C.J., delivering the judgment of the Divisional Court, was of the opinion that, as what the plaintiff claimed and was entitled to was an easement, the defendant's possession was insufficient to bar the plaintiff; and . . . I feel compelled to concur with that view.

Both titles, that is, the plaintiff's and the defendant's, are registered. The plan under which it must be held that both claim, was registered before either title began. The parcels mentioned in the defendant's 99-year lease are set out in the plan, and the parcels owned by the plaintiff are also described in it. And upon it are also plainly set forth the open spaces called "private entrance" and "park," upon both of which, it is not disputed, the defendant's buildings and improvements encroach. The defendant's occupation began in May, 1895, or perhaps a little earlier, . . . The plaintiff purchased the parcels which she first owned . . . in September, 1902. They had previously been the property of Mary S. and F. Sellick, who purchased from the association by deed dated the 26th October, 1899.

While the lots were all unsold there was nothing to prevent the original vendors, the Beach Association, from enclosing and using the land as it had been used before the plan was registered. There was no one then to complain. See Re Morton and St. Thomas, 6 A. R. 322. But this right would cease upon a sale being made under the plan. See Sklitzsky v. Cranston, 22 O. R. 590. The title to the soil of the way remained in the owner, who might sell and convey his interest in it. But such a sale would necessarily be subject not merely to the then existing rights in the way, if any, but also to similar future rights arising upon subsequent sales. So that, even if the conveyance to the defendant had actually been of the land which she claims she purchased, and her case can be put no higher than that, she must, even in that event, have taken subject to the rights of prior and subsequent purchasers of lots laid out in the plan, such rights resting upon and being protected by the prior registration of the plan, of which every one subsequently dealing with the land was bound to take notice.

And that such rights were in the nature of easements, I cannot doubt, notwithstanding the able argument of Mr. Douglas. The case, in my opinion, clearly falls within the authority of Mykel v. Doyle, 45 U. C. R. 65, which has been too long followed to be now questioned in any Court in Ontario.

The appeal must, in my opinion, be dismissed with costs.

MEREDITH, J.A., for reasons stated in writing, was also of opinion that the appeal should be dismissed.

MOSS, C.J.O., OSLER and MACLAREN, JJ.A., concurred.