CAREY v. THE CITY OF TORONTO.

Sale of lots by a plan showing streets and lanes.

The mere fact of the owner of lands selling them by a plan showing streets and lanes thereon, does not bind him to continue such streets and lanes unless a purchaser is materially inconvenienced by the closing up of any of them.

A sale by auction was announced of lots, the advertisement stating that "lanes run in rear of the several lots." At the auction the plaintiff purchased a lot on the north side of Baldwin Street, which ran to a lane running from east to west, and a lane also ran in rear of other lots which joined at right angles the lane in rear of the plaintiff's lot.

Held, that as the plaintiff had ready access to the streets by the lane on which his lot abutted, he could not prevent the vendors from closing up any other lane upon the property.

CHANCERY DIVISION.

Boyd, C.] [April 22.

MORRISON v. MORRISON ET AL.

Will—Construction—Speaking from death—Contrary intention—After acquired property—R. S. O. c. 106, s. 26.

A testator by his will, dated May 19th, 1873, devised to R. M. "the property on H. Street," and gave "all the residue of his estate real, personal and mixed, which he should be entitled to at the time of his decease to A. M." At the date of the will he possessed only one property on H. Street called the Red Lion Hotel. He subsequently acquired other property on that street, consisting of three houses and lots.

Held, that, notwithstanding R. S. O. c. 106, sec. 26, by which a will is made to speak from the death, "unless a contrary intention appears by said will, the after-acquired property on H. Street did not go to R. M. but fell into the residue." The testator had expressed his intention with reference to all land acquired by him after the date of his will by appropriate words in that will, and it would be going contrary to that intention to declare that some after-acquired property should be withdrawn from the residuary clause, and held to pass under the prior specific devise.

Martin, Q.C. and *Waddell*, for plaintiff.
Furlong, for the defendants, the Swans.
Parker, for the defendant, R. Morrison.
Laidlaw, for the defendant, A. Morrison.

Boyd, C.] [May 11.

MITCHELL v. GORMULLY.

Partnership—Syndicate—Right of one partner to deal with his share—Profits.

M. & G. met and agreed to jointly purchase 150 acres of land and to sell it in lots or perhaps *en bloc* to a syndicate, if one could be got up. Both parties knew that others were interested under each of the two principals. M. had one-third interest and G. had two-thirds. No syndicate was got up to take the whole, and G. telegraphed M. that he was going to arrange a syndicate for two-thirds, and he formed a syndicate of eight persons, of whom he was one, to purchase his two-thirds interest, and obtained a large profit thereon. This arrangement was made in writing and recited that G. was seized in fee of the lands and had executed a declaration of trust of one-third in favour of M., and executes this declaration as to the remaining two-thirds. A quit-claim deed was afterwards executed by M. in favour of G., and a declaration of trust as to one-third in favour of M. was signed by G. In an action by M. for a share of G.'s profit it was

Held, that there was no sale of any of the lots that belonged to M. The two-thirds had not been disposed of so that they had passed out of the partnership though as to them there might be a subpartnership; there had been no dealing with the joint property of the partnership, but only of the individual interest of one partner; he had sold some portion of his individual share and no injury had resulted to his partner, and even if any had it would be no more than one of the inevitable concomitants attendant upon the right of one member to deal as he pleases with his share of the partnership concern. The action was therefore dismissed with costs.

McCarthy, Q.C., and *C. H. Ritchie*, for defendant.

S. H. Blake, Q.C., for plaintiff.