

May 1, 1893.

## DUMOULIN v. BURFOOT.

Ontario]

*Contract—Sale of land—Building restriction—Description—Street boundaries—Construction of covenant.*

The owners of a block of land in Toronto, bounded on the north by Wellesley street, and west by Sumach street, entered into an agreement with B. whereby the latter agreed to purchase a part of said block which was vacant wild land, not divided into lots, and containing neither buildings nor street, though a by-law had been passed for the construction of a street immediately south of it to be called Amelia street. The agreement contained certain restrictions as to buildings to be erected on the property purchased, which fronted on the two streets north and west of it respectively, and the vendors agreed to make similar stipulations in any sale of land on the south side of Wellesley street produced.

A deed was afterwards executed of said land pursuant to the agreement which contained the following covenant: "And the grantors . . . . covenant with the grantees . . . . that in case they make sale of any lots fronting on Wellesley street or Sumach street, on that part of lot 1 in the City of Toronto, situate on the south side of Wellesley street and east of Sumach street, now owned by them, that they will convey the same subject to the same building arrangements or conditions (as in the agreement).

The vendors afterwards sold a portion of the remaining land fronting on Amelia street, and one hundred feet east of Sumach street, and the purchaser being about to erect thereon a building forbidden by the restrictive covenant in the deed, B. brought an action against his vendors for breach of said covenant, claiming that it extended to the whole block.

*Held*, affirming the decision of the Court of Appeal, Gwynne, J., dissenting, that the covenant included all the property south of Wellesley street; that the land not being divided into lots any part of it was a portion of a lot of land fronting on Wellesley and Sumach streets, and so within the purview of the deed; and that the vendors could not, by dividing the property as they saw fit, narrow the operation and benefit of their own deed.

*Held*, per Gwynne, J. The piece of land in question did not front or abut on either Wellesley or Sumach street, but on Amelia