

committed a breach of sec. 14 of the award, conditions, tender, and by-law mentioned in the 2nd paragraph of the statement of claim, in that respect.

The other question is, whether, under the terms of the agreement, the power to make regulations to be complied with by defendants in respect of the places at which cars are to be stopped for the purpose of taking on or letting off passengers, rests with defendants or with the city engineer and the council of plaintiffs, and, if with the latter, whether the regulation now sought to be enforced was made in accordance with the agreement.

The relative clauses of the award, conditions, tender, and by-law on this point are as follows:—

26. The speed and service necessary on each main line, part of same, or branch, is to be determined by the city engineer and approved by the city council.

37. Each car is to be in charge of a uniformed conductor, who shall clearly announce the names of cross-streets as the cars reach them. . . .

39. Cars shall only be stopped clear of cross-streets and midway between streets where distance exceeds 600 feet. . .

For many years defendants stopped their cars at all the places mentioned in sec. 39, but, being of opinion that fewer stops were necessary or desirable for the effective working of the railway, recently ceased to stop at many of them. Complaints having been made of the inconvenience caused by this course, the city engineer examined into the matter and reported to the council's committee on works in favour of the restoration of nearly all the former stopping places, as follows: "I beg to recommend that the Toronto Railway Company be requested to stop their cars at the following points. . . ." The several points or places are then specified in detail. The committee sent on the report in the usual way to the board of control; the board . . . passed it on to the council for consideration; and the latter by resolution of 25th April adopted it without amendment.

Defendants were notified to comply with the resolution and to stop their cars as provided thereby. This they refused to do, on various grounds, contending: (1) that if the matter were within the jurisdiction of the engineer at all, he was