

SECOND DIVISIONAL COURT.

MAY 7TH, 1918.

## \*MILLER v. TIPLING.

*Way—Easement—Right of Way over Adjacent Land—Reservation or Re-Grant in Conveyance—Construction—Ascertainment of Land to which Easement is Appurtenant—Use of Land as Approach to Garages—Injunction.*

An appeal by the defendant from the judgment of MEREDITH, C.J.C.P., who tried the action without a jury at Toronto, in favour of the plaintiff, restraining the defendant from making use of the northerly  $2\frac{1}{2}$  feet to the depth of 76 feet of the plaintiff's land in Leuty avenue, Toronto, except in connection with the ownership or occupancy of the adjacent premises to the north.

The appeal was heard by MULOCK, C.J. Ex., CLUTE, RIDDELL, and KELLY, JJ.

C. J. Holman, K.C., and J. H. Bone, for the appellant.

I. F. Hellmuth, K.C., and Alexander MacGregor, for the plaintiffs, respondents.

MULOCK, C.J. Ex., read a judgment, in which he said that the sole question upon the appeal was, whether the defendant was entitled to use or authorise the user of a way  $2\frac{1}{2}$  feet wide by a depth of 76 feet, extending westerly from Leuty avenue, as appurtenant to his lands.

One Atkinson owned a block of land on the west side of Leuty avenue, and erected thereon three houses, Nos. 24, 26, and 28—No. 24 being the most southerly. Houses 26 and 28 were separated from each other by a strip of land, not built upon,  $8\frac{1}{2}$  feet in width. The two houses were immediately opposite each other and of the same depth from east to west. In September, 1912, Atkinson sold and conveyed to the plaintiffs' predecessor in title the land upon which No. 26 was situate. House 26 stood  $2\frac{1}{2}$  feet south of the northerly limit of the lot upon which it was placed. At the time of the sale and conveyance, Atkinson owned the land adjacent thereto on the north, on which stood No. 28, and he also owned the land adjacent on the west, the two portions together forming an L-shaped piece of land. After the description of the land intended to be conveyed, in the conveyance from Atkinson to the plaintiffs' predecessor, were these words: "together with a right of way for the purpose only of getting in coal or other fuel and for the passage of an automobile over the 6 feet adjoining the

\* This case and all others so marked to be reported in the Ontario Law Reports.