

into a railway station and were inviting the public to use the passage as a means of access to their station. Kekewich, J., held that the right of way passed to the devisees of the houses as an appurtenance, but that the defendants by altering their mode of user had forfeited their right, so that, under present circumstances, it was not exercisable at all; though semble on restoration of their premises to their original character, the right might revive. The case is also interesting as shewing the bearing of actual user, on the construction of an implied grant of an easement of way, as to its nature and extent.

WILL.—CONSTRUCTION.—BEQUEST ON CONDITIONS.—FORFEITURE
—“RESIDENCE”—“UNMARRIED”—INVALID CONDITION—RES-
ON MARRIAGE.

In re Wright, Mott v. Issott (1907) 1 Ch. 231. A testator by his will bequeathed a leasehold house to trustees upon trust to permit his daughter Caroline to occupy the same free of rent, but subject to a proviso thereafter mentioned “and to her residing on the said premises during her lifetime.” In a subsequent part of the will was a provision that the use of the house was given to Caroline upon the express condition that Caroline should “remain single and unmarried,” and, in case she married, there was a gift over. After the testator's death Caroline resided in the house until her marriage, she then went to reside with her husband and rented the house bequeathed to her, reserving one room which she furnished and used two or three times a week. The trustees applied for a construction of the will and for the judgment of the Court as to whether in the events which had happened there was a forfeiture of the bequest of the house. Kekewich, J., held that residing meant “personally residing” and therefore the condition as to residing had not been fulfilled. As to this point see *MacKlem v. MacKlem*, 19 Ont. 482, where it was held that a condition as to “actual occupation” was fulfilled by occupation by a caretaker. But the learned judge also held that as the subsequent condition in restraint of marriage was void and reading that into, or with, the condition as to residence for the purpose of construing that clause, “residing during her lifetime” must mean during her lifetime while she was capable of residing, namely, as a spinster; and therefore upon her marriage the condition as to residence ceased to apply, and consequently there was no forfeiture, which is certainly an ingenious way out of the difficulty.