north of it, and fronting on Bathurst street, was a frame stable or barn used in connection with the hotel; and the principal purpose in securing the right of way now in question, or in stipulating for a way 20 feet wide, was to insure access to this stable for loads of hay, etc., coming down a public lane from London street or from Markham street.

The defendant had recently purchased the westerly 50 feet of lots 1, 2, and 3, and had erected thereon a brick theatre fronting on Bloor street. The northern wall of this theatre coincided with the southern limits of the public lane and of the westerly part of the land over which the plaintiffs have their right of way. On this northern wall the defendant had put two iron fire-escapes. One of these was the subject of dispute in this action. It overhangs the land over which the right of way exists, projecting 3 feet 4½ inches from the wall.

The way in question is now used by the plaintiffs in bringing in fuel for the heating of apartments over Bathurst street shops, which replaced the hotel, and by the tenants of these apartments in bringing in their furniture. It is also used to some extent by the tenants of the plaintiffs' Bloor street shops and apartments.

There is no present inconvenience from the fire-escape, but the plaintiffs suggested future inconvenience. These suggestions the learned Judge considered far-fetched and unlike what were considered in Sketchley v. Berger (1893), 59 L.T.R. 754.

The learned Judge said that he had come to the conclusion that there was no interference with the easement granted, or, to use the language of Cockburn, L.C.J., in Hutton v. Hamboro (1860), 2 F. & F. 218, practically and substantially the right of way could be exercised as conveniently as before, and the plaintiffs had lost nothing by the alteration made by the defendant.

Obviously it was not a case for damages, because the plaintiffs had not suffered any loss; and it was not a case for an injunction because it is highly improbable that they ever will be inconvenienced in the slightest degree by the fire-escape. They say that they ought to have an injunction because it is possible that in some way they may in the future suffer some inconvenience, and when the inconvenience does arise they may be held to have lost by acquiescence their right to object. But, the plaintiffs having brought this action, there is not the slightest danger of its being held that they have acquiesced in any interference with the right of way, unless and until, the fire-escape proving to be an interference, they desist from objecting. An injunction which will harm the defendant ought not to be granted for the sake merely of protecting the plaintiffs against some future interference with the exercise of their right of way, which they apprehend, but which it is difficult to believe will ever take place.

Action dismissed with costs.