been anticipated, at the time this Act was passed, that the plant and buildings renewal fund should ever amount to more than $85,000 as already shown. If then the reserve fund was not to be invested there would be a clear yearly loss of the interest on $1,000,000, say 5 per cent. *i.e.* $50,000, to the consumers, while if it were invested in excessive plant there would be not only a loss of the interest but the further loss to the consumers of $50,000, *i.e.*, 5 per cent. on the $1,000,000 invested in plant, which would be deducted from the profits and added to the plant and buildings renewal fund, thus swelling it to $135,000 per year to come out of the bare earnings of the company. It is therefore manifest that this fund was to be invested for the consumers' benefit in some interest bearing securities and not for the company's benefit in its plant. Here the interests of the consumers and those of the company are directly antagonistic.

29. With $1,000,000 of capital prior to the passing of the Act, the company's surplus profits had accumulated to nearly $400,000. The company has nearly doubled its business since. In 1886 the revenue amounted to $335,022.46, and in 1893 to $627,492.51. There was received in premiums $455,482.26, which if added to the reserve fund on hand at the passing of the Act would make $849,792.53 or $49,792.53 more than the statutory reserve. The reserve invested in plant and the general business of the company amounts to $742,758.13, which, if deducted from the preceding sum, shows a total loss of $107,034.40 since 1886, which has been taken from premiums, and the reserve fund has not been formed. While if, as the Respondents contend for, the reserve fund had been invested in some of the securities mentioned in the Act there would have been, after forming the rest or reserve fund, a sum of $49,792.53 of premiums standing to the credit of the special surplus account, together with the accumulated interest from the investment of the reserve fund, and the price of gas would have been largely reduced to the consumer. It is therefore submitted, for the above reasons, that the investment of the reserve fund was imperative.

30. The words of sec. 4 of the Act, "may be invested" are here obligatory, and not merely permissive, except as to the choice of the securities named. See Interpretation Act R. S. O. 1887, sec. 8, ss. 2, which is subject to the limitations in sec. 7, ss. 1 and also to sec. 39. These sections did not alter the law of the construction of statutes, but merely declared what was already decided by the Courts here and in England to be the law. See *re* Lincoln Election, 2 A. R. 324, and remarks of Moss, C.J.A., at page 341.

31. It is admitted that "may" was always construed as permissive unless there was something in the Act to show it was to be obligatory, but in certain cases it is construed as meaning "must," and the true rule as laid down in Reg. *v.* Bishop of Oxford, 4 Q. B. D. 245 and 525, is that the context and the surrounding circumstances must be looked at in order to see what in the particular case the construction should be. And again, "it is a well established rule for the construction of statutes that if they impose a charge upon the subject they must be strictly construed as against the parties in whose favour the charge is imposed." See per Field J. in Reg. *v.* Barclay, 8 Q. B. D. 311; see per Lord Penzance in Julius *v.* Bishop of Oxford, L. R., 5 App. Cas. 231; per Lord Cairns,

p. 225; see also English and American Encycl. Vol. 14, page 979; Thompson *v.* Lessee of Carroll, 22 How. U. S. 434; Malcolm *v.* Rogers, 5 Cowen, N. Y. 193; Mason *v.* Fearsome, 9 How. U. S. 259; Rex *v.* Hastings, 1 D. & R. 148; Rex *v.* Havering Atte Bower, 5 B. & Ald. 691; People *v.* Supervisors of N. Y., 11 Abb. P. R. 114; Stines *v.* Franklin Co., 48 Mo. 167; Cook *v.* Kelly, 12 Abb. N. Y., P. R. 135; Commrs. of Poor *v.* Gains, 3 Brev. S. C. 396; Supervisors *v.* U. S. 4 Wall. 435; Galena *v.* Amy, 5 Wall. 705; Schuyler *v.* Mercer Co., 9 Ill., page 20; People's Bank *v.* Brooklyn, 22 Barb. 412.

32. All the securities mentioned in the Act bear interest, and it was unlawful to invest this fund in any other manner than that pointed out in the Act. See Bagshaw *v.* Eastern Ry. Co., 7 Hare 114; Munt *v.* Shrewsbury Ry. Co. 13 Beav. page 1; See per Lord Langdale in Logan *v.* Earl of Courtown, 13 Beav. at page 22.

33. The Company by this Act was getting great privileges. First, the $1,000,000 given to them in the reserve fund. Second, the former illegal acts of taking out of the profits which should have gone to the consumers the sum of $394,310.27 condoned and legalised. Third, the privilege of taking 5 per cent. for usual and ordinary renewals and repairs to form the plant and buildings renewal fund, which as has been clearly shown is more than sufficient to keep their plant and buildings in the most thorough repair. In consideration of these advantages they were to invest the reserve fund in the securities mentioned in the Act for the benefit of the consumers, and to establish the special surplus account —these were the only charges imposed upon them. All this was thoroughly debated before the passing of the Act and fairly and honestly agreed to by all parties. It was therefore the clear duty of the Company to have observed the trust, to have kept these moneys in a separate bank account as they received them, and as soon as possible thereafter to have invested them in dominion or provincial stock until some better paying securities of those mentioned in the Act could have been procured, and to have added the interest thereon to their other profits for the benefit of the consumers. The plant and buildings renewal fund should also have been paid into a separate account, and any surplus should have been invested in like securities for the benefit of the consumers. Any surplus of premiums after forming the reserve fund should have been paid into the bank, and at the end of the year carried to the special surplus account, and applied in reduction of the price of gas rents as the statute directs.

34. The company has used these trust funds for the purposes of its business contrary to the statute, and must pay the penalty by having the account taken against them with rests at six per cent. and the judgment affirmed, except as to the cross appeal, which should be allowed.

Dated this 5th day of December, 1895.

C. ROBINSON,
J. MACGREGOR,
Counsel for (Plaintiffs) Respondents.

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No. 13. Notice of Cross Appeal, 5th Dec., 1895.

Notice of Cross Appeal.

Take notice that the above named Respondents will on the hearing of the appeal herein by way of cross appeal claim that that portion of the judgment of the trial Judge is erroneous wherein in answer to the fifth question submitted in the said special case it was held by the learned Judge that it was not compulsory upon the said defendant company to invest the reserve fund in any one or more of the securities mentioned in the said Act; and will on said hearing claim that the said fund should be invested in one or more of the securities mentioned in the 4th section of the said Act, upon the grounds among others set out in reasons numbers 26 to 34 in the reasons against appeal filed herein, and will contend that the judgment herein should be varied by directing that the defendant company should be charged with interest thereon at the rate of 6 per cent. per annum from such time as the same or any portion thereof was diverted in the manner found in said judgment since the 23rd day of April, 1887.

Dated this 5th day of December, 1895.

Yours, &c.,

JNO. MACGREGOR,
Respondents' Solicitor.

To Messrs. Mulock, Miller & Co.,
Appellants' Solicitors.

No. 14. An Act to further extend the powers of the Consumers' Gas Company of Toronto, 23rd April, 1887.

Chapter 85.

An Act to further extend the powers of the Consumers' Gas Company of Toronto.

[Assented to 23rd April, 1887.]

Preamble. Whereas the Consumers' Gas Company of Toronto have petitioned for authority to increase the capital stock of the said company and the amount of their real estate, to meet the requirements of the rapidly increasing population of the City of Toronto, and it is expedient to grant the prayer of the said petition;

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Increase of capital stock authorised. 1. It shall be lawful for the company to add to their present capital stock such an amount as shall increase the same to a sum not exceeding $2,000,000, divided into shares of $50 each, provided that such increase of capital stock shall be first agreed upon by a majority of the votes of the shareholders present at any annual general meeting or meetings, or at any special meeting or meetings called from time to time for that purpose.

Stock may be issued in parcels. 2. It shall not be obligatory upon the company to sell, at one time, the whole amount of stock authorised by this Act, but the company may, from time to time limit the number of shares to be offered for sale to such an amount as may be from time to time agreed and decided upon by a majority of the votes of

shareholders present at any general or special meetings of the shareholders as aforesaid called for that purpose. RECORD.

3. The notice of any special meeting or meetings of the stockholders of the company called by the directors of the company in pursuance of this Act, may be given by inserting a notice specifying the time, place and object of such meeting in at least two daily newspapers published in the City of Toronto in each issue thereof during the three weeks next preceding the day fixed for such meeting. Notice of meetings.

4. All shares to be issued under the provisions of this Act, shall be sold by public auction after three weeks' notice in two of the daily newspapers published in the City of Toronto such shares to be put up in lots of ten shares each, and all surplus realized over the par value of the shares so sold shall be added to the rest or reserve fund of the company, until the same shall be equal to one-half of the paid up capital stock of the company, the true intent and meaning being that the company may at all times have and maintain a rest or reserve fund equal to, but not exceeding, one-half of the then paid up capital of the company, and which rest or reserve fund may be invested in Dominion or Provincial stock, municipal debentures, school debentures, drainage debentures, debentures of loan companies, and mortgages on real estate. Stock to be sold by auction and surplus over par value added to reserve.

5. The shares of such increased stock shall be paid in together with the premiums (if any) thereon, by such instalments and at such times and places and under such regulations as the directors may from time to time appoint. Payments on new stock.

6. There shall be created and maintained by the company, out of the earnings of the company, another fund, to be called the plant and buildings renewal fund, to which fund shall be placed each year the sum of five per cent. on the value at which the plant and buildings in use by the company, stand in the books of the company, at the end of the then fiscal year of the company, and all usual and ordinary renewals and repairs shall be charged against this fund. Renewal fund.

7. Any surplus of net profit, from any source whatever, including premiums on sales of stock after the rest or reserve fund, shall have been established and maintained as aforesaid, remaining at the close of any fiscal year of the company after payment of fees to the president, vice-president and directors of the company, (not exceeding in all the sum of $9,000 per annum), after payment of dividend at the rate of ten per cent. per annum on the paid up capital stock of the company, and the establishment and maintenance of the said rest or reserve fund, and providing for said plant and buildings renewal fund, shall be carried to a special account, to be known as the special surplus account, and whenever the amount of such surplus is equal to five cents per thousand cubic feet on the quantity of gas sold during the preceding year, the price of gas shall be reduced for the then current year, at least five cents per thousand cubic feet to all consumers. Special surplus account.

8. If in any year, the net profits of the company, from all sources, are not sufficient to meet the requirements of the company for the payment of fees to the president, vice-president and directors, (limited as aforesaid), the payment of dividends at said rate of ten per cent. per annum as aforesaid, and to provide for the plant and buildings renewal fund, it shall and may be lawful for the directors of the company in their discretion, to draw upon the said rest or reserve fund to the extent of any such deficiency, and to restore any amount so drawn from time to time from said rest or reserve fund out of the earnings of the company, but the said rest or reserve fund shall not be otherwise drawn upon. Application of reserve fund.

Audit of company's account.

9. The company shall give not less than two weeks written notice by registered letter, to the mayor of the City of Toronto for the time being of the time of commencing the annual audit of the books and accounts of the company, and it shall and may be lawful for an auditor to be appointed by the mayor of the corporation of the City of Toronto, should he deem it advisable to make such appointment, to be present at such annual audit, and for the purpose of verifying the company's annual statement, to have access at the company's office to all books, accounts and papers necessary for such purpose.

Power to hold real estate of $25,000 yearly value.

10. Notwithstanding anything contained in former Acts affecting the company, it shall be lawful for the company to acquire and hold real estate, of which the total yearly value shall not exceed $25,000 over and above the yearly value of any buildings and works now, or which may be hereafter erected thereon.

Opinions of the Judges.

No. 15. Reasons for Judgment. Judgment of MacLennan, J.A.

MacLennan, J.A.: —

It is important at the outset to ascertain the relation in which the company stands to its customers, called in the Act of 1887 the consumers. An examination of the Acts relating to the Company prior to that of 1887 does not disclose any obligation to supply gas to any particular person, and with one exception, the company was as free in the conduct of its business and the disposition of its property as any other corporation or individual. That exception was a restriction upon the power of paying dividends, which was limited to ten per cent per annum upon its paid up capital. The corporate franchises included very extensive powers of laying down mains and service pipes in the streets of Toronto and the restriction upon dividend was evidently intended to ensure to some extent reasonable prices for gas to consumers. Subject to that restriction the company was perfectly free. It could supply gas to one person and refuse to supply it to another. It could sell at one price to one customer and stipulate for a different price from another, and in every case might make the best bargain it could just as any other vendor of any other commodity might do. The Legislature probably thought that the company might in their own interest be trusted to treat their customers with fairness and liberality and that if they did not do so the same power which conferred their franchises could modify or withdraw them. Until the Act of 1887, therefore, the company could charge what they pleased for their gas, and the relation between them and their customers was in every instance merely a relation of contract. The Corporation of Toronto was a large consumer for street lighting and otherwise and the two corporations made the best bargain they could with each other. So also the company could and did make special bargains with persons who consumed very large quantities, supplying them at lower rates than others. That was the position of the company prior to the Act of 1887. That Act was applied for by the company and obtained for the purpose of enabling it to increase its capital. The application was opposed by the City of Toronto. It contains a number of special provisions relating to a rest or reserve fund, a plant and building renewal fund and a special surplus fund to be created and maintained by the company;

and by section seven it was declared that whenever the amount of such surplus fund should be equal to five per cent* per thousand cubic feet on the quantity of gas sold during the preceding year the price of gas should be reduced for the then current year at least five cents per thousand cubic feet to all consumers. It also contains a clause authorising an auditor appointed by the Corporation of Toronto to be present at the company's annual audit, with access to the company's books, accounts and papers, for the purpose of verifying the company's annual statement. The time at which the amount of the surplus fund provided for by the Act is to be ascertained is the end of the company's fiscal year. The pleadings do not state what that time is but it may be inferred from the schedules annexed to the special case that the end of the fiscal year is the 30th of September. The enactment, therefore, is that whenever the account made up for any year ending on the 30th September shews a certain surplus the price of gas for the ensuing year shall be reduced at least five per cent* per thousand feet to all consumers. There is nothing else in the Act affecting the relation of the company to consumers. The company can still choose its consumers and is still under no obligation to sell to any particular person, unless it chooses to do so. The Act has not made it compulsory to sell gas to every one, nor is any one compelled to buy from them. It follows that the consumers who are mentioned in the Act are those persons to whom the company thinks fit to sell and who are willing and agree to buy from them. In other words the consumers' relation to the company must still be a relation of contract, and there is nothing to prevent the latter from terminating any particular contract just as they could before the Act. Then what is the effect of this provision of the Act for a reduction of price? I think it is no more than this: That in every case in which the company chooses to continue to supply gas to a person who had been a consumer in the previous year this provision of the statute as to a reduction of price must be read into the contract. I do not see how in any year the statute can be applied to the case of a person who was not a consumer at all in the preceding year. There can be no reduction unless there is something to reduce. And if during any year there was no supply there could be no price to reduce for the following year. The schedules forming part of the special case shew that the company's general practice has been to classify their customers and to charge a different price to each class but the same price to the members of each class. They seem to have a special bargain with the Corporation of Toronto for street lighting at so much per lamp for a term of years. There is, however, nothing in any of the company's Acts requiring any degree of uniformity of price or forbidding discrimination among their customers. There is, therefore, nothing that can be called a price or the price of gas in a general sense to which the words of the statute are to be applied. The price depends on the contract expressed or implied between the company and each consumer and it is to that price the words of the Act are to be applied. The Plaintiffs, however, have been consumers ever since 1887, and so there must have been some contract between the company and them during that time, express or implied. We are not told what that contract was, but whatever it was it must be regarded as containing, as one of its terms, the statutory provision as to reduction of price; and the Plaintiffs were entitled at the end of each year to have a reduction of

* *Sic.* Query five cents.

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No. 15.
Reasons for Judgment.
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—*continued.*

five cents per thousand for the following year, whenever the company's surplus account was such as to warrant it. It would seem, however, that if in any year the surplus account did not come up to the named limit, the price for the following year would be matter for a new contract in every case in the making of which the company would be completely unfettered by anything contained in the Act. Such being the effect of the statute, and the Plaintiffs having been consumers ever since it became law under some contract express or implied, they brought their action against the company on the 22nd February, 1894.

They allege that they have been consumers of gas ever since the passing of the Act and have paid the company large sums therefor and are entitled to the benefit of the provisions of the Act. In paragraph 23 they put their cases thus: They have been compelled to pay and have paid to defendant company during the years 1889, 1890, 1891, 1892 and 1893 large sums of gas rents in excess of what was justly due to the defendant company, and which through the wrongful acts of the company have been paid to them as aforesaid, and claim a return of the same from the said defendant company and that an account may be had for that purpose. The fifteenth paragraph of the special case contains this statement: "The Plaintiff Johnston has been a consumer of gas since 1887 and has paid large sums of money to the Defendants therefor. In the month of January 1893 the Plaintiffs the Toronto Type Foundry Company (Limited) notified the defendant company that they had purchased Johnston's business and that for the future all gas bills were to be charged to the Type Foundry Company. This was not done, and the Plaintiff Johnston is and always has been primarily liable to the defendant company therefor, and that the Plaintiff Johnston is the managing director and the largest stock-holder in the Toronto Type Foundry Company (Limited)." The Plaintiffs' cause of action then appears to be that having regard to the statute they have paid more than they ought to have paid for the gas which they have received from the Defendants for a number of years past, and they seek to recover back what they have overpaid. The action to recover back money paid is a very familiar one. It is the old common law money count of "money had and received" and I think, notwithstanding its great length, that is the only cause of action alleged in the statement of claim. If the Plaintiffs are entitled to recover back any part of the money which they have paid to the Defendants for gas they have a cause of action, if not they have none. Unless they have paid money under circumstances which entitle them to recover it back their action ought to be dismissed, and they have no concern with the way the Defendants have kept their accounts or of the application which they have made of their premiums and earnings. If the Plaintiffs have had the benefit of a reduction of price that is all they are entitled to, and if they have not, yet the moment they receive it they are entitled to nothing further; they have no longer any interest in the accounts. They have then no more right to question the company's conduct of its business or its manner of keeping its accounts than any stranger. I think, therefore, this appeal comes to this, that if upon the case stated the Plaintiffs are entitled to receive back money which they have paid to the Defendants there ought to be judgment in their favour, but if not the action ought to be dismissed. The case must then be examined to see if they are so entitled. Although that, if anything, is the only relief the Plaintiffs

are entitled to, strangely enough it is not one of the numerous claims made in the pleading, unless it be found in a shadowy form in the sixth claim which is that the Defendants may be declared to be trustees for the Plaintiffs of all sums of money by them received and misappropriated and which should have been allowed to the Plaintiffs in the reduction of the price of gas as provided by the Act. It is needless to point out that there is nothing whatever proved or admitted which could give rise to a trust between the Defendants and the Plaintiffs. The other claims are for the taking of various accounts and for a number of mandatory orders. Although the pleadings and the special case are very lengthy they are singularly wanting in the most material facts. The nature of the contract under which the gas was supplied and consumed is not stated, nor the quantity taken, nor the price paid either for the whole or any part of the period, nor are we informed of any of the circumstances under which over-payment was made. All that is alleged is what has already been quoted, namely, that they paid large sums in excess of what was justly due; but there is no proof or admission of over-payment. It is alleged that by reason of the promises and the misapplication of profits, etc., by the Company they were compelled to pay the money; but none of the matters alleged or admitted amount to any sort of compulsion. The neglect or refusal of the Company to make up the accounts prescribed by the statute, or to make them up in the prescribed manner, could not oblige the Plaintiffs to make over-payment. In fact no over-payment is proved or admitted either in the statement of defence or in the special case. On the contrary the Defendants in their defence deny any over-payment, and allege that they have made reductions in price to the Plaintiffs greater than they would be required to make if they had made up accounts according to the Plaintiffs' contentions. There is nothing to the contrary of that in the special case, the statement being merely that the Plaintiffs have since 1887 paid the Defendants large sums for gas. The case as it stands before us now is that there is no proof or admission that there has been any over-payment whatsoever. It cannot, as I think, be denied that if at the end of each year the Plaintiffs demanded and were allowed for the next year a reduction of five cents per thousand on the price of the preceding year, the Plaintiffs could claim nothing further. They could claim no examination or investigation of the Defendants' accounts or of the investment or application of the Defendants' funds. For anything that is proved or admitted to the contrary in the pleadings or in the case stated the fact may be as alleged by the Defendants, that the Plaintiffs have had the reduction of price to which they were entitled under the Act. That being so they have not made out a cause of action and the judgment in the case stated ought to be for the Defendants. But even if it had been admitted that over-payment had been made, that alone would not have entitled the Plaintiffs to judgment. It is not a matter of course to recover back money paid which need not have been paid. Marriott *v.* Hampton, 2 Sm. L. C. 1686-1701. We look in vain in the pleadings and in the special case for any facts or circumstances such as even if there was over-payment as alleged, would entitle the Plaintiffs in law to recover it back. There is a demurrer to the statement of claim on the ground that no cause of action is disclosed and that the Plaintiffs cannot sue on behalf of other consumers of gas. There is also a statement of defence and the demurrer was ordered to stand over for decision at the trial. The first question stated in

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—*continued.*

the special case for the determination of the Court is whether upon the facts therein stated the Plaintiffs or either of them have or has a right to maintain the action and it is agreed that judgment shall be for the Plaintiffs or Defendants according to the result. I am of opinion that both upon the demurrer and the special case the Plaintiffs fail and that they have not made out a case for the recovery of the alleged over-payment. Not being entitled to recover the over-payment it follows that they are not entitled to the accounts and enquiries and mandatory orders claimed in their pleading or the other relief directed by the judgment. The only importance or use of such accounts and enquiries is to show a right to a reduction of price in case the right was disputed or refused. The Plaintiffs cannot have any general right to compel the Defendants to observe the provisions of the statute. Such rights as they have depends on whether they are consumers of gas, and *non constat* that the company will deal with them any more. It may be that if a consumer when he comes to pay his bill demands a reduction in price according to the provisions of the statute, and it is denied him on the ground that the state of the surplus account does not oblige them to grant it, he may be entitled to an account and to have it made up as prescribed but if his demand of a reduction is acceded to he has no further concern in the company's affairs.

The action of the named Plaintiffs failing, as I think it does, it is unnecessary to decide the question which was much debated, whether in such a case the Plaintiff can properly sue on behalf of all other consumers. I may say, however, having considered the question very carefully, that I think they cannot. The Plaintiffs' cause of action and their only cause of action is over-payment. It is not alleged that all or any of the other consumers have made over-payments, and unless they have they have no claim. Moreover every consumer has a separate contract with the company, and the fact that the provision of the statute as to reduction of price is to be regarded as a term of all such contracts makes no difference in that respect—they are all separate contracts still. Again, even if it could be supposed that every consumer had made over-payment the right to recover them back is not a matter of course but depends in each case on the circumstances under which they were made, and therefore each consumer has, if anything, a separate cause of action. Apart from his right to a reduction of price, a consumer has no right whatever to interfere in the internal affairs of the company and the relief sought in this action being merely the recovery of a sum of money with which other consumers have nothing to do, I think the authorities shew that they could not all join in one action and if so it follows that one cannot sue on behalf of the others as well as himself. The case is like that of Smurthwaite *v.* Hannay, 1893, 2 Q. B. 412, and 1894 A. C. 494, in which it was held by the House of Lords, reversing the Court of Appeal, that although the claims of all the Plaintiffs arose out of the same occurrence and were as far as possible identical, yet because the contracts were separate the Plaintiffs could not all sue in one action. See also Sadler *v.* the Great W. R. Co., 1895, 2 Q. B. 688, affirmed in D. P., W. N. 1896, p. 57 and now in 12 T. L. R. 394.

I am, therefore, of opinion that the Plaintiffs' action should be dismissed, and that being so I think we are not called upon to express any opinion on the other several questions propounded in the special case. The appeal should therefore, be allowed.

Rose, J.:—

In the special case it is said that the judgment of the court is to proceed upon the facts stated in the case, that the pleadings are annexed and may be referred to as showing the question in issue. Then follows a statement of facts and upon such facts the court is asked to determine among other things, first "whether the Plaintiffs or either of them have or has a right to maintain this action."

Referring to the pleadings to ascertain the questions in issue, we find from the 23rd paragraph of the statement of claim that the Plaintiffs claim a return from the defendant company of large sums of money paid for gas rents, alleged to have been paid to the company in excess of what was justly due and further claim "that an account may be had for that purpose," the "purpose" being, I suppose, to obtain an order for the return of the money so paid in excess. In order therefore to make out a cause of action the Plaintiffs must show the payments in excess. These payments were by the 23rd paragraph alleged to have been paid through the wrongful acts of the company. I agree to what my learned brother MacLennan has said that there does not appear upon the facts stated, any admission by the company of wrongful over-payment or of an over-payment at all.

The company specifically denies the correctness of the Plaintiffs' statements and by paragraph 5 of the statement of defence says that the surplus profits have never amounted to such a sum as would impose on the company the duty of reducing the price of gas under the provisions of the Act, and that it has from time to time voluntarily reduced the price of gas to a much greater extent than would have been incumbent on it to do had it acted in the premises in accordance with the Plaintiffs' contentions and further says that all consumers of gas furnished by the company have paid therefor, since the passing of the Act, less than the company had the right to charge and collect.

As I make it out, between the passing of the Act and the date of issuing the writ five fiscal years elapsed, and assuming that the amount of net profit in each of the five fiscal years equalled five cents per thousand cubic feet on the quantity of gas sold during the preceding year, the outside sum by which the Plaintiffs could have asked to have had the price of gas reduced for the five years would be 25 cents per thousand cubic feet on the whole quantity of gas supplied to them during the five years. And it appears from the annual reports of the directors of the company, pages 25, 39 and 54 of the appeal book, that the price of gas was reduced from the 1st of October 1885 to the 1st October 1893, by the sum of 40 cents per thousand cubic feet. So that not only does it not appear, as pointed out by our learned brother MacLennan, that the Plaintiffs have paid any sum in excess of what was properly chargeable, but it does appear that reductions have been made which possibly and probably have given the Plaintiffs more than they were entitled to on any view of the facts as alleged by them. The reduction made in 1889 and 1893 to consumers of over 500,000 cubic feet per annum was 20 cents per thousand. Assuming, therefore, what we do not know, that the Plaintiffs were consumers of over 500,000 cubic feet per annum, it appears from these reports that they had an actual reduction in the price of 20 cents per thousand cubic feet during the five years. I am therefore unable to

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say that on the facts stated the Plaintiffs have paid any sum in excess of what they were bound to pay.

It is not, in my view, therefore, necessary for me to consider any other question, because the Plaintiffs would not be entitled to an account without first showing that as a result of taking the accounts they would be entitled to have an order made for the repayment to them of moneys paid by them in excess of what was lawfully chargeable.

For these reasons and without expressing any opinion as to the rights which any consumer would have upon a contract made since 1887, if the company agreed to supply him with gas without any agreement being made as to the price at which such gas should be supplied and leaving myself open to consider such question if it becomes necessary to do so, I agree that the action fails and this appeal must be allowed with costs.

Judgment of Osler, J.A.

Osler, J.A.

I have had an opportunity of reading the judgment just delivered by my brother MacLennan and I agree in the conclusion at which he has arrived.

No. 16. Certificate of Judgment of Court of Appeal for Ontario, 30th June, 1896.

In the Court of Appeal for Ontario.

Tuesday, the thirtieth day of June 1896.

Between

J. T. Johnston and the Toronto Type Foundry Company (Limited) who sue on their own behalf as well as on behalf of all other consumers of gas furnished by the Defendants in the City of Toronto . . . . . (*Respondents*) *Plaintiffs*,

and

The Consumers' Gas Company of Toronto . . (*Appellants*) *Defendants*.

This is to certify that the appeal of the above-named Appellants from the judgment of the Honourable Thomas Ferguson, one of the Justices of the High Court of Justice for Ontario pronounced on the ninth day of September, 1895, having come on to be argued before this Court on the twenty-first, twenty-second and twenty-third days of January, 1896, whereupon and upon hearing counsel as well for the Appellants as the Respondents this Court was pleased to direct that the matter of the said appeal should stand over for judgment; and the same having come on this day for judgment: it was ordered and adjudged that the said appeal should be and the same was allowed with costs to be paid by the Respondents to the Appellants forthwith after taxation thereof. And that judgment be entered in the action in the High Court of Justice for Ontario for the Defendants dismissing this action with costs to be paid by the Plaintiffs to the Defendants forthwith after taxation thereof.

A. GRANT,

(Seal) Regr.

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No. 17. Order permitting Appellants to pay money into Court in lieu of filing Appeal Bond, 16th Mar., 1897.

In the Court of Appeal for Ontario.

The Honourable Mr. Justice Osler in Chambers.

Tuesday the sixteenth day of March 1897.

Between

J. T. Johnston and the Toronto Type Foundry Company (Limited) who sue on their own behalf as well as on behalf of all other consumers of gas furnished by the Defendants in the City of Toronto . . . . . *Plaintiffs* (*Respondents*),

and

The Consumers' Gas Company of Toronto. . . *Defendants* (*Appellants*).

Upon motion made on behalf of the above named Respondents and upon reading the affidavit of the above named J. T. Johnston filed herein and the notice of motion served herein and upon hearing what was alleged by counsel for the above named Respondents and Appellants.

It is ordered that the above named Respondents be allowed in lieu of filing a bond to pay into Court to the credit of this action the sum of two thousand dollars to remain as security to the above named Appellants that they the Respondents will effectually prosecute an appeal to Her Majesty in Privy Council from the judgment of this Court delivered on the thirtieth day of June 1896, and will pay such costs and damages as may be awarded in case the judgment so appealed from is confirmed and upon such payment into Court as aforesaid, the above mentioned appeal to Her Majesty in Her Privy Council be and the same is hereby allowed.

(Sgd) A. GRANT,
Regr.

Entered in Court of Appeal,
Order Book No. 7,
Issued 21/5/97.
(Sgd.) A. G.

No. 18. Certificate of payment of money into Court, 27th May, 1897.

Johnston *v.* Consumers' Gas Company.

27th May, 1897.

I certify that it appears from the entries in the books in the Accountant's Office that J. T. Johnston has paid into Court to the credit of this cause, two thousand dollars this day.

B. W. MURRAY,
Acct.

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No. 19. Certificate verifying transcript of Record and as to security for costs, 27th May, 1897.

In the Court of Appeal for Ontario.

Between

J. T. Johnston and the Toronto Type Foundry Company (Limited) who sue on their own behalf as well as on behalf of all other consumers of gas furnished by the Defendants in the City of Toronto . . . . . (*Respondents*) *Plaintiffs*,

and

The Consumers' Gas Company of Toronto . . . (*Appellants*) *Defendants*.

I, Alexander Grant, of the City of Toronto, Registrar of the Court of Appeal for Ontario, humbly certify to the Queen's Most Excellent Majesty in Her Privy Council that the documents mentioned in the schedule hereto annexed comprise the record of the proceedings in this cause.

And I further certify that the correct transcript of such record is hereto annexed and that an index of the same is contained in the said schedule.

And I further certify that every sheet of such record is marked with my signature and that the seal of the Court of Appeal for Ontario is affixed hereto with the sanction of the said court and that the fees and expenses incurred and paid by the Respondents, J. T. Johnston and the Toronto Type Foundry Company (Limited) for the preparation of such transcript amounts to the sum of £21 2s. 6d.

And I further certify that the said Respondents, J. T. Johnston and the Toronto Type Foundry Company (Limited) have given security to the Appellants upon their said appeal to Her Majesty in Council by depositing in court the sum of two thousand dollars ($2,000.) and which deposit has been allowed as good and sufficient security to the Appellants for their costs of the appeal herein by an order of the Honourable Mr. Justice Osler made in Chambers and dated the 16th day of March, 1897.

In witness whereof I have hereunto set my hand and affixed the seal of the Court of Appeal for Ontario this twenty-seventh day of May one thousand eight hundred and ninety-seven.

A. GRANT.
Regr.

Schedule.

1. Printed copy of the pleadings, evidence and exhibits used upon the argument of the case in the Court of Appeal, together with the reasons for and against the appeal in that Court.

2. The opinions of the several Judges by whom the appeal was heard.

3. Certificate of judgment in the Court of Appeal.

4. Order of the Honourable Mr. Justice Osler for payment into Court of the sum of two thousand dollars for security for costs on the appeal to Her Majesty in Council.

5. Certificate of the accountant of the Supreme Court of Judicature for Ontario, shewing the amount to the credit of this cause.

In the Privy Council.

No. 37 of 1897.

On Appeal from the Court of Appeal for Ontario.

BETWEEN

J. T. JOHNSTON and THE TORONTO TYPE FOUNDRY COMPANY (LIMITED) . (*Plaintiffs*) *Appellants,*

AND

THE CONSUMERS' GAS COMPANY OF TORONTO . (*Defendants*) *Respondents*

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Gray's Inn, W.C.,
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