

Upon inquiry in the office of the Master of Titles, I find that parcel 42 was subdivided into a large number of lots, and all the deeds from Pike, the owner of the whole parcel, contain a similar provision.

The extraordinary power conferred upon the Court, whereby any condition or covenant running with land may be modified or discharged, is manifestly a power that must be exercised with the greatest caution.

The question as to the validity or effect of this co-called condition—for common law condition it certainly is not—and the question whether it offends against the rule as to perpetuities, are not before me on this application.

I am inclined to think that the fact that this covenant or condition was inserted in all deeds from Pike indicates that there was a common building scheme and that the purchasers may have rights *inter se*.

On this question (upon which I say nothing) I refer the parties to *Formley v. Barker*, [1903] 2 Ch. 539; *Elliston v. Reacher*, [1908] 2 Ch. 665; *Ricketts v. Enfield*, [1909] 1 Ch. 544; *Reid v. Bickerstaff*, [1909] 2 Ch. 505; *Wiley v. St. John*, [1910] 1 Ch. 84, 325.

It would clearly be improper for me to deal with the matter in the manner proposed without notice to Pike and to those claiming under him.

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DIVISIONAL COURT.

FEBRUARY 28TH, 1911.

\*MERRITT v. CITY OF TORONTO.

*Marsh Lands—Right of Owner against Adjoining Owner—Access to Deep Water—Proprietary Rights—Riparian Rights—History of Toronto Harbour and Ashbridge's Bay.*

Appeal by the plaintiff from the judgment of MAGEE, J., dismissing the action, which was brought by the owner of certain lots on Ashbridge's Bay, for a mandamus to compel the defendants to amend a plan of theirs shewing certain work they intended to perform, and which, in pursuance of the plan, they had performed, thereby obstructing the plaintiff's access to the shore and interfering with his riparian rights, and to compel the defendants to remove the obstructions, and to restrain the defendants from interference with the plaintiff's rights.