

The action and counterclaim were tried without a jury at a Toronto sittings.

A. C. McMaster, for the plaintiff company.

J. Hales, for the defendant.

KELLY, J., in a written judgment, said, after stating the facts, that the plaintiff company had had possession of the premises since 1909, under leases made by the defendant and his predecessor in the ownership of the premises. The plaintiff company was given possession of and had continued to use the cellar for the purposes of heating the premises, storing coal and other commodities, and for other purposes as well, all along believing that it had an exclusive right thereto, although the lease contained a statement that the plaintiff company "was only getting the ground-floor . . . and access to the cellar." There was no evidence that the lessor or any one but the plaintiff company made use of the cellar during all the years it had occupied the premises. The company had also used the vacant land at the rear of the store for the purpose of bringing goods to and through the door leading into the store; this also was not objected to by the lessor.

The new stairway did not very seriously interfere with the light, though it did create some obstruction, and from the plaintiff company's standpoint the interference was accentuated by the fact that that part of the company's premises had all along been used as a dispensary. To the extent to which there was such obstruction, the building of the stairway was a derogation from the company's rights under the lease.

The unauthorised use by the defendant of the exterior of the wall of the demised premises was more serious. The demise of a floor or a room or an office bounded in part by an outside wall *prima facie* includes both sides of that wall: *Carlisle Café Co. v. Muse Brothers & Co.* (1897), 77 L.T.R. 515; *Hope Brothers Limited v. Cowan*, [1913] 2 Ch. 312.* There was not in the demise to the plaintiff company any exception or reservation excluding the application of this rule; and the company was entitled to restrain the defendant from using the exterior wall of its store for the purpose of erecting the stairway.

In the circumstances, the defendant was not entitled to the relief asked for in his counterclaim. Having regard to the conditions which existed at the time of the original lease with respect to the cellar and what had occurred since, and on the evidence that the company had always during its occupancy of the premises had exclusive use of the cellar, and that the renewals of the lease were made with full knowledge by the lessor that it was so used,

*See also *Goldfoot v. Welch*, [1914] 1 Ch. 213.