

considered proper to be paid for its use by the Savage Company, must stand unchanged. But, upon the subject of compensation, proof has been introduced, since the former argument, which, in my judgment, must affect the rate to be paid by the defendant for the use of the road. In the first place, there does not appear to have been any contract between the parties in relation to it. And in the next, it is shown, that the motive power and every expense attending the transportation upon the road, was paid and furnished by the defendant. Under these circumstances, I do not think it would be proper to allow ten per cent. upon the cost of the road for its use, and the point of difficulty is, what will be a fair rate? The best guide, I think, is the letter of Mr. George Williams, agent of the cotton factory, to L. Jarvis, President of the said Railroad Company, under date of the 1st of April, 1841. In that letter, he proposes, on the part of the cotton factory, to pay for that year, six per cent. on the cost of the road, and \$100 in addition for repairs. Now, in the absence of any contract for the residue of the period, during which the road was used by the defendant, I am persuaded no injustice will be done by adopting the terms of this letter, and applying them to the whole period, and that, therefore, is my judgment. With regard to the time when the road was first opened, and the use of it by the defendant commenced, I conclude, from the proof, that it was on the 1st of June, 1836, and without undertaking to decide upon the conflicting proof, as to the period of time down to which its use continued, my opinion is that, under the pleadings it must stop with the 1st of July, 1843. In stating the account, interest at the rate of six per cent. should be allowed the defendant, on the cash advanced by it for the construction of the road, from the time of each advance respectively, and the annual sum to be paid by the defendant for its use, should be taken to be payable in equal semi-annual payments, and credited with interest accordingly, but no rests on either side should be allowed.

The next item of surcharge stated in the bill is the sum of \$1,350, as for cash paid complainant by C. D. Williams, that