

Re Lynn, Lynn v. Toronto General Trusts Company, 20 O.R. 475, and
Beam v. Beam, 24 O.R. 189, approved.

Judgment of the County Court of Prince Edward affirmed; OSLER, J.A.,
dissenting.

G. H. Widdifield for the appellant.

Hoyle, Q.C., for the respondent.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

ROSE, J.]

[Dec. 9.]

CITY OF TORONTO *v.* LORSCH.

*Municipal corporations—Public highway—Obstruction by private person—
Declaratory judgment—Injunction.*

A municipal corporation has the right to have it declared, as against a
private person, whether or not certain land is a public highway, and whether
such person has the right to possess, occupy, and obstruct the same.

And in an action brought by the municipal corporation for the purpose, a
declaration may be made according to the facts, and the defendant enjoined
from possessing or occupying the land so as to obstruct the use of it as a
public highway.

Fenelon Falls v. Victoria R.W. Co., 29 Gr., followed.

Gooderham v. City of Toronto, 21 O.R. 120; 19 A.R. 641, applied and
followed.

Shepley, Q.C., for the defendant.

Biggar, Q.C., for the plaintiffs.

Div'l Court.]

ST. DENIS *v.* HIGGINS.

[Dec. 7.]

*Specific performance—Contract for exchange of lands—Title not in plaintiff—
Knowledge of defendant.*

Where the plaintiff, at the time he entered into a contract with the defend-
ant for the exchange of lands, had no title to the lands he proposed to exchange,
which were, to the knowledge of the defendant at the time of the contract,
vested in the plaintiff's wife;

Held, in an action for specific performance, that the defendant could not
withdraw on the ground that the plaintiff had no title, at any rate before the
time fixed for the completion of the exchange, and the plaintiff, having tendered
a conveyance from his wife before action, was entitled to succeed, for the de-
fendant, having entered into the contract knowing that it did not bind the
estate, but only the person, of the plaintiff, must be taken to have relied from
the beginning upon the promise of the plaintiff to procure the concurrence of
the owner, and could not set up that the plaintiff was not the owner.

Dictum of KEKEWICH, J., in *Wylson v. Dunn*, 34 Ch.D. 569, not followed.

G. H. Stephenson for the plaintiff.

Waldron for the defendant.