

It was clear, the learned Chief Justice said, that a right of passage to Dry Lake for the purpose of watering cattle was reserved to the grantors by the conveyance; the appellant company had no right to destroy that right or impair its usefulness by the mining operations or otherwise; and there was no reason for interfering with the assessment of damages at \$1,500.

There might be some question as to the nature of the easement—whether the way that was in use at the time of the conveyance or a way undefined by the conveyance and to be selected afterwards; but it was not necessary to determine the exact nature of the right—the appellant company being permitted to provide a way over some other part of the land.

The learned Chief Justice was inclined to think that no definite way was reserved by the conveyance, but that, the old way having been used after the conveyance, and its use acquiesced in by the appellant company, it was the way to which the respondent was entitled. The case was analogous to that of a way of necessity, and such a way is the most direct and convenient one: *Pinnington v. Galland* (1853), 9 Ex. 1. When once the way is ascertained, it cannot be altered: *Pearson v. Spencer* (1861), 1 B. & S. 571. It was unnecessary to decide this, because the respondent was content with the judgment, which gave him a lesser right.

*Appeal dismissed with costs.*

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OCTOBER 12TH, 1915.

KEMPENFELDT LAND CO. LIMITED v. FOX.

*Vendor and Purchaser—Agreement for Sale of Land—Formation of Contract—Offer—Negotiations—Possession Taken by Purchaser—Action for Specific Performance—Incomplete Agreement.*

Appeal by the plaintiff from the judgment of MIDDLETON, J., who tried the action without a jury, dismissing it with costs.

The action was brought to obtain specific performance of an alleged agreement between the parties whereby the plaintiff company agreed to sell and the defendant to buy a parcel of land described as part of the south-east quarter of lot 27, in the 11th concession known as block G.

The main defence—and that which succeeded at the trial—was, that in the negotiations which took place the parties had