

The only question which causes me any trouble is as to the disposition of the costs. That is always more or less a perplexing question. The law, in its wisdom, has placed the disposition of the costs in the discretion of the Judge. I had much rather such discretion did not devolve upon me. Plaintiff certainly has suffered, suffered without any fault on his part. It looks very much as if he has no substantial remedy in respect of his sufferings through the negligence of another, or others. He brought his action relying upon the statement of the nurse that Dr. Bruce had done that which she has sworn to; it was not launched upon any knowledge of his own. He was insensible at the time, unable to preserve himself from the injury which this pad caused, and unable to know what directions were given. Under all the circumstances of the case, I think I am fairly exercising my discretion in making no order as to costs of the action.

The action is dismissed without costs if the case go no further. If it go further, dismissed with costs.

ANGLIN, J.

NOVEMBER 10TH, 1904.

WEEKLY COURT.

CITY OF TORONTO v. TORONTO R. W. CO.

*Street Railways—Agreement with Municipal Corporation—Construction—Operation of Railway—Right of Municipality to Direct—Service—New Lines—Extension of Municipal Boundaries—Time Tables and Routes—City Engineer—Night Cars—Open Cars—Heating Cars—Specific Performance—Special Case—Costs.*

In this action issues were raised which involved the determination of the respective rights of plaintiffs and defendants as to a number of matters affecting the operation of defendants' railway. The solution of many of the questions as to which the parties differed depended upon the true construction of several provisions of the agreement under which defendants acquired the right to operate the railway.

This agreement, including certain incorporated documents, was ratified and confirmed by Act of the Ontario Legislature, 55 Vict. ch. 99, and is to be found printed as a schedule to that statute. To dispose as far as possible of such questions the parties agreed to submit to the Court a special case in the following terms:—

The parties desire, before proceeding to take further evidence in this case, to obtain the opinion of the Court upon certain questions of law arising on the construction of the