

"On the issue raised by the fourth plea, I think the defendant is entitled to a verdict. That plea alleges that there was a public highway through the *locus in quo*, and that it was impossible for the defendant to pass along the highway without removing the wall. The jury found that this was such public highway; and we are bound to assume that finding to be good, unless, as is contended, there cannot in law be a highway through a place which is no thoroughfare. It seems to me that such a doctrine is incorrect. There may or may not be a highway under these circumstances. Take the case of a large square with only one entrance, the owner of which has for many years permitted all persons to go into and round it; it would be strange if he could afterwards treat all persons entering it, except the inhabitants, as trespassers. In the *Trustees of the Rugby Charity v. Merryweather*, Lord Kenyon laid down that there might be a highway through a place which was not a thoroughfare, and seems to have left it to the jury whether there was such highway or not. In *Woodyer v. Haddon* (1813), 5 Taun 126, the Court did not decide that there could not be a highway under such circumstances, but only that in that particular case there was none; and I do not find anything decided there which is necessarily inconsistent with what was laid down by Lord Kenyon."

There are three kinds of ways which can be highways and which have been classified by Lord Coke, Co. Lib. 56a. "There be three kynds of wayes whereof you shall reade in our ancient bookes—first a footway which is called *iter quod est jus eundi vel ambulandi hominis*; and this is the first way. The second is a footway and horseway, which is called *actus ab agendo*; and this vulgarly is called pack and prime way, because it is both a footway, which was the first or prime way and a pack or drift way also. The third is *via aditus*, which contains the other two and also a cartway, etc., for this is *jus eundi, vehendi, et vehiculum et jementum ducendi*; and this is twofold, viz., *Regia via*, the King's highway for all men, *et communis strate*, belonging to a city or town or between neighbour and neighbours."

To designate a footpath as a highway certainly would appear rather grandiloquent, but on principle, guided by the consider-