

REPORTS AND NOTES OF CASES

Dominion of Canada.

SUPREME COURT.

Nova Scotia.]

KNOCK v. KNOCK.

[Nov. 10, 1897.]

Right of way—Easement—Winter road—Appurtenant and necessary way—Implied grant—Landlocked tenement—User—Prescription—Obstruction—Interruption of prescription—Acquiescence—Limitation of action—R.S.N.S. (5 ser.) c. 112—R.S.N.S. (4 ser.) c. 100—2 & 3 Wm. IV. (Imp.) c. 71, ss. 2 & 4.

K. owned lands in the County of Lunenburg, N.S., over which he had for years utilized a roadway for convenient purposes. After his death the defendant became owner of the middle portion, the parcels at either end passing to the plaintiff, who continued to use the old roadway as a winter road for hauling fuel from his wood-lot to his residence at the other end of the property. It appeared that though the three parcels fronted upon a public highway, this was the only practical means plaintiff had for the hauling of his winter fuel owing to a dangerous hill that prevented him getting it off the wood-lot to the highway. There did not appear to be any defined form of the way across the lands more than a track upon the snow during the winter months, and it was not utilized at any other season of the year. This user was enjoyed for over twenty years prior to 1891, when it appeared to have been first disputed, but from that time the way was obstructed from time to time up to March, 1894, when the defendant built a fence across it that was allowed to remain undisturbed and caused a cessation of the actual enjoyment of the way during the fifteen months immediately preceding the commencement of the action in assertion of the right to the easement by the plaintiff.

The statute (R.S.N.S. 5th ser. c. 112) provides a limitation of 20 years for the acquisition of easements and declares that no act shall be deemed an interruption of actual enjoyment, unless submitted to or acquiesced in for one year after notice thereof and of the person making the same.

Held, that notwithstanding the customary use of the way as a winter road only, the cessation of user for the year immediately preceding the commencement of the action was a bar to the plaintiff's claim under the statute.

Held, also, that the circumstances under which the roadway had been used did not supply sufficient reason to infer that the way was a necessary easement appurtenant or appendant to the lands formerly held in unity of possession, which would pass by implication upon the severance of the tenements, without special grant. Appeal allowed with costs.

Wade, Q.C., for appellant. *Harrington*, Q.C., for respondent.