

his estate clearly depends for its appropriate enjoyment on the way, or that some conclusive indication of his grantor's intention exists in the circumstances of his estate."

In *Alley v. Carrollton*¹³ it appeared that the lands were surrounded on one side by the Colorado River, and on the other sides by the remaining lands of the grantor. In passing upon this case, the court says:—

"The allegations of the petition, we think, however, may be fairly construed as shewing appellant to have been entitled to an enjoyment of a right of way of necessity appurtenant to his land over that of the appellee (grantor), at and previous to the commencement of this suit, which had been obstructed and interfered with by the appellee."

Here there was the recognition of the doctrine that an absolute necessity was not required, for there was nothing to shew, but what the Colorado River was navigable and access could be reached in that direction.

The case of *Pettinghill v. Porter*¹⁴ is a leading case. Here an instruction to the jury, as follows, was approved:—

"That the deed under which the plaintiff claimed, conveyed whatever was necessary to the beneficial enjoyment of the estate granted, and in power of the grantor to convey. That it was not enough for plaintiff to prove the way claimed would be convenient and beneficial, but she must also prove that no other way could be conveniently made from the highway to her house, without unreasonable labour and expense. That unreasonable labour and expense means excessive and disproportioned to the value of the property purchased."

It will be observed from the above that the court attempts to lay down a rule as to what may be such inconvenience as will justify the finding of the necessity.

The authorities heretofore cited and quoted from, we believe, represents as near as possible the various opinions upon this proposition as to what will constitute such a necessity, from which it may be presumed that a right of way was intended to be conveyed by the grant of the grantor to the grantee. It is further, we believe, obvious that the courts have not been able