Arlington avenue at least 20 feet and to be of a prime cost of $2,500 for each dwelling, such dwelling to be either detached or semi-detached, and it is understood that a garage built of solid brick or stone may be erected for private purposes only." Similar covenants were contained in the deeds of other lots sold by the land company.

One of the many defences set up was, that the existence of this covenant created such a defect in the title as justified the purchaser in refusing to complete. The house standing upon the land was in conformity with the covenant; but the defendant said that he required a garage, and did not wish to be compelled to erect one of stone or brick. That did not seem to be his real reason for refusing to complete the purchase; but, if the covenant was one that could be enforced, the defence was good.

The land company had sold or agreed to sell all of its land on the west side of Arlington avenue. The frontage of its lands on the west side was originally (exclusive of the lots fronting on St. Clair avenue) about 853 feet; it had conveyed to purchasers the major portion of this land, but was still possessed of the legal title to some 273 feet, which it had agreed to sell but had not conveyed. The agreements as to the 273 feet were with 5 several purchasers, each of whom has paid a considerable portion of his purchase-price; but a substantial amount remained to be paid upon each purchase; and, by the terms of the agreement, the company was under no obligation to convey until the whole of the purchase-money was paid. Each of the agreements contained a covenant on the part of the purchaser similar in its terms to the grantees' covenant in the deed of 1914, above set out.

Upon this state of facts, it was not necessary to discuss the question whether the circumstances were such as would entitle a purchaser of one of the other parcels of land sold by the land company to enforce against the owner of the land in question the covenant entered into by the plaintiff's predecessors in title. The company refused to release the land from the covenant; it was a covenant for the protection of the land retained by the company; the plaintiff or his wife, the registered owner, bought with notice of it; the law, as established in Tulk v. Moxhay (1848), 2 Ph. 774, and restated in many cases, e.g., London County Council v. Allen, [1914] 3 K.B. 642, is that, in such circumstances, the covenantee can enforce the covenant as against a purchaser from the covenantor.

Upon this ground, without consideration of the other defences, the action should be dismissed. The defendant was entitled to a return of his deposit of $200.