

user constantly obstructed plaintiff when desiring to drive over the strip. For about 2 years one tenant, Albert Tourgis, stored his vehicles on the strip, not always in the same place, but leaving them wherever he chose. He had an express waggon, a large covered waggon, and a run-about, all of which at one time or another were stored on this strip of under 11 feet in width. Plaintiff drove past daily, saw these obstructions, which must have interfered with his passage over the strip, but at no time protested or made any objection of any kind to such user. . . .

Frequently whilst the strip was being so used, plaintiff would arrive, and his passage over it being interfered with by Wilby's vehicles, he would, in a friendly, neighbourly way, ask Wilby to move his waggon so as to allow him to pass. This Wilby would do.

Plaintiff, however, at no time raised any objection to the use Wilby was making of the strip, or claimed any right to use it himself. In the absence of the occupants, plaintiff, in order to be able to pass, would move the vehicles out of his way and then replace them.

Thus it appears that for about 10 years of the 20 immediately preceding the commencement of this action, various tenants of the stables now the property of defendant were in occupation of the strip, and making such use of it as to interrupt plaintiff's driving over it, unless the obstruction were removed; that sometimes, in response to his friendly request, the person in occupation would remove such obstruction and allow him to pass; at other times plaintiff would remove the obstruction, and on passing it, replace it; and that on no occasion did he remonstrate with any one of the persons causing such obstructions, or claim . . . a way as of right.

The only case sought to be made out at the trial on behalf of plaintiff was an enjoyment of the easement in question by himself and his predecessor in title from May, 1881, until December, 1905, a period of less than 25 years, and he claims to have shewn such enjoyment as, under R. S. O. 1897 ch. 133, establishes a right in him to the easement in question. Section 35 of the statute enacts that "no claim which may be lawfully made at common law, by custom, prescription, or grant, to any way . . . to be enjoyed upon, over, or from any land . . . when such way . . . has been actually enjoyed by any person claiming right thereto, without interruption, for the full period of 20 years, shall be defeated