

dants, the agent did not pay over the premium to the latter till Jan. 20, 1902, who accepted, knowing for what it was paid. They did not, however, issue a policy, and after the fire had occurred repudiated liability, on the ground that they had only insured the plaintiffs for 30 days.

Held, that the defendants were liable, for if they intended to treat the insurance as terminated at the end of 30 days, it was their plain duty to have so informed the plaintiffs, and returned them a proper proportion of the premium paid, and not having done so they were legally, as well as morally liable both by virtue of the second statutory condition, R.S.O. 1897, c. 203, s. 168. (2). and also on the ground of estoppel.

Riddeil, K.C., and *John Greer*, for plaintiffs. *Watson*, K.C. for defendants.

Ferguson, J.] IN RE BAR 7. McMILLAN [Feb. 8.
Division Courts—Judgment summons—Form of affidavit—R.S.O. 1897, c. 60, s. 243—Prohibition.

An affidavit, by a plaintiff in a Division Court action desiring to issue a judgment summons, stating that "the sum of \$65.10 of the said judgment remains unsatisfied as I am informed and believe", the judgment being for more than \$65.10, is not such an affidavit as is required by s. 243, of the Division Courts Act, R.S.O. 1897, c. 60, and prohibition will lie to restrain proceedings upon a judgment summons issued pursuant to such an affidavit.

Middleton, for defendant. *Gamble*, for plaintiff.

Divisional Court] CITY OF TORONTO v. TORONTO RAILWAY CO. [Feb. 9.
Interest—Contract—Sum certain—Rental of track—Interest by way of damages—Demand of payment.

By the agreement in question in the action the defendants agreed to pay to the plaintiffs \$800 per annum per mile of single track and \$1600 per mile of double track occupied by the defendants' railway, not including "turnouts", in four equal quarterly instalments on the 1st of January, April, July and October in each year. Disputes arose between the parties as to the meaning of the word "turnouts" and as to what tracks were to be measured and as to the manner in which they were to be measured, and this action was brought in reference to these questions and was finally determined on appeal to the Judicial Committee. In the result the contention of neither party was given effect to, the mileage in respect of which rental was payable being held to be less than that contended for by the plaintiffs and greater than that contended for by the defendants. The plaintiffs had from time to time demanded payment of the sums payable