by the owner of the servient tenement . . . . In the present case, however, no evidence appears to have been offered on the part of the defendants to contradict or explain the user by the plaintiffs which ought to have been submitted to the jury. For the reasons which I have already given, evidence which merely shewed that there had been no actual acquiescence by the defendants would have be irrelevant."

Lindley, J., says, p. 766, "The only way in which I can reconcile the authorities on this subject is, to hold that a right to lateral support can be acquired in modern times by an open uninterrupted enjoyment for twenty years, and that if such an enjoyment is proved, the right will be acquired as against an owner in fee of the servient tenant, unless he can show that the enjoyment has been on terms which exclude the acquisition. Whether he has assented or not, even if he has dissented, appears to me immaterial, unless he has disturbed the continued enjoyment necessary to the acquisition of the right."

Fry, J., propounds his opinion, p. 773, that the whole law of prescription and the whole law which governs the presumption or inference of a grant or covenant rest upon acquiescence; he then proceeds to consider of what ingredients acquiescence consists, and how the true grounds and principles of acquiescence can be applied to the question of the right of a house to be supported by the adjoining land. He observes that the authorities show that some notion of acquiescence was in the minds of the learned judges in establishing the existence of the right, but that he regards the right as resting, not on any principle, but solely on a series of authorities which disclose no clear ground for their existence.

Bowen, J., maintains that there is no reason why, in the case of support to buildings, the same doctrines should not regulate the quality and nature of the user required, as apply to the mode of acquisition of affirmative easements and of light, *e. g.*, that the user should be open and uninterrupted. But he agrees that the period during which the house had stood was sufficient to give the plaintiff the same right as if his house was ancient, provided the engagement fulfilled the conditions, and provided it was not shewn by the defendant that the right had no lawful origin.

Lord Selborne, L. C., expressed his divergence from all the Judges before whom the case had come (see per Lindley, J., p. 764) by holding, that, inasmuch as he regarded the right of support as an easement not purely negative, capable of being granted, it followed that it must be within the 2nd section of the Prescription Act, Imp. 2 and 3 Will. IV., c. 71, (R. S. O., c. 108, sec. 35), unless that section is confined to rights of way and rights of water, which he did not believe it could be without unjustifiable violence to the express terms of the Act; but he says, p. 801, if the Act does not apply, the same result would practically be reached by the doctrine, that a grant, or some lawful title equivalent to it ought to be presumed after twenty years' user.

(3.) The third question put before Judges was as follows:—

"If the acts done by the defendants would have caused no damage to the plaintiffs' building as it stood before the alterations made in 1849, is it necessary to prove that the defendants, or their predecessors in title, had knowledge or notice of those alterations, in order to make the damage done by this act in removing the lateral support, after the lapse of 27 years, an actionable wrong?

As to this, we have only space to say that the general opinion of the judges and peers seems embodied in the words of Bowen, J., at p 789, viz., "It was necessary to prove that the plaintiff had openly enjoyed the additional support rendered necessary by his alterations. It would, of course, be an open