lieve there was some neglect of some one in connection with the works, or the car could not have fallen off, and we would award to the plaintiff Ede $2,700 and to the plaintiff Lynn $500."

The effect of this is, that the verdict proceeds upon the view that damages should be paid by the company because the accident occurred in the prosecution of their work in constructing the bridge. But no specific negligence is found inculpating the defendants or any of their officers or men in charge of the work. Therefore plaintiff has failed to prove his case—the onus lay on him—and though I would be willing to regard the matter as still open for further trial—a course which the jury probably contemplated when the foreman said that evidence had been kept back—yet I do not think the practice would justify such procedure. The action has been brought to trial, and plaintiff has failed to prove his case, and so failing the action also fails and must stand dismissed: Farmer v. Grand Trunk R. W. Co., 21 O. R. 299. I speak of the consolidated trial of both actions . . . ; both rest upon the same evidence, and have the same result.

The defendants do not ask for costs.

The evidence said to be kept back refers to other workmen who were at the bridge who might have been called—but it was open to either party to call them, and plaintiff relied on the evidence he had.

OCTOBER 22ND, 1907.

DIVISIONAL COURT.

McCLELLAN v. POWASSAN LUMBER CO.

Way—Private Way—Easement—Extinguishment—Unity of Ownership—Revival on Severance—Implication—Necessity for Fresh Grant—Land Titles Act.

Appeal by defendants from judgment of TEETZEL, J., at the trial at North Bay, in favour of plaintiff, in an action for damages caused to plaintiff's property by reason of defendants blocking up a roadway claimed by plaintiff as ac-