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FALCONBRIDGE, C.J.

AUGUST 24TH, 1906.

TRIAL.

DAVIDS v. NEWELL.

*Easements—Light—Air—Ventilation—Private Way—Pre-
scription—Proof—Injunction—Damages—Costs.*

Action for an injunction and damages in respect of tres-
pass to land, etc.

T. D. Delamere, K.C., and C. C. Ross, for plaintiffs.

E. E. A. DuVernet and D. C. Ross, for defendants.

FALCONBRIDGE, C.J.:—Plaintiffs have proved their paper
title, and it lay upon defendant to shew satisfactorily the
enjoyment of the three easements which he claims, for such
a length of time as to confer a right.

He failed entirely to prove any agreement or license such
as is set up in paragraph 4a of the statement of defence as
amended.

R. S. O. 1897 ch. 133, sec. 36, stands in defendant's way,
and prevents any claim by him for access and use of light.

But it is improper to couple "light" and "air" together
in every case: Gale, 7th ed., p. 572; and he has established
his right to maintain his openings for access of air, i.e., ven-
tilation.

As to the right of way claimed over the alleged lane, the
burthen rests on defendant to prove his enjoyment for the
requisite length of time to have been open, peaceable, and as
of right, "nec vi, nec clam, nec precario:" Gale, p. 201.
This, I think, he has failed to do in the clear and satisfac-
tory manner which the law requires when it is sought to take
any property or any kind of enjoyment thereof from the true
owner.