original agreement provided for apportionment of the first quarter's rent, having regard to the time of possession under the lease, and properly so, for at the date of that instrument the company were not in possession. But at the date of the second instrument (4th February, 1895) the company were in possession, and the agreement fixed the date of the commencement of the first term as of January, 1895. Thus all uncertainty as to the time from which rent should be payable was removed.

I think, therefore, that the appeal of the company fails, and that it should be dismissed.

But I am unable to agree with the learned Chancellor that interest was not payable in respect of the arrears of rent. The gales of rent were payable by virtue of a written instrument, at a certain time, and so fall within secs. 113 and 114 of the Judicature Act. The reasons urged against the application of these provisions, i.e., delay in perfecting the title and completion of the transaction, however forcible in the absence of possession and beneficial enjoyment by the company, ought not to prevail in the face of that fact. In Marsh v. Jones, 40 Ch. D. 563, the Court of appeal held the plaintiff entitled by way of damages to interest on purchase money from the day on which the purchaser had taken possession, although the amount of purchase money was not finally ascertained for more than two years after possession taken.

I am of opinion that the referee's finding in respect of interest should not have been disturbed.

The result is that the appeal of the company is dismissed, and the appeal of the city allowed. Costs will follow the event.

MACLENNAN and GARROW, JJ.A., gave written reasons for the same conclusions.

OSLER and MACLAREN, JJ.A., also concurred.

MACMAHON, J. —— APRIL 16TH, 1903.

TRIAL.

TRAPLIN v. CANADIAN WOOLLEN MILLS (LIMITED).

Master and Servant—Injury to Servant—Dilapidated Condition of Elevator—Common Law Liability—Finding of Jury.

Action for damages for injuries sustained by plaintiff while working in defendants' factory.

H. Guthrie, K.C., for plaintiff.

G. F. Shepley, K.C., for defendants.

MACMAHON, J.—One Baker, a machinist who for more than a year had been intrusted with the repair of a portion of the mill machinery, found the machinery which ran the elevator "chattering," which, he said, indicated that the ma-