

street; for the purpose, it is apparent, of preventing the owners of the adjoining lands to the east from obtaining access thereto. The defendant on her part agreed in similar terms that she would within 2 years from the 1st of April, 1909, consent to the opening of a street, 50 feet wide, across the rear of her lands to Delaware avenue; thus making a continuous street from Rutherford avenue to Delaware avenue. She agreed within that time to make the usual application to the city of Hamilton; and she was in the same way to be entitled to a one foot reserve. If the proposed Rutherford avenue was accepted by the city, and grading was required, then the plaintiff and the bank agreed to pay half of the cost of grading that portion between their respective parcels. These are the only provisions of the agreement now material.

Application was made to the city by the bank, and Rutherford avenue was accepted and has been laid out and opened up; the bank has sold all the land, and counsel on its behalf stated in Court that the bank had no longer any concern in the matters in difference between the parties to the action.

No application was made with reference to the proposed street at the east of the lands of the parties until long after the period named in the agreement; but an application was made in March, 1912. The city refused to accept the dedication or to approve the opening of the proposed street.

The agreement in the meantime was registered, and the plaintiff, desiring to dispose of his lands, is met by an objection that it is a cloud on his title. This action is brought to have it declared that the agreement is spent and forms no cloud upon the title.

Before the action, application was made to the defendant to release any claim she might have, but she took the position now indicated by the defence filed in the action.

"5. The defendant submits that under the terms of said agreement the said street can be opened without the approval of a plan by the said corporation and that said agreement is not conditional upon the consent of said city corporation.

"8. The defendant submits that neither plaintiff nor defendant can successfully refuse to open said street over their said lands when called upon so to do by the said Bank of Hamilton or any purchasers from it as aforesaid or from the Cumberland Land Company, which was incorporated to