

munity house, or any kind of manufactory, trade or business whatsoever, or erect or build, or commence to erect or build, any building or edifice with intent to use the same, or any part thereof, for any of the purposes aforesaid. The breaches relied on by the plaintiff were that the defendant permitted the use of the several rooms in the houses upon the premises by his tenants, for the business of a tailor, milliner, insurance agent, newspaper dealer, tobacconist, and two express carriers. It also appeared that the general current of business had reached and passed the premises, and that during the pendency of the action, an elevated railroad was built with a station in front of such premises, which the trial court found affected them injuriously, and rendered them less profitable for the purpose of a dwelling house, but did not render their use for business purposes indispensable. The evidence also disclosed that the station covered a portion of the street, its platform occupied half the width of the sidewalk in front of defendant's premises, and from it persons could look directly into the windows, and that this, with the noise of the trains, rendered privacy and quiet impossible, so that large depreciations in rents and frequent vacations followed the construction of the road. Mr. Justice Danforth, speaking for the Court, said—

"It is now claimed by the appellant that there has been such an entire change in the character of the neighbourhood of the premises, as to defeat the object and purpose of the agreement, and that it would be inequitable to deprive the defendant of the privileges of conforming his property to that character, so that he could use it to his greater advantage, and in no respect to the detriment of the plaintiff. The agreement before us recites, that the object which the parties to the covenant had in view was 'to provide for the better improvement of the lands, and to secure their permanent value.' It certainly is not the doctrine of court of equity to enforce, by its peculiar mandate, every contract, in all cases, even where specific execution is found to be its legal intention and effect. It gives or withholds such decree, according to its discretion, in view of the circumstances of the case, and the plaintiff's prayer for relief is not answered, where, under those circumstances, the relief he seeks would be inequitable. . . . If for any reasons, therefore, not referable to the defendant, an enforcement of the covenant would defeat either of the ends contemplated by the parties, a court of equity might well refuse to interfere; or if, in fact, the condition of the property by which the premises are surrounded, has been so altered 'that the terms and restrictions' of the covenant are no longer applicable to the existing state of things. . . . And so, though the contract was fair and just when made, the interference of the court should be denied, if subsequent events have made performance by the defendant so onerous, that its enforcement would impose great hardship upon him and cause little or no benefit to the plaintiff. . . . In the case before us, the plaintiffs rely upon no circumstances of equity, but put their claim to relief upon the covenant and the violation of its conditions by the defendant. They have established, by their complaint and proof, a clear legal cause of action. If damages have been sustained, they must, in any proper action, be allowed. But, on the other hand, the defendant has exhibited such change in the condition of the adjacent property, and its character for use, as leaves no ground for equitable interference, if the discretion of the court is to be governed by the principles I have stated, or the cases which those principles have controlled."

See also the *dictum* above quoted from *Roper v. Williams* (1822), 1 T. & R., 17.

**Object of Restriction.**—It must also appear, either from the terms of the agreement, from the circumstances in which it originated, or the situation and condition of the property, that the restriction was intended to benefit that property, and not merely for the personal advantage of the original covenantee: *Keates v.*