

fact that defendant's title by possession never matured so as to displace the paper title of plaintiffs.

E. B. Stone, Peterborough, for appellant.

D. W. Dumble, K.C., for plaintiffs.

THE COURT (STREET, J., BRITTON, J.) held that, upon a perusal of the evidence and exhibits, there seemed no reason for disturbing the result arrived at by the trial Judge, the whole question being one of fact, the onus being on defendant, and he having, in the opinion of the trial Judge and of the Court, failed to satisfy the onus. The plaintiffs were purchasers for value with a registered title and without notice of the paper title of defendant, which was not registered till after this action was brought. Plaintiffs' paper title must, therefore, prevail also. Appeal dismissed with costs.

FEBRUARY 16TH, 1903.

DIVISIONAL COURT.

ONTARIO ELECTRIC LIGHT AND POWER CO. v.
BAXTER AND GALLOWAY CO.

Contract—Supply of Electric Current—Destruction of Building on Premises to which Current to be Supplied—Impossibility of Performance—Defence to action for Price—Readiness and Willingness to Perform—Damages for Breach.

Appeal by defendants from judgment of County Court of Wentworth in favour of plaintiffs in action tried without a jury. The plaintiffs' claim was upon a written agreement for the supply of an "electric current to the extent of fifty horse-power," to recover three instalments (less \$85.39 paid on account) alleged to be due by defendants under a provision in the agreement whereby defendants "agree to pay for the electric current . . . \$1,250 per annum . . . in equal monthly payments," for five years. The defence was that the agreement, according to its true construction, was for the supply of electric current for a particular specified mill, and that the mill having been destroyed by fire on the 25th April, 1901, without default, and before any breach of the agreement on the part of defendants, performance of the agreement had become impossible, and the parties were excused. The agreement of plaintiffs for the supply of the current was that they would, "upon the conditions and for the purposes and within the limits" stated in the agreement, supply it for and to defendants "in the premises" of defendants. The second paragraph was: "It is understood and agreed that the said electric current so to be supplied shall