the road in repair. It will thus be seen that one of the principal questions raised was as to the effect of the covenant to repair the road contained in the original conveyance, and how far it was binding upon the subsequent owners of the land reserved, and of the roadway respectively. The Court were unanimously of opinion that the covenant to repair did not run with the land and did not bind the subsequent owners of the roadway, nor was the plaintiff as owner of the adjoining land entitled to enforce it. Cotton, L.J., says, at p. 773:—

" . . . Undoubtedly where there is a restrictive covenant, the burden and benefit of which do not run at law, Courts of Equity restrain any one who takes the property with notice of that covenant from using it in a way inconsistent with the covenant. But here the covenant, which is attempted to be insisted upon on this appeal, is a covenant to lay out money in doing certain work upon this land; and that being so in my opinion—and as the Court of Appeal has already expressed a similar opinion in a case which was before it—that is not a covenant which a Court of Equity will enforce; it will not enforce a covenant not running at law when it is sought to enforce that covenant in such a way as to require the successors in title of the covenanter to spend money, and in that way to undertake a burden upon themselves."

The plaintiff's action was therefore dismissed against all the defendants.

MORTGAGE—FUND IN COURT—PRIORITY—STOP ORDER.

The case of *Re Holmes*, 29 Chy. D. 786, is a decision of the Court of Appeal affirming Bacon, V.-C., and was a contest for priority between two encumbrancers on a fund in Court; the second encumbrancer took his encumbrance with notice of a prior encumbrance; he, however, obtained a stop order against the fund, which the first encumbrancer did not. It was nevertheless held, that the second encumbrancer was not entitled to priority.

PRINCIPAL AND AGENT—DIRECTOR—MISFEASANCE.

The decision of the Court of Appeal in *Re Cape Breton Co.*, 29 Chy. D. 795, may be read in connection with the recent case in our own Court of Appeal of *Beatty* v. *North-West Transportation Co.*, 11 App. R. 205. In 1871 F. and five other persons purchased certain coal areas for £5,500, which were conveyed to G. as trustee for them without disclosing the trust. In 1873 a company was formed for the purpose of purchasing these areas and other property. F. was one of the directors, and as such he concurred in effecting a purchase from G. for £12,000 cash and £30,000 in fully paid-up shares, without disclosing that he, F., was a part owner. In 1875 the company was ordered to be wound up. In 1878 two schemes were submitted to a meeting of contributories, one for repudiating the purchase of the coal areas, and the other for adopting the purchase and selling the property. The latter scheme was adopted, and the property was sold at a heavy loss. A contributory then took out a summons to make F. liable for misfeasance as a director in allowing the company's seal to be affixed to the contract for purchase from G. Pearson, J., dismissed the application, holding that though the company would have been entitled to rescind the contract, yet as rescission had become impossible no relief could be given against F. That as F. when he purchased was not a trustee for the company, he could not be treated as having purchased on behalf of the company at the price he gave, and, therefore, was not chargeable with the difference between the price at which he bought and the price paid by the company; and that he could not be charged with the difference between the price paid by the company and the value of the property when the company bought it, as that would be making a new contract between the parties. Cotton and Fry, LL.J., agreed in affirming this decision, but Bowen, L.J., dissented. Cotton and Bowen, LL.J., are not very clear as to whether they treat the relation existing between a director and shareholders as that of trustee and *cestui que trust*, or principal and agent. Fry, L.J., plainly asserts the relation to be that of principal and agent, as do Burton and Osler, JJ.A., in *Beatty* v. *North-West Transportation Co.* Fry, L.J., says, at p. 812:—

"I think that the case is one in which the adoption of the contract by the principal puts an end to any further rights against the agent. It appears to me that to allow the principal to affirm the contract, and after the affirmance to claim, not only to retain the property, but to get the difference between the price at which it was bought and some other price, is, however you may state it, and however you may turn the proposition about, to enable the principal, against the will of his agent, to enter into a new contract with the agent, a thing which