

DANTZLER *v.* BOND.

4-7472

Opinion delivered November 27, 1944.

HIGHWAYS—ESTABLISHMENT BY PRESCRIPTION.—Where landowner sought to enjoin County from exercising dominion over road passing through his property, and Chancery Court found that a preponderance of the evidence showed adverse use for seven years, only a question of fact was presented by the appeal to this Court.

Appeal from Crittenden Chancery Court; *Francis Cherry*, Chancellor; affirmed.

*K. T. Sutton*, for appellant.

*John A. Fogleman* and *James C. Hale*, for appellee.

GRIFFIN SMITH, Chief Justice. Dantzler sought to enjoin the County from working a road through his land, contending it was private property. The highway had not been designated by court order. Only question for our determination is whether the Chancellor's finding that use had been hostile and adverse for seven years was supported by a preponderance of the testimony.

Evidence is but sketchily abstracted. A map is discussed, and we are referred to the transcript for its meaning. What the drawing would disclose in aid of appellant's contention is presented adjectively, rather than visually.

Appellant testified that in February, 1942, he destroyed a bridge. Over his protest the County reconstructed it in August of the same year. No one, said appellant, was authorized to travel this road. He began complaining of trespassers five or six years before suit was filed, and thought there had not been general travel over the land prior to that time. Other witnesses were certain common use went back ten or twelve years; "twenty," one said.

If we accept testimony given by appellant and by others in his behalf, prescriptive rights had not been acquired; but if appellee's witnesses are to be believed, the converse is true. Even though it is quite clear that only a few people had need of the highway, we are not convinced that the Chancellor erred in declining to restrain the defendant below.

Affirmed.

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