The appeal was heard by MEREDITH, C.J.O., GARROW, MACLAREN, and MAGEE, JJ.A., and KELLY, J.

Merritt A. Brown, for the appellants.

J. H. Bone, for the purchaser, respondent.

GARROW, J.A., delivering judgment, said that the vendors' contention was, that the effect of the sale and conveyance for taxes was wholly to eliminate the restrictive covenant as in any way affecting the title; they also relied on the curative effect of 8 Edw. VII. ch. 118 (an Act respecting the Town of Toronto Junction, in which the lands were situate), sec. 18.

The nature and effect of restrictive covenants had been under consideration in many recent cases: London County Council v. Allen, [1914] 3 K.B. 642, 672; In re Nisbet & Potts' Contract, [1905] 1 Ch. 391, [1906] 1 Ch. 386; Milbourn v. Lyons, [1914] 1 Ch. 34, [1914] 2 Ch. 231.

Under these authorities, if there is a dominant tenement, the owner, and he alone, can claim the benefit of the covenant. If there is not such a tenement, the claim upon the covenant, as against subsequent assignees or purchasers, entirely ceases, although the personal claim between the original covenantor and covenantee may still exist. And, if the claim has become a mere personal one against the owner, it cannot form the basis of a valid objection to the title.

The case is unaffected by 8 Edw. VII. ch. 118, sec. 8, which was intended mainly to cure defects in procedure.

In the absence of definite information as to the ownership of the adjoining lands, and assuming that there is land in the position of a dominant tenement giving the owner the right to claim the benefit of the restrictive covenant as creating an equitable interest analogous to an equitable easement in the vendors' lands, the effect of the sale and conveyance for taxes was to convey to the purchaser the land free from any claim under the covenant: Tomlinson v. Hill (1855), 5 Gr. 231; Soper v. City of Windsor (1914), 32 O.L.R. 352; In re J. D. Shier Lumber Co. Assessment (1907), 14 O.L.R. 210, 221; sec. 178 of the Assessment Act, R.S.O. 1914 ch. 195; Essery v. Bell (1908), 18 O.L.R. 76.

The objection upon which the purchaser relied was, therefore, not a valid objection.

MEREDITH, C.J.O., MACLAREN and MAGEE, JJ.A., concurred.

KELLY, J., also concurred, giving written reasons.

Appeal allowed.