

FIRST DIVISIONAL COURT.

DECEMBER 26TH, 1917.

*COUNTY OF WENTWORTH v. HAMILTON RADIAL
ELECTRIC R.W. CO.

*Street Railway—Agreement with City Corporation—Privileges—
Annual Payments to Corporation—By-law—Construction—
Judgment in Former Action—Res Adjudicata—Question in
Issue in this Action not Decided in Former—Discontinuance
of Operation of Part of Line—Mileage Rate, whether Payable
on Part not Operated—Obligation for Continuous Operation
of whole Railway Deducible from Provisions of By-law—
Damages for Breach of Obligation.*

Appeal by the defendant company from the judgment of
SUTHERLAND, J., 12 O.W.N. 379.

The appeal was heard by MEREDITH, C.J.O., MACLAREN,
MAGEE, HODGINS, and FERGUSON, JJ.A.

D. L. McCarthy, K.C., and A. H. Gibson, for the appellant
company.

J. L. Counsell, for the plaintiff county corporation, respondent.

MEREDITH, C.J.O., reading the judgment of the Court, said
that the action was brought to recover the amount of the annual
instalments which the respondent corporation alleged were due
to it under the terms of an agreement between the parties, dated
the 19th June, 1905—the instalments sued for being those pay-
able on the 1st January, 1915, 1916, and 1917.

By a by-law of the council of the respondent corporation,
passed on the 10th June, 1905, the right, under certain conditions
and subject to certain terms mentioned in the by-law, to con-
struct, maintain, and operate a single-track electric railway on the
Main street road from Sherman avenue to the Delta and on the
King street road from the Delta easterly through Bartonville to
the Saltfleet town-line, was granted to the appellant company;
and by the agreement the appellant company covenanted to
“perform, observe, and comply with all the agreements, obliga-
tions, terms, and conditions” contained in the by-law.

The compensation which the respondent corporation was to
receive for the grant of the rights and privileges which it granted
was provided for by para. 24 of the by-law, in sums of money to
be paid according to mileage “of railway operated on the said
county roads under this by-law.”