HILES *v.* ELLICE.

CROOKS *v.* ELLICE.

*Drainage—Municipal corporations—By-law—54 Vict., c. 51 (O.).*

Under the Drainage Trials Act, 1891, 54 Vict., c. 51 (O.), the referee has power to award either damages or compensation, whether the case before him be framed for damages only, or for compensation only, and on such a reference it is unnecessary to consider whether the by-laws in question are or are not invalid.

Reports of the referee upheld; Burton, J.A., dissenting on the ground that the references in question were not within the Act.

*M. Wilson*, Q.C., and *E. Sidney Smith*, Q.C., for the appellants.

*J. P. Maybee* and *F. W. Gearing* for the respondents.

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IN RE CITY OF TORONTO AND TORONTO STREET R.W. CO.

*Toronto Street Railway Company—Franchise—Property—Roadbed.*

Under the statutes and agreements affecting the Toronto Street Railway Company, the possibility of exercising the franchise beyond the period of thirty years therein mentioned, if the city did not choose to take over the railway, is not "property," the value of which could be taken into consideration by the arbitrators in arriving at the amount payable by the city on assuming the ownership of the railway.

Nor was the company entitled to any allowance for permanent pavements constructed by the city under an agreement by which the company, in lieu of constructing and maintaining such pavements, as provided by former agreements, paid the city an annual allowance for the use thereof.

Judgment of ROBERTSON, J., 22 O.R. 374, affirmed.

*McCarthy*, Q.C., *Moss*, Q.C., and *Shepley*, Q.C., for the appellants.

*Robinson*, Q.C., *S. H. Blake*, Q.C., and *Caswell* for the respondents.

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MCGEACHIE *v.* NORTH AMERICAN LIFE ASSURANCE CO.

*Insurance—Life insurance—Premium—Non-payment—Forfeiture—Election—Waiver.*

Under a policy of life insurance with a condition that if any note given for a premium should not be paid at maturity the policy should be void, but the note should nevertheless be payable, the insurers are not bound on non-payment of the note to do any act to determine the risk. In the absence of an election to continue the risk it comes to an end, and mere demands for payment of the note, and a refusal during the currency of the note to accede to the insured's request for cancellation of the policy, are not sufficient evidence of such election.

Judgment of the Queen's Bench Division, 22 O.R. 151, reversed, and that of STREET, J., at the trial, restored.

*J. K. Kerr*, Q.C., for the appellants.

*Aylesworth*, Q.C., and *Marquis* for the respondents.