

withhold from her costs both of the appeal and of the motion before the Master.

MULOCK, C.J.

MAY 14TH, 1906.

TRIAL.

ADAMS v. FAIRWEATHER.

*Way—Private Right of Way—Easement—Prescription—
Presumption of Lost Grant—Evidence—Interruption—
Inconsistent User by Others—Jus Publicum.*

Action for a declaration that plaintiff was entitled by prescription to a right of way appurtenant to his premises, being lot 119 on the east side of Bleecker street, in the city of Toronto, over a strip of land, part of the rear end of defendant Angus Fairweather's property, known as street numbers 610, 612, and 614, on the west side of Ontario street.

MULOCK, C.J.:—The properties of plaintiff and defendant abut on a narrow street, 12 feet in width, called Darling avenue, running north and south, which at its southerly end joins a lane running easterly along the southerly limit of premises No. 610 to Ontario street.

Adjoining number 610 on its north side is number 612, and next to 612 is 614. The total width of these three premises on Darling avenue is 50 feet.

The strip in question is about 10 or 12 feet wide, and extends a distance of 33 feet wholly across the rear ends of 610 and 612, and also in triangular shape for a few feet into 614, the total length of the Darling avenue side of this strip being about 40 feet, and of the easterly side of it about 33 feet. The shorter side does not extend into 614. The rear end of plaintiff's premises is about opposite the rear end of Nos. 612 and 614.

Plaintiff's wife acquired the property now owned by plaintiff in 1880, and in 1881 she with her husband and family took up her residence upon it, residing there until her death in 1900, when she devised it to plaintiff, who has ever since continued to be the owner and occupant thereof.