

MARCH 13TH, 1902.

DIVISIONAL COURT.

TORONTO GENERAL TRUSTS CORPORATION v.
WHITE.

*Landlord and Tenant—Lease—Purchase of Buildings by Lessor at
End of Term—Valuation by Arbitration—Interest on Amount of
Award—Possession Given to Lessor.*

Appeal by plaintiffs from judgment of MACMAHON, J., upon a special case stated for the opinion of the Court. The lease in question contained a proviso for the valuation, at the end of term, of the buildings on the land, by three indifferent persons, and also provided that the reference should be entered upon, and award made, within 6 months next preceding the 1st day of November, 1900, and that within six months from said 1st day of November, the value of the buildings should be paid, with interest at 7 per cent. per annum from said 1st day of November. Arbitrators were duly appointed, and the parties agreed to extend the time for award for one month, and also until such further time as the arbitrators might extend the same. On 31st October, 1900, the lessee gave up possession, and on the 30th November, 1901, the award was made. The Judge below held that the plaintiffs, who are the executors of the deceased lessee, were not entitled to interest on the amount of the award from the 1st day of November, 1900, until the making of the award, or for any portion of the said period from the 1st day of November, and the making of the award.

F. E. Hodgins, for plaintiffs.

W. Laidlaw, K.C., for defendants.

The judgment of the Court (FALCONBRIDGE, C.J., BRITTON, J.) was delivered by

BRITTON, J.—The defendants were, as to the buildings, in the position of purchasers in possession, and the general rule in such cases is that the purchaser pays interest: *Birch v. Toy*, 3 H. L. Cas. 565. The test as to payment of interest seems to be possession. *McCullough v. Clemow*, 26 O. R. 467, is not at all like the present case. Where title is not accepted at the time of taking possession, interest is payable on the purchase money from the time of taking possession. *Pigott v. G. W. R. W. Co.*, 18 Ch. D. 146, shews that interest will run from the time when the purchaser may prudently take possession. See also *Ballard v. Shutt*, 15 Ch. D. 122.