

purchases. The facts in this case were, that a railway company sold a piece of the land not required for their railway to the plaintiff, together with a house which they had allowed him to erect thereon. The house was close to their line of railway, which ran over a series of arches, through two of which there was some access of light to two of the lower windows of the plaintiff's house. The company retained in their own hands lands on the other side of the railway, opposite the plaintiff's house; and their conveyance to him contained a recital that all the land acquired by them, except that sold to the plaintiff, would be required by them for their railway, and it contained no express grant of right, or covenant as to light. The defendant's predecessor in title afterwards acquired from the company, under a conveyance, subject to any right of light which the plaintiff might have, the fee of the lands opposite the plaintiff's house, and erected buildings thereon, and he also took a lease of the arches. The defendant subsequently acquired this property, and blocked up the arches nearest the plaintiff's house with hoardings. The plaintiff claimed a mandatory injunction to compel the defendant to remove the hoarding; and it was held by the Court of Appeal (Cotton, Bowen, and Fry, L.JJ.), affirming Kekewich, J., that when the company sold the land to the plaintiff they had entered into an implied obligation not to do or permit anything on the land which they retained which would interfere with the plaintiff's reasonable enjoyment of the land he purchased, except what was required for the construction of the railway, and that the hoarding not being for that purpose, the plaintiff was entitled to the relief claimed. The effect of this implied obligation, however, might possibly be held in Ontario to be modified by the R.S.O., c. 111, s. 36, which prevents any person now acquiring an easement of light over the land of another; at the same time it is not clear that it would do so, because it will be observed that the plaintiff's right in this case arose, as we have seen, not by prescription, but from an implied covenant or obligation on the part of his vendors, which might be held to arise notwithstanding the statute.

WILL—CONSTRUCTION—GIFT TO A CLASS.

*In re Musther: Groves v. Musther*, 43 Chy.D., 569, a testatrix by her will gave the residue of her property to be equally divided between her nephews and nieces, sons and daughters of her late brothers George, John, William and Christopher, "but should any of them be dead before me, I then direct that his or her share shall be equally divided between his or her children." Kay, J., held, following *Christopherson v. Naylor*, 1 Mer., 320, that the children living at the death of the testatrix, of nephews or nieces who were dead at the date of the will, did not take. This decision was affirmed by the Court of Appeal (Cotton, Lindley, and Lopes, L.JJ.), notwithstanding some contrary decisions of Sir George Jessel, M.R. It does not appear to have been argued that the fact that a will now speaks from the death of the testatrix has affected the question of construction of such a bequest, and yet we should have thought the point was worthy of discussion.