the position of the parties was that in the Osborne case the grantee to uses had died leaving a will which was held to be a due exercise of the power of appointment, while in the present case the grantee to uses was still living; this difference in no way affected the principle involved.

The learned Judge's judgment in this case was not intended to be a decision upon the question as to the wife's right to dower; but, having in view the doubts expressed in Armour on Real Property, 2nd ed., p. 114, the learned Judge did not think it proper, upon a vendor and purchaser application, to force an unwilling purchaser to accept the title with the wife unrepresented on the motion.

Had the Osborne case been referred to on the argument, the learned Judge would have considered himself bound by it. His decision ought not to be considered as in conflict with that in the Osborne case.

ORDE, J. OCTOBER 22ND, 1920

*RE TORONTO R.W. CO. AND CITY OF TORONTO.

Contract — Construction—Originating Motion — Rule 604 — Agreement between City Corporation and Purchasers of Street Railway —Payments for Mileage and Percentage upon Gross Receipts— Priority as between City Corporation and Bondholders—Application by Street Railway Company for Determination—No "Right" of Applicant Involved.

Motion by the Toronto Railway Company, upon originating notice under Rule 604, for an order determining the true interpretation of a certain contract.

E. D. Armour, K.C., and William Laidlaw, K.C., for the Toronto Railway Company.

G. R. Geary, K.C., for the Corporation of the City of Toronto.

R. S. Cassels, K.C., for the trustees for the bondholders.

R. B. Henderson, for a bondholder.

ORDE, J., in a written judgment, said that the company asked for an interpretation of those provisions of the contract between the city corporation and the original purchasers of the railway (whose rights and obligations were now vested in and borne by the Toronto Railway Company) which related to the payments