

ditions arise which may make it possible to have an access to a highway in some direction. that this possibility of access would not destroy the right of way unless it be shewn that it is one that is as convenient and valuable to the use of the land as was the way of necessity.

While it seems to be the settled opinion that the way of necessity rests upon grant, and that it will pass as an appurtenant to the lands to which it furnishes a way, yet the courts seem to have engrafted upon it a distinction from all other ways that are founded upon a grant, and that is that it is not a perpetual right, but exists only so long as the necessity which created it exists.

Thus in the leading case of *New York v. Millner*²² it is said:—

“Again the right of way of necessity over the lands of the grantor in a conveyance in favour of the grantee and those subsequently claiming the dominant tenement under him, is not a perpetual right of way, but only continues so long as the necessity exists.”

The same language is substantially found in *Palmer v. Palmer*,²³ also in *Pierce v. Selleck*.²⁴

This brings up the analogous situation that a grant presumes a consideration and that although the grantee may have paid for something, yet he cannot exercise full ownership and transfer the right to some one else.

For instance, suppose that A should convey a piece of land to B, which was so situated that B would have a right of way of necessity over the lands of A, and that B should in turn convey his property to C. who owned adjoining lands that touched a public highway. Then C could, by reason of his ownership of other lands, reach the public highway without being compelled to exercise the way of necessity, which B had over the lands of A, and if the doctrine announced by the courts is to be carried out in its fullest extent C would be deprived of this right of way for the lands he had purchased out over the lands of A, notwithstanding the fact that such right of way might be an exceedingly valuable one and furnish a much better access to