the contract with Fernholm, is not called." Wright was not called, and Fernholm's evidence therefore stands uncontradicted. I would have thought that the Judge's expressions are equivalent to, or would justify, a finding that there was either a mutual mistake or fraud in the written document.

However, the Judge bases his decision on the ground that the circumstances make it inequitable for the Court to interpose for the purpose of a specific performance. The letter of 26th August, 1905, . . . which is relied upon by plaintiff as depriving the agreement of its inequitable character, is purely illusory. It is not executed by the company; it is not even signed by Wright as manager; and it leaves Fernholm entirely at Wright's mercy as to what particular two acres should be chosen and allotted to him. I am of opinion that, even putting the case upon the lower ground upon which the Judge has chosen to place it, he has exercised a judicial discretion in the matter, and that his judgment is right. The judgment appears to be sufficiently favourable to plaintiffs in that the action was dismissed without costs, and without prejudice to any action which plaintiffs might be advised to bring for rectification and specific performance, or for return of the purchase money.

In my opinion, the appeal ought to be dismissed with costs.

DECEMBER 18TH, 1906.

DIVISIONAL COURT.

LUDGATE v. CITY OF OTTAWA.

Highway—Non-repair—Injury to Pedestrian—Snow and Ice on Sidewalk—Notice to Municipal Corporation—Gross Negligence—Damages.

Appeal by defendants from judgment of MABEE, J., ante 257, in favour of plaintiff for $250 in an action for damages for personal injuries sustained by plaintiff owing to a fall upon a sidewalk in the city of Ottawa, alleged to be dangerous owing to its condition by reason of snow and ice.