

let, or all the owners and occupiers of such a farm, have immemorially used to cross such a ground for such a particular purpose; for this immemorial usage supposes an original grant whereby a right of way thus appurtenant to land or houses may clearly be created. A right of way may also arise by act and operation of law; for, if a man grants me a piece of ground in the middle of his field, he at the same time tacitly and impliedly gives me a way to come to it; and I may cross his land for that purpose without trespass. For when the law doth give anything to one, it giveth impliedly whatsoever is necessary for enjoying the same."

The following outline is presented by Blackstone. Rights of way have been classified into three kinds.

First: those arising from necessity. Second: those created by grant or by reservation in a grant; and third: those arising by prescription. This classification, however, relates more particularly to the method in which such a way may be created or come into existence, than to the creation or right of a way itself. Because a right of way by necessity, as it is termed, exists by reason of it being necessary to the proper use of the estate to which it attaches: it has been considered, or at least so considered by writers who are not accurate in the use of their terms, as resting alone upon such necessity, and not upon a grant or implied contract. The better doctrine, however, and one which is conceded to be proper, has been announced by Judge Morton, in the case of *Nichols v. Luce*,² in the following:—

"The three different modes of acquiring and holding rights of way, in their origin, resolve themselves into one. The distinction between them relates more to the mode of proof than to the source of title. They are all derived from the voluntary grant of the proprietor of the fee. Prescription presupposes and is evidence of a previous grant. Necessity is only a circumstance resorted to for the purpose of shewing the intention of the parties and raising an implication of a grant. And the deed of the grantor as much creates the way of necessity as