

EMPIRE FLOUR MILLS LIMITED v. CITY OF ST. THOMAS—  
KELLY, J.—FEB. 16.

*Contract—Supply of Electric Current—Rates of Payment—Counterclaim—Interest—Costs.*]—Action against the Corporation of the City of St. Thomas and the Hydro-Electric Commission of St. Thomas for a declaration that the plaintiffs, who were customers of the defendants for a supply of electric current for power purposes, were liable only for rates according to class E., and for an injunction restraining the defendants from cutting off the plaintiffs' supply of power. The action was tried without a jury at St. Thomas. KELLY, J., in a written judgment, said that the plaintiffs' written contract was for a supply under class A., which was practically unrestricted. There was a contest as to whether the contract had been varied or altered. The learned Judge finds that there was nothing in the nature of a bargain by which the plaintiffs could enforce a change from one class to another at such time or times as suited their convenience. When they did enjoy that privilege, it was by a voluntary concession or license. The plaintiffs had not made out their case, and the action failed. The defendants the Hydro-Electric Commission of St. Thomas counterclaimed for \$1,173.24, the amount representing the difference between the rates under class E. (at which rates the plaintiffs had made payments from month to month) and the rates chargeable to users of current under class A. These defendants were entitled to recover the amount claimed with interest (if exacted) and costs. W. K. Cameron, for the plaintiffs. W. B. Doherty, for the defendants the Corporation of the City of St. Thomas. G. H. Kilmer, K.C., for the defendants the Hydro-Electric Commission of St. Thomas.