

**NOVA SCOTIA COURT OF APPEAL**  
**Citation:** *Jessome v. Beaton*, 2018 NSCA 91

**Date:** 20181121  
**Docket:** CA 475329  
**Registry:** Halifax

**Between:**

James Jessome

Appellant

v.

Kyle David Beaton

Respondent

**Judges:** Derrick, Oland and Hamilton, JJ.A.

**Appeal Heard:** November 21, 2018, in Halifax, Nova Scotia

**Written Release:** November 21, 2018

**Held:** Appeal dismissed per oral reasons for judgment of Derrick, J.A.; Oland and Hamilton, JJ.A. concurring.

**Counsel:** Alan Stanwick, for the appellant  
Sean MacDonald, for the respondent

### **Reasons for Judgment: (Orally)**

[1] James Jessome has appealed the decision of Justice Frank Edwards dismissing his application for a declaration and other relief in relation to an alleged right-of-way, referred to as an unnamed lane, over the lands of Kyle Beaton at 159 MacIntyre Road, Scotch Lake, Nova Scotia. We are satisfied his appeal should be dismissed.

[2] Justice Edwards made explicit and well-reasoned factual and credibility findings and concluded that: (1) there was uncontradicted evidence Mr. Jessome had previously used an alternate route to access his property at 147 MacIntyre Road, Scotch Lake; (2) Mr. Jessome had not provided sufficient evidence to establish on a balance of probabilities that he or his predecessors in title had made continuous, uninterrupted and open use of the unnamed lane at any time for a period of 20 years; and (3) the existence and use of a gate installed across the lane by Mr. Beaton's uncle and predecessor in title supported the inference that Mr. Jessome had used the lane with permission.

[3] Dissatisfied with the result from the court below, Mr. Jessome is effectively seeking a re-trial. There is no basis for appellate intervention in this case. We have examined Justice Edward's decision for palpable and overriding error and found none. A careful review of the record establishes that his findings are amply supported by the evidence.

[4] The appeal is dismissed with costs in the amount of \$2000 inclusive of disbursements.

Derrick, J.A.

Concurred in:

Oland, J.A.

Hamilton, J.A.

