what was already a highway, namely, the southerly 50 feet of the lot extending as far west as the lands of the defendant company, and it did not affect the remaining 16 feet in width, which had not previously been established as a public road.

I am of opinion that the plaintiffs are entitled to succeed as to this southerly 50 feet, but not otherwise; as against the defendant company, the plaintiffs altogether fail; the southerly 66 feet of the company's lands not having at any time been a part of a public highway.

The declaration, therefore, will be that the southerly 50 feet, extending as far west as the defendant company's lands, is a public highway to possession of which the plaintiffs are entitled as against the defendants Carl E. Fisher and Howard Fisher, who are restrained from obstructing it; the operation of the order for possession and against obstruction being suspended for three months from this date to enable these defendants to comply with the terms now imposed.

The defendant company are entitled to their costs against the plaintiffs; success as between the plaintiffs and the other defendants being divided, there will be no costs as between them.

BRITTON, J., IN CHAMBERS. FEBRUARY 14TH, 1914.

RE BARNETT v. MONTGOMERY.

Division Court—Jurisdiction—Title to Land—Motion for Prohibition—Costs.

Motion by the defendant for prohibition to the First Division Court in the County of York.

M. L. Gordon, for the defendant.
R. G. Hunter, for the plaintiff.

BRITTON, J.:—The plaintiff agreed with the defendant to purchase property, and paid as a deposit $100. The sale was not carried out, but no question of title arose in the negotiations for purchase. There was delay, and the plaintiff assumed to cancel the agreement, or withdraw his offer, and he demanded a return of the sum of $100 which he had paid when he made the offer to purchase. As the defendant refused to return the deposit, the