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APPELLATE DIVISION.

FEBRUARY 10TH, 1915.

RIDGE v. M. BRENNEN & SONS MANUFACTURING CO.

Easement—Right of Way—Overhanging Roof—Acquisition of Title by Possession—Interference with User of Way.

An appeal by the plaintiff from the judgment of the Senior Judge of the County Court of the County of Wentworth dismissing an action, brought in that Court, to compel the defendants to remove a cornice erected by them on their building and overhanging a strip of land over which the plaintiff had a right of way.

The strip belonged to a Mrs. Fell. The lands of both the plaintiff and Mrs. Fell were originally owned by the same person; that person conveyed the fee in one part to Mrs. Fell subject to the right of way in favour of the plaintiff over the rear 10 feet; and conveyed the fee in the other part to the plaintiff with the right of way described in the same terms.

The defendants, in repairing their building, which immediately adjoined the rear of Mrs. Fell's land, projected the cornice over the strip. The cornice was more than 17 feet above the ground, and there was no evidence that it interfered with the plaintiff's user of the way.

The appeal was heard by MEREDITH, C.J.O., GARROW, MACLAREN, MAGEE, and HODGINS, J.J.A.

M. Malone, for the appellant, contended that the defendants would in 20 years acquire title to the land under the cornice, and would thus interfere with the plaintiff's user of the whole width of the way: *Rooney v. Petry* (1910), 22 O.L.R. 101, 107.

S. F. Washington, K.C., for the defendants, respondents, was not called upon. (In the Court below he cited and relied on