

The questions to be decided are: (a) Has the alley been abandoned? (b) Have the defendants acquired title to the southern portion of the alley by prescription? (c) Does any portion of defendants' cement block building stand within the alley and, if so, should they be required to remove that portion of the building and other obstructions, if any?

As to the questions (a) and (b), the Court is clearly of the opinion under the evidence that the alley has not been abandoned and the defendants do not have title to any portion of the alley by adverse possession. In fact Clarence A. Bussard, who now claims to be the only defendant in interest, in answer to a question by the Court, stated, in effect, that he thought he and other owners named whose land adjoined the alley would have a right to use the alley if it were cut through from South to ^{the} Saints Street.

Question (c) presents the usual difficulties encountered when the ancient landmarks have been obliterated. The stone marking the starting point used in laying out and platting that portion of the land in question cannot be located. The surveyors, Rothenhoefer for the plaintiff, and Waters for the defendants, are not in accord as to its location which they attempted to find by following some old memoranda found in the office of Rufus A. Rager, a surveyor now deceased. But from the testimony and the measurements made by the surveyors Grove and Rothenhoefer from the established points west and running east on South Street, and also from the testimony of the surveyors who started their survey from the east, it is fairly evident that defendants' building does extend at least about 4.43 feet into the alley beyond its eastern boundary for the full depth of the building fronting on South Street, and measuring from Market Street or established points west of this plat, it extends six feet into the alley. However, the evidence is uncontradicted that the defendants placed their building on the east of the eastern boundary of the alley as the same was laid