I do not think it was practical (so far as the garbage is concerned, and that seems to be about all that was removed from this lane) to have it removed regularly or at stated intervals, but only occasionally, by carrying the garbage can out to the street. It was not the practice to drive horses and carts into the lane or to use it for the passage of carts or waggons for the purpose of removing garbage. It was a case of occasionally carrying out the garbage cans out of the lane to the carts on the street.

Ballard v. *Dyson,* 1 Taunton 279; *Langley* v. *Hammond,* L. R. 3 Ex. 161; *Bradbrim* v. *Morris,* 3 Ch. D. 812; *Foster* v. *Richmond,* 9 Local Government Reports 65.

The witness, Devins, who occupied lot 202 for about two and a half years, beginning in the year 1900, and lot 200 for three years prior thereto, swears that he was told by Mr. Armstrong, who occupied lot 204, that he had no right to use the lane, but that he might put his garbage out, provided that he would keep his part of the lane clear, and Matthews, who bought 202 in 1892 but did not live there for 7 or 8 years thereafter, told Devins the same thing. Although Matthews was called by the plaintiff he was not recalled, nor was this evidence contradicted in any way.

The evidence for the plaintiff falls far short of that required to create an easement for a right of way over the defendants' property.

I think the appeal should be allowed and plaintiff's action should be dismissed with costs.

HON. SIR WM. MULOCK, C.J., HON. MR. JUSTICE CLUTE, and HON. MR. JUSTICE SUTHERLAND agreed.

HON. MR. JUSTICE RIDDELL :—I agree in the result.