considered findings, etc., made by him after a trial; that the matters might be heard by the Divisional Court; and the proper judgment entered up as a Divisional Court judgment.

I have read with care and considered all the material before my learned brother, and can find nothing of which the defendants can complain.

Much of the argument before us consisted of a complaint that the trial Judge did not define the easement of the defendants. But this is not asked for in the pleadings; it was not asked in the argument, voluminous as it was, addressed to the trial Judge; when we made a direction in the Divisional Court, "the Referee will determine the extent of the easement," neither party had it inserted in the judgment; it is not asked in the notice of the present motion; and we were not asked either to allow an amendment of the pleadings or to make a declaration without an amendment.

I think the defendants were well advised in not having the Divisional Court direction made part of the formal judgment —had they done so, no doubt the trial would have taken a different course not at all to their advantage.

From my examination of the evidence, I think that, taking the easement at the very highest that the evidence would at all justify, the learned Judge has been far from generous in his estimate of damages, particularly as, under Con. Rule 552, they are assessed to the date of the assessment.

The right to damages at all in the McGrath and McMillan cases is, in my view, clear.

As to costs: in the first place, leave to appeal has not been given, and my learned brother informs me that he would not give it. But, in any case, the ownership of the land is not admitted, and judgment is properly ordered with costs on the High Court scale.

Pursuant to the arrangement, the judgments will be entered up as Divisional Court judgments—and the appeals will be dismissed with costs on the High Court scale.

BRITTON, J., somewhat reluctantly, agreed in the result, for reasons stated in writing.

FALCONBRIDGE, C.J., also agreed in the result.