

to the amount paid, considerably exceeded the true balance payable.

The question of the disposition of the actions, in view of this evidence, had now been argued.

Counsel for the defendants did not seek to avoid the bringing into the account of the excess paid during the earlier months, and both parties desired that the accounts should be continued to the end of February, 1919; and the accounts had accordingly been continued to that date. The result was a net balance of \$26,244.75 payable to the defendants.

The plaintiffs were ready and willing to pay the true amount due for power, and in these actions they asked for an injunction restraining the defendants from exercising the right given to them by para. 7 of the contract to terminate the agreement or cease supplying energy thereunder by reason of the default in payment of the price.

The contract was so difficult of interpretation that the parties could not agree upon the amount payable. In perfectly good faith the defendants claimed a very much larger sum than that which the purchasing company, in equally good faith, thought was the amount payable.

The defendants, in each of the earlier actions, had served a notice demanding payment of the specific amount due, according to their contention, and claiming the right to exercise the option given under para. 7, but this amount was not paid.

Within the time, and before the right to exercise the option, the action was brought, and an interim order was made restraining the defendants from exercising the optional right under para. 7, upon the terms that the plaintiffs pay to the defendants the amount the plaintiffs admitted to be due, and upon payment into Court of the difference between that sum and the amount claimed by the defendants. In the case of the earlier months, it now appearing that the amount paid exceeded the amount owing, it was clear that there was no right to forfeit; but counsel for the defendants took the position that in regard to the later months the situation was different, the amount actually paid being less than the amount actually due. To this it was answered that as to these amounts the notice was defective where it asked payment of a definite sum exceeding the amount due; and, where no definite sum was asked, the notice was defective in that a specific and definite sum ought to have been claimed.

The learned Judge was inclined to think that the notices given were defective; but he did not feel compelled to determine this, because he took the view that, when the motion for the injunction was made, and the money was paid into Court to the credit of the action, there was "payment" within the meaning