

H. R. Frost, for the plaintiff.

H. E. Rose, K.C., for the defendant.

MIDDLETON, J.:—The dispute in this action is concerning a strip of land used as a lane, immediately to the north of the recently constructed apartment house at the corner of Surrey place and Grosvenor street, Toronto. This house is erected upon a parcel of land long owned by the late Mr. Baird. This parcel was enclosed to the north by a high board fence, separating it from the lane in question. Mr. Baird never had or claimed to have any right with respect to this lane. The land north of Mr. Baird's property and south of Breadalbane street, according to the registered plan, was supposed to have a frontage of 135 feet by a depth of 80 feet. In fact, when a survey was made upon the ground it was found to overrun some two feet.

In 1870, Ross, the then owner, sold the whole 135 feet to Stevens, and, by divers mesne conveyances, the whole lot became vested in McLean. In July, 1877, McLean conveyed the south 85 feet of the 135 feet to McBean. McBean at this time built the four houses now found upon the land. These, fronting on Surrey place, occupy the northern portion, leaving a strip to the south, which is the lane in question, and a narrow strip running, four feet wide north and south at the rear, which has been called for convenience "the alley." This lane and alley were apparently designed to afford a means of access to the rear premises of the houses, which constituted a solid row, without any other entrance to the rear save through the houses.

In July, 1877, McBean mortgaged each of these four houses to the British Canadian Loan Company. The descriptions contained in the mortgages were very carelessly prepared, so far as the rights of way were concerned. According to these descriptions, and as the fact is, each house was given a frontage of nineteen feet six inches, which would have left seven feet out of the eighty-five for a lane. Owing to the overplus, the lane was actually approximately eight feet wide. In each of these mortgages the property was described as running to the westerly limit of an alleyway four feet in width, and it was conveyed with a right of way over and along the alley. The southerly house, known as number 21, was described as running to the lane. If one may speculate as to the intention, it was probably intended that the northern houses should have a right of way not only over the alley but also over the lane.

McBean afterwards conveyed the equity in the houses, deal-