

leased to the defendant Sands and not built upon, in such a way as to interfere with and restrict the right of the plaintiffs to use that part of the defendants' land in turning round with horses and vehicles in a certain yard to the east of the plaintiffs' premises and to the west of the defendants' premises, all being part of lot 297. The plaintiffs alleged that from the 22nd January, 1868, they and their predecessors in title had used the piece of vacant land now in question in turning round with horses and vehicles, as convenience demanded. The action was tried without a jury at Kingston. BRITTON, J., in a written opinion, reviewed the evidence, and said that it was insufficient to establish such an easement as was claimed—if such an easement could be established at all. Sufficient user had not been proved to warrant the inference that the predecessors of the plaintiffs used this land as of right—what they did was as consistent with leave and license and with acts of trespass as with user as of right. There was no question about the ownership of the land, and the onus was upon the plaintiffs to establish the easement. That could not be done by equivocal acts, occasionally, as convenience demanded, committed by the owners of the westerly part of lot 297. Reference to *Adams v. Fairweather* (1906), 13 O.L.R. 490. The very most that was done here was to exercise a supposed right as one of the occupiers of premises adjoining the yard. Then again, from 1883 to 1896 Jane and James Powell were lessees of the eastern part and lessors of the western part, and during that time the statute would not run in favour of the lessee of the western part against his lessors in reference to an easement or right of way appurtenant to the plaintiffs' land, where there was such unity of title and possession as existed. Action dismissed with costs, including the costs of the interim injunction and motions to continue. Judgment for the defendants upon their counterclaim for damages occasioned by the injunction order, the defendant Powell's damages being assessed at \$40, and the damages of the defendant Sands at \$30, with costs. J. L. Whiting, K.C., and A. E. Day, for the plaintiffs. A. B. Cunningham, for the defendants.

BRADSHAW v. GROSSMAN—SUTHERLAND, J., IN CHAMBERS—
APRIL 10.

Pleading—Statement of Defence—Res Judicata.]—Appeal by the defendant Caplan and cross-appeal by the plaintiff from