EASEMENT—RIGHT OF WAY—MORTGAGE OF SERVIENT TENEMENT WITHOUT RESERVATION OF RIGHT—IMPLIED RESERVATION—WILL—DEVISE—IMPLIED GRANT.

Taws v. Knowles (1891), 2 Q.B. 564, was an action brought to recover damages for interruption of an alleged right of way. Both plaintiff and defendant claimed title under a testatrix who had been owner of both the dominant and servient tenement. The dominant tenement she had occupied herself, and the way in question was over a passage, which led from the house she occupied, through the servient tenement (which she let to a tenant), to a street. This was not a way of necessity, but was used by her from time to time. In 1882 the testatrix had mortgaged the servient tenement without reserving the right of way over it. She subsequently died, and by her will devised the dominant tenement to the plaintiff's predecessor in title and the servient tenement to the defendant. The will contained no reference to the right of way. The defendant redeemed the mortgage and took a conveyance from the mortgagee. Under these circumstances, A. L. Smith and Grantham, JJ., held that, as no right of way was reserved by the mortgage and as the way was not a way of necessity, all right of way through the passage was extinguished by the mortgage; and that consequently the right of way had not passed to the plaintiff's predecessor in title under the will, and they dismissed the action. Upon appeal, the court (Lindley, Fry, and Lopes, L.JJ.) refused to decide whether or not the way did or did not pass under the will subject to the mortgage: but they affirmed the decision on the ground that as both plaintiff and defendant were volunteers, the plaintiff had no equity to deprive the defendant of the larger estate he had acquired by the conveyance from the mortgagee; but, though dismissing the appeal, they did so subject to the right (if any) of the plaintiff to redeem the mortgage. *Phillips* v. *Low*, 92 L.T. 26, is another case recently decided by Chitty, J., bearing on the questions involved in this case.

TRUSTEE—MORTGAGE BY CESTUI QUE TRUST—MISREPRESENTATION, LIABILITY OF TRUSTEE FOR—PERSON CONTRACTING WITH C.Q.T.—INCUMBRANCES—NOTICE OF INCUMBRANCE TO TRUSTEE—FRAUD.

Low v. *Bouverie* (1891), 3 Ch. 82, was an action in which an incumbrancer on the interest of a *cestui que trust* sought to make the trustee liable for misrepresenting the amount of the prior incumbrances on the interest of the *cestui que trust* of which notice had been given to him (the trustee). There was no doubt that the misrepresentation had been made in fact, but it was admitted that it had been made without fraud, and that it was due to negligence or forgetfulness. The representation was made in answer to a letter from the plaintiff's solicitors stating, as a reason for the inquiry, that their clients "were doing business with" the *cestui que trust*, but not stating that any advance was intended to be made on the strength of the information obtained from the trustee. The defendant stated certain incumbrances, but not all of which notice had been given. But he did not state that those mentioned were all. Under these circumstances, as there was no actual fraud, the Court of Appeal (Lindley, Bowen, and Kay, L.JJ.) held that under *Derry* v. *Peek*, 14 App. Cas. 337, the trustee was