Secundum formam doni the municipal corporation are, in my opinion, restricted in their use of the Queen street avenue as a highway, as to street openings into it, by the provisions of the clause which specifies the openings existing in 1889, and in terms as such confirms them.

It follows that the acts of the city engineer in removing the fence in question and extending Anderson street were in violation of the rights of plaintiffs. But, upon the evidence, I am not satisfied that these acts were so clearly authorized by defendants that they should be held to have forfeited their rights as lessees or donees of plaintiffs.

There will, therefore, be judgment for plaintiffs for the injunction which they claim. Inasmuch as defendants have unsuccessfully sought to maintain a right to do that which they will now be enjoined from continuing, they must pay the costs of plaintiffs of this action. On the motion for interim injunction there will be no costs to either party.

MARCH 25TH, 1905.

DIVISIONAL COURT.

COOKE v. McMILLAN.

Vendor and Purchaser—Contract for Sale and Purchase of Land—Specific Performance—Objection of Purchaser—Jurisdiction of Court over Foreign Defendant—Title—Will—Conveyance by Executors—Period of Distribution—Further Evidence on Appeal.

Appeal by defendant from judgment of IDINGTON, J., 4 O. W. R. 523, in favour of plaintiff in action by vendor for specific performance of a contract for the sale and purchase of land.

A. R. Clute, for defendant.

M. H. Ludwig, for plaintiff.

The judgment of the Court (FALCONBRIDGE, C.J., STREET, J., ANGLIN, J.), was delivered by

FALCONBRIDGE, C.J.:—Instead of making the usual decree for specific performance with a reference as to title, the trial Judge, at the request of the parties, disposed of the objection to the title in the manner set forth in the report of his judgment (4 O. W. R. 523.)