

The policy was therefore not "in force" at the time of the death of the assured, and the plaintiff cannot succeed.

The appeal should be allowed and the action dismissed with costs. As to costs of the appeal, in the case of *Re Stinson and College of Physicians and Surgeons of Ontario* (1912), 27 O.L.R. 515, a Divisional Court refused all costs (but one counsel fee) to a successful appellant when the material furnished was incomplete; such a course is a fortiori when the material furnished is incorrect. I think the same order should be made in this case. . . .

FALCONBRIDGE, C.J.K.B., agreed.

LATCHFORD and KELLY, JJ., were of opinion, for reasons stated by each in writing, that the appeal should be allowed with costs.

*Appeal allowed.*

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MARCH 23RD, 1915.

# RE ONTARIO AND MINNESOTA POWER CO. AND TOWN OF FORT FRANCES.

*Assessment and Taxes—Valuation of Land and Buildings of  
Water Power Company—Principle of Valuation—Evidence  
—Onus—Appeal—Question of Law—Business Assessment.*

An appeal by the company (by leave) from a decision of the Ontario Railway and Municipal Board.

The assessment of the company for the year 1914 by the assessor of the municipality was as follows: land, \$100,000; buildings, \$415,142; business assessment, \$122,500: total, \$637,642. These figures were altered by the Court of Revision: land, \$95,000; buildings, \$705,000; business assessment, \$200,000: total, \$1,000,000. This was confirmed on appeal to the District Court Judge. There was a further appeal to the Board, and the Board's variations left the assessment: land, \$550,000; buildings, \$250,000; business assessment, \$480,000: total, \$1,280,000.

The appeal of the company was on two grounds: (1) that under the law and the facts the assessment of \$550,000 on the