

ANCIENT LIGHT—ENJOYMENT—"CONSENT OR AGREEMENT"—
CONSENT OR AGREEMENT AS TO LIGHTS BY TENANT—PRE-
SCRIPTION ACT 1832 (2-3 Wm. IV. c. 71) ss. 3, 4—(R.S.O.
c. 133, s. 35.)

Hyman v. Van Den Burgh (1908) 1 Ch. 167. In this case the Court of Appeal (Cozens-Hardy, M.R., and Moulton and Farwell, L.JJ.) have affirmed the judgment of Parker, J. (1907) 2 Ch. 516 (noted ante, p. 25). The Court of Appeal point out that under the Prescription Act a right to access of light is not absolute and indefeasible, even after twenty years' enjoyment, unless and until some action is brought in which the right is called in question, and that until such action is brought the right remains inchoate and if within twenty years prior to any such action it can be shewn that the light in question was enjoyed by consent or agreement the inchoate right would be defeated. In this case after twenty years' enjoyment but within twenty years before action a tenant in possession of the premises had agreed to avoid the blocking up the lights in question to pay one-half a year therefor. He never paid the one-half but it was held that this amounted to an enjoyment by "consent or agreement" within the statute so as to prevent the acquisition of an absolute right under the statute.

APPOINTMENT OF NEW TRUSTEE—APPOINTMENT BY ACTING EX-
ECUTOR OF LAST SURVIVING TRUSTEE—TRUSTEE ACT (23-24
VICT. c. 145) s. 27—(R.S.O. c. 129, s. 4.)

In re Boucherett, Barne v. Erskine (1908) 1 Ch. 180. The question to be decided was whether a new trustee of a will had been validly appointed. A testator by his will made in 1875 devised his real estate to trustees. The will contained no power to appoint new trustees, but in effect referred to the powers given by 23-24 Vict. c. 145, (R.S.O. c. 129). The last surviving trustee died in 1888 having by his will appointed three executors. Probate was granted to one of the executors power to prove being reserved to the other two. In 1894 the proving executor appointed a new trustee of the first mentioned will. The other two executors were then alive, but died without taking probate. Joyce, J., held that the appointment was valid under 23-24 Vict. c. 145, (R.S.O. c. 129, s. 4) as having been made by the "acting executor" of the last surviving trustee; the saving clause in s. 76 of the Conveyancing Act, 1881, which had