

## McCLELLAN v. POWASSAN LUMBER CO.

1909

\*May 19.

*Easement—Private way—Unity of ownership—Subsequent severance  
—Revival of easement—Reservation.*

**A**PPEAL from a decision of the Court of Appeal for Ontario (1), affirming the judgment of a Divisional Court (2), which set aside the verdict for plaintiff at the trial and dismissed the action.

In 1891 two parcels of land, on one of which was a grist mill and the other a saw mill, theretofore owned by different persons, became vested in one owner who, in 1894, conveyed away to defendants' (respondents') predecessors in title both parcels except certain lots including that on which stood the grist mill which was afterwards conveyed to the plaintiff. A road from the highway over a part of the saw mill property had been used for access to the grist mill from the time it was built, but was obstructed by the defendants in 1906, and an action was brought for an injunction to restrain them from continuing such obstruction and for damages.

The plaintiff succeeded at the trial, but the judgment in his favour was reversed by the Divisional Court, which held that the easement was extinguished by the unity of ownership in 1891, and that, as the subsequent conveyances contained no reservation, express or implied, of the right to use the road, the plaintiff could not recover. This judgment was affirmed by the Court of Appeal.

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\*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff and Anglin JJ.

(1) 17 Ont. L.R. 32.

(2) 15 Ont. L.R. 67.

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After hearing counsel for both parties the Supreme Court of Canada dismissed the appeal for the reasons given by the courts below.

*Appeal dismissed with costs.\**

*Laidlaw K.C.* for the appellant.

*Armour K.C.* and *McCurry* for the respondents.

\*Leave to appeal to the Judicial Committee of the Privy Council granted 29th June, 1909.

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