

That's not the way!

R Owers and N Owers –v- K Bailey [15 September 2006] High Court

The Message:

Householders are awarded damages and an injunction against their neighbour for interfering with their right of way.

The Case:

This case arose out of a dispute between the Owers and Bailey in relation to a track which lay between their properties. The owner of the track was unknown.

Both Owers and Bailey claimed a right of way over the track which was about 20 metres in length. The track was the only access to the Owers' property. The previous owner had provided a statutory declaration to the Owers confirming that he and his family from 1991 had used the track as a means of vehicular access to and from what was now the Owers' property. A long standing local resident also gave evidence that the track had been used to gain access to the property since before the Second World War.

On the basis of the statutory declaration and the resident's evidence, it was clear that the Owers and previous owners of their property had used the track "as of right" continuously since 1957 and probably since 1930 to obtain access to the property.

The Owers, therefore, established that they were entitled to use the track on several grounds including that they had a "prescriptive" right based on continuous use for over 40 years.

After buying their property the Owers carried out extensive building works. During the period of the works, their neighbour, Bailey, removed some of the rails of a boundary fence between the two properties and the Owers agreed to Bailey using the track whilst he was moving into his house. However, Bailey continued to use the track even after he had moved in.

In a meeting with the Owers, Bailey claimed that he could probably gain the right to use the track on the Owers' land to access his house. They both agreed to obtain advice from their solicitors.

A month later Bailey was quite intimidating in an encounter with Mrs Owers claiming that he had a right to use the track. Bailey said that if the Owers stopped him using the track, he would prevent their builders from coming on site. Bailey left his tractor in such a way as to cause difficulty for the Owers' builders in carrying out their works and generally in accessing the Owers' property. The police were called on a number of occasions.

Some months later Mr Owers confirmed that the permission for Bailey to use the track on Owers' land had been withdrawn. Bailey subsequently constructed gates on part of the track, impeding access to the Owers' property. The dispute with Bailey meant that the Owers were not reasonably able to sell their property, which they wanted to do.

The Court found that Bailey had shown unneighbourly conduct with a view to securing access over the Owers' land, something to which he knew he was not entitled. The Owers were entitled

to a declaration that their property had the benefit of a right of way over the track and also to injunctions requiring Bailey to remove the gates and stop interfering with Owers' right of way.

The Owers were awarded £6,500 damages for loss of amenity and in respect of the effect of Bailey's behaviour on the Owers. The Court deferred deciding the level of damages for Owers' loss of opportunity to sell their property.