from the rear of lot 41 over road A.; and further declaring that the defendant, as owner and occupier of lot 41, was entitled to such right of way to drive horses, carriages, cattle, and carts. The right was claimed by the defendant as having been acquired by prescription.

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL and SUTHERLAND, JJ.

E. D. Armour, K.C., and A. Burwash, for the plaintiffs.

R. J. Slattery, for the defendant.

The judgment of the Court was delevered by RIDDELL, J.:— In such a case "the user which will create an easement over the lands of another by prescription must be open, notorious, visible, uninterrupted, and undisputed, exercised under a claim of right adverse to the owner, acquiesced in by him, and must have then existed for a period of twenty years. . . . There can be no prescriptive right to pass over another's land in a general manner, and where a right of way by prescription is claimed, a certain and well-defined line of travel must be shewn:" Bushey v. Sanliff (1895), 86 Hun. N.Y. 384. The last proposition is, of course, subject to this, "that where you can find the terminus *a quo* and the terminus *ad quem*, the mere fact that the owner (of the dominant tenement) does not go precisely in the same track for the purpose of going from one place to the other, would not enable the owner of the servient tenement to dispute the right of road:" per Mellish, L.J., in Wimbledon, etc., Co. v. Dixon (1875), 1 Ch. D. 362, at p. 369. The strictness with which evidence adduced in support of an alleged right of way will be weighed is seen in the case of Avery v. Fortune (1908), 11 O.W.R. 784, in which the Court of Appeal reversed a judgment of this Division finding that a right of way had been established by prescription.

With very great respect for the learned County Court Judge, and bearing in mind the duty of an appellate Court in dealing with findings of fact by a trial Judge, I am unable to convince myself that the findings can be supported. As each case must depend upon its own facts, there can be no good purpose attained by setting out the facts and the evidence at large; and I simply say that, in my view, the learned Judge below erred in finding that the evidence disclosed facts sufficient to justify a finding that the right of way alleged had been proved. In this view of the facts, it is not necessary to express any opinion upon any of the many questions of law raised at the argument.