

cess to and egress from her grist mill property situate on South River, and for an injunction restraining defendants from continuing the obstructions placed by them upon this alleged roadway.

The appeal was heard by BOYD, C., MACLAREN, J.A., and MABEE, J.

E. D. Armour, K.C., and J. McCurry, North Bay, for defendants.

W. Laidlaw, K.C., for plaintiff.

BOYD, C.:—As I view the case of the plaintiff, it appears to be one of great hardship, but, however much disposed to help him, relief can only be given according to law.

I do not regard the fact that the title to the lands in question of plaintiff and defendants has been brought under the Land Titles Act, R. S. O. 1897 ch. 138, as necessitating a new application to the doctrine and principles relating to the ownership and enjoyment of lands. The Act does not affect the substantive body of law respecting real estate, but is framed with a view (as stated in the title) "to simplify titles and to facilitate the transfer of land." Apart from the Act, the law has been definitely settled by *Wheeldon v. Burrows*, 12 Ch. D. 33, and the line of decisions which follow and apply its rules, that unity of ownership or seisin in fee extinguishes all pre-existing easements or private right of way over one part of the land for the accommodation of another part. When the whole is in the hands of one owner, he is proprietor of the soil, and his manner of using any piece of it or part of it is an incident of ownership, and not in any sense an easement. To constitute an easement there must be some privilege which the owner of one tenement has the enjoyment of in respect of or over the tenement of another. When the ownership of the two tenements unites for the same estate in fee, the easement ceases entirely, is extinguished, and it can only be revived or brought into being again by a fresh grant, and then the right granted is of a new thing: see *Goddard on Easements*, 6th ed., p. 553.

The severance of the land in respect of which an easement existed over one part for the benefit of the other does not per se revive the extinguished easement, if the dominant part is first granted and the servient part retained by