

There remains to be considered the further contention of the defendants that the plaintiffs and their predecessors in title have lost through non-user their title to and rights over the part of lot 3 on James street which lies east of the east wall of their present building on the northerly part of that lot and its production southerly. . . .

I think the reasonable view is, that, from the time the James street driveway was closed at least, there was no such cessation of use or occupation of the rear portion of lot 3 as to debar the plaintiffs and their predecessors in title from their interest therein and their right to pass over the Hughson street alleyway. I have reached the same conclusion with regard to the time prior to the closing of the James street driveway. . . .

I must accept the evidence offered for the plaintiffs. . . . Many of their witnesses are in a position to speak of the conditions, and what they say is consistent with other circumstances which one cannot overlook. I have to conclude that the defendants have failed to prove that the plaintiffs, who have the paper title, have forfeited through want of use or failure to occupy it.

The plaintiffs also ask an injunction restraining the defendants from using any part of lot 3 on James street for the purpose of affording access to lot 2 on James street, part of which is owned by the defendants. No such right is expressly given to the defendants by the conveyance to them of that lot or as appurtenant thereto. Any right they possess to pass over the rear part of lot 3 on James street was acquired in the conveyance from Hill to them of the rear portion of lot 3 on Hughson street by which they also acquired "the right, title, and interest of the grantor" (Hill), "if any, over the rear 12 feet of lot number 3, fronting on the east side of James street in the same block, as reserved in instrument number 46171, duly registered in the registry office for the county of Wentworth, in common with the owners, tenants, and occupants of the remainder of said lot number 3."

What was reserved by instrument number 46171 was "a right of way 12 feet wide along the easterly boundary" of lot 3 on James street, "such right of way to be used as right of way for" Hill, who then purported to be the owner of lot 3 on Hughson street, and Farewell, to whom Hill was then conveying lot 3 on James street, subject to the right so reserved. It is evident that whatever easement was created over the rear 12 feet of the James street lot was intended for the use and benefit of the owners of that lot and of the westerly portion of lot 3 on Hughson street, and was so confined.