

verbally to allow the latter the right to cross the parcel in question, and that the defendant had exercised this right for four or five years. His user of the way, however, ceased after that for six or seven years until, about 1886 or 1887, he commenced to use the trail over the plaintiff's land at times for heavy loads; but, in 1892, the defendant himself built a fence without any gate right across the very trail which he claimed the right to use and between the plaintiff's land and a parcel on the east of it which the defendant had in the meantime acquired.

There was no evidence to shew that the plaintiff, when he acquired the land, had any notice of the alleged agreement for a right of way.

*Held*, 1 That the intermittent use by the defendant of a convenient old trail was not sufficient to affect the plaintiff with constructive notice of the alleged agreement.

2. That defendant was not entitled to use the trail as a way of necessity, notwithstanding that there were natural obstacles to his reaching the travelled highway by any other road.

3. That there was no such continuous enjoyment of the way as is necessary to establish an easement by prescription under 2 & 3 Wm. 4, c. 71, s. 2: *Carr v. Foster*, 3 Q.B. 581: *Hollins v. Verney*, 13 Q.B.D. 308.

4. That the evidence was not sufficient to establish a definite agreement for a perpetual right of way or to warrant the interference of a court of equity by way of specific performance, as the agreement was made when the country was sparsely settled and the road allowances were not expected to be speedily made passable, and the passage across the intervening land not owned by either party, might have been shut off at any time.

*Anderson and Ormond*, for plaintiff. *Cooper*, K.C., and *Taylor*, for defendant.

Killam, C.J.]

[July 5.]

IMPERIAL BANK v. FARMERS' TRADING CO.

*Corporation—Promissory notes—Liability of trading company on indorsement of promissory notes*

The promissory notes sued on in this action had been given to one Crighton by the managing director of the defendant company for the company in payment for a quantity of tea ordered from Crighton, which, however, he never delivered. Crighton had endorsed the notes to the plaintiffs.

The company was incorporated by letters patent under The Manitoba Joint Stock Companies Act, R.S.M. c. 25. Its chief business was dealing in agricultural implements, vehicles, binder twine and tea. Its place of business was at the town of Portage la Prairie. There were four directors, three of whom were farmers living at some distance from the town. The fourth, a Mr. Marshall, personally conducted and managed the business. He had been appointed secretary and managing director of the company.