

Boyd, C., Maclaren, J.A., Mabee, J.]

[Oct. 22.

McCLELLAN v. POWASSAN LUMBER COMPANY.

*Way—Private way—Easement—Extinguishment by unity of ownership—Revival on severance—Implied reservation—Land Titles Act.*

Unity of ownership or seisin in fee extinguishes all pre-existing easements or private rights of way over one part of the land for the accommodation of another part; and an easement so extinguished can only be revived by a fresh grant, and then the right granted is of a new thing; the severance again of the land in respect of which an easement formerly 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 the owner who made the severance. *Wheeldon v. Burrows*, 12 Ch.D. 31, followed.

Previous to 1891 two adjoining parcels of land, known as the grist mill property and the saw mill property, were in different holders, and there was on the land, well defined on the ground, a road leading from the highway to the grist mill over a part of the saw mill property. In 1891 the two properties became united in the same owners, who, in 1894, conveyed all the land, excepting certain lots, on one of which stood the grist mill. In the document of transfer there were no words to indicate that any right of way over the rest of the land conveyed was also excepted. The grist mill property was afterwards conveyed to the plaintiff, who claimed the right to use the road over the saw mill property as marked upon the ground:—

*Held*, that when the transfer of 1894 was made, the road was not a subsisting easement or right of way, though it was marked upon the ground as a former right of way, which continued to be used for the convenience of the owner of the whole property after he became such owner; failing an express reservation in the transfer of 1894, none was to be implied; and the fact that the title to all the lands in question had been brought under the Land Titles Act made no difference, there being nothing in the provisions of section 26 or other sections to affect the result in the plaintiff's favour; Mabee, J., dissenting.

Judgment of Teetzel, J., reversed.

*Armour, K.C., and J. McCurry, for defendants. Laidlaw, K.C., for plaintiff.*