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Basil Thurman, Ron Kester, Vaughn Kester and Joseph Page v. Verl D. Byram, William K. Byram, John D. Byram, Val M. Byram, Donald E. Byram, Kenneth Byram, Harry J. Wilkinson, Dorothy Wilkinson, His Wife, Browning Industries, John Doe I and John Doe II : Brief of Respondents

Utah Supreme Court

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IN THE SUPREME COURT OF THE  
STATE OF UTAH

BASIL THURMAN, RON KESTER, )  
VAUGHN KESTER and JOSEPH )  
PAGE, )

Plaintiffs-Respondents )

vs. )

Case No. 16873

VERL D. BYRAM, WILLIAM K. )  
BYRAM, JOHN D. BYRAM, VAL M. )  
BYRAM, DONALD E. BYRAM, )  
KENNETH BYRAM, HARRY J. )  
WILKINSON, DOROTHY WILKINSON, )  
his wife, BROWNING INDUSTRIES, )  
JOHN DOE I and JOHN DOE II, )

Defendants-Appellants )

BRIEF OF RESPONDENTS

RESPONSE TO APPEAL FROM JUDGMENT OF DISTRICT COURT OF MORGAN  
COUNTY, HONORABLE J. DUFFY PALMER PRESIDING

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his wife, BROWNING INDUSTRIES,	)	
JOHN DOE I and JOHN DOE II,	)	
	)	
Defendants.	)	

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BRIEF OF RESPONDENTS

STATEMENT OF THE KIND OF CASE

This is an appeal from judgment entered in the District Court of Morgan County, the Honorable J. Duffy Palmer presiding, the case having to do with whether or not Cottonwood Road was in fact a public roadway, and whether these plaintiffs had a prescriptive easement for use of said roadway, trial was heard on the 20th day of November, 1979.

DISPOSITION IN LOWER COURT

The Lower Court granted judgment in favor of the plaintiffs

and against the defendants ruling that the roadway in question was a public roadway and further that three of the plaintiffs had a prescriptive easement over said roadway.

#### RELIEF SOUGHT ON APPEAL

Respondents seek to have the decision of the Lower Court that the roadway in question was a public roadway and that these plaintiffs had a prescriptive easement over the same upheld.

#### STATEMENT OF FACTS

Cottonwood Road is located in Cottonwood Canyon, Morgan County. The lower part of the road is paved up to the point where the gate in question was placed in 1979 near the Browning Arms Plant. From there on the road is a dirt road. The road extends approximately nine miles from the gate up through the forest land (Tp 112). Cottonwood Road has existed since before the turn of the century. In 1929 through 1930 a portion of the road at the lower end was shifted over but other than that the road has remained in its present location over the years (Tp 115).

According to the testimony of all witnesses who testified, no gates have existed on the roadway below the East boundary to the forest property since 1929 or 1930 (See record as a whole).

Generally the road has been open to public use and has been regarded as a public road (Tp 38, 52, 65, 67, 109, 119, 139). A bridge owned by the State Road Department was placed on the road where it crosses over Cottonwood Creek and was installed by the State and County crews in approximately 1929 (Tp 116, 117).



County crews assisted in maintaining the road (Tp 136, 171) and the two sheriffs of Morgan County who have served since 1954 until the present testified that they observed the general public using the road and that they were of the opinion that Cottonwood Road was a public road (Tp 42, 43, 229). Since 1947, a sign has existed at the lower portion of the road stating that the Canyon was private property, that there was no trespassing on private property and warning persons to know where they were (Exhibits 1 and 2, Tp 122). This sign existed in spite of the fact there has always existed since 1939 forest land in the canyon. An addition was made to the forest land in 1965 bringing the total acreage of forest land up to 1,300 acres (Tp 8, 165), and to which the Cottonwood Road was the only access.

As testified by all the witnesses at trial, Cottonwood Road has never been blocked or access ever curtailed by any gate or other obstruction below the East boundary of the forest property until 1978. The only testimony to differ with that was that of Kenneth Byram who testified that he had strung a wire across the road a couple of times each year, not to stop traffic, but to assist in taking his sheep off the summer range (Tp 210). None of the other owners or other witnesses testified as to ever having seen this wire across the road or the road having been blocked in any manner prior to 1978.

Access to private property adjacent to the road had been fairly open until about 1964 when Byrams closed their property



and other land owners followed suit (Tp 177, 178); even then, the road was never closed, but property adjacent to the road was all posted and all accesses were posted and mostly gated (Tp 123, Tp 172, Tp 219, Tp 232).

Hunting trespass permits began to be sold in 1964 by the Byrams and shortly after that by others. These permits were never checked on the Cottonwood Road but on the private property of the defendants adjacent to the road (Tp 151, Tp 163, Tp 166).

Three of the plaintiffs herein testified that they had been using the Cottonwood Road in excess of 26 years (Tp 68, Tp 90, 99) and some of them as many as twenty to twenty-five times each year and that the road had never been blocked nor had they ever been asked not to use the road (Tp 71, 72, 91, 93, 101). They used the road to get to the area which is now forest land for both hunting and picnicing and observed many other people using the road for picnic areas (Tp 69, 85, 91 and 100). This area prior to its sale in 1964 to the forest service was never posted (Tp 171).

They on occasion saw some of the defendants while on the road and were never stopped or asked not to use the road until 1978 when the gate in question was installed blocking the roadway (Tp 92, 101).

## A R G U M E N T

### POINT I

Findings of the trial judge are supported by clear and convincing evidence and should not be disturbed by this Court.

The Supreme Court of the State of Utah has set forth the responsibilities of the Supreme Court in considering cases on appeal as follows:

In considering the attack on the findings and judgment of the trial court it is our duty to follow these cardinal rules of review: to indulge them the presumption of validity and correctness; to require the appellant to sustain the burden of showing error; to review the record in the light most favorable to them; and not to disturb them if they find substantial support in evidence. Charlton vs. Hackett, 11 U.2nd 389, 360 P.2nd 176 (1961).

Based on the responsibility of this Court as set forth in the Charlton case, the facts as set forth in the record overwhelmingly support the judgment and decree of the lower court. The record indicates that Cottonwood Road is located in Morgan County, State of Utah and has existed since before the turn of the century and in it's present location since approximately 1929 or 1930 (Tp 115).

Mr. Clem Morris, who testified for the plaintiff, stated that he had owned the property owned by defendant Wilkinson for approximately ten years from 1920 to 1929 (Tp 26, 1.2 and 6). He stated that the road had always been there as long as he could remember, had been open to the public (Tp 65). He stated that although he left the ranch at about 1929 that he was familiar with the road and had been on the road within the past two years (tp 67, 1.9).

Mr. Clinton Gruel, a Forester and Range Conservationist with the Forest Service, in charge of timber sales, grazing

permits and use of public lands in the Cottonwood area (Tp 7, 1.23), testified that he had been familiar with the Cottonwood Road since 1975 and had been over the road several times each year since that time (Tp 8, 1.11). He testified that Cottonwood Road provided access to approximately 1,280 acres of forest land in the Canyon (Tp 8, 1.5). Initial forest land was reserved from the public domain in 1939 (Tp 24, 1.22 and 27) and that the last acquisition was by trade from Mr. Frank Bowman in 1965 (Tp 24, 1.30). He testified that over the years he had observed other people using the road (Tp 8) and the forest property (Tp 16, 17 and 18) and had never observed any restrictions being placed on the use of the road until 1978 (Tp 35, 1. 1 and 2). That in his opinion, the road appeared to be a public road and that the forest service had received no complaints that access to the forest property had been denied until the gate was put upon the road in 1978 (Tp 30, L.4). The only restrictions that he observed on the roadway was the fact that the lands adjacent to the roadway were posted and that leaving the roadway to go onto the adjacent private land was prohibited (Tp 32, L.17). He also testified that Morgan County received monies from the Federal Government for the years 1974 through 1979 under a 1974-75 act for law enforcement and patrolling forest lands (Tp 11, L.1; page 28). This patrolling of forest land necessarily required the patrolling of Cottonwood Road to get to the forest land.

Sheriff Porter Carter testified that he was born in Morgan County and had resided there for 59 years and was familiar with

Cottonwood Road (Tp 36, L.9). He testified that he had been sheriff of Morgan County for 16 1/2 years beginning in 1954 (Tp 36, L.27 and 29), and that during that time he patrolled the road on many occasions. He stated that there were never any gates or other obstructions on the road until it reached to the Warner property beyond the forest land (Tp 37, L.27), and that no one was required to get permission to use the road up to that point (Tp 38, L.21-24). It was his opinion that Cottonwood Road was always a public road (Tp 38) and that he observed many people using it (Tp 43, L. 10-23; page 49, L.14-17). He had observed the sign indicated in defendants exhibits 1 and 2 (Tp 40, L.5), but was never asked by any of the land owners, including the defendants, to keep people off the road (Tp 46, L.19). The sheriff testified that complaints were made by defendants and prosecutions instituted for trespass on the private land adjacent to the road but never for being on the road itself (Tp 39, L. 18-21; page 47, L. 11-13). Further, that none of the defendants had ever requested that he stop people from using the road or that they did not want people using the road (Tp 46, L.19).

Mr. Delbert Kester testified that he resided in Morgan for 17 years (Tp 50, L.50) and actually lived in the canyon from 1937-1941 (Tp 51, L.18). He also ran a cafe in the county from 1952-1955 (Tp 56, L.5). He stated that he has been using Cottonwood Canyon Road for 43 years on the average of 7 or 8 times each year for hunting and camping purposes. (Tp 51, L.7-8).

He testified that he had never observed any gates or other restrictions on the road below the forest property until 1978 (Tp 56, L.11-14; Tp 61, 62) and has observed many other vehicles using the road (Tp 54, L.3). During all those years that Mr. Kester was using the road, he has never been stopped from using the road or required to get permission until 1978 (Tp 51, L.27). Even in prior years when defendants sold hunting trespass permits these permits were never checked on the road itself nor were they required in order to use the road (Tp 55, L. 12 and 13). He observed that land adjacent to the road had always been posted for the past 10 to 12 years (Tp 56, L.20).

Mr. Basil Thurman, one of the plaintiffs herein stated that he had been using the road for 29 years and over the last 25 years had used it on the average of 6 or 7 times each year (Tp 68, L. 13, 19-22). He never observed any gates or other obstructions on the road until 1978 (Tp 69, L.8). He observed other vehicles, both trucks and passenger cars using the road (Tp 70, L.1-10). His primary reason for being in the Canyon was to hunt and camp on what is now forest land (Tp 70, L. 14-18). He stated that he had used the road openly and had never been asked to stop or requested not to use the road prior to 1978 (Tp 71, L.29; page 72, L.4). He stated he had seen the sign in defendants exhibit 1 and 2 but that he felt the sign applied only to the land adjacent to the road as the road had always been open and for many years the private land adjacent to it posted



and most accesses off the road blocked by gate or posting (Tp 73, L. 23).

Plaintiff Joseph Page testified that he had been using Cottonwood road for eleven years on the average of 4 or 5 times a year (Tp 84). That he had never observed any gates or other obstructions on the road below the forest property and that he observed cars and other vehicles generally using the road. He testified that the road appeared to be open and that he had never been stopped or asked not to use the road (Tp 85). Although, he stated that he had never observed any paint on the bridge, he did observe that during the period he had been using the road that private property adjacent to the road had always been posted and any access off the road on the private land gated (Tp 86).

Mr. Ron Kester, another of the plaintiff, stated that he had been using Cottonwood Road for 28 years on the average of 20 to 25 times each year (Tp 9, L. 18 and 24). He stated that he had observed traffic on the road and that there had never been any gates or other obstructions on the road prior to 1978 (Tp 91). Mr. Kester stated that he knew both defendant Wilkinson and Val Byrum and had seen them on the road but had never been stopped by any one or requested not to use the road until 1978 (Tp 91, L.21; page 92; page 93). He testified that he had never observed any orange paint on the bridge but was acquainted with the bridge, that it had been there for a long time and was a county bridge with the county load limit sign on it ( P 97, L.24; page 98). He observed along with other witnesses that the private

land adjacent to the road was posted "no trespassing" and all access off the road (Tp 91, L.26).

Vaughn Kester testified that he had been using Cottonwood Road for 26 years; 10 to 15 times each year for hunting and camping (Tp 99). That he had observed other people using the road and up to 20 to 30 people at a time picnicing on the forest ground (Tp 100). He stated that there had never been any gates or obstructions on the road until 1978 although private land adjacent to the road was posted (Tp 100, 105). He stated that he knew the Byrams and had talked to them on the road but had never been stopped from using the road or asked not to use the road by them until 1978 (Tp 101, L.6-8-10).

Elton Wood who was not a party in this action, indicated that he had lived in Morgan County since 1939 and was familiar with the Cottonwood Road and had been on the road 50 to 60 times (Tp 105), had never been restricted the use of the road or had any knowledge of anyone being restricted from using the road prior to 1978 (Tp 107).

One of the defendants, Mr. Harry Wilkinson, testified that he had lived in Morgan County since 1925, (Tp 111, L.17). That there had never been any gate on the road until up near Smally's Ranch (near the forest property). He stated that the bridge over Cottonwood Creek was taken from the State road and was installed by the County and State personnel and supervised by the State Road boss (Tp 115,116). The County also helped maintain the road (Tp 117, L.3, Tp 136). Mr. Wilkinson testified



that there were no restrictions on the road until the last 10 or 12 years and that it had been fairly well open (Tp 119, L.18; 128, L.14), he stated it was generally used by any one who wanted to use it (Tp 139, L.8) and that it was not generally his policy to stop people from using the road when he saw them (Tp 137). He stated that he was familiar with the sign set forth in exhibits 1 and 2 but indicated that after the sign was put up that no gate was put up and in fact he fenced his property adjacent to the road with the idea that people would be using the road and he didn't want them on his land adjacent to it (Tp 141, L.7-17). He further indicated that in the last 10 to 15 years all private land along side the road was posted.

Defendants called several witnesses who had been hunting on defendant Byrams' property for years (Tp 145, 152, 159 and 161), they each stated that they had received permission to hunt on the property from the Byrams but their trespass permits were never checked on Cottonwood Road but only on private property adjacent to the road. Each admitted that the road had never been obstructed in any way until 1978 and that the placing of the gate across the road would not effect their use of the Canyon but would be of benefit.

Mr. Frank Bohman, a long time resident of Morgan County who had owned the property in the Canyon traded to the forest service from 1948 through 1965 (Tp 167), stated that his land in the Canyon was used by alot of people without permission (Tp 168); but that he had never posted it no trespassing (Tp 171, L.7 and 14)

He testified that he never recalled any gates or other obstructions on the road limiting access and that he had observed people camping on the forest land in the canyon (Tp 172, L.23). Mr. Bohman further testified that he had never requested the sheriff to keep people off the road (Tp 173, L.16).

Mr. Val Byram, one of the defendants herein, testified that there had never been any permanent gate on the road until 1978; but that the signs in exhibit 1 and 2 was posted and an that an ad was placed in the newspaper in 1964 giving notice to all, closing their land to public use (Tp 177, L.19, exhibit 3). Even after that, no gate or other obstruction was placed on the roadway. They began selling hunting trespass permits in the fall of 1965 (Tp 178, L.6) but even then, the road remained open and permits were never required for use of the road until 1978 (Tp 196, L.8 and 30).

The father of Val Byram, and one of the defendants, Mr. Kenneth Byram, testified that his land in Cottonwood Canyon had been in his family since 1937 (Tp 200, L.17), and that there had never been any gates on the road until 1978 up to the East side of the forest property because as he stated "people respected each other" (Tp 201, L.28,30; 208, L.10-17). He stated that the road was open from 1930 to 1978 and there wasn't much restriction until the gate was put in in(1978 Tp 209, L.18-22), although, the sign was placed down at the beginning of the road (Tp 203), and all private land adjacent to the road had been

posted all the way up the road for years (Tp 208, L.13).

Another land owner in the canyon, Mr. Leland Kippen, a witness called by the defendants, testified that he had been using the road since about 1951 (Tp 211, L.23). He stated that he could never remember any gate or obstruction on the road below the forest land (Tp 218, L. 9 and 10) nor was he aware of any one ever being told to leave the road (Tp 215) or of people being stopped from using the road (Tp 218, L.16-20). He was aware of the sign indicated in exhibit 1 and 2 and the fact that private land adjacent to the road was all posted (Tp 219).

Sheriff Max Robinson testified that he had lived in Morgan County all of his life and had been in the Morgan County sheriffs office since 1968 and sheriff since 1973 (Tp 226,229). He stated that he had been familiar with Cottonwood Road for 40 years, that he had been over the road many times and could never remember any gates or obstructions (Tp 227). He testified that on some trips he would see no cars on the road and other times eleven or twelve vehicles. He observed that there were camping areas on the forest land and that he had observed camps in there two to three at a time (Tp 227). The sheriff stated that he had patrolled the road as sheriff, that he was acquainted with both defendants Wilkinson and Byrams but had never been requested by any of them to stop people from using the road (Tp 228, L.23). He stated that the only trespass prosecutions he was aware of involved persons leaving the main road and going

on to the adjacent private property (Tp 228). It was his opinion that the road had been open all through the years and that it was a public road (Tp 229). Consistent with other testimony, he stated that land adjacent to the road was posted "no trespassing" (Tp 232, L.26-27).

It is also important to note that following the testimony of the case, the court along with counsel viewed the road in question (Tp 241).

Based upon the facts that are briefly set forth above and which were fully presented at trial, it is clear that Cottonwood Road has been a public roadway since before the turn of the Century, that the defendants herein have themselves regarded said roadway as a public roadway as evidenced by their actions over the years and that only of late have they attempted to enforce a right which has long been extinguished and that the Findings of Fact and Conclusions of Law and Decree of the Lower Court are supported by very substantial evidence and the decision of the Lower Court declaring Cottonwood Road a public road and granting to three of the plaintiffs a prescriptive easement over said roadway should be sustained.

#### POINT II

Cottonwood has been used by the public as a public thoroughfare far in excess of the 10 year period required by Section 27-12-89, Utah Code Annotated, and is therefore dedicated to the public use.

Section 27-12-89, Utah Code Annotated 1953 as amended provides as follows:

"A Highway shall be deemed to have been dedicated and abandoned to the use of the public when it has been continually used for a public thoroughfare for a period of ten years."

State Statute further provides that once a public road is established it continues until abandoned or vacated by proper authority. Section 27-12-90, Utah Code Annotated 1953 as amended.

As stated by the Utah Supreme Court, in cases involving the question of a dedication to public use, all facts must be considered together and where there is dispute, determination of the facts and resolution of the issue is primarily the responsibility of the trial court. Bonner vs. Sudbury, 18 Ut2d 140, 417 P2nd 646 (1966).

Section 27-12-89, Utah Code Annotated 1953 as amended provides, and the more recent Utah Supreme Court cases confirm, that implied dedication will be presumed from continuous use by the public of a roadway as a public thoroughfare. That is, that the intent of the owner to dedicate will be implied in law when the required public use is shown. Bonner vs. Sudbury, Supra; Petersen vs. Combe 20 Ut2d 376, 438 P2nd 545 (1968); Pitts vs. Roberts, \_\_\_\_ Ut2d \_\_\_\_, 562 P2nd 231 (1977).

Although it is difficult to measure what constitutes public use, the Utah Supreme Court stated in the Lindsey vs. Churnos case, 75 Ut 384, 285 P 646 (1929) in upholding in the Lower Courts determination that a road had been dedicated to public use, as follows:



"It is difficult to fix a standard by which to measure what is a public use or public thoroughfare, it can be said here that the road was used by many and different persons for a variety of purposes; that it was open to all who desired to use it; that the use made of it was as general and extensive as the situation and surroundings would permit."

In the matter here before the Court, it is uncontested that the roadway in question has existed for in excess of 60 years and in its present location since 1929 (Tp 65, 111).

The plaintiffs and witnesses appearing in their behalf as well as many defense witnesses testified that they were familiar with the road and had used it in excess of 20 years (Tp 30-35, 50, 65, 67, 68, 90, 99, 109, 111, 166, 200, 211, 226). That the general nature of the road had not changed over that period of time and that there had never been any gates or other obstructions on the road limiting it's use below the forest boundary until 1978 (Tp 52, 69, 93, 107, 172, 196, 202, 208, 209, 218).

Testimony was also presented to the effect that the road was used by the general public and by members of the public using the forest property (Tp 49, 54, 70, 100, 109, 119, 139, 168, 172, 227). That until 1978 they had never been prevented from using the roadway (Tp 49, 51, 69, 91, 92, 109, 119, 139, 209) or ever asked not to use it (Tp 51, 92, 101, 108, 215). That a state bridge was installed by the state and county crews and that the road was maintained by the county (Tp 115, 117, 171).

Both the former sheriff, Porter Carter, and the present sheriff, Max Robinson, whose joint terms as Morgan County Sheriff extends from

1954 until present, testified that they were born in Morgan County and were familiar with the road as citizens and as County Officials (Tp 35, 36, 226, 229). They stated that there had never been any gates or obstructions on the road and that they had observed the general public using the roadway and the forest property served by the road on many occasions (Tp 49, 227). That they had never prosecuted any one for trespassing on the road (Tp 34, 46, 228) nor had they ever been requested by the defendants to keep people from using the roadway (Tp 46, 228). They each testified that they always regarded Cottonwood Road as a public road (Tp 42, 49, 229).

The matter before the Court is not a situation where defendants gated the road to keep out the public or entered into contracts with individuals for the use of the road or instituted law suits to protect the private nature of the roadway as in Gillmor vs. Carter, 15 Ut2d 280, 391 P2nd 425 (1964) cited by appellants or where evidence showed only that the roadway was used by other land owners straddling the roadway and that the roadway dead ended at an area having no public interest as in the Petersen vs. Combe case, 20 U2nd 376, 438 P2nd 545, (1968).

Defendants in this matter claim that the placing of the sign at the mouth of Cottonwood Canyon which stated, "No Trespassing in Private Property in this Canyon, the law says no shooting, only in hunting season. Its up to you to know the



law and where you are. Violaters will be prosecuted" (Tp 82), was evidence that the road in question was not public. In the first place, the sign was not installed there until 1947 (Tp 207) and at that time was down below the portion of the road which is now paved and considered by the defendants herein to be a public roadway (Tp 124, 125, 203). The sign was not moved up beyond the Browning Plant in the general location of the present gate until approximately 1965 (Tp 123, 190, 191). In the second place, the sign never forbid the use of the roadway as is clear from it's language (Tp 82). In the third place, it is clear from the evidence set forth above and in the record that defendants never intended to close the road or that it not be a public road. As defendant Wilkinson testified, after the sign was put up he fenced his property adjacent to the road because he knew people would be using the road and he didn't want people on his property damaging his crops (Tp 141). Subsequently, all the private property adjacent to the road was posted and the only prosecutions for trespass were for persons leaving the roadway and going on the adjacent property (Tp 39, 46, 228). Even when defendants Byram posted a notice in a newspaper closing their property to hunting and started selling hunting trespass permits, the use of the road was never restricted and these permits were only checked on the private property adjacent to the road (Tp 55, 51, 163, 177, 196).

The evidence is clear from the acts of the defendants, that

until recently they regarded Cottonwood Road as a public roadway and treated it as such. As stated by the Utah Supreme Court in the Bonner case, Supra, the intent of the owner cannot rest upon what he says his intent was because:

"In case controversy arises, he can always avow that his intent was in accord with his interest." (p.648)

When the record is taken as a whole, the evidence is clear and convincing that Cottonwood Road has existed and been regarded and used by all as a public roadway and as the Courts have stated in a number of cases:

"Since the memory of man runneth not to the contrary."  
Bonner vs. Sudbury, Supra.

### POINT III

Basil Thurman, Ron Kester and Vaughn Kester have each used Cottonwood Road for a period of in excess of 20 years. Said use has been open and notorious and has resulted in a prescriptive easement over said roadway in favor of these plaintiffs.

In the matter before the Court, plaintiff Basil Thurman, Ron Kester and Vaughn Kester each testified that they had used the roadway in excess of 20 years (Tp 68, 90, 99). Mr. Thurman testified that he used the road for the past 25 year period on the average of 6 or 7 times each year (Tp 68). Mr. Ron Kester testified that he had been using the road for about 28 years and averaged about 20-25 trips each year (Tp 90). He further testified that he knew both Mr. Wilkinson and Mr. Val Byram and had seen them while using the roadway and that they had never stopped him or indicated he was not to use the roadway (Tp 92, 93). Mr.

Vaughn Kester testified that he had been using the road for approximately 26 years on the average of 10-15 times each year (Tp 99). That he had talked to the Byrams while using the road and that they had never at any time indicated that he was not to use the same or stopped him from using it until 1978 (Tp 101).

There was no evidence whatsoever to in any way indicate that the plaintiffs had used said roadway under permission of the defendants. The Utah Supreme Court, in overturning a Lower Court which refused to establish a prescriptive easement stated in the case of Richins vs. Struhs, 17 Ut2d 356, 412 P2nd 314 (1966);

"That when claimant has shown that such a use has existed peaceably and without interference for the prescriptive period of 20 years, the law presumes the use to be adverse to the owner."

The Court went on to explain the reason for the doctrine and stated:

"The origin of the purpose of their recognition arises out of the general policy of the law of assuring the peace and good order of society by leaving a long established status quo at rest rather than by disturbing it." Supra page 315.

See also Zollinger vs. Frank, 110 Ut 514, 175 P2d 714, 170 ALR 770 (1949).

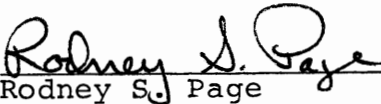
The evidence as set forth in the record and as recited above, establishes by clear and convincing evidence that the use of Cottonwood Road by these plaintiffs has been open, adverse, notorious and uninterrupted for a period of in excess of 20 years and therefore that these plaintiffs have obtained an easement by prescription over said roadway.

CONCLUSION

Respondents respectfully submit that the evidence presented at trial substantially supports the findings of the trial Court. That the evidence was clear and convey that Cottonwood Road has been regarded and used as a public thoroughfare in excess of 50 years and further that three of the plaintiffs herein have used the Road openly and continuously for a period in excess of 20 years.

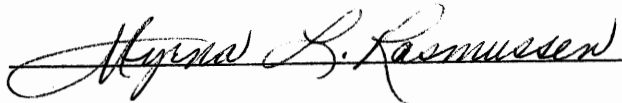
WHEREFORE, respondents respectfully request this Court to affirm the decision of the trial Court rendered below.

Respectfully submitted,

  
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Rodney S. Page  
Attorney for Respondents

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing Respondents brief to Mr. Robert A. Echard, attorney for the appellents, 427 - 27th Street, Ogden, Utah 84401.

  
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