

RESTRICTIVE COVENANT—COVENANT FOR "HIMSELF, HIS EXECUTORS, ADMINISTRATORS AND ASSIGNS"—BREACH BY ASSIGN—COVENANT RUNNING WITH LAND CONTINUING BREACH.

*Powell v. Henesley* (1900) 1 Ch. 680. This was an action to restrain the breach of a covenant running with the land. The covenant was contained in a deed of conveyance of part of a building estate, and thereby the defendant (the grantee) covenanted "for himself, his executors, administrators and assigns" with one Ball (the owner of the estate) his heirs and assigns that he would (inter alia) erect on the land conveyed priv te residences only with suitable outbuildings in the rear, and that before commencement of the erection of buildings he would submit plans to the covenantee. The defendant subsequently demised his land to lessees subject to the covenant above mentioned and his lessees entered into similar covenants with him. Ball had conveyed to Bond and the lessees of the defendant commenced to build a house without having submitted plans to Bond or obtained his approval and they also erected a water closet attached to the front of the house and not accessible from the inside of the house. Bond took objection and the lessees stopped building, subsequently the trustee in bankruptcy of the lessees disclaimed the lease and the defendant reentered on the land with the unfinished house upon it. Bond then conveyed his land to the plaintiff who commenced this action to compel the defendant to remove the building, alleging depreciation in the value of the plaintiff's property by reason of the proximity of the unsightly and unfinished house being visible from all the principal rooms of the plaintiff's residence. Eve, J., who tried the action, held that the covenant to submit plans involved a negative covenant that no building should be commenced until plans had been submitted and approved by the covenantee, his heirs and assigns, and that the erection of the house was a breach of the covenant, also that the erection of the water closet was an outbuilding within the meaning of the covenant and that its erection in the circumstances was also a breach of the covenant. But he held that the defendant was not liable to pull down the building, (1) because there was no continuing breach of the covenant, it having been broken once and for all when the house was erected; (2) because the breach was committed not by defendant but by his assigns and the defendant had not by his conduct rendered himself personally liable for the violation of the covenant, and (3) because the words in the covenant "for himself, his executors, administrators and assigns" were used to indicate that the covenant ran