no direction that the annuity is to be paid out of the income to accrue during the life of the annuitant, the annuity is a charge upon the income even beyond the life of the annuitant, so that no one can take the income till the arrears of the annuity are satisfied.

Now, my view is, as I have said, that the words here are sufficient to create a charge of the annuities upon the corpus; but if I am not right in that view, the words are at all events sufficient to bring the case within the second class of cases, that is, to create a charge of the annuities upon the income until the arrears of the annuities are made up. I have not, however, been pressed to adopt that view, and looking at the authorities and the reason of the thing, I do not think I ought to extend that inconvenient construction to a case where there is a clear prior gift of an annuity, as in the present instance.

There will, therefore, be a direction that the growing deficiency of income to pay the annuities shall from time to time be made up out of the capital.

Solicitor: *A. T. Cox.*

CANNON *v.* VILLARS.

[1877 C. 490.]

Landlord and Tenant—Right of Way, Restricted or General—Obstruction—Injunction.

Defendant, the owner of a house with a gateway and a paved road under it leading to a paved yard, and a vacant piece of ground at the rear, agreed to grant to the Plaintiff a lease of the house and vacant ground and the appurtenances, with power to erect on the vacant ground a workshop for the purposes of his business as a gas engineer, and it was stipulated that the Plaintiff should not obstruct the gateway, except for the purposes of ingress and egress. The workshop was erected, and the only access to it by vehicles was through the gateway and over the yard which were also the only approach to the stables of the Defendant, who carried on business in adjoining premises. The Defendant's vans, before the agreement was entered into, had often stood in the yard when not in use. The Plaintiff now alleged that the Defendant blocked up the gateway and yard with his vans, and prevented the access of carts and vehicles to his workshop:—

Held, that, under the agreement, the Plaintiff had an implied right of

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way through the gateway and over the yard for the reasonable purposes of his business; that such right was general and not restricted; and that he was entitled to an injunction to restrain the Defendant's obstruction.

Statement.

THIS was an action to restrain the obstruction of a right of way under an agreement.

At the time when the agreement was executed the Defendant was the owner in fee of a house, No. 1, *Bath Street, Southwark*, with a gateway under it, and a yard at the rear, part of which was covered. The road under the gateway, and also the yard, were paved with stone and formed the only approach to certain stables belonging to and occupied by the Defendant. The Defendant, who was an upholsterer, carried on business in premises adjoining, and kept vans for the purposes of his business, which before and at the time when the agreement was entered into were kept standing, when not in use, in the covered part of the yard.

On the 24th of June, 1876, the Defendant entered into an ageeement with the Plaintiff, who was a manufacturing gas engineer, which agreement, so far as material, was as follows:—

"The landlord agrees with the tenant to grant to him, his executors, administrators, or nominees, and the tenant agrees with the landlord to take, all that messuage situate at No. 1, *Bath Street*, together with a piece of vacant ground in the rear thereof, measuring forty feet long and ten feet wide at one end, and fifteen feet wide at the other end, with the appurtenances, for the term of fourteen years.

"The said lease is to contain all usual and proper covenants, and particularly power for the tenant to erect on the said vacant piece of ground a workshop for the purpose of his business as a gas engineer; and such lease and the counterpart thereof are to be prepared at the expense of the tenant.

"The tenant is in no way to obstruct the entrance and gateway, except by the use of the entrance for the purposes of ingress and egress, neither shall the tenant underlet the said house or workshop without the written consent of the landlord."

The Plaintiff had entered into possession and erected at the rear of the yard, in pursuance of the agreement, a workshop in which he carried on his said business.

The only means of access from the high road to the workshop, excepting through the house door, was through the gateway and over the yard. The gateway, when unobstructed, was sufficiently wide to admit the passage of trucks, carts, and vehicles of all kinds.

Statement.

The Plaintiff alleged that it was necessary, for the purposes of his business, that there should be a free and unobstructed means of ingress, egress, and regress for trucks, carts, vans, and horses through the gateway and over the yard; that in June, 1877, the Defendant began, and had since continued, to block up and obstruct the gateway and yard by permitting his vans to be drawn within the same and to remain there at all hours of the day and night, so that frequently only a passage of from two to four feet was left, and sometimes there was no room for a single person to pass; that thus the Plaintiff was prevented from using the gateway and yard for the purpose of taking into or removing from his workshop any work or materials requiring for their conveyance a truck, cart, or van, and from enjoying such right of access as for the purposes of his business he was entitled to enjoy.

The Plaintiff alleged that he had sustained loss and injury by these acts of the Defendant, and claimed an injunction to restrain the Defendant, his agents or workmen, from obstructing or blocking up the gateway and yard, or from interfering with the free ingress and egress of the Plaintiff, with or without trucks, vans, carts, and other vehicles.

The defence was that the Plaintiff had only a right of footway under the agreement, and not a right of way for trucks, carts, vans, or other vehicles; also, that the Defendant had been in the habit of using the covered part of the yard for his own vans before the agreement was entered into, and was still entitled to place them there when not in actual use.

Argument.

Chitty, Q.C., and *Tremlett*, for the Plaintiff:—

The Plaintiff in this case seeks to establish a right of way either by grant or necessity through the entrance or gateway under the house he occupied and over the yard to the workshop which he has erected at the rear, and claims an injunction to restrain the Defendant from blocking it up by his vans. The Defendant

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admits that the Plaintiff is entitled to a right of footway, but we contend the words of the agreement give him a general and not a limited right of way, for he was authorized "to erect on the vacant piece of ground a workshop for the purposes of his business as a gas engineer." This would imply such right of access to the workshop when erected as the purposes of his business required, including necessarily access by carts or waggons.

In *Newcomen* v. *Coulson* (1), where an award under an Inclosure Act directed that certain allottees of land should have a right of way which in terms was only applicable to agricultural purposes, and provided that in case they should "shut out" the way the same should be of a certain width, an owner of one of the allotments having commenced building houses upon the way, which was before a trackway, it was held that they were entitled to construct a substantial roadway applicable to the purposes for which it was now being applied.

The grantee of a tenement is entitled to sufficient way-leave for the purposes of his tenement. Here the right claimed, having regard to the Plaintiff's business, which is referred to in the agreement, must include the right of access for vehicles, and the Defendant should be restrained by injunction from the obstruction complained of.

Davey, Q.C., and *W. C. Harvey*, for the Defendant:—

There is nothing in this case to shew that this is a way of necessity, nor can it be implied as a way of grant. The words of the agreement, which is only an informal agreement for a lease, cannot be construed as giving more than a right of footway to the Defendant's workshops.

In *Cousens* v. *Rose* (2), where, under a lease of a dry dock and warehouses, a right of way was established over the whole of a strip of land between the dock and the warehouses, it was held that the right was confined to foot-passengers.

In construing this agreement regard must be had to the relative position of the parties and to the use made by the Plaintiff of this gateway and yard at the time when the agreement was entered into. It appears that the Plaintiff had been in the habit of using

(1) 5 Ch. D. 133. (2) Law Rep. 12 Eq. 366.

the gateway and yard for his own vans, as they constituted the only approach to his stables, and the vans when not in use usually stood under the covered part of the yard. He cannot therefore now, in the absence of express words, be deprived of the reasonable use of the gateway and yard, especially as by the agreement the tenant was in no way to obstruct the entrance and gateway, except for the purposes of ingress and egress. At any rate, if the injunction is granted, it cannot extend to deprive the Defendant of the reasonable use of his own freehold. In the *United Land Company* v. *Great Eastern Railway Company* (1), where an injunction was granted to restrain the obstruction of the free use of level crossings over a railway, claimed by the occupiers of neighbouring houses, the injunction did not extend to restrain the company from the use of the railway for the reasonable and proper working of the traffic.

JESSEL, M.R.:—

This case has been elaborately argued, but I confess it appears to me that there is really no question either as to what is the law or as to what is the true construction of this agreement. In construing all instruments you must know what the facts were when the agreement was entered into. The first fact here is that the only access to the piece of ground let to the Plaintiff for the purpose of the erection of the workshop available for any cart, waggon, or other vehicle, was through a paved gateway which was the entrance to a long yard also paved in a manner fitted for the passing of carts, waggons, and other carriages. As I understand, it was a stone paved way, so stoned as to be sufficient and proper for that passage. The only other access at all to the *locus in quo* was through the door of a house through which it is admitted carts, waggons, and carriages could not pass. The ownership both of the land of the yard and of the gateway was in the landlord, the Defendant, Mr. *Villars*.

The Plaintiff is a gas engineer, and wished to take the piece of land up the yard for the purpose of building a workshop on it. At the time the agreement was entered into the landlord had

(1) Law Rep. 10 Ch. 586.

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some stables up the yard, to which, I am told, no coachhouse was attached, and he used vans for the purpose of his business, and those vans, of course, when in use were outside in the streets of the town, and when not in use were put under the covered portion of the yard, which immediately adjoined the gateway or entrance. It was stated that these vans did not go out for a whole day, although on working days they usually went out for the whole or a part of the daylight.

Now I will say a word or two about the law. As I understand, the grant of a right of way *per se* and nothing else may be a right of footway, or it may be a general right of way, that is a right of way not only for people on foot but for people on horseback, for carts, carriages, and other vehicles. Which it is, is a question of construction of the grant, and that construction will of course depend on the circumstances surrounding, so to speak, the execution of the instrument. Now one of those circumstances, and a very material circumstance, is the nature of the *locus in quo* over which the right of way is granted. If we find a right of way granted over a metalled road with pavement on both sides existing at the time of the grant, the presumption would be that it was intended to be used for the purpose for which it was constructed, which is obviously the passage not only of foot passengers, but of horsemen and carts. Again, if we find the right of way granted along a piece of land capable of being used for the passage of carriages, and the grant is of a right of way to a place which is stated on the face of the grant to be intended to be used or to be actually used for a purpose which would necessarily or reasonably require the passing of carriages, there again it must be assumed that the grant of the right of way was intended to be effectual for the purpose for which the place was designed to be used, or was actually used.

Where you find a road constructed so as to be fit for carriages and of the requisite width, leading up to a dwelling-house, and there is a grant of a right of way to that dwelling-house, it would be a grant of a right of way for all reasonable purposes required for the dwelling-house, and would include, therefore, the right to the user of carriages by the occupant of the dwelling-house if he wanted to take the air, or the right to have a waggon drawn up to the door

when the waggon was to bring coals for the use of the dwelling-house. Again, if the road is not to a dwelling-house but to a factory, or a place used for business purposes which would require heavy weights to be brought to it, or to a wool warehouse which would require bags or packages of wool to be brought to it, then a grant of right of way would include a right to use it for reasonable purposes, sufficient for the purposes of the business, which would include the right of bringing up carts and waggons at reasonable times for the purpose of the business. That again would afford an indication in favour of the extent of the grant. If, on the other hand, you find that the road in question over which the grant was made was paved only with flagstones, and that it was only four or five feet wide, over which a waggon or cart or carriage ordinarily constructed could not get, and that it was only a way used to a field or close, or something on which no erection was, there, I take it, you would say that the physical circumstances shewed that the right of way was a right for foot-passengers only. It might include a horse under some circumstances, but could not be intended for carts or carriages. Of course where you find restrictive words in the grant, that is to say, where it is only for the use of foot-passengers, stated in express terms, or for foot-passengers and horsemen, and so forth, there is nothing to argue. I take it that is the law. *Primâ facie* the grant of a right of way is the grant of a right of way having regard to the nature of the road over which it is granted and the purpose for which it is intended to be used; and both those circumstances may be legitimately called in aid in determining whether it is a general right of way, or a right of way restricted to foot-passengers, or restricted to foot-passengers and horsemen or cattle, which is generally called a drift way, or a general right of way for carts, horses, carriages, and everything else.

Applying those rules to the case before me, I must say I have no doubt whatever as to the meaning of the agreement. [His Lordship then stated the terms of the agreement.] What do we here find? First we find the Plaintiff is to have power to build on the vacant piece of land. That is very material, because it is admitted on the part of the Defendant that for the purpose of building in *London* you require the right to bring up carts or

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waggons with building materials, as otherwise you cannot build conveniently or reasonably. To this extent, then, at all events, it is absolutely necessary that he must have the right to come with carriages or carts. How does he get it? Only under those words, "ingress and egress;" for I agree entirely with the argument on the part of the Defendant, that where you find an express right of way granted (for there is no question about way of necessity), it is a mere question of construction as to what the extent of the right of way granted is. That being so, it is plain that he must have the right for waggons and carts, at all events, while he is building. What is to limit it? I see no words of limitation. If he has ingress and egress for waggons and carts for building, why not at all times? However, the matter does not stop there. What is he to use it for? He is to use the workshop for his business as a gas engineer. It cannot be seriously contested that the Plaintiff has a right to bring up trucks, which he constantly does, and indeed that is not contested; whether he absolutely wants to take up carts is more in contest, but has he not a right to take up coals in a cart or waggon? A gas engineer wants coal, and indeed everybody wants coal in this climate at some period of the year, whether he is a gas engineer or not; and is it to be suggested that the man who is to build a workshop and use it for the purpose of a gas engineer has not a right to bring a cartful of coals up to the shop? When you come to look at it in that way, it is obvious, without going into evidence, that it is a reasonable use of the right of way, and a use suitable for the business which is to be carried on, that he should use the right of ingress and egress for the purpose of bringing up a truck or a cart when wanted. That being so, it seems to me this is clearly to be held a general right of way.

Then there is this consideration also that it is admitted, from the width of the way, and from the character of the way, and from the mode in which the way was paved, that it is a cartway or carriageway, and nothing else, except in so far as a carriageway and cartway always include a footway. It was constructed for that purpose, and used for that purpose. Therefore we have the other ground also present in this case.

Now, as regards the position of the vans, it is quite true the owner of the stables and the owner of the vans did at one time put

his vans on his own freehold, as he had a right to do, before he executed the grant. But is there anything in that circumstance to shew that he is to continue to put them there, obstructing the right of way granted? I cannot find it at all. It may be, after he granted the right of way, he could not keep his vans there quite so long as before; probably he could not keep them there all day at times when the Plaintiff wanted to take his trucks up. But that is not a permanent physical obstruction forming a portion of the property demised at the time the right of way is granted over it; it is a temporary accident of the business carried on by the grantor, which might be discontinued at any moment. And even if it had been necessary, which it is not, that his vans should be removed altogether, I should not think that circumstance was one which interfered with the proper legal construction of the grant. I am of opinion, therefore, that the Plaintiff is right, and entitled to an injunction to restrain the Defendant, his servants, agents, workmen, and others from blocking up or obstructing or permitting the blocking up or obstructing the entrance or yard so as to interfere with the reasonable use by the Plaintiff, his servants, workmen and agents, with trucks, vans, carts, and other vehicles for the purpose of his business as a gas engineer. It is not intended to prevent the Defendant putting his vans there as he did before, or to prevent the Plaintiff from moving them as he did before.

Solicitors: *Woodbridge & Sons; W. Maynard.*