

upon the premises to which the easement is appurtenant. They have not unduly increased the burden of the easement by altering its character, nature, or extent. I do not know that they can be required to limit their use of the crossing to purposes for which the land was used before the railway was built: *United Land Co. v. Great Eastern R. W. Co.*, L. R. 17 Eq. 158; but they are in fact exercising the right of crossing in a manner in which, upon the evidence before me, I think it was contemplated it should be exercised when the agreement of December, 1894, was made.

For the plaintiffs it is further urged that when the right of crossing was created the lands on either side belonged to the same owners, Noah and Charles Briggs; that they are now held by different owners—the plaintiffs' lessor Scott or his vendor Fanning on the north and Maguire on the south—and that, therefore, the right of crossing has ceased to exist; and counsel cited *Midland R. W. Co. v. Gribble*, [1895] 2 Ch. 827. There a severance, without reservation, in favour of the land for which the easement was subsequently claimed, of the easement itself, or of any right of way over the other portion of the land to the enjoyment of which the right of crossing would be necessary, was held to involve an abandonment of the right of crossing. The Court of Appeal, affirming the decision of Wright, J., rests its judgment distinctly upon the abandonment and release implied by the owner's severance "in such a way as to shew conclusively that this occupation way over the railway was no longer of any use to him, and to shew conclusively that he never intended to use it thereafter When he severed the land without any reservation of any right of way, there was an end of the right of way over the railway—he abandoned his easement:" per Lindley, L.J., at p. 831. Here there was the grant by Maguire to Fanning, as appurtenant to the land to the north which Fanning bought, of the right of way over the strip 30 ft. wide leading from the railway crossing over Maguire's unsold land to Aberdeen avenue. *Midland R. W. Co. v. Gribble* is, therefore, as Mr. Lewis said, an authority supporting rather the contention of the defendants than that of the plaintiffs. There has not been in this case any such severance as would involve the cesser of the right of crossing.

The plaintiffs have entirely failed, in my opinion, to establish their right to the relief which they claim, and their action should, therefore, be dismissed with costs.