

RESTRICTIVE COVENANTS AS TO USE OF LAND—ESTATE SOLD IN LOTS—MUTUAL COVENANTS BY PURCHASER WITH VENDOR AND PURCHASERS OF LOTS.

King v. Dickeson, 40 Chy.D. 596, was an action for an injunction to restrain the breach of restrictive covenants as to the use of land. An estate was sold in building lots; the purchasers of each lot entered into a covenant with the vendor and with the purchaser of the other lots not to build on his lot beyond a specified line. The purchaser of one lot mortgaged part of his lot. The mortgagee had notice of the covenant, but no restriction as to the use of the land was imposed on him by the mortgagor. The mortgagee, having foreclosed his mortgage, sold the mortgaged land, and it ultimately vested in the defendant, both the defendant and the sub-purchasers, through whom he claimed, buying with notice of the covenant. The action was brought by the mortgagor in respect of his ownership of the other part of the lot not included in the mortgage; but it was held by North, J., that although the purchasers of other lots would be entitled to prevent the defendant from building contrary to the covenant, yet that the mortgagor, having imposed no restriction on his mortgagee, could not compel its observance either by the mortgagee or any one claiming under him. The action was therefore dismissed.

VENDOR AND PURCHASER—SALE OF "BUSINESS PREMISES"—PROPERTY SUBJECT TO UNDISCLOSED RESTRICTIVE COVENANTS—DEFECT IN TITLE—RETURN OF DEPOSIT.

In re Davis & Cavey, 40 Chy.D. 601, was an application under the Vendors' and Purchasers' Act. The property in question was sold at auction, and described in the particulars as "leasehold business premises." The conditions of sale provided that the title should commence with the conveyance to the vendors and that no objection should be made to anything contained in the lease; but nothing was said about its contents, and no opportunity was given to intending purchasers to inspect the lease, and the property was bought by a purchaser who had not inspected it. After the sale the purchaser discovered that the lease contained covenants restricting him from carrying on upon the premises any trade or business, or doing any act to the nuisance or annoyance or damage of the lessors or the adjoining tenants, or using the premises as a public house. The question was whether, under these circumstances, the purchaser was bound to accept the title; and it was held by Stirling, J., he was not, because as the property was put up for sale as business premises the vendor was entitled to a title that would enable him to carry on any business, subject only to the restrictions imposed by the general law, or in force as to any particular trade; and that as the covenant in question imposed serious restrictions upon the use of the premises as business premises, he was entitled to a declaration that the title was not such as he could be compelled to accept; but the Court refused to order a return of the deposit, because the Court held that in such a case as the present the deposit could only be ordered to be returned if the contract was invalid; and that upon an application under the Act the validity of the contract could not be disputed. The order was, however, made without prejudice to an action for the deposit.