

*Held*, that there was no evidence upon which the jury could reasonably have found that the electric wire was a nuisance to those lawfully using the highway, or that there was any neglect of duty on the part of the defendant company to the public which could render them liable to the plaintiff.

Judgment of TEETZEL, J., reversed.

Riddell, K.C., and R. H. Greer, for defendant company, appellants. W. N. Ferguson, for plaintiffs.

Full Court.]

[June 29.

CITY OF TORONTO v. TORONTO RAILWAY CO.

*Street railway—Streets in newly annexed territory—Extension of road into—Stopping places—Right to fix—Determination of engineer.*

Section 14 of the agreement entered into between the plaintiffs and defendants, set out in 55 Vict., c. 99(O), whereby the defendants are required to establish and lay down new lines and to extend the tracks and street car service on such streets as may be, from time to time, recommended by the city engineer and approved by the city council does not apply to territory which was not within the limits of the city at the date of the agreement; but had subsequently been annexed to and became part thereof. *Toronto R.W. Co. v. City of Toronto*, 37 S.C.R. 430, reversing the *City of Toronto v. The Toronto R.W. Co.*, 10 O.L.R. 657, followed.

By s. 26 of the agreement the speed and service necessary on any main line, part of same, or branch is to be determined by the city engineer and approved by the city council; and by s. 39 the cars should only be stopped clear of cross streets and midway between streets, where the distance exceeds six hundred feet.

*Held*, subject to the limitations of clause 39, the regulating of the places at which cars should be stopped came within s. 29 relating to the speed and service and was therefore to be determined by the city engineer and approved of by the council.

The engineer's report to the council recommended that cars should be required to stop at certain specified points, which was adopted by resolution of the council.

*Held*, that such report, though somewhat informally expressed, was a sufficient determination on the part of the engineer and that the adoption by resolution was sufficient, it not being essential that such adoption should be by-law.