

The defendants did not in any way enter into competition with the plaintiffs; and the business which they carried on caused no appreciable damage to the plaintiffs—not even increasing their fire-risk or insurance-rates.

After the plaintiffs knew the purpose to which the defendants intended to devote their property, they not only made no objection but actually encouraged the defendants in establishing their foundry. There was no merit whatever in the plaintiff's action. They based it wholly upon a restriction to which Dickson wished to subject purchasers from him of the lands in question and other lands farther north, which were served, like the properties of the parties, by an hydraulic canal which Dickson had constructed.

It was undoubted that a restriction was imposed, in 1842, upon the predecessors in title of the parties, that only one foundry should be carried on upon the lots served by the canal. At the time no power except that of water was in use, ordinarily, in Upper Canada. Dickson's intention was, it would seem, to prevent competition among the lessees from him of the power which he had made available.

The restriction was contained in a form of agreement which was not registered, and the defendants were purchasers for value without notice of such restriction.

Since 1842, conditions had so changed in this Province that the object of the restriction could not be attained. As in *Sobey v. Sainsbury*, [1913] 2 Ch. 513, to give effect to the plaintiffs' contention would be to perpetuate, far beyond the real intention of the original contracting parties, restrictions which by the course of time had become obsolete and meaningless. The plaintiffs might not be actuated by mere caprice, or by a desire to make money out of a possible breach by the defendants of technical and obsolete restrictions; but, in the altered state of circumstances, the enterprise of the defendants should not be prohibited at the instance of persons who had not sustained and were never likely to sustain damage by what the defendants had done.

*Action dismissed with costs.*