

ERINDALE POWER CO. LIMITED v. INTERURBAN ELECTRIC CO.
LIMITED (No. 1)—MIDDLETON, J.—SEPT. 13.

Contract—Supply of Electric Current—Modification of Contract—Payment for Current Supplied—Quantum Meruit—Account—Items—Claim for Damages for Deceit—Costs.—The plaintiff company, the owner of certain property, plant, and equipment producing electricity, was incorporated by letters patent issued by the Dominion of Canada on the 21st May, 1909. The defendant company, the owner of certain plant and premises used in connection with the distribution of electric energy, was incorporated by the Province of Ontario on the 15th July, 1908. The defendants Waddington and Edmondson were officers of both companies, and were made parties to this action in respect of the claim made for damages for deceit. The action was tried by MIDDLETON, J., without a jury, at Toronto. At the trial, it was decided that the claim for deceit failed. An agreement was entered into between the two companies by which the plaintiff company undertook to supply electricity to the defendant company, and under which electricity was supplied. This agreement was modified at different times in minor matters, and materially at a later date, when it was found that the plaintiff company could not supply the electricity contracted for. The principal claim in the action was for payment for the electricity supplied, and there was a counterclaim by the defendant company. The first and most important question which arose was as to the basis upon which the plaintiff company was entitled to be paid for the electricity supplied. The learned Judge considers the evidence and the contentions of the parties with regard to this, and says that the contract contemplated delivery and payment on a peak-load basis, but the plaintiff company was bound to have at all times ready for delivery a full 1,000 horse power. When this was found to be impossible, the parties mutually assented to give and to receive electricity intermittently, and on a basis entirely different from that which was stipulated for in the contract. That which was done by the mutual assent of the parties was quite different from that which was contracted for; and the payment, in the absence of any bargain, should be upon a quantum meruit basis. Upon this footing, and taking into account a number of items in dispute upon which the learned Judge passed, in a written opinion of some length, he came to the conclusion that the plaintiff company was entitled to recover \$18,735.89. Judgment for the plaintiff for this amount; no costs to either party. H. E. Rose, K.C., and J. L. Ross, for the plaintiff company. R. McKay, K.C., and D. Inglis Grant, for the defendants.