undertaking, and that their rights of running upon it were governed by the agreement of the 1st of September, 1891, and were subject to the same obligations as were imposed upon the company with reference to their other tracks. The Master's finding was upheld in the Divisional Court and also in the Court of Appeal. In their Lordships' opinion the conclusion thus arrived at is plainly right.

The question as to interest is not so simple. If the law in Ontario as to the recovery of interest were the same as it is in England, the result of modern authorities, ending in the case of *The London, Chatham and Dover Railway Company* v. *The South-Eastern Railway Company* (1893) A.C. 429, would probably be a bar to the relief claimed by the corporation. But in one important particular the Ontario Judicature Act, R.S.O. 1897, c. 51, which now regulates the law as regards interest, differs from Lord Tenterden's Act. Section 113, which is a reproduction of a proviso contained in the Act of Upper Canada, 7 Wm. IV., c. 3, s. 20, enacts that "interest be payable in all cases in which it is now payable by law or in which it has been usual for a jury to allow it." The second branch of that section (as Street, J., observes) is so loosely expressed as to leave a great latitude for its application. There is nothing in the statute defining or even indicating the class of cases cited. But the Court is not left without guidance from competent authority. In *Smart* v. *Niagara & Detroit River Railway Company* (1862) 12 C.P. 404 Draper, C.J., refers to it as a settled practice "to allow interest on all accounts after the proper time of payment has gone by." In *Michie* v. *Reynolds* (1865) 24 U.C.R. 303 the same learned Chief Justice observed that it had been the practice for a very long time to leave it to the discretion of the jury to give interest when the payment of a just debt had been withheld. These two cases are cited by Osler, J.A., in *McCullough* v. *Clemow* (1895) 26 O.R. 467, which seemsto be the earliest reported case in which the question is discussed. To the same effect is the opinion of Armour, C.J., in *McCullough* v. *Newlove* (1896) 27 O.R. 627. The result, therefore, seems to be that in all cases where, in the opinion of the Court, the payment of a just debt has been improperly withheld, and it seems to be fair and equitable that the party in default should make compensation by payment of interest, it is incumbent upon the Court to allow interest for such time and at such rate as the Court may think right. Acting on this view the Divisional Court and the Court of Appeal, consisting in all of seven learned judges, have given interest in the