

Bond street; and, since then, it has been and still is used as a means of access to the yard.

Michael did not close the entrance from Simcoe street, and it was freely used as a mode of access to the rear of stores which he owned upon parcel B, and upon parcel D, to which he had acquired title.

The defendant, having acquired title from Michael Quigley, contemplated erecting a block of buildings on Simcoe street, covering, inter alia, parcel C, and so closing it as a means of access to the yard. The plaintiff, claiming title under Samuel Quigley, now brings this action for an injunction, claiming to have acquired a title by prescription to a right of way from the lane and yard across the strip of land in question.

Samuel Quigley, on the 11th April, 1901, conveyed the 30-foot parcel (lot A) to one Hincks, "together with the rights of way and user in the will of Malachi Quigley . . . described, and thereby devised to the party of the first part and his assigns." This conveyance does not grant to Hincks the title of Quigley to the yard and lane as tenant in common—but only his right as owner of one of the dominant tenements to the easements appurtenant to the 30-foot parcel, as defined by the will.

The right of way now claimed by the plaintiff is not appurtenant to the parcel of which he is the owner, i.e., the 30-foot lot. Quigley may have been enjoying the use of the land in question as a means of access to the yard, and it may be that the title he was acquiring under the statute would have passed to his grantee of the yard; but he is still owner, as one of several tenants in common, of the yard and lane—subject to the various rights and easements created by the will.

Further, the right, if any, which Quigley was acquiring, was a right of way to and from the yard and lane, and of which he was a tenant in common, and not a right of access to the 30-foot parcel. The way is in no sense appurtenant to it.

The evidence as to user is most unsatisfactory. No doubt, a great deal of traffic went over this land—most, if not all, being to the rear of the stores—occasionally teams and passengers may have gone to the rear of the cottages on the 30 feet. No one who had any real knowledge of the facts was called to shew any such user during the last few years. The occupants of the cottages were not called—those who used the way were not called—and Allen, a most estimable man, who seemed to devote much time to watching the traffic, on cross-examination