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HODGINS, MASTER IN ORDINARY.

MARCH 6TH, 1903.

MASTER'S OFFICE.

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

Street Railways—Construction—Municipal Corporations—Extra-territorial Rights—Franchise—Forfeiture—Construction of Statutes—Interest as Damages.

Reference to ascertain the amount due to plaintiffs for mileage and other matters as set out in the judgment.

J. S. Fullerton, K.C., and W. C. Chisholm, for plaintiffs.

J. Bicknell, K.C., for defendants.

THE MASTER—It is not necessary now to make a summary of the cases dealing with the allowance of interest as damages from 7 Wm. IV. ch. 3 to the present time; for the law is well settled that such interest as damages is properly allowable where the original claim is a sum certain, ascertainable by mere arithmetical calculation—as I find it to be in this case. And there are many letters of demand of payment which strengthen the plaintiffs claim and would warrant a jury awarding such interest as damages for nonpayment. The city's claim of interest will, therefore, be allowed.

In the second branch of the reference, which requires me to inquire and report by whom the portion of the railway track on that part of Queen street (or the Lake Shore road) west of Roncesvalles avenue was constructed, and at what time, and what rights of running upon the said track the defendants possess, I find that the said portion of the said railway track was constructed by the defendants shortly prior to the 30th June, 1893; and that the cost of the same remained in the accounts of the defendants as a charge against their expenditures until the 30th April, 1898—or about a month after the trial of this action,—at which date an entry was made in their accounts of \$248.50 against the Mimico Electric Railway Company for the cost of putting down the track in question. This action appears to have been commenced on the 5th February, 1897, and was tried on the 28th March,