Judicial Circuit of Maryland, in pursuance of the directions of the act of Assembly in such case made and provided, transmit to the Court of Appeals here the record of proceedings of a plea which was lately depending before him in the Circuit Court of Howard County between Charles Carroll plaintiff, and Charles Carroll McTavish defendant, and wherein the said Circuit Court gave judgment for the said Charles Carroll against the said Charles Carroll McTavish and from which said judgment the said Charles Carroll McTavish appealed to the Court of Appeals here, the tenor of which said record of proceedings is in form following, to wit:

Maryland Sct.

At a Circuit Court of the Second Judicial Circuit of the State of Maryland begun and held at the Court House at Ellicotts Mills in and for Howard County on the first Monday of September it being the first day of the same month in the Year of Our Lord one thousand eight hundred and fifty six.

Were Present

The Honorable Nicholas Brewer Circuit Judge.

Sheriff

William N. Worthington Clerk.

Among other were the following proceedings, to wit:

Charles Carroll McTavish
vs
Charles Carroll

Be it remembered that heretofore, to wit: on the twelfth day of July in the year of Our Lord one thousand eight hundred and fifty two a procedendo Record from the Court of Appeals of the State of Maryland was filed in the Circuit Court for Howard County in the words and tenor following, to wit:

Charles Carroll McTavish
vs
Charles Carroll

Court of Appeals
June Term 1855
John R. Eccleston Justice delivered the opinion.

This is an action on the case brought by C Carroll the Appellee against C. C. McTavish the appellant, for obstructing a road running from the Mills of the Appellee to his Mill dam, which dam and the obstructed portion of the road are on the lands of the Appellant. The declaration alleges that the Appellee was possessed of an ancient Mill, with the right to use the water power stream on the close of McCTavish through a race running over said close, from the Mill dam to the mill, and to the use of a road running from the Mill to the dam, immediately along the bank of the said race, for the purpose of passing with wagons &c as occasion required, to clean out and repair the race; and that the Appellant placed a fence along the bank of the race, between the race and the road, whereby the road was obstructed, and the Appellee deprived of the use thereof, and prevented and hindered from repairing his race, and his mill was rendered entirely useless — At the instance of the Plaintiff the Court

the Court instructed the jury "If they find the deeds offered in evidence by the Plaintiff and Defendant, and that the Plaintiff on the death of said Charles Carroll on the 14th of November 1832, came into the full possession of all the property conveyed to him by the deed of the 28th of July 1832 and so continued in possession until this day, and if the Jury find that there was a Mill on said property which had been erected thereon sometime before the death of said Carroll, and a considerable time or period before the execution of any of the deeds aforesaid which still remains thereon, and if the Jury further believe from the proof that there was a race with a road or way upon its bottom Bank or margin to be used for the reparation of the banks of said race leading from a dam upon the lands of said defendant which was conveyed to him or them under whom he claims by said Carroll, who during his lifetime, and for a long period before his death, used and passed by a race and road, or way, in connection with said Mill, and if the Jury further find that from the death of said Carroll the plaintiff has been in the quiet and peaceable possession of the land conveyed to him as aforesaid, with the said Mill and also from the time last aforesaid did use and enjoy the said race and road or way through the lands of the defendant to and with the said Mill until the 26th of July and 1852, and if the Jury should also believe that the defendant, on or about the day last aforesaid erected a post, and rail fence on the western Bank of said race over and along said road or way, and extended posts across the same near to said dam and also at a greater distance therefrom as stated by the witnesses, and that said Defendant did also plough up the bed of said road and cause the same to cultivation then the plaintiff is entitled to recover.

The Contempt of this instruction is denied by the Appellant, upon the ground that Charles Carroll of Carrollton, being the owner of the land on which the dam was erected, and the race and road passed over and also of the land where the Mill stood, having conveyed the land on which the dam and race now, with the appurtenances, to Mr McTavish, subject to his own life estate, without any other reservation or exception whatever his subsequent conveyance to the Appellee gave him no right to use the dam, race or road, and consequently the obstructions to the road complained of could not entitle the plaintiff to a verdict.

Inasmuch as the elder Mr Carroll owned both parts of the estate which he used the Mill and its appurtenances, notwithstanding the great length of time he possessed the same, it is true he did not thereby acquire or enjoy a right to the dam, race and road as easements strictly speaking, for a man cannot subject one part of his property to another by an easement because he cannot have an easement in his own property, as the same object is obtained by him through the exercise of the general right of property. Nevertheless under the peculiar circumstances of these transactions it seems but reasonable that Mr McTavish should be considered as having taken her portion of the estate subject to all such Mill rights as were in use at the date of the conveyance to her and which continued to be used subsequently and were actually necessary to continue the Mill in operation — A different view of the subject would necessarily have placed the use of the Mill entirely