

ticularly mentioned in the agreement. It was stated in the contract that, provided the plaintiff company was ready to deliver the 200 horse power, payments should be computed from a period commencing 18 months after the execution of the contract. And it was further provided that, if the defendant company was ready to receive it, the plaintiff company should deliver at an earlier period. The defendant company agreed to pay for the power in 12 monthly instalments, the amount of the monthly instalments to be readjusted at such time as the amount of power supplied was increased; and payments of all sums due for power were to be made on the 15th day of each month, for all power available, delivered, or ordered for use or used during the preceding month. As the defendant company required to have its supply of current continuous and uninterrupted, provision was made in the contract for damages in the event of the power not being so furnished, and provision was also made for discontinuance of power for repairs. The action was tried without a jury at Port Arthur. BRITTON, J., in a considered judgment, found that the defendant company never went into operation at Fort William so as to require this electrical energy, and in fact never was ready to receive and never did take any of it as contracted for; that, on the other hand, the plaintiff company was ready and willing at all times on and since the 30th December, 1912, to deliver the electrical energy. The damages should be the price the defendant company was to pay. Electrical energy is not like such commodities as cotton or sugar or anything of that kind. It is available for use only when generated and as required from day to day. If not taken on the day stipulated, it is of no value thereafter, and cannot enter into consideration in regard to the amount of damages. Judgment for the plaintiff company for \$8,333.33 as claimed, without interest, and with costs. F. R. Morris, for the plaintiff company. W. A. Dowler, K.C., for the defendant company.

DUNCAN v. COOPER—LENNOX, J., IN CHAMBERS—JUNE 17.

Appeal—Motion for Leave to Appeal from Order of Judge in Chambers to Appellate Division—Rule 507.]—Motion by the defendants for leave to appeal from two orders made by CLUTE, J., in Chambers, on the 11th June—the one dismissing the defendants' motion to set aside the writ of summons for irregularity; and the other (made upon an application by the defend-