

agreement on which the action is brought. These questions are:—

Is the city or the railway company, and which of them, on the proper construction of the agreement, entitled to determine, decide upon, and direct:—

1. What new lines shall be established and laid down and tracks and service extended thereon by the company, whether on streets in the city as existing at the date of the agreement or as afterwards extended?

2. What time tables and routes shall be adopted and observed by the company?

3. Whether, if so determined by the city engineer, with the approval of the city council, cars which start before midnight must finish the route on which they have so started, though it may require them to run after midnight?

4. At what time the use of open cars shall be discontinued in the autumn and resumed in the spring, and when the cars shall be provided with heating apparatus and heated?

5. In the event of the decision of the Court being in favour of the city on any of the above questions, is the city entitled to a decree for specific performance as to the matter so decided or in any and which of them?

6. Is the privilege to the city to grant to another person or company, for failure of the company to establish and lay down new lines and to open same for traffic or to extend the tracks and services upon any street or streets as provided by the agreement, the only remedy the city can claim?

C. Robinson, K.C., and J. S. Fullerton, K.C., for plaintiffs.

W. Cassels, K.C., and J. Bicknell, K.C., for defendants.

ANGLIN, J.—In approaching the consideration of the agreement and incorporated conditions, I fully accept the proposition with which Mr. Cassels opened his argument, viz., that to manage defendant company and its undertaking is the right and the duty of its directors. But, inasmuch as this company exists for the purpose of operating the Toronto railway under a public franchise, it must be self-evident that, in regard to matters within their scope, the terms and conditions upon which the franchise itself is held must govern the exercise of the rights which it confers. To these terms and conditions in such matters the management and control of the directorate of the defendant company must conform. To that extent their independence of action is restricted—their right of control is qualified.