

of getting in wood and coal and getting out ashes. The appellant, the owner of lot 4, had, as was admitted, by virtue of a conveyance from the devisee of lot 4 and by the Statute of Limitations, acquired title to the portion of lot 5 on which house No. 9 stood:—

*Held*, that a right of way over the passage between the two houses did not pass by implication of law to the devisee of lot 4.

The passage in question was used by the occupants of house No. 9 from the time of the death of the testator until 1895, but during the period from March to June, 1894, the owner of No. 13 was also the tenant of No. 9:—

*Held*, per MEREDITH, C.J., that the unity of possession during that period interrupted the running of the statute, and the appellant had not acquired a right of way as an easement by prescription under R. S. O. ch. 111, sec. 35.

Dictum of Hatherley, L.C., in *Ladyman v. Grave*, L. R. 6 Ch. 763, not followed.

But, per *Curiam*, that at all events the *locus in question* could not be treated as a way to lot 4; it was rather a way to that portion of lot 5 on which house No. 9 stood; and there being unity of seizin of the alleged dominant and servient tenements in the devisee of lot 5, no easement could exist while that unity continued; and therefore the enjoyment of the way as an easement began only when the title of the devisee of lot 5 to that portion of it on which house No. 9 stood became extinguished by the statute, which was less than twenty years before this litigation.

*Semble*, per MEREDITH, C.J., that, but for this latter circumstance, the claim of the appellant might have

been sustained by the application of the doctrine of "lost grant."

And also, that the respondent, by reason of his tenancy of house No. 9, was estopped from asserting that his possession of the land of which he was tenant, and his user of the way which was enjoyed in connection with it, were other than a possession and user by him as tenant. *Re Cockburn*, 450.

*Negligence—Private Way—Accident.*]—See MUNICIPAL CORPORATIONS, 10.

*Private Approach to and from Highway—Accident—Non-repair—Liability of Private Person.*]—See MUNICIPAL CORPORATIONS, 1.

## WILL.

1. *Construction—Election—General Words—"My Estate"—Insurance Policies—Apportionment—Variation—R. S. O., ch. 136, sec. 6 (1)—Deficiency of Assets—Legacies—Abatement.*]—Testatrix by her will left all her property, by general words, to her executors, upon trust, *inter alia*, (5) to set apart \$4,500 and pay the income to the plaintiff, one of her sons; (6) to realize on all the residue of the estate, and, after providing for maintenance of unsold portions, to pay \$1,400 to a second son and \$2,000 to a third, and, when all the residue should be realized, to divide it equally between these two; (7) after the death of the plaintiff, to divide the \$4,500 among his children, adding—"It is my will that my son Robert" (the plaintiff) "is to get no benefit from my estate except as provided in this will, the provision herein made being in lieu of any share in the insurance on my life." Two policies of insurance on her life