

█ Plaintiff also argues that because defendant purchased his lots after the plaintiff, no easement can run in the defendant's favor. It is settled law that implied easements arise, if at all, at the time of the original split of the dominant and servient estates. *Gagnon v. Moreau*, 107 N.H. 507, 225 A.2d 924 (1967). In the present case, the implied easement over plaintiff's portion of Walnut Street commenced the moment plaintiff took ownership of his lot. It cannot be disputed that this easement is appurtenant. *Glines v. Auger*, 93 N.H. 340, 42 A.2d 219 (1945). As an incident of the land it benefits, the easement follows the land; hence when defendant purchased his lots he also purchased the easement appurtenant to those lots. Mere nonuse of the easement up to this time does not defeat the defendant's right to use the street, as nonuse by itself does not terminate an easement. *Bruchhausen v. Walton*, 111 N.H. 98, 276 A.2d 6 (1971); *Gagnon v. Carrier*, 96 N.H. 409, 77 A.2d 868 (1951).

█ The trial court ruled also that the defendant has the right to develop Walnut Street from end-to-end for his and others' use for the purpose of going to and from his property. This ruling is correct. This result does not, as plaintiff claims, circumvent the intent of RSA 238:7. Rather, it recites the type of use which is reasonable for defendant's easement. *Cf. Sawtelle v. Tatone*, 105 N.H. at 405-06, 201 A.2d at 117. *See also Stozenski v. Borough of Forty Fort*, 456 Pa. 5, 317 A.2d 602 (1974).

Exceptions overruled.

BROCK, J., did not sit; the others concurred.

Hillsborough
No. 78-129

█
WILLIAM WILSON

v.

STANLEY SHEA

October 30, 1978
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pass Hale, plaintiff caught sight of the pony. There is conflicting testimony as to whether the pony strayed into the road and whether the Hale vehicle swerved into the westbound lane. Nevertheless, it is undisputed that the plaintiff's truck struck the rear of the Hale car, and then went off the opposite side of the highway.

Plaintiff alleges that the defendant negligently secured the pony, and that this negligence caused the damage to plaintiff's truck. A nonjury trial before the superior court resulted in a verdict for defendant. Plaintiff's motion to set aside the verdict was denied and plaintiff excepted. All exceptions were reserved and transferred by *Goode, J.*

■ The trial court found that no act or failure to act on the part of defendant was causal of the accident, and refused to find that the pony was negligently secured or that defendant did not have a suitable enclosure or other restraint to contain it. *See* RSA 467:1-a (Supp. 1977) *in re* Stallions. The court also found that plaintiff was following the Hale vehicle too closely, was traveling at excessive speed, and had failed to keep a proper lookout, all of which were causal of the accident. These findings could reasonably be made on the evidence and therefore must be upheld. *Archambault v. Adams*, 118 N.H. 634, 392 A.2d 139 (1978). Given these findings, the verdict for the defendant was proper.

■ At the time of trial, Leon Hale had died of causes unrelated to the accident. The court admitted in evidence a statement made by Hale to his insurance adjustor that contained statements regarding his own conduct and that of the pony. At the time the statement was made Hale and his daughter, who had been a passenger in his vehicle, were both possible plaintiffs, and he a potential defendant in foreseeable legal proceedings. The admission of the statement was questionable under the circumstances. *See Nute v. Blaisdell*, 117 N.H. 228, 374 A.2d 923 (1977); *Sullivan v. Dumaine*, 106 N.H. 102, 106, 205 A.2d 848, 851 (1964). We need not decide the question, however, because the statement related only to the plaintiff's negligence; it had no bearing on the issue of defendant's negligence. Since the court found defendant not to be negligent, a verdict for the defendant follows regardless of fault on the part of plaintiff. The admission of the statement was therefore harmless.

Exceptions overruled.

All concurred.