

Grace to defendant, and also to an injunction restraining defendant from interfering with said right of way so as to prevent the free user thereof by plaintiff. There will likewise be judgment for plaintiff directing defendant to remove the covering placed over the said right of way by him, and the other obstructions placed by him on said right of way.

Reference may be had to *Mykel v. Doyle*, 45 U. C. R. 65; *McKay v. Bruce*, 20 A. R. 709; *Bell v. Goulding*, 23 A. R. 485; *Goddard*, 5th ed., pp. 109 and 540.

Defendant must pay plaintiff's costs.

ANGLIN, J.

DECEMBER 3RD, 1904.

WEEKLY COURT.

CITY OF TORONTO v. TORONTO R. W. CO.

*Street Railways — Contract with Municipal Corporation — Specific Performance—Private Statute—Special Case—Hypothetical Question—Refusal to Answer.*

After judgment (ante 330) had been delivered by ANGLIN, J., upon the special case stated in this action, further argument was heard as to the bearing of the Ontario statute 63 Vict. ch. 102, secs. 1 and 5, upon the question presented as to the right of plaintiffs to a decree for specific performance.

C. Robinson, K.C., and J. S. Fullerton, K.C., for plaintiffs.

W. Cassels, K.C., and J. Bicknell, K.C., for defendants.

ANGLIN, J.—This legislation (63 Vict. ch. 102, secs. 1 and 5), said to have been procured on behalf of the municipality to overcome the difficulty presented by the decision of the Court of Appeal in *City of Kingston v. Kingston Electric R. W. Co.*, 25 A. R. 462, had not been alluded to in argument before me. In these circumstances, I thought it advisable to stay the issue of formal judgment, to withdraw my opinion upon and answer to the 5th question submitted, and to direct that the special case should again be placed on the Weekly Court list, in order that I should have the advantage of hearing counsel upon the scope and effect of these special statutory provisions.