

conveyed both properties to Maguire in December, 1901. In March, 1903, one Fanning acquired from Maguire the premises now leased by the defendants. In his conveyance Maguire granted to Fanning a right of way, from Aberdeen avenue to the lands conveyed to him, over a strip of land 30 feet wide and abutting at its northern end, opposite the crossing provided and maintained by the plaintiffs under the agreement of 1894. Fanning subsequently agreed to sell to Mr. J. J. Scott; and Mr. Scott has leased the premises to the defendants, with an option to the defendants to acquire Mr. Scott's rights under his agreement with Fanning. The right of way is not specifically referred to in the two latter documents. It was evidently regarded as something which would pass with the land as appurtenant to it.

Though Fanning bought the property for the purpose of re-establishing a brick-making industry upon it, he did not make use of it. Before Mr. Scott bought, he negotiated with the plaintiffs, through their superintendent, Mr. Fisher, for a siding. In these negotiations the crossing was not expressly referred to. Mr. Scott established an extensive brick-making industry on the property. The plaintiffs built the siding arranged for, and also reconstructed the crossing, which they have since maintained in repair. For a year and a half no objection was taken to the use made of the crossing by Mr. Scott, which was similar in character and extent to the use which the defendants have made of it since they acquired the business. But early in 1906 the plaintiffs began to complain of the crossing being used for the purposes of a manufacturing business, asserting that it had been intended only for farm purposes. This action was begun in July, 1907.

While I do not deem it material, in case it should hereafter prove to be so, I find that the plaintiffs were aware that Mr. Scott intended to use the premises which he bought from Fanning as a brick-yard, and that he intended to invest a large sum of money in the business. I find that the plaintiffs, through Mr. Fisher, were fully aware that Mr. Scott bought with the idea of using the crossing in question and the lane to the south as the means of conveying from his yard brick intended for local trade, and which he should not ship out by the plaintiffs' railway. I find that it was because of this knowledge that they reconstructed and subsequently repaired the crossing in question.

This crossing and lane afforded, when this action was begun, the only means of egress from the Scott property to