various mesne conveyances the plaintiff claimed title to the same, the plaintiff's deed being in 1871, and all the conveyances described the lots as being according to the plan. Neither Marshall nor Clarke, up to the time that he conveyed to the defendant, ever used the lane as a way, and in 1887, the defendant erected a building across the northerly end of the lane and also a stable on the south-west corner of lot 4 and extending across the westerly end of the lane.

Held, that the defendant having by the conveyance from Clarke become the owner of lots 1, 4 and 5, together with the lane as laid out on the plan and having afterwards conveyed lot 5 as laid out on the plan, this amounted to an adoption by him of the plan and the grant by him to Dawson, his grantee, of all ways, rights, etc., appertaining to the lot, amongst which was the lane, and Dawson's title was now in the plaintiff, who therefore had a private right to use the lane, and an order must go as asked, requiring the defendant to remove all buildings, obstructions placed by him on the lane.

McFadden and *Graham*, for the plaintiff.

Blain and *Mahaffy*, for the defendant.

Divisional Court.

MEREDITH, C.J.)
ROSE, J.)

[Jan. 11.

WESTERN BANK *v.* COURTEMANCHE.

Mortgage—Insurance pursuant to covenant—Assignment of mortgage—Equitable assignee of insurance money.

Courtemanche sold certain goods to Dyson & Gillespie, part of the purchase money being secured by promissory notes made by Dyson to the order of Gillespie and endorsed by Gillespie, and also by a chattel mortgage on the goods executed by Dyson, to whom by arrangement between the parties they had been transferred by bill of sale by Courtemanche. This chattel mortgage contained a covenant to insure for the benefit of Courtemanche and his assigns, and insurance was accordingly taken out which was duly assigned to the mortgagee. Courtemanche discounted the notes with the plaintiffs and assigned the chattel mortgage to the plaintiffs, but he did not transfer the insurance. The insurance policy expired and the firm of Dyson & Gillespie, who kept an account with the plaintiffs, renewed it, but it did not appear that the renewal policy was assigned to Courtemanche or the loss made payable to him. Afterwards a fire occurred, the loss being adjusted at $1,600, and Dyson & Gillespie assigned to the plaintiffs the said insurance moneys as security for their indebtedness and the money was duly paid to the plaintiffs. Dyson told the plaintiffs to apply the moneys on the notes above mentioned and the plaintiffs did so, but Gillespie afterwards objecting on the ground that the money should have been applied on the firm account, and that the plaintiffs had no right to apply it on the notes without the authority of the firm, the plaintiffs transferred the moneys to the firm account, which then left a balance to the credit of that account, which was subsequently withdrawn, and now sued Courtemanche on the notes, or rather on renewals of them.

Held, that the plaintiffs could not recover for they were not only entitled,