

as the wife swore to might account for her condition. I think defendant, after he discovered his mistake, showed all proper consideration for her and called at her home to express his regret at what had occurred.

Holding this view I fix the damages for the assault at five dollars, for which plaintiff will have judgment without costs.

Defendant's counsel contended that plaintiff's notice of action was insufficient. I do not enter into this question for the reason that there is no plea on the record raising that defence, and in consequence defendant cannot avail himself of the irregularity of the notice if it is so.

Judgment for plaintiff.

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### NOVA SCOTIA.

SUPREME COURT AT WINDSOR.

JUNE 8TH, 1909.

### REYNOLDS v. LAFFIN.

*Trespass to Land—Highway—Gate—Fences—Title—Easement—Adverse Possession—User.*

H. W. Sangster, for plaintiff.

W. M. Christie, K.C., for defendant.

This action was brought in 1906 and is for destroying gate and trespassing on plaintiff's lands. The defence is that the gate was across a public way. The second action was brought in 1908 and is for tearing down fences and going over plaintiff's lands. The defence is that defendant claims right of way by uninterrupted user for more than 20 years before first action. The two cases were tried together.

The following authorities were relied on for plaintiff:—

Gale on Easements, 1908 ed., p. 193; Bright v. Walker, 1 C. M. & R. 220; Symons v. Leaker, L. R. 15 Q. B. D. 629; McDonald v. McDougall, 30 N. S. R. 305; Goddard on Easements, 5th ed. 219; James v. Plant, 4 A. & E. 761.

For defendant:—Cap. 167, sec. 31, R. S. N. S.; Hollins v. Verney, 13 Q. B. D. 304; Knock v. Knock, 29 N. S. R. 267; 27 S. C. R. 664.

