

tion of three days from the giving of notice under clause 25. The defendants hardly dispute that the plaintiffs have, recently, as defendants say, so improved the plant and work of maintenance and operation, as reasonably to comply with the agreement, but the contention is that the default continued so long as at least to completely wipe out plaintiffs' claim as sued for.

The defendants counterclaim for damages generally and for the *per diem* liquidated damages as above stated. What the plaintiffs are required to do, before becoming liable to what is in fact, a penalty, called liquidated damages in clause 25, is not the same as is called for by the contract in clauses 7, 8, and 11. The defendants have not the right to serve the notice and deduct the \$25 for each day, unless the plaintiffs make default in so maintaining the system as to give the best results for fire purposes.

That clause must be interpreted, having regard to plant satisfactory at time of installation, having regard to the population of the town, the size—particularly the height—of buildings, the fire brigade, the length and strength of hose supplied by the town, and other conditions disclosed in the evidence. An ex-chief of the Perth fire brigade—thought that as early as 1903, the working of the pumps began to go bad—no complaint to the company was made. In the early part of 1905 complaint was made, and it was mainly in regard to alleged want of pressure and want of water at fires.

Prior to 2nd May, 1905, the fire committee of the council of Perth, employed Ross and Holgate, consulting and supervising engineers of Montreal. They handed the matter to a Mr. Henry, who visited Perth and made an inspection on 2nd May, 1905. Henry reported to Ross and Holgate and they in turn reported to the defendants. The report states that he (Henry) "witnessed test of water works system, made in order to ascertain whether the Canadian Electric and Water Power Company were in a position to give a fire service to the town as required by the contract; more particularly with reference to clauses 9 and 11 of the contract."

The report does not mention specifically clause 25, but, after giving a full description of the plant, deals with "pressure." A pressure was obtained as high as 140 lbs. at station, and 100 lbs. registered on town hall hydrant. The report, which on the whole is unfavourable to the plaintiffs on the points considered, sums up as follows:—