The sole question—apart from the quantum of damages—before the trial Judge was whether or not, in casting upon the defendants the burden of removing and replacing heavier bars than theretofore, the plaintiff was interfering with the free exercise by the defendants of their right of way over his land.

The statement of claim set up the facts and the defendants' conduct, and alleged that "the defendants defy the plaintiff to prevent them from so conducting themselves." The defendants in pleading did not avoid the issue so raised. They alleged that the new bars were heavier and more cumbersome than the old; that they had given notice to the plaintiff of their refusal to permit the use of the new bars; that the plaintiff refused to maintain the bars as they had been used; and that the defendants, in order to enjoy their right of user of the land, and owing to the difficulty of restoring the new bars, threw them down and refused to permit the plaintiff to maintain the right of way in a manner different from the way in which it had always been used by their predecessor in title and themselves.

This defence was a distinct assertion by the defendants that the nature of the right of way which they were entitled to enjoy over the plaintiff's land was different from that asserted by the plaintiff. That issue involved a question of title—namely, what is the nature and extent of the defendants' easement, or the extent to which the plaintiff's title to the servient tenement is affected by that easement?

The action should be regarded as one for trespass or injury to land in which the question of title to land is involved, and in which is sought a declaration binding upon the parties, not only as to the immediate cause of action for damages, but also as to their future rights.

The case, therefore, if within the jurisdiction of a County Court, must fall within the class of cases over which, by sec. 22 (1) (*c*) of the County Courts Act, a County Court has jurisdiction if the value of the land does not exceed $500, and the sum claimed does not exceed that amount.

The sum claimed was only $50; but there was no evidence that the interest in or right over his own land enjoyed by the plaintiff and sought to be curtailed by the defendants was worth less than a sum exceeding $500. Unless that was clearly shewn (and the burden was on the defendants), a County Court would have no jurisdiction. In fact the value in such a case as this might well be that of the whole of the plaintiff's land and not merely that strip of land over which the actual roadway runs: see Moffatt v. Carmichael (1907), 14 O.L.R. 595.

The plaintiff's costs were, therefore, taxable on the Supreme Court scale, and the appeal should be dismissed with costs.