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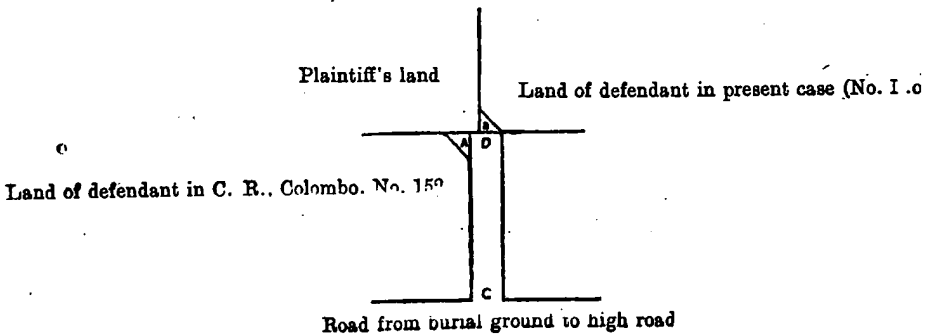
ALWIS v. SILVA.

C. R., Colombo, 152 and 153.

*Servitude—Jus viæ ex necessitate—Action for compelling adjacent landowner to accept compensation and give land enough for broadening an existing footpath.*

The owner of a land having a *jus viæ* over another's land may justly maintain an action against him for the broadening of the path so as to admit of his carts having ingress and egress for purposes of his trade, provided that such extension is absolutely necessary and no material loss accrues as the result thereof.

THE plaintiff, being the owner of the land figured in the sketch appearing at foot, averred that the public cart way nearest thereto was a 16-foot wide road from the burial ground to the high road; that he had quiet use and occupation of the path or passage D C from that public road to his garden for many years, but that, in view of his owning several carts and being a carpenter and cart



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builder, and in view of the situation of his land and workshops and buildings in relation to the public road, it had become necessary that he should have a full right of passage for drawing and carting stones and wood from the public road to his land and back again, and that the passage D C should be widened so as to admit of carts passing and repassing; and that it was necessary that the portion A belonging to the defendant in the present case and portion B belonging to the defendant in C. R., Colombo, 152, in extent 20 and 49½ square links, and in value Rs. 2 and Rs. 3 respectively, should be added to the footpath, but that the owners of A and B refused to accept the compensation offered or fix any other compensation. He therefore sued each owner in a separate action and prayed that they severally and respectively might be ordered to transfer the portions required to the plaintiff and grant plaintiff full right of way over the same on his paying him the said sums for compensation or any other sum that the Court would deem an adequate and equitable price, and that on his depositing such sums the Court would evict each defendant from the said portions.

The defendant in each of these cases denied plaintiff's right to maintain the action. The Commissioner (Mr. Smart) dismissed both actions.

*Browne*, for appellant.

*Dornhorst*, for respondent.

*Cur. adv. vult.*

6th July, 1882. DE WET, C.J.—

The appellant's (plaintiff's) claim is for the right to encroach upon two small pieces of lands, the properties of the defendants, for the purpose of allowing him the necessary egress and ingress to that property, which is situated in the immediate vicinity of the property of defendants (*vide* plan put in), being at the same time ready and willing to pay to the defendants whatever compensation may be considered fair and reasonable for such encroachment.

From the evidence of the appellant I am quite satisfied that he is entitled *ex necessitate* to the right of way he seeks. Not only has he no other reasonable means of obtaining access *per viam* to his property, but the pieces of land over which he seeks to obtain this right are very small indeed, and in addition to this the defendants have failed to show that by plaintiff's obtaining this right they would be materially affected in the enjoyment of their rights to their property.

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Upon the authority of *Voet*, 8, 3, 4, and the authorities therein cited, I decree that upon payment by the appellant to respondents the sum of Rs. 3, the amount tendered, and upon his providing means for closing up any aperture or apertures that may be made upon the properties of the respondents by the appellant, the appellant shall have and enjoy the right of way (*ius viæ*) over the properties of the respondents marked A and B upon the plan put in at the trial in the Court below.

[The decree entered in case No. 153 was as follows:—

That the decree of the 30th day of March, 1882, be set aside, and it is decreed that on the plaintiff paying to the defendants the sum of Rs. 3 as, and for, the just price or compensation due to the defendants in respect of the defendants granting to the plaintiff the full right of way hereinafter described, the defendant do grant to the plaintiff a full right of way over the triangular portion of ground belonging to the defendant, and bordering the property of the plaintiff marked B, and coloured pink, in the survey made by Juan de Silva, dated the 9th day of August, 1881, filed in this case, which portion measures 14.2 links on the southern and eastern sides, 8 links on the western side, and 11 links on the northern side thereof; and that the plaintiff should be placed and quieted in the possession of the said right; and that the plaintiff on being placed in such possession shall forthwith properly fence and enclose the land of the defendants along the said 14.2 links northern and western sides of the said portion in the same manner as the other two sides of the said portion are presently fenced and enclosed, and as part of the said fence to be erected by him shall make, construct, and erect for the defendants a gateway and gate 7½ feet in breadth and 4 feet in height, which fence and gate the plaintiff has at the hearing of this appeal undertaken by his counsel so to construct and erect, and that the defendants do pay to the plaintiff the costs of this action both in the said Court of Requests and in this Court.]