

Lamb's interest in the mortgaged property was not properly gotten in by these proceedings. This is based on the contention that Lamb, being a grantee of the equity of redemption, was not the holder of a lien, charge, or encumbrance and was not properly made a party defendant in the proceedings. Whatever may be said in favour of this contention under other conditions, I think the legal estate of which Martin was possessed having become vested in plaintiffs is sufficient to overcome the objection, so far at least as concerns the plaintiffs' right to maintain this action in respect of the easterly part of the James street lot. Lamb made no further conveyance of the mortgaged property, nor does it appear that he was at any time in possession.

Some reliance is placed upon a statutory declaration made by Hill as to his belief, that the east limit of lot 3 was co-existent with the east wall of the stable he erected on the James street property. That declaration he explains in his evidence at the trial. He mortgaged to Martin and afterwards, with his assignee Blackley, he conveyed to Farewell lot 3 on James street, whatever it was. What he says now about his belief about the eastern boundary of the lot it appears to me has arisen from some confusion in his mind by reason of his having reserved the right of way over the easterly 12 feet of the lot. If, as contended by defendants, the east limit of that lot was the easterly limit of the stable, then Hill's reservation in his conveyance to Farewell of a right of way over the easterly 12 feet of the lot, would pass that right of way over the easterly 12 feet of the land covered by the stable, a substantial brick building, a condition of things which would be most unreasonable for a grantor to create, and equally unreasonable for a purchaser to accede to.

There remains to be considered the further contention of defendants that plaintiffs and their predecessors in title have lost, through non-user, their title to and rights over the part of lot 3 on James street which lies east of the east wall of their present building on the northerly part of that lot and its production southerly. Witnesses were called in large numbers to shew that for such a length of time as would be sufficient to deprive plaintiffs and their predecessors of any right in or to this easterly 12 feet, there existed on the ground a fence running southerly from the south-east angle of the stable to a point in the southerly limit of lot 3; that