

As a result of negotiations, pending an application by defendants to vacate this judgment, a new agreement between the city and the University was concluded in 1889, which was ratified by an Act of the legislature, 52 Vict. ch. 53 (O.)

One of the principal complaints made by the University authorities had been that, instead of maintaining the fences upon the park and avenues, as agreed, the municipal corporation had caused or permitted various public entrances to be made into these avenues and into the park itself, and had caused or permitted portions of the fences which they were so bound to maintain, to be removed for that purpose. Opposite to the eastern end of Anderson street 6 feet of fencing had been removed to admit of the construction of a footpath, 6 feet wide, which extended the sidewalk on the north side of Anderson street through the western fence of the Queen street avenue to the western footpath or sidewalk running up the avenue.

By the agreement of 1889 the judgment of forfeiture obtained by the University was vacated, and the University . . . consented to and confirmed all existing street openings into the Queen's park and avenues, and, amongst them, "Anderson street, footpath 6 feet wide," as if agreed upon in pursuance of the lease of 1859.

By the same agreement the Yonge street avenue and the Queen street avenue were dedicated by Her Majesty to the public, all restrictions as to traffic being removed, "subject to conditions hereinafter set forth," which do not affect the matters now under consideration. The lease of 1859, as modified, should, the parties further agreed, remain in full force and effect.

Anderson street has a width of about 40 feet. Until recently defendants have maintained a fence across the southerly 34 feet of its eastern end, to the satisfaction of plaintiffs. In the summer of 1904 defendants' engineer caused this fence to be removed, and proceeded to grade and construct, as a roadway for vehicular traffic, an extension of Anderson street across the Queen street avenue, cutting through a concrete sidewalk constructed on the west side of such avenue, and also removing some trees which stood in the line of the new highway. The lease of 1859 required the lessees to preserve and keep in good order the trees planted in the park and avenues.

Plaintiffs allege that these acts worked a forfeiture of the lease held by defendants, and they ask a judgment so declaring, and ordering the delivery up and cancellation of the lease. In the alternative they claim a mandatory injunction