

Ont.]

[May 6.]

PETERS v. SINCLAIR

Trespass—Easement — Public way—Dedication — User—Prescription.

S. brought action against P. for trespass on a lane called Ancroft place which he claimed as his property and asked for damages and an injunction. Said lane was a *cul-de-sac* running from Sherbourne street on the west, and the defence to the action was that it was a public street or, if not, that P. had a right-of-way over it either by grant or user. On the trial it was shewn that the original owners had conveyed the lots to the east and south of Ancroft place to different parties, each deed giving a right-of-way over it to the grantee and to those to whom the owner had conveyed or might thereafter convey the lot to the north (now P.'s land). The deed to P.'s predecessor in title did not give him a similar right-of-way. The deed to the predecessor in title of S. had a plan annexed shewing Ancroft place as a street fifty feet wide and the grantee was given the right to register said plan with the deed. The evidence also established that for several years before the action Ancroft place had not been assessed, and that the city had placed a gas lamp on the end near Sherbourne street; also, that for over twenty years it had been used by the owner of the lot to the north, and by the owners of adjoining lots, as a means of access to, and egress from, their respective properties. In 1909 the fee in the lane was conveyed to S. who had become owner of the lots to the east and south.

Held, 1. Idington, J., dissenting, that the evidence was not sufficient to establish that the lane had been dedicated to the public and accepted by the municipality as a street.

2. Idington, J., and Duff, J., dissenting. The lane was not a "way, easement or appurtenance" to the lot to the north "held, used, occupied and enjoyed, or taken or known, as part and parcel thereof," within the meaning of sec. 12 of the Law and Transfer of Property Act, R.S.O. (1897), ch. 119.

3. That P. had not acquired a right-of-way by a grant implied from the terms of the deeds of the adjoining lots nor by prescription.

Appeal dismissed with costs.

Tilley, and J. D. Montgomery, for appellant. Ludwig, K.C., for respondent.