

great fire in April, 1900. The result was, as found by the Master, that the city was left without electric light from the plaintiffs for a long period, and, though due diligence was used in the restoration of the works, for a further considerable period there was but a partial supply of light by plaintiffs.

G. F. Henderson, Ottawa, for plaintiffs.

T. McVeity, Ottawa, for defendants.

BOYD, C.:—It was well found by the Master that this was "an unforeseen accident, not occurring through any default of the company"—a contingency provided for in these terms by the agreement between the parties. The solution of the difficulty with regard to the non-lighting during this period depends upon the construction of the 7th clause of that part of the agreement which embraces covenants and conditions. This group of clauses is preceded by the declaration: "It is hereby covenanted and agreed between the said parties hereto as follows, and these presents are on the express conditions." The 7th clause provides that the company shall at all times keep lighted the lamps at their own cost, unless when prevented by some unforeseen accident, not occurring through any default of the company, but in any event the company shall pay 50 cents for each night for each lamp that is not kept lighted to the satisfaction of the superintendent of fire alarms, whose report is to be final and conclusive as to the number of lamps not kept lighted by the company, according to the terms of this agreement. The Master held that the company were to be paid the contract price for the period when no light was furnished, and that the city was entitled to deduct therefrom penalties liquidated at 50 cents for each unlighted lamp during the same period. I read the contract as meaning that if no light was furnished from unforeseen accident, there was to be no pay and no penalty during such time; when light began to be furnished, then pay began *quo tanto*—the company all the while being in no default.

Appeal of plaintiffs allowed with costs, and appeal of defendants dismissed with costs.

MEREDITH, C.J.

JULY 15TH, 1902.

CHAMBERS.

RE THOMSON v. STONE.

County Court—Jurisdiction—Action by Division Court Judgment Creditor for \$92 to Set Aside Chattel Mortgage for \$520—Subject-matter Involved.

Motion by defendants for an order prohibiting (after