"It is said that, the covenant being one which does not run with the land, this Court cannot enforce it; but the question is not whether the covenant runs with the land, but whether a party shall be permitted to use the land in a manner inconsistent with the contract entered into by his vendor, and with notice of which he purchased. Of course, the price would be affected by the covenant, and nothing could be more inequitable than that the original purchaser should be able to sell the property the next day for a greater price, in consideration of the assignee being allowed to escape from the liability which he had himself undertaken. That the question does not depend upon whether the covenant runs with the land is evident from this, that if there were a mere agreement and no covenant, this Court would enforce it against a party purchasing with notice of it; for if an equity is attached to the property by the owner, no one purchasing with notice of that equity can stand in a different situation from the party from whom he purchased."

To the same effect, *Bleeker* v. *Bingham* (1832), 3 Paige (N.Y.), 246; *Barrow* v. *Richards* (1840), 8 Id., 351; *Coles* v. *Sims* (1854), 5 De G.M. & G., 1, and cases cited in note (2); *Whatman* v. *Gibson* (1838), 9 Sim., 196; *Lord Manners* v. *Johnson* (1875), L.R., 1 Chy.D., 673. *Earl of Zetland* v. *Hislop* (1882), L.R., 7 App. Cas., 427; *Gaskin* v. *Balls* (1879), L.R., 13 Chy.D., 324; *Trustees, etc.*, v. *Lynch* (1877), 70 N.Y., 440; *Hodge, Ex'r, et al.* v. *Sloan* (1887), 107 Id.. 244; *St. Andrew's Lutheran Church's Appeal* (1871), 67 Pa., 512; *Wilson* v. *Hart* (1866), L.R., 1 Chy., 463. These covenants may be said to run with the land in equity, though not in law.

An exception to the rule that the covenant need not run with the land at law is made in those cases in which the promise under seal calls for the performance of some positive act on the land, either of covenantor or covenantee. Thus in *Austerberry* v. *The Corporation of Oldham* (1885), L.R., 29 Chy.D., 750, a number of the inhabitants of the borough, being desirous of constructing a new road, executed a deed of settlement, which recited that the making of the proposed new road would be of great public advantage; that the several parties thereto had agreed to form amongst themselves a joint stock company and to raise capital for the purchase of land for the formation of the road and making and maintaining the same, and that certain trustees had been appointed to carry out the work in accordance with a plan therein minutely described. The trustees purchased from one Elliott, the plaintiff's predecessor in title, a strip of land in the line of the proposed turnpike, at the same time covenanting for themselves, their heirs and assigns, that they, or some one of them, would, within three years, make and fence off, in a workmanlike manner, the said tract of land into a road, to form part of the road provided for in the deed of settlement, and to form the remainder of said road, which, when completed, should be kept open and maintained by the said trustees for the use of the public, subject to such tolls as should be agreed upon. Under a Borough Improvement Act, the defendant purchased the said road, gave notice to the plaintiff to repair the portion on which his property fronted, and upon refusal, proceeded to make the repairs himself. An attempt was made to collect the expenses from the plaintiff, who filed a bill praying *inter alia*, an injunction restraining the defendants from further prosecution. The injunction was refused. Lord Justice Cotton said:—

"In my opinion, if this is not a covenant running at law, there can be no relief in respect of it in equity; it is not a restrictive covenant; it is not a covenant restraining the corporation, or