

the 12 or 14 feet were reserved for the use of the brick cottage. This explanation of the situation appears to me to accord better with all the other circumstances than the claim to have the land open to joint user by both tenants.

I find that the true boundary will give two feet more land to defendant than was supposed at the date of purchase, and thereby access will be afforded from the back porch to the wicket gate attached to the wooden cottage, and as for wood and coal, that can be delivered in the same way as was done before the erection of these double gates in 1894.

Success is divided; the claim as to right of way fails, but defendant is entitled to a larger strip of land along the porch than was conceded by plaintiff. The boundary should be defined as according to the line laid down in Mr. Fairchild's plan, and neither party should get costs.

The question of law I do not consider at length, but I have grave doubts whether any right of user over the strip of land would, in the circumstances found, pass to the owner of the wooden cottage either by implication or under the Conveyancing Act, R. S. O. 1897 ch. 119, sec. 12; *Roe v. Siddons*, 22 Q. B. D. 237; *Watts v. Kelson*, L. R. 6 Ch. 173.

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MAY 13TH, 1907.

DIVISIONAL COURT.

MARKLE v. SIMPSON BRICK CO.

*Negligence—Master and Servant—Injury to and Death of Servant—Action by Widow for Damages—Findings of Jury—Accident—Cause of.*

Appeal by plaintiff from judgment of RIDDELL, J., 9 O. W. R. 436.

M. J. O'Reilly, Hamilton, for plaintiff.

G. Lynch-Staunton, K.C., and N. Somerville, for defendants.

THE COURT (MEREDITH, C.J., CLUTE, J., MABEE, J.), dismissed the appeal with costs.