

"Mere non-user will not, in every case, prevent acquisition of an easement; but, to have that effect, it must be coupled with some act indicative of an intention to abandon the claim, or it must be of such long continuance, and so constant, as to indicate an intention not to resume the user."

To the same effect is the statement in Angell on Water-courses; "It need not be shewn to flow continually; and it may at times be dry; but it must have a well-defined and substantial existence."

Channell, B., in *Hall v. Lund* (1863), 1 H. & C. at p. 685, says that in order to be continuous the user need not be on every day of the week.

I do not find anything to warrant the use of the word "regularly" as meaning at defined or stated time. But there is authority for a qualified meaning . . . i.e., a systematic or necessary recurrence arising either from the course of nature or the necessities of the enjoyment of the easement.

This is illustrated not only by the case of *Hall v. Swift* already cited, but by the opinion of Mr. Justice Willes, cited in Gale on Easements, 8th ed., p. 139; "In the case of drains the easement is not strictly continuous; the drain is not always flowing; but there is a necessary and permanent dependence upon it for its enjoyment as a house."

In *Bechtel v. Street* (1860), 20 U. C. R. 15, Robinson, C.J., holds it sufficient to maintain a prescriptive right, that the party has kept the water back, not at all times—i.e., through the whole of each day or week or month—but whenever it was necessary for working his mills, letting the water down when it was not necessary for his purpose to keep it up, provided the privilege was so exercised as a matter of right and without denial or interruption by the other party.

I see no reason, therefore, contrary to my first impression, to quarrel with the statement of counsel for the defendant that prescriptive right might be acquired to hold as long as he could all the water that comes down in its natural course for such period or periods as the water lasts. But it equally follows from the cases that there must be a constant and systematic user to support that claim, and the user is the test of the prescriptive right.

Neville, J., in *Attorney-General v. Great Northern Rw.* [1909] 1 Ch. at p. 779, says: "The prescription must de-