

## England.

### JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

(*Present* Lord Macnaghten, Lord Davey and Sir Arthur Wilson.)

CITY OF TORONTO v. TORONTO RAILWAY CO.

*Interest on payments in arrear—R.S.O. (1897) c. 51, s. 113.*

The above Act provides that "interest shall be payable in all cases in which it is now payable by law or in which it has been usual for the jury to allow it."

*Held*, that under the true construction of this enactment it is incumbent upon the Court to allow interest for such time and at such rate as it may think right in all cases where a just payment has been improperly withheld, and compensation therefor seems fair and equitable.

An order by the Court below that the company (appellants) should pay arrears of track rentals within the limits of the respondent city, over and above their periodical payments already made, and should pay interest thereon, was affirmed.

[London—Nov. 8, 1905.]

This was an appeal from the Court of Appeal for Ontario on a judgment delivered Jan. 23, 1905, which affirmed a judgment of the Divisional Court Feb. 9, 1904 (40 C.L.J. 159). The main question was as to the city's right to recover interest from the company upon track rentals, payment of which had, in the opinion of the Court, been improperly withheld.

Neither the judgment at the trial nor the judgment in appeal therefrom had declared the appellants liable for interest, nor had it been claimed in the statement of claim. The Master in Ordinary had on the reference made to him allowed interest at the rate of 6 per cent. per annum on the amount found due as damages for non-payment of a sum certain, and also which a jury would have been warranted in awarding. The Divisional Court affirmed this finding. In the appellate Court the Chief Justice considered that both sides could equally have ascertained by measurement the exact amount due under the contract, but that the appellants merely objected to the respondents' measurements, making no attempt to ascertain the amount themselves, and procured delay by promises to settle. As no rule required the full legal rate to be paid, the appellate Court reduced it to 4 per cent.