Laidlaw, K.C., and *G. T. Blackstock*, K.C., for the appellant company. As soon as the proper method of ascertaining the exact measurement had been arrived at the claim was paid, so that there was no delay. Interest had not been claimed in the suit nor was the amount capable of ascertainment from any document, and there was no evidence of demand. Secs. 113 and 114 of the above Act have been confined to tradesmen's accounts rendered in ordinary course, and there was no contract to pay interest. See *London, Chatham and Dover Ry. Co.* v. *South Eastern Ry. Co.* (1892) 1 Ch. 120; and (1893) A.C. 429; *Sinclair* v. *Preston* (1901) 31 S.C.R. 408.

Shepley, K.C. and *Rowlatt*, for the City, respondents. Interest was claimed at the trial and was within the competence of the referee. This was in effect the case of a debt certain payable by virtue of a written statement at a certain time, as it has all the elements of certainty as appear by the contract and nothing more was required than an arithmetical computation. See *City of Toronto* v. *Toronto Railway Co.* (1893) A C. 511, 515; *McCullough* v. *Newlove* (1896) 27 O.L.R. 62; *McCullough* v. *Clemow* (1895) 26 O.L.R. 467, 473; *London, Chatham and Dover Ry. Case* (ante); *Duncombe* v. *Brighton Club Co.* (1873), L.R. 10 Q.B. 371.

The judgment of their Lordships was delivered by

LORD MACNAGHTEN:—The action was brought in 1897 on a contract dated Sept. 1, 1891, under which the Railway Company acquired from the corporation the exclusive right of working street railways within the city, which at that time extended no further west than Roncesvalles Avenue. This privilege or franchise was granted for a term of years in consideration of the payment of certain mileage rates. Disputes, however, soon arose about measurements. In February, 1897, the corporation brought this action against the Railway Company, claiming a large sum over and above the periodical payments which had been made from time to time. At the original hearing in 1898 it was, among other things, declared that the company were not liable to pay a mileage rate in respect of the 940 feet of track in dispute. On appeal this part of the Order was discharged, and it was referred to the Master in Ordinary to enquire and report by whom the track was constructed, and at what time and what rights of running upon it the Railway Company possessed. The Master, after reviewing the evidence taken before him, found that this portion of the track was constructed by the Railway Company on or about the 30th of June, 1893, as part of their own