

sist better with her duty to her husband, her children, and herself.”

The plaintiff is entitled to her costs of the action.

BRITTON, J.

JUNE 14TH, 1912.

CANADIAN ELECTRIC AND WATER POWER CO. v. TOWN OF PERTH
—BRITTON, J.— JUNE 14.

Contract—Construction — Water Supply—Municipal Corporation—Compliance with Contract—Acceptance—Counterclaim—Default—Damages.]—There were three actions between the same parties. The first was for the recovery of \$3,000 and interest for the use of hydrants in supplying the defendants with water for the years 1905, 1906, and 1907; the second, for the same service in the years 1908, 1909, and 1910; and the third, for the same service for 1911. The actions were tried together. The defence to the three actions was, that the plaintiffs had failed to comply with the agreement set out in the schedule to 62 Vict. ch. 70 (O.), between one Charlebois and the defendants, the plaintiffs now standing in the place of Charlebois, by virtue of assignments ratified and confirmed by the Act. The learned Judge, after referring to the agreement and to the facts and the evidence, said that, in his opinion, the contract, as to the construction of the waterworks system, was reasonably complied with—the evidence was overwhelming that the defendants had accepted the work as a compliance with the contract as to buildings, pumps, engines, and all the plant and apparatus necessary to do the work required of the plaintiffs.—The defendants alleged that, whatever was the condition in prior years, it was such on the 9th May, 1905, that they had the right to complain and to deduct \$25 for each day the plaintiffs were in default after the expiration of three days from the giving of notice under clause 25 of the agreement. The defendants counterclaimed for damages generally, and for the per diem liquidated damages as above. As to this, the learned Judge found that the clauses in the contract as to maintaining the water system created conditions subsequent to the acceptance by the defendants of the construction and installation work, and that the covenant of the plaintiffs was a continuing one, protecting the defendants from payment of hydrant rents, if the plaintiffs made default under clause 25, according to the proper construe-