MIDDLETON, J., in a written judgment, said that the defendant contended that the action might have been brought in a County Court, and so, under Rule 649, the costs awarded must be taxed upon the County Court scale with a right of set-off.

The plaintiff purchased certain lots laid out upon a subdivision plan, and the defendant had now acquired title to the remaining lots. The defendant had ploughed up the land, villa lots and streets, visible to the eye upon the plan, but not upon the ground. The plaintiff's land was in the centre of the block, and upon it an old house. The means of access to it when the place was a farm was a lane, but this lane was now owned by the defendant. The mode of access on paper was over the streets laid out upon the plan, and this was the only lawful means of access and the one in actual use. If the defendant could acquire title to this house and land, the whole place could become a farm once more; but, so long as the plaintiff refused to sell, he had the right to insist upon the streets remaining. The defendant having ploughed the highway, the plaintiff alleged that this was a nuisance, and that he was so particularly prejudiced that he was entitled to maintain an action. Both parties asserted that these streets were public highways, and for the purpose of this case that should be assumed to be the fact.

At the trial judgment was given in favour of the plaintiff restraining the defendant from further ploughing the streets or otherwise obstructing access to the plaintiff's land.

It was held by the Judge below, affirming the ruling of the Taxing Officer, that the action could not have been brought in a County Court, because the action concerned the plaintiff's land, which was worth more than $500.

The appeal was argued as if the case came under sec. 22 (1) (*c*) or (*i*) of the County Courts Act. But the case really came under sec. 22 (1) (*b*), and the action was a "personal action" within the meaning of that clause. It was nothing more than an action for damages for an obstruction to a highway and for the abatement of the nuisance caused by the obstruction.

By sec. 28 of the same Act, a County Court can grant all appropriate remedies in any action where the cause of action is within its jurisdiction. An injunction or a mandatory order is a remedy, and not a cause of action.

Reference to Martin v. Bannister (1879), 4 Q.B.D. 491.

Section 22 (*i*) is not in this way rendered meaningless—it applies to actions to set aside conveyances, to actions for specific performance,and all other actions for equitable relief, when the subject-matter does not exceed in value $500.

So far as Ross v. Vokes (1909), 1 O.W.N. 261, is in conflict with the views now expressed, it must be regarded as overruled by this decision.