## SHERIFF'S SALES, cont.

After the above adversed conveyance, the tract herein described fronts 165 feet, more or less, on the east side of Oller Avenue with a depth along the alley to the north of 140 feet to the alley in the rear and with a depth on the south of 97.6 feet, more or less.

Subject to all restrictions, reservations, covenants, conditions and easements, if any, effecting the same.

Being the same real estate conveyed to Terry D. Stevens and Doris J. Stevens, husband and wife, by deed of Carmer H. Barkdoll and Vivian R. Barkdoll, husband and wife, dated March 31, 1978 and recorded in Franklin County Deed Book 756, Page 588.

Together with all improvements existing thereon on March 31, 1978 or thereafter together with appurtenances thereto including but not limited to fixtures, machinery and equipment which on March 31, 1978 or thereafter were located on the above referred to real estate and which were permanently used as a necessary and intricate part of the flower and greenhouse business operated on the above referred to real estate.

BEING sold as the property of Terry D. Stevens and Doris J. Stevens, Writ No. DSB 1982-187.

**TERMS**

**As soon as the property is knocked down to a purchaser, 10% of the purchase price plus 2% Transfer Tax, or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property.**

**The balance due shall be paid to the Sheriff by NOT LATER THAN Monday, December 20, 1982 at 4:00 P.M. E.S.T. Otherwise, all money previously paid will be forfeited and the property will be resold at the hour at which time the full purchase price or all costs, whichever may be higher, shall be paid in full.**

Raymond Z. Hussack
Sheriff
Franklin County, Chambersburg, PA

*Mills* court noted statutes of limitation find their justification in convenience and necessity rather than in logic and are by definition arbitrary and so are left to legislative determination and control. *Id.* at 779, note 9.

## ORDER OF COURT

October 29, 1982, it is ordered that the cases are dismissed as barred by the statute of limitations and that the costs be paid by the plaintiffs.

---

[1]The opinion includes an excellent recitation of the evolution of the criminal and civil statutes of limitations in child support cases.

## CRESSLER v. GENESCO, INC., C.P. Franklin County Branch, Vol. 7, Page 290

*Equity - Easement by Implication - Termination by Non-Use-Notice of Easement - Width of Easement*

1. Where a street is named as a boundary in a deed, and the street is neither a public highway nor dedicated to public use, the grantee of such real estate acquires an easement by implication.

2. A street named as a boundary does not have to be in existence at the time of a conveyance in order to create an easement by implication.

3. Non-use of an easement, no matter for what duration of time, will not extinguish an easement.

4. A grantee takes subject to an easement where the prior deed creating the easement was recorded and it is immaterial whether the grantees' own deed refers to the easement.

5. To determine the width of an easement of unspecified width, the Court must consider that the easement should be of such width as would be suitable and convenient for its reasonable use.

*W. Scott Henning, Esq.*, Attorney for Plaintiffs

*John McCrea, III, Esq.*, Attorney for Defendant

ADJUDICATION AND DECREE NISI

KELLER, J., October 27, 1982:

This equity action was commenced by the filing of a complaint in ejectment on February 4, 1981, and service of the same upon the defendant on February 5, 1981. An answer to the complaint was filed on June 8, 1981. After discovery was completed the matter was listed for trial and a Pre-Trial Conference was held on November 2, 1981. At the Pre-Trial Conference, by stipulation of counsel, the plaintiffs were granted leave to file an amended complaint in equity, and the defendant was granted twenty (20) days after service of the amended complaint to file its answer or other appropriate pleading. The amended complaint in equity was filed November 20, 1981, and the defendant's answer was filed January 4, 1982. The matter was listed for trial without jury. A second Pre-Trial Conference was held on April 26, 1982. Trial was held as scheduled commencing at 9:00 a.m. on June 10, 1982.

FINDINGS OF FACT

1. The plaintiffs are Frank A. Cressler and William H. Cressler.

2. The defendant is Genesco, Inc., t/d/b/a Phoenix Clothes, a Tennessee corporation qualified to do business in the Commonwealth of Pennsylvania and having an office located at Lurgan and Marden Avenue, Franklin County, Shippensburg, Pennsylvania.

3. The plaintiffs are the owners of a certain tract of real estate lying and being situate in the southwest corner of Lurgan and Marden Avenues in Franklin County, Shippensburg, Pennsylvania more fully described as follows:

> ALL THAT CERTAIN piece or parcel of land situate in the Borough of Shippensburg, County of Franklin, State of Pennsylvania, and bounded and described as follows:
>
> BEGINNING at a stake at the northwest corner of property formerly of the Shirtcraft Company, now L'Aiglon Apparel, Inc. of Shippensburg on the western side of Lurgan Avenue; thence northwestwardly with said Lurgan Avenue 188 feet to a corner at the intersection of a proposed street with said avenue; thence with the said proposed street southwardly 645 feet, more or less, to the edge of the right-of-way of the Reading Company (Railroad); thence southeastwardly with the said right-of-way 192 feet, more or less, to corner of land formerly of Peerless Furniture Company, now Affiliated Industries, Inc.; thence with said land of Affiliated Industries, Inc., and L'Aiglon Apparel, Inc. of Shippensburg, aforesaid to the place of beginning, 620 feet, more or less.



4. The plaintiffs acquired title to the above described real estate as Tract No. 2 in quitclaim deed by the United States of America acting through the Small Business Administration by its Administrator dated October 27, 1980, and recorded in Franklin County Deed Book Vol. 803, Page 141.

5. Prior to the purchase of the above-described real estate, the plaintiffs caused a survey of Tracts 1 and 2 described in the above deed to be made by Dougal and McCans, Inc., Registered Surveyors, in September 1980. The plan was prepared in October 1980, and submitted to the plaintiffs. On the northerly side of the plaintiffs' real estate the plan shows "Marden Ave. extending from Lurgan Avenue in a southwesterly direction to the lands of Consolidated Rail Corporation. In the area designated as Marden Avenue extending from Lurgan Avenue to the intersection of Reading Road the word "(existing)" appears immediately after the designation of the avenue. In the area extending from Reading Road southwesterly to the Consolidated Rail Corporation lands, after the designation of the avenue appears the word "(proposed)". Marden Avenue is shown on the plan as having an actual width from curb to curb at the point of its intersection of Lurgan Avenue of 39.68 feet, and at the southwesterly end in the "proposed" area a width of 40 feet. Within the area designated as Marden Avenue also appears the legend "(no ordained width)".

6. Gary Lynn Dougal, professional land surveyor and a member of the firm of Dougal & McCans, Inc., advised the plaintiffs at or about the time of survey of the above-described real estate was presented that the right-of-way described on the plan as Marden Avenue appeared on the deeds of plaintiffs predecessors in title because they felt there was the possibility of a problem.

7. William H. Cressler, one of the plaintiffs, testified that he and his co-owner considered the availability of Marden Avenue before purchasing the above-described real estate. They were also aware before the purchase that Marden Avenue extended over lands immediately adjacent to the above-described real estate on the north and it was being used by the defendant as part of its parking lot.

8. By stipulation of counsel at the first Pre-Trial Conference, Exhibits "A" and "C" attached to plaintiffs' complaint in ejectment were accepted as correct. The same exhibits are attached to the amended complaint, and constitute the abstract of title to the real estate of the plaintiffs and the defendant.

9. The common grantor of both parties was West End Land Company of Shippensburg. The real estate now owned by the plaintiffs was originally conveyed by West End Land Company of Shippensburg to Shirtcraft Co., Inc., by deed dated November 13, 1943, and recorded in Franklin County Deed Book Vol. 318, Page 108 on February 8, 1944. The real estate now owned by the defendant was originally conveyed by West End Land Company of Shippensburg to Blue Ridge Pre-Built Homes, Inc. by deed dated December 16, 1965, and recorded in Franklin County Deed Book Vol. 600, Page 229 on February 10, 1966.

10. The plaintiffs introduced into evidence the following deeds in their chain of title:

(a) The West End Land Company of Shippensburg to Shirtcraft Co., Inc., dated November 13, 1943, recorded in Franklin County Deed Book Vol. 318, Page 108 on February 8, 1944.

(b) Deed of Shirtcraft Co., Inc. to Interfield Realty Corp. dated July 3, 1945, and recorded in Franklin County Deed Book Vol. 338, Page 35 on August 4, 1945.

(c) The deed of Interfield Realty Corporation to the Shirtcraft Co., Inc. dated June 25, 1952, and recorded in Franklin County Deed Book Vol. 429, Page 453, on June 27, 1952.

(d) Deed of The Shirtcraft Co., Inc. to L'Aiglon Apparel, Inc. of Shippensburg dated April 16, 1956, and recorded in Franklin County Deed Book Vol. 478, Page 523 on April 18, 1956.



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Raymond Z. Hussack
Sheriff
Franklin County, Chambersburg, PA

NOTICE TO ALL ATTORNEY PRACTICING IN ADOPTION CASES:

39th Judicial District Adoption Chairman, George S. Glen, Esq., has just informed the Journal that recent changes in the law have necessitated modifications in certain of the forms used for Adoption Cases. They are:

The Report of Intention to Adopt;
The Report of the Intermediary;
The Exhibit A;
The Consent Form.

Chairman Glen states that a supply of new forms will soon be available, but until then, existing forms will have to be changed in each case to comply with law. For further information, please call Chairman Glen at (717) 263-2313.

(e) Deed of L'Aiglon Apparel, Inc. of Shippensburg to L'Aiglon Apparel, Inc. dated October 6, 1972, and recorded in Franklin County Deed Book Vol. 679, Page 964 on October 11, 1972.

(f) Deed of Frank H. Bender, Sheriff of Franklin County to Peoples National Bank of Shippensburg dated August 19, 1976, and recorded in Sheriff's Deed Book Vol. 5, Page 138 on August 19, 1976. (Deed recites the Sheriff's Sale "by virtue on a writ of execution at the suit of Peoples National Bank of Shippensburg against L'Aiglon Apparel, Inc.")

(g) The deed of the Peoples National Bank of Shippensburg to Gilbert L. Collins and Gloria M. Collins, his wife, dated August 26, 1977, and recorded in Franklin County Deed Book Vol. 747, Page 407 on August 26, 1977.

(h) The "bill of sale" of John L. Buck, United States Marshall to the United States of America on behalf of the Small Business Administration dated October 19, 1979, and recorded in Franklin County Deed Book Vol. 803, Page 135, on November 23, 1979.

(i) The quitclaim deed of the United States of America acting through the Small Business Administration by its administrator to the plaintiffs dated October 27, 1980, and recorded in Franklin County Deed Book Vol. 824, Page 141 on November 10, 1980.

11. Each of the deeds referred to in Finding of Fact No. 10 include the description of the plaintiffs' real estate in the following language after identifying it as being located in the Borough of Shippensburg, County of Franklin, and state of Pennsylvania:

"BEGINNING at a stake at the northwest corner of a property of The Shirtcraft Company (wherein subsequent appropriate deeds "formerly of The Shirtcraft Company, now L'Aiglon Apparel Inc. at Shippensburg," or "formerly of L'Aiglon Apparel Inc. at Shippensburg and now of the Peoples National Bank of Shippensburg) on the western edge of Lurgan Avenue; thence northwesterly with said Lurgan Avenue 188 feet to a corner at the intersection of a proposed street with the said avenue; thence with the said proposed street southwestwardly 645 feet, more or less, to the edge of the right-of-way of the Reading Company (railroad);"

12. The plot plan identified as "Plat B. Oakland Park Subdivision, a residential development of the West End Land Company, Shippensburg, Franklin County, Pa., prepared by John H. Atherton, registered professional engineer and former county surveyor, dated September 1951, and recorded in Franklin County Deed Book Vol. 287A, Page 247 shows a real estate development of the common grantor of both parties, and specifically includes the real estate of the predecessors of both parties divided by a street identified as Marden Avenue extending from Lurgan Avenue in a southwestwardly direction past the intersection of Reading Road and approximately 100 feet beyond Reading Road before abruptly terminating. The layout of Marden Avenue on the said development plan does not extend to the property line of the Reading Railroad. It is shown as having an equal width from Lurgan Avenue to its termination point.

13. The Zoning Map of the Borough of Shippensburg marked "revised July 25, 1972 prepared by Arrowood, Inc., Borough Engineer for the Borough of Shippensburg," shows Marden Avenue extending in a southwestwardly direction and of an even width from Lurgan Avenue past Reading Road to the property line of Reading Railroad. The boundary lines of Marden Avenue are solid from Lurgan Road to Reading Road, and dashed from Reading Road to the Reading Railroad property line; presumably indicating a proposed but not laid out or used street.

14. The survey of the property subsequently purchased by the plaintiffs and the adjoining area identified on the survey plan as Marden Avenue discloses that the width of Marden Avenue at the intersection of Marden Avenue (existing) and Reading Road was 35 feet from the northerly property line of the property subsequently purchased by the plaintiffs to the curb line on the southerly property line of the defendant.

15. There is no evidence that any portion of Marden Avenue was ordained by the Borough of Shippensburg.

16. The plaintiffs intend to erect a 30,000 square foot building to house a supermarket at the corner of Lurgan Avenue and Marden Avenue, and fronting on Lurgan Avenue. At the rear of the supermarket loading docks will be constructed with a parking area to accommodate movement, backing, turning and parking of delivery vehicles, including but not limited to tractor



trailers. It will have a maximum length of 40 feet. Plaintiffs estimate the width of the tractor trailers to be approximately 12 feet, whereas the defendant estimates the tractor trailer widths at 7½ feet.

17. The plaintiffs were unable to provide the demensions of the planned supermarket building other than that it will be a 30,000 square foot building, and that it will setback 30 feet from the streets.

18. The plaintiffs plan to erect to the rear of the supermarket building and truck delivery area another building which will either be used as an office building for their enterprise or rented as a commercial building or both. Plans for the building in the rear have not been prepared, and the plaintiffs were unable to testify as to its proposed size or its definite use other than to testify that the ultimate determination of the case at bar will affect the size of that building.

19. The plaintiffs will be required by the Borough of Shippensburg to install a storm water management system and storm water detention basin at the southwest end of their real estate adjoining the lands of Consolidated Rail Corporation. The system will occupy the southwesterly most 120 feet of the plaintiffs' real estate, and it will not be available for any other use by the plaintiffs. Access from Marden Avenue to the system will only be required for maintenance and repair of that system.

20. The plaintiffs intended to use Marden Avenue as a means of access by delivery trucks, including tractor trailers, to the loading area planned for the rear of the supermarket and ultimately as a means of access to the building to be located to the rear of the supermarket and its loading area.

21. Marden Avenue is paved from Lurgan Avenue to Reading Road, and used as a street. Vehicles park without time limitation beside the curb on the northerly side of the paved portion of Marden Avenue. Signs limit parking on the southerly side (adjacent to the plaintiffs' lands) to one hour but there is no enforcement of the hour time limit.

22. There is no curb on the southerly side of Marden Avenue between Lurgan Avenue and Reading Road. The Plaintiffs' boundary line on the southerly side of Marden Avenue is grown up with trees and brush described as "a jungle."

23. The real estate of the defendant involved in the case at bar is described as that real estate lying on the northwest corner of Reading Road and Marden Avenue in Franklin County, Shippensburg, Penna. more particularly described as follows:

> ALL THAT CERTAIN tract of land situate in the Borough of Shippensburg, County of Franklin, and Commonwealth of Pennsylvania, bounded and described as follows, to wit:
>
> BEGINNING at an iron pin in the right-of-way line of the Reading Railroad Company at corner of other land of William E. Naugle, Jr. et al., which point is 32.37 feet from a point in the center of the Reading Railroad Company main track; thence by other land of William E. Naugle, Jr. et al., North fifty-five (55) degrees fifteen (15) minutes East, Three Hundred eighteen and seventy-nine hundredths (318.79) feet to an iron pin at the right-of-way line of Reading Railroad Company; thence by said right-of-way South thirty-four (34) degrees forty-five (45) minutes East, two hundred twenty-two and forty hundredths (222.40) feet to an iron pin at corner of land of L'Aiglon Company; thence by L'Aiglon Company land South fifty-five (55) degrees fifteen (15) minutes West two hundred eighty-three and ten hundredths (283.10) feet to an iron pin at the right-of-way line of the Reading Railroad Company; thence by said right-of-way line of the Reading Railroad Company North forty-three (43) degrees, fifty-two (52) minutes West, two hundred twenty-five and twenty-five hundredths (225.25) feet to the PLACE OF BEGINNING.
>
> Containing 1.537 acres, per survey of Arrowood, Incorporated, dated December 22, 1972.

24. The above described real estate vested in the defendant by the following conveyances:

> (a) Deed of the West End Land Co. of Shippensburg to Blue Ridge Pre-Built Homes, Inc. dated December 16, 1965, and recorded in Franklin County Deed Book Vol. 600, Page 229, on February 10, 1966.
>
> (b) Deed of Sheriff C. E. Dessem, Jr. to Paul E. Bogar and Kathryn R. Bogar, his wife, dated September 19, 1967, and recorded in Sheriff's Deed Book Vol. 5, Page 19, on September 26, 1967.
>
> (c) Deed of Paul E. Bogar and Kathryn R. Bogar, his wife, to William E. Naugle, Jr. and Lois H. Naugle, his wife, and



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Richard L. Naugle and Lana L. Naugle, his wife, dated November 1, 1972, and recorded in Franklin County Deed Book Vol. 680, Page 746, on November 3, 1972.

(d) Deed of William E. Naugle, Jr. and Lois H. Naugle, his wife, and Richard L. Naugle and Lana L. Naugle, his wife, to Genesco, Inc., dated March 1973, and recorded in Franklin County Deed Book Vol. 685, Page 60, on March 26, 1973.

25. The descriptions appearing in the above deed make no reference to that portion of Marden Avenue extending in a southwest direction from the intersection of Reading Road to the property line of the railroad, and over the lands of the defendant and its predecessors in title.

26. William E. Naugle, Jr., one of defendant's predecessors in title, caused Arrowood, Inc., an engineering—surveying-planning firm, to survey the real estate subsequently purchased by the defendant and prepare a draft of the same. The draft dated December 22, 1972 (defendant's exhibit 1) shows Marden Avenue extending in a northeasterly direction from Reading Road toward Lurgan Avenue but does not show Marden Avenue extending in a southeasterly direction from Reading Road across the lands subsequently purchased by the defendant to the lands of the railroad.

27. Marden Avenue from Lurgan Avenue to Reading Road is and has been paved for an unknown period of time. No evidence was introduced as to who had caused that portion of Marden Avenue to be paved.

28. The defendant manufactures shoes and clothing at its Shippensburg Plant, and at the present time has approximately 350 employees.

29. Prior to 1973 property owners in the neighborhood where the defendant's plant is located in Shippensburg complained of employees parking in front of their homes. The Borough Manager requested the defendant's plant manager to attempt to alleviate the problem. The defendant purchased the above described 1.537 acres of real estate to be used as a parking lot for its employees. In late 1975 or early 1976 the entire tract was paved by the defendant, and aisles and parking spaces were painted on the asphalt. The tract provides 175 or 176 parking spaces in addition to the travel aisles.



30. If the right-of-way claimed by the plaintiffs as Marden Avenue is granted over the southerly 40 feet of the defendant's parking lot, the defendant will lose at least 38 and perhaps 46 parking spaces and a travel aisle.

31. The defendant's parking lot is heavily used by its employees, and the empty spaces observed by the plaintiffs is due to absenteeism. If the 38 to 46 parking spaces are lost, that many more of defendant's employees will be required to park upon the streets of the borough.

32. The defendant caused a sign "Parking for Genesco Employees Only" to be in place in the area claimed by the plaintiffs as a portion of Marden Avenue.

33. Marden Avenue from Lurgan Avenue to Reading Road is unobstructed and open for use by the plaintiffs.

34. Marden Avenue (proposed) from Reading Road to the property of Consolidated Rail Corporation is and has been occupied by the defendant at least since late 1975 or early 1976 by the use of the area as a parking lot occupied by employees' vehicles, and by the defendant's sign.

35. The plaintiff's witness, Gary L. Dougal, testified on direct examination that as a rule of thumb a reasonable street width for two-way traffic including truck traffic would be between 34 and 36 feet between curbs.

36. A reasonable width for the right-of-way claimed by the plaintiffs, taking into consideration the width of existing portion of Marden Avenue at the intersection of Reading Road, the use contemplated by the plaintiffs, and the availability of space on their own real estate to provide a gradual as distinguished from an abrupt entry by delivery vehicles, is 35 feet of actual street space.

37. No evidence was introduced of any termination of the right-of-way by abandonment, adverse possession or estoppel.

## DISCUSSION

Disposition of this case was deferred pending settlement discussions pursuant to request of counsel for the parties following the trial held on June 10, 1982. Plaintiffs' counsel informed the Court on September 3, 1982 that all settlement

negotiations had collapsed and requested the Court to proceed with adjudication.

The two issues to be resolved in this case are: (1) are plaintiffs entitled to an easement over Marden Avenue; and (2) if so, what is the width of that easement.

To decide the first question, we must consider the language of the deeds of plaintiffs' predecessors in title. The West End Land Company of Shippensburg originally owned the real estate now owned by plaintiffs and defendant. This common grantor conveyed to plaintiffs' predecessor in title in 1944, twenty-one years before the conveyance to defendant's predecessors in title. The deed description contained in each of the deeds made to or from plaintiffs' predecessors refer to a "proposed street." In fact, the surveyor's call specifically states that the boundary to the property runs "...with the said proposed street southwestwardly 645 feet..."

The proposed street, known as Marden Avenue, appears on a plan for a real estate development which was prepared at the direction of West End Land Company, the common grantor of both parties. There was no evidence presented that any portion of Marden Avenue was ever ordained by the Borough of Shippensburg. The northerly part of Marden Avenue, specifically from Lurgan Avenue to the intersection with Reading Road, is unobstructed and available to plaintiffs for their use. This open portion of Marden Avenue is 40 feet wide. It is the southerly portion of Marden Avenue from the intersection with Reading Road to the right-of-way of the Reading Railroad Company, now Consolidated Rail Company, that is the subject of this litigation. Plaintiffs contend an easement by implication arises on their behalf from the circumstances.

The Supreme Court of Pennsylvania has dealt with cases similar to the one before us and has consistently held that where a street is named as a boundary in a deed, and the street is neither a public highway nor dedicated to public use, the grantee of such real estate acquires an easement by implication over the street. *Justin J. Powell, Inc. v. Wian*, 456 Pa. 35, 318 A. 2d 346 (1974); *McAndrews v. Spencer*, 447 Pa. 268, 290 A. 2d 258 (1972). In *Powell* the Court held that it is immaterial whether a street as such existed at the time of conveyance. It is equally immaterial that Marden Avenue was not a completed street at the time of West End Land Company's conveyance to plaintiffs' predecessor in title or thereafter. In our judgment plaintiffs acquired an easement over the real estate of the defendant for a full 645 feet, the length of plaintiffs' boundary as stated in all deeds referring to plaintiff's land.



Defendant contends that plaintiffs' right-of-way was terminated by non-user. Little evidence was presented as to the use made of Marden Avenue by the plaintiffs and their predecessors in title but that does not impair plaintiffs' case. The Supreme Court held in *Stozenski v. Borough of Forty Fort*, 456 Pa. 5, 317 A. 2d 602 (1974) at page 9, "Non-use, no matter for what duration of time, will not extinguish an easement."

Non-use is a factor which may be considered in determining whether abandonment of an easement occurred. To find abandonment, there must be proof of intent on the part of the plaintiffs or their predecessors in title to abandon the easement and either (1) adverse possession by the defendant, or (2) affirmative acts by the plaintiffs that render the use of the easement impossible, or (3) obstruction of the easement by the plaintiffs in a manner that is inconsistent with its further enjoyment. *Piper v. Mowris*, 466 Pa. 89, 351 A. 2d 635 (1976); *Stozenski*, supra. The defendant failed to prove the existence of the necessary combination of these elements to support its contention that plaintiffs or their predecessors abandoned their easement.

To bar an easement, adverse possession of the land in question must be actual, continuous, adverse, visible, notorious, and hostile for a period of twenty-one years. *Piper*, supra; *Stozenski*, supra. As previously noted, the common grantor did not convey into defendant's chain of title until 1965 which renders the running of the twenty-one year time requirement impossible. Therefore, defendant cannot successfully claim that there was abandonment due to the existence of adverse possession. Similarly, no evidence of affirmative acts on the part of the plaintffs to render the use of the easement impossible was presented. Finally, plaintiffs cannot be found to have obstructed the easement in a manner that is inconsistent with its further enjoyment.

Defendant also asserts that its lands should not be subject to an easement because its deed makes no reference to the existence of an easement in favor of plaintiffs or any of their predecessors. We reject that argument, for the conveyance by the common grantor into defendant's chain of title was twenty-one years after the conveyance into plaintiffs' chain of title. Defendant had record notice of plaintiffs' right-of-way. In *Piper v. Mowris*, supra, the court held that a grantee takes subject to an easement where the prior deed creating the easement was recorded. It is immaterial whether defendant's

deed does or does not refer to the land as being subject to an easement. Each grantee is charged with notice of everything affecting his title which could be discovered by an examination of the deed records of his grantor. *Finley v. Glenn*, 303 Pa. 131, 154 A. 299 (1931).

Since the resolution of the first issue requires the conclusion that plaintiffs do possess an unterminated easement over Marden Avenue, the second issue must now be resolved. Marden Avenue is 40 feet wide to its intersection with Reading Road and plaintiffs' easement will also be 40 feet wide to Reading Road because a grantee whose land is bounded by a street acquires an easement by implication not to the middle of the street but over its entire width. *Beechwood v. Reed*, 438 Pa. 178, 265 A. 2d 624 (1970).

To determine the width of plaintiffs' easement over Marden Avenue from the intersection of Reading Road to the intersection with the right-of-way of Consolidated Rail Company, we must consider that the easement should be of such width as would be suitable and convenient for its reasonable use. *Lease v. Doll*, 485 Pa. 615, 403 A. 2d 558 (1979). Plaintiffs' own witness testified that a reasonable width for a street handling two-way traffic, including truck traffic as contemplated by the plaintiffs, would be between 34 and 36 feet. We conclude that the width of plaintiffs' easement over that portion of Marden Avenue lying between Reading Road and the right-of-way of Consolidated Rail Company shall be 35 feet. Such width is suitable for the uses of plaintiffs and will not be overburdensome to defendants.

## DECREE NISI

NOW, this 27th day of October, 1982, the Plaintiffs, Frank A. Cressler and William H. Cressler, acquired an easement appurtenant over the real estate of the Defendant, Genesco, Inc. located on the northerly side of the Plaintiffs' real estate, and being forty (40) feet in width from Lurgan Avenue to Reading Road and thirty-five (35) feet in width from Reading Road to the edge of the right-of-way of the Consolidated Rail Corporation (formerly Reading Railroad Co.).

The Defendant, Genesco, Inc. is enjoined from interfering with the use of said easement by the Plaintiffs, their heirs and assigns.

This Decree Nisi shall become absolute pursuant to the Pa. R.C.P. 1518 and 1519 unless exceptions are filed within ten (10) days after notice of the filing of the Adjudication.



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