

first mortgage imposed a burden on the purchaser to pay more cash.

Taking this view of the case, the action ought to be dismissed without costs, and the defendant ought to recover the \$100 paid from the plaintiff.

My regret is that I cannot order the agent whose bungling or worse has brought about all this trouble to pay the costs. Both these ladies trusted him to protect their interests, and in the result he has landed them in a law suit.

HON. MR. JUSTICE KELLY.

FEBRUARY 11TH, 1914.

FITZGERALD v. CHAPMAN.

5 O. W. N. 888.

*Injunction—Blocking of Lane—Nuisance—Reference as to Damages
—Stay of Operation of Order.*

KELLY, J., granted plaintiff an injunction restraining defendants from using a lane so as to interfere with plaintiffs' rights therein but suspended the operation of the order to give defendants an opportunity to abate the nuisance.

Motion for an interim injunction to prevent defendants from blocking a lane turned by consent into a motion for judgment.

T. N. Phelan, for plaintiff.

G. Osler, and S. G. Crowell, for defendants Chapman & Walker, Limited.

S. W. McKeown, for the other defendants.

HON. MR. JUSTICE KELLY:—On the return of the motion for injunction an application was made to turn it into a motion for judgment. An enlargement was granted and defendants were given the opportunity to submit further material. When the matter again came on it appeared that all the facts were fully before me, and I disposed of it by way of judgment thereon. A consideration of the material submitted has left no doubt in my mind that plaintiff is entitled to relief, but the parties through their counsel having expressed their readiness to negotiate a settlement, I have delayed judgment to enable them to arrive at a conclusion, if possible. I have not been advised that any definite result has been reached.