

stood the dwelling-house of McCarthy, and acquired the benefit of the restrictive covenants entered into by Mrs. Cayley.

On 16th September, 1908, the defendant made an offer in writing to the plaintiffs of \$500 cash (and a further consideration) "for the complete removal and release of the building restrictions on my property at the south-west corner of Beverley and Baldwin streets 90 x 120 feet." The offer was accepted by plaintiffs on 25th September, 1908.

The plaintiffs submitted to the defendant a draft release purporting to be a complete release of all the said restrictive covenants, but the defendant objected that the document was insufficient, inasmuch as it did not dispose of the interest of Walsh therein, and the defendant refused to carry out his part of the contract without obtaining a release from Walsh as well as from the plaintiffs.

Upon these facts, the question stated for the opinion of the Court was, whether Walsh, by reason of the conveyances aforesaid, or otherwise howsoever, obtained such interest (if any) in the said building restrictions as to render it necessary to procure a release or consent from Walsh in order to enable the defendant to build any additional dwellings on his property.

A. Cohen, for plaintiffs.

J. Heighington, for defendant.

TEETZEL, J.:—I am of opinion that the question propounded in the stated case must be answered in the negative. I am unable to read the covenants by Cayley contained in the conveyance from McCarthy to Cayley in any other light than that they were intended for the benefit and advantage of the vendor with reference only to the property reserved by him.

It is a question of intention whether restrictive covenants contained in a conveyance are simply for the vendor's benefit in his capacity of owner of a particular property, or whether they are for the vendor's benefit in so far as he reserves unsold property, and also for the benefit of other purchasers as part of what is called a building scheme. See *Brown on Covenants*, p. 110; *Osburn v. Bradley*, [1903] 2 Ch. 446, 666; see also *Nottingham v. Butler*, 15 Q. B. D. 261, 16 Q. B. D. 778; *Elliston v. Reacher*, [1908] 2 Ch. 374; and *Duke of Bedford v. Trustees of the British Museum*,