

tory, within the meaning of the proviso in the plaintiffs' lease; but, as the defendant had not intentionally, wilfully, or maliciously misled the plaintiffs, and was acting in good faith upon what he believed to be his rights, there was no false and fraudulent representation to the plaintiff. *Peck v. Derry*, 14 App. Cas. 337, followed.

*Held*, however, that the plaintiff was entitled to succeed for a breach of the covenant for quiet enjoyment of the premises "without interruption or disturbance from the lessor;" for where the lessor covenants against his own acts, it is not material whether the act assigned as a breach was lawful or unlawful; and the acts here done were in breach of the covenant, for the defendant had no right to give the plaintiff notice to quit, and no right to complain that the plaintiffs acted upon the notice without waiting for an action to be brought. *Edge v. Boileau*, 16 Q.B.D. 117, followed. *Cowling v. Dickson*, 45 U.C.R. 94, 5 A.R. 549, discussed.

It was urged that an agreement made after the notice to quit, under which the plaintiffs vacated the premises before the day named in the notice, was an acquiescence in the defendant's demand.

*Held*, not so; the plaintiffs went out under protest, and going out earlier merely lessened the damages. The damages to be assessed upon the same principle as in the case of an eviction.

*S. H. Blake*, Q.C., and *F. C. Cooke*, for plaintiffs. *Watson*, Q.C., and *S. C. Smock*, for defendant.

Street, J.]

WARREN v. VAN NORMAN.

[Jan. 6.

*Way—Right of—Prescription—Termini—Slight deviations—Interruptions.*

The evidence showed that the plaintiff and his predecessors in title had for upwards of twenty years before the commencement of the action used and enjoyed as of right a way over the defendant's land from the plaintiff's land to a highway. The termini a quo and ad quem had not varied during the twenty years: but at two points, about fourteen years before action, one of the plaintiff's predecessors slightly altered the line of the way for the purpose of going round muddy spots, and the user of the original line at these two points was abandoned for the substituted one. These deviations were short as compared with the length of the way.

*Held*, that they did not operate to do away with the plaintiff's right to claim the way between the termini, that way having been substantially used during the whole period; and the plaintiff was entitled to have his right to the way between the termini declared, but should be confined either to the original or substituted line. *Wimbledon, etc., Conservators v. Putney*, 1 Ch. D. 362, *Gale on Easements*, 6th ed., p. 327, *Rouse v. Bardin*, 1 H. Bl. 352, and *Payne v. Shedden*, 1 M. & R. 382, referred to.

Slight interruptions by the defendant were insufficient to prevent the statute from running. *Carr v. Foster*, 3 Q.B. 581, and *Flight v. Thomas*, 11 A. & E. 688, referred to.

*J. A. Hutcheson*, and *A. A. Fisher*, for plaintiff. *Britton*, Q.C., and *W. B. Carroll*, for defendant.