

duly constructed. The Messrs. B. conveyed both properties to M. in 1901, and in 1903 F. acquired from M. the premises afterwards leased by the defendants. In his conveyance M. granted to F. a right of way over the lane opposite the crossing. S. acquired title from F. and subsequently leased to the defendants. The land leased by the defendants had been in use as a brick yard for 25 years before 1893, but lay idle from that year until 1903, when S. established a brick-making industry upon it. The plaintiffs were aware that S. bought with the intention of using the crossing and the lane to the south as the means of conveying from his yard brick for local trade, and with this knowledge they reconstructed and kept in repair the crossing in question, which was used by S. and the defendants for that purpose, without objection by the plaintiffs, until 1906, when they complained of its use, and began this action in July, 1907.

*Held*, that a railway company acquiring a right of way may take the land required subject to reservations in favour of the grantor of such rights of crossing or other easements as may be agreed upon, and are not inconsistent with the use of the right of way for railway purposes; an agreement for a crossing contemporaneous with the deed of the right of way is equivalent to a reservation in the deed itself; and, the vendors having made such an agreement, the character and extent of the right of crossing must be determined by the terms of that agreement. Subject to the question of severance, the covenant of the plaintiffs with "the vendors, their heirs, executors and administrators," enured to the benefit of the assigns or grantees of the vendors, including lessees of such grantees; and the use which the defendants were making of this crossing was within the rights conferred upon the Messrs. B. by the agreement of the plaintiffs, not being, upon the evidence, inconsistent with the safe operation of the railway, nor unduly increasing the burden of the easement created by the agreement.

*Held*, also, that, although when the right of crossing was created the lands on either side of the railway belonged to the same owners, and were now held by different owners, there was no such severance as would involve the cesser of the right of crossing. *Midland R.W. Co. v. Gribble* (1895) 2 Ch. 827 distinguished.

*J. W. Nesbitt*, K.C., for plaintiffs. *A. M. Lewis*, for defendants.