thority. *Cf. Baltimore & P. R. R. v. Fifth Baptist Church*, 108 U. S. 317 (1883); *Master Horseshoers' Protective Ass'n v. Quinlivan*, *supra*. It has been argued, however, that this technique should be discouraged as creating uncertainty and that, if possible, other means should be used to obtain a just result. See Warren, Book Review (1920) 33 HARV. L. REV. 878, 880; (1929) 42 *id.* 1077, 1078. Therefore, the reasoning employed by the court, which stressed the importance of the corporation as the means through which its members enjoyed their right to use the beach, may well be the more desirable method of reaching the result, in spite of the fact that it seems forced.

EASEMENTS — CREATION: NECESSITY — IMPLICATION OF AN EASEMENT AGAINST STATE CONDEMNING PART OF OWNER'S LAND. — Eminent domain proceedings were brought by the state to appropriate for forestry purposes part of a tract of land belonging to one individual. Damages were awarded upon the theory that the former owner would, as a result of the condemnation, be deprived of access to the public highway. The state, maintaining that it took the land subject to a way by necessity, appealed from a judgment on the verdict. *Held*, that a way by necessity arose against the state. Reversed and remanded. *State ex rel. McNutt v. Orcutt*, 199 N. E. 595 (Ind. 1936).

Easements by necessity have long been declared to result from an implied grant or reservation expressing the intention of the parties to a conveyance. See *Vandalia R. R. v. Furnas*, 182 Ind. 306, 310, 106 N. E. 401, 402 (1914); *Brasington v. Williams*, 143 S. C. 223, 243, 141 S. E. 375, 381 (1927). In holding that a way by necessity arose over land condemned by the state, the court expressly rejected that theory. This course seems historically justified; for such easements were first created by law for the public welfare in the absence of any indication of the parties' intention although, because of a countervailing interest in the security of acquisitions, this was done only where the dominant and servient tenements had been under unified ownership. See *Packer v. Welsted*, 2 Sid. 39, 111, 112 (K. B. 1658); *Pinnington v. Galland*, 9 Ex. 1, 13 (1853); Simonton, *Ways by Necessity* (1925) 25 COL. L. REV. 571, 574. Their creation in land taken by judicial proceedings further indicates that the rule rests on considerations of fairness and policy. *Russell v. Jackson*, 2 Pick. 574 (Mass. 1824). Despite the fact that in the condemnation of the dominant portion the state must have access to the land in order to use it, it has been held, following the implied grant theory, that a way over the remaining land must be expressly condemned. *Banks v. School Directors*, 194 Ill. 247, 62 N. E. 604 (1901). Without resort to that fiction, this result could perhaps have been rested upon the desirability of maintaining security of title. And where the servient portion is taken, it seems desirable that a way by necessity be created in the owner, unless expressly condemned, in order to avoid requiring the state to appropriate property rights unnecessarily. *Cf. Cleveland, C. C. & St. L. Ry. v. Smith*, 177 Ind. 524, 97 N. E. 164 (1912). But *cf. Prowattain v. Philadelphia*, 17 Phila. 158 (C. P. Pa. 1885) (use as park held to preclude easement); JONES, EASEMENTS (1898) § 308. Nor should the sovereignty of the new owner bar the implication of an easement. *Snyder v. Warford*, 11 Mo. 513 (1848); see Simonton, *supra*, at 579. But see *Thomas v. Morgan*, 113 Okla. 212, 214, 240 Pac. 735, 737 (1925). *A fortiori*, the instant decision is sound since the state expressly took the position that the owner had the right of way for the destruction of which he was seeking damages. Yet the landowner's rights may readily be made certain; for express stipulations in condemnations proceedings for easements over the land condemned have been given effect by the courts. *Tyler v. Hudson*, 147 Mass. 609, 18 N. E. 582 (1888); *St. Louis K. & N. Ry. v. Clark*, 121 Mo. 169, 25 S. W. 192 (1894).