

adjoining the land now conveyed, and the deed proceeded, "And I further convey the right of way to cross my land * * from the highway * * to the land owned by S., * * to have and to hold the aforesaid lands and premises with the appurtenances unto and to the use of S., his heirs and assigns forever."

Held, that the right of way was not a mere way in gross, but became appurtenant to the land of S., generally, and not merely to the land conveyed by the deed.

The word "premises" in a deed may cover not merely the land conveyed, but all that goes before in the deed.

Where C. conveyed to S. land which was inaccessible from the highway without passing over the lands of C. or some other person,

Held, that a way of necessity was impliedly granted by C., over his land conveyed to S.,

Since a way of necessity can only pass with the grant of the soil, the owner of the legal estate in the land as to which it is claimed, should be a party to an action claiming such way and

Where an equitable owner of the land sued, he was permitted to make the owner a co-plaintiff by amendment at the hearing. *Saylor v. Cooper*, 398.

[Appeal-d and stands for argument.]

Closing travelled road—Other convenient access to road—Onus of proof—Dedication.—The power of a municipal council to close up a road under section 504 of the Municipal Act, whereby any one is excluded from access to his lands, is a conditional one only, and if another convenient road is not already in existence, or is not opened by an-

other by-law passed before the time fixed for closing the road, the by-law closing the road may be quashed.

The onus of shewing that another convenient road is open to the applicant is upon the corporation.

The corporation of East Whitby by by-law closed up an old travelled road, whereby the applicant was shut out from ingress to his lands except by a short road leading to the original road allowance, which was now for the first time opened. For some years prior to 1844 the short road was used as a private road for the convenience of persons going to one F.'s place, mills, brewery, and distillery. In 1844 F. conveyed the land on each side of it to his son and son-in-law, but no mention was made of it in the deeds. The wife of the purchaser from the son-in-law, while speaking to F. at one time about the title, as to which some dispute arose, complained that the old travelled road might be closed up. F. replied that they would still have the short road leading to the road allowance, which would still be opened if the old travelled road were closed.

Held, that the latter statement, in connection with the facts of the former user of the road, and of its not having been disposed of when F. disposed of the lands on each side thereof sufficiently shewed the intention to dedicate the short road to the public; that the applicant had therefore another convenient way to his lands, and that the by-law should not be quashed; but, under the circumstances, without costs. *Adams and Corporation of East Whitby*, 473.

By-law opening.—See MUNICIPAL CORPORATIONS, 3.