

TEETZEL, J.

OCTOBER 10TH, 1903.

WEEKLY COURT.

RE FIELDING and TOWN OF GRAVENHURST.

Arbitration and Award—Interest on Amount Awarded—Date of Commencement—Publication—Confirmation—Judgment.

Motion by the corporation of the town of Gravenhurst for an order to amend a writ of fi. fa. by limiting the amount of interest directed to be levied, to interest from the date of entering judgment upon an award. The award was published on the 26th September, 1902, under the Municipal Act, fixing the price to be paid by the corporation to Robert Fielding for an electric plant at \$18,012. By sub-sec. 4 of sec. 566 of the Municipal Act, as amended by 63 Vict. ch. 33, sec. 30, the municipality had three months from the publication of the award within which to accept or reject it. No appeal having been launched and no notice of refusal to accept given, the award became absolute and enforceable against the town on the 26th December, 1902, but the town had not raised sufficient money to pay the price, and it was not until May, 1903, that a by-law for that purpose was carried, and further delays followed from the town not having been able to make a sale of its debentures, and in the meantime Fielding remained in possession of the plant at the request of the town, and he benefited by whatever profits may have been made out of operating it. Shortly after the award became absolute Fielding commenced and continued to urge the town to raise the money and take over the property. On 5th May, 1903, as a term for his continued indulgence, he obtained from the corporation a consent that the award might be enforced in the High Court in the same manner as a judgment. Under sec. 466 of the Municipal Act, and pursuant to the consent, an order was obtained on 3rd September, 1903, directing that judgment for the amount of the award might be entered in favour of Fielding. Neither in the award nor in the order was any provision made for payment of interest. Fielding, relying on sec. 116 of the Judicature Act and Rules 866, 869, issued a fi. fa. for the amount of the award and interest from the date of publication.

R. D. Gunn, K.C., for the corporation.

R. McKay, for Fielding.

TEETZEL, J. . . . In my opinion interest upon the amount of the award is recoverable only from the 26th December, 1902, at which date the award became absolute and