

# Reserch on right of way of necessity under the sri lankan



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The governing principle is that a right of way of necessity can be claimed no further than the actual necessity of the case demands. In the leading South African case of Peacock v. Hodges[3] gave the effect to this principle.

After that this rule was adopted to each and every case where the right of way of necessity claims.

Actual necessity is a question of fact which should be decided case by case.

In Amarasuriya v. S. I.

Perera[4] the plaintiff instituted an action claiming a right of cart-way of necessity over the land of the defendants. The cart-way claimed is 10 feet wide and nearly 75 yards long. The plaintiff bases his claim on two grounds :- (1) that he lives in a house on the land and that he owns a car purchased in 1930 and (2) that it is necessary to employ carts to take the produce of the land.

According to the evidence the plaintiff bought this land less than 4 years before the institution of this action. It was a bare land at the time. He put up a house about 3 years after his purchase and lived there with his wife for about 4 months and then the wife went to live at Moratuwa.

The plaintiff does not say in his evidence that he continued to live in the house after his wife went to Moratuwa. The evidence for the defendant is that the plaintiff is not living now on the land. In any event the plaintiff is a Government Servant and it is not unlikely that he will be transferred within a few years from this station to another station.

The plaintiff did not construct a garage for his car on this land. He built a garage on an adjoining land of which his mother is said to own an undivided share.

The plaintiff himself admits that there was no cart road to the land before his purchase. The evidence does not show any good reason why the plaintiff should not walk to the garage on the adjoining land and drive the car from there. Based on that evidence Wijeyewardene J. decided that there is no actual necessity to grant the right of cart way by necessity to the Plaintiff Respondent.