

as terminated, or, without terminating the contract, discontinue the delivery of current, unless the account rendered was paid by the 15th May, 1918.

The plaintiffs refused to pay the amount claimed; and, fearing that the contract would be treated as at an end, and that the supply of energy covered by it would be cut off, launched the present motion.

The dispute could not, in the opinion of the learned Judge, be regarded as originating in a mere desire to embarrass the defendants, however slight the love the real plaintiffs—the Hydro-Electric Power Commission—bore to the defendants. The dispute, upon the material before the Court, must be regarded as founded on good faith. The plaintiffs asserted that they had not received the amount of energy they had been charged with. It was only upon failure to pay for the energy so delivered, and not for failure to pay the account rendered—unless correct—that the right of cancellation arose. Suddenly to cancel the agreement, and thus cut off the supply to the plaintiffs and their customers of 10,000 horse power—in large part applied in manufacturing munitions of war—would, in the circumstances, cause irreparable loss to the plaintiffs and those dependent upon them for power. Damages would be no compensation.

Upon the plaintiffs paying to the defendants \$18,901.02 and paying into Court \$22,823.04 to await the determination of the dispute, the plaintiffs should have the injunction asked for. Otherwise motion dismissed.

Costs should be costs in the cause unless the trial Judge should otherwise order.

LATCHFORD, J.

JUNE 13TH, 1918.

PENBERTHY v. CORNER.

Contract—Excavation Work—Difficulty in Completing—Work to be Executed “according to Plans”—Abandonment—Money Expended in Completion—Damages—Ascertainment of.

Action by the contractor for the erection of a Hydro-Electric sub-station in the city of Toronto, against the sub-contractor for the excavation work, to recover damages for the defendant's failure to complete the excavation. The defendant was paid \$700 on account of the contract-price, and counterclaimed for the balance or part of it.