

Judgment will, therefore, be entered for administration and for an injunction as prayed by plaintiff. The reference will be to the Master at Brantford. There will also be an order that defendant shall forthwith pay into Court the moneys of the estate which she admits holding.

In view of the fact that defendant is administratrix of the estate of the intestate, and that it was quite reasonable that she should require plaintiff to prove in a court of law that she has no beneficial interest in that estate, costs of all parties of this action should, I think, be paid out of the estate of Catharine Wall.

Further directions and subsequent costs will be reserved.

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ANGLIN, J.

MARCH 25TH, 1905.

TRIAL.

UNIVERSITY OF TORONTO v. CITY OF TORONTO.

*Way—Dedication—Lease to Municipality—Contract—Construction—Express Restrictions—Exclusion of Others—Forfeiture—Injunction.*

Action for a declaration of forfeiture of a lease, or, in the alternative, for a mandatory injunction, in the circumstances mentioned in the judgment.

J. A. Paterson, K.C., for plaintiffs.

J. S. Fullerton, K.C., for defendants.

ANGLIN, J.:—The Bursar of the University and Colleges of Toronto, in the year 1859, leased to the corporation of the City of Toronto, for a term of 999 years, the property known as the Queen's park and the two avenues known as the Queen street avenue and the Yonge street avenue, subject to certain reservations and restrictions. At this time the Queen street avenue was fenced in on both sides, and, except through the gateways at the north and south ends, and at the intersection of Caer Howell street, there were no public approaches to it. These fences the lessees covenanted to maintain and repair. In 1886 plaintiffs, conceiving that defendants had broken their covenants in the lease of 1859, brought action to have such lease forfeited and avoided. In that action judgment was, on 31st January, 1888, entered for plaintiffs as prayed.