

Divisional Court.]

[Feb. 16.

ONTARIO ELECTRIC LIGHT CO. v. BAXTER & GALLAWAY.

*Agreement—Supply of electric power—Continued existence of property—Condition precedent.*

Where under the terms of an agreement the plaintiffs were to supply the defendants with electric current to a specified amount of horse power, to be used by them for operating their machinery and for use in their business and for no other purpose, the limitation was for the purpose of confining the use of the power to the defendants' premises, and not to any existing mill thereon, so that the fact of such mill being afterwards destroyed by fire did not dispense with the defendants' obligation to receive and pay for the power. *Taylor v. Caldwell* (1863) 3 B. & S. 826, distinguished.

*Lynch Staunton*, K.C., for plaintiffs. *Teetzel*, K.C., for defendants.

Meredith, C. J., MacMahon, J.]

[Feb. 27.

RUSSELL v. EDDY.

*Costs—Third party—Discretion—Appeal.*

Rule 214 gives power to the court or a judge to order a plaintiff whose action is dismissed to pay the costs of a third party brought in by the defendant, as well as the costs of the defendant. Such an order is in the discretion of the court or judge, and there is no appeal from it unless by leave, as provided by the Judicature Act, R.S.O. 1897, c. 51, s. 72.

*W. H. Blake*, K.C., for plaintiff. *Godson*, for defendant.

Divisional Court.]

[March 3.

METALLIC ROOFING CO. v. AMALGAMATED SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION.

*Parties—Who may be sued—Status of defendants—Local union.*

The right to maintain an action or the liability to be sued can only be by or against persons as individuals, or as a corporation or a partnership, or where individuals are carrying on business in a name other than their own, or where they have been given the capacity to own property and to act by agents.

A local union of workmen, a purely voluntary association, occupying none of such capacities, are not liable to be sued; and a writ served upon them was therefore set aside;

*Taff Vale R.W. Co. v. Amalgamated Society of Railway Servants* (1901) A.C. 426, distinguished.

Where it clearly appears that the association sued is not an entity, which may be sued by the name it bears, it is more convenient to set aside