causeway must be considered as within the curtilage of both blocks. The definitions in the books supported this view. He then cited "Stroud's Judicial Dictionary" and "Jacobs's Law Dictionary," and referred to the cases of "Marson v. London, Chatham, and Dover Railway" (L.R. 6, Eq., 101), and "Commissioners of Inland Revenue v. Goodfellow" (45 J.P.). This drain therefore came within the very definition given in the statute.

MR. JUSTICE CHARLES concurred. It had been suggested that there was something in the definition of the word "street" which prohibited the Court from holding that this causeway was within the curtilage. He could not adopt that view. The appeal must be dismissed with costs.

QUEEN'S BENCH DIVISION.

Before JUSTICES MATHEW and KENNEDY.

THE VESTRY OF THE PARISH OF ST. MARTIN-IN-THE-FIELDS v. BIRD.
(71 L. T. Rep., 432.)

An Arcade consisting of houses and shops separately rated and occupied, and arched over with a common roof, the Arcade enclosed by gates shut every evening, is not one building nor "premises within the same curtilage," within the meaning of Section 250 of the Metropolis Management Act (18 and 19 Vict. c. 120), and therefore if the said houses or shops drain into a common drain such drain is a sewer.

This was a case stated in order to determine whether the Vestry was liable to put the drains in order of the Lowther Arcade in the Strand.

MR. BEVEN argued for the plaintiffs that the Lowther Arcade is one building, because it is arched over by a common roof and shut in by common gates, the property of one person and used for one purpose as a bazaar. If it is not one "building" it is within the definition of "premises within the same curtilage." The word "premises" is a much wider term than "building," and has been defined by Turner, *L. J.*, in the case of "Lethbridge v. Lethbridge" (6 L. T. Rep. 727): "The word 'premises' as used in this clause must I think be taken to mean premises in immediate connection with the mansion, and without the occupation of which the mansion could not be conveniently occupied and enjoyed." In the case of "Read v. Read" (W. N., 1866, p. 386) the Master of the Rolls says:—"The word 'premises' is as nearly as possible synonymous with 'appurtenances.'" In "Shepherd's Touchstone" it is said that a grant of messuage with the appurtenances passes the "curtilage." The word "curtilage" has been defined in the case of "Marson v. The London, Chatham, and Dover Railway Co." (18 L. T. Rep. 317, L. Rep. 6, Eq. 101). In the present case the use to which the passage has been put brings it within such a definition. The drainage here is the private property of the owner, it runs under the passage which he keeps within his own hands and shuts off from the public; those who pass along it only do so by the owner's license.

MR. MACMORRAN (for the defendant): When a drain receives the

drainage of two or more houses it is *prima facie* a sewer without regard to whether it is constructed by a local authority or by a private person. "Travis v. Uttley" (70 L. T. Rep. 242, 1894) where the Court held that a drain passing under and receiving the drainage of three houses was a sewer. In the present case this drain is a sewer within the meaning of the Act. In this Arcade there are twenty-five houses let to eighteen different occupiers, some of whom live on the premises. Each of these houses is distinct and separate, and has a curtilage of its own. The fact of the Arcade being the property of a common owner is only an accident and does not affect the question. These are distinct houses and shops, separately occupied and separately rated, and they are separately drained into a common drain. It is submitted that they are not within the same curtilage within the meaning of the Act.

Mr. JUSTICE MATHEW: I think that the drainage mentioned here is vested under the Metropolis Management Act in the local authority, and that the owner cannot therefore be called upon to repair. This is a sewer unless it be a drain, and it is not a drain within the meaning of the Act, unless it be "used for the drainage of one building only or for premises within the same curtilage, and made merely for the purpose of communicating with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed, and shall also include any drain for draining any group or block of houses drained by a combined operation under the order of any Vestry or District Board." Now, it is admitted here that there was no order of any Vestry or District Board, and the question is whether this is a drain within the definition of Section 250 of the Metropolis Local Management Act. I cannot bring myself to think that this is anything but a row of shops which happens to be occupied in a peculiar way, namely, with entrance gates at each end for the purpose of securing privacy and safety. But that does not prevent the tenements within the gates at each end being separate tenements, as they unquestionably are, and they are separately assessed as such. Then does it cease to be a row of houses on each side because there is a covering to the passage through the Arcade? I cannot see why it should. The covering inside is convenient no doubt for those who have to repair to the shops in the Arcade. Take the case of Chester. There the shops are under an Arcade. But can anyone say they are not separate shops? The shelter afforded by the roof cannot make any difference. Then are they "premises within the same curtilage?" That is the other description. Each of these tenements stands by itself, is accepted as a dwelling house, is used as such, and has its own curtilage. It would be an extravagant and extraordinary use of the term "curtilage" to hold because there are gates at each end and a covering that there is one curtilage to the whole of this area. I am of opinion, therefore, that the owner is exempt from this liability and that it falls on the Vestry.

Mr. JUSTICE KENNEDY: I entirely agree.

Judgment for the defendant.