

TEETZEL, J.

MARCH 20TH, 1909.

## WEEKLY COURT.

## COSMOPOLITAN CLUB v. LAVINE.

*Vendor and Purchaser — Deed — Restrictive Covenants — Building Scheme — Release of Covenants by Assignee of Covenantee — Rights of Owners of other Parts of Same Block of Land — Intention — Absence of Privity.*

Motion by the plaintiffs for judgment upon a case stated for the opinion of the Court under Con. Rule 372.

Before 1st June, 1886, one D'Alton McCarthy was the owner in fee simple of a parcel of land on the south-west corner of Baldwin and Beverley streets, in the city of Toronto, having a frontage on the west side of Beverley street of 207 feet by a depth of 160 feet. By deed of that date McCarthy conveyed to Mrs. Jane I. Cayley the northerly 90 feet from front to rear, reserving for himself the southerly 117 feet from front to rear, upon which was built his dwelling-house. It was recited in this deed that McCarthy was the owner of the land to the south of that conveyed to Mrs. Cayley, and that, to protect himself from injury by the erection of buildings or otherwise, he had considered it advisable to exact certain covenants from Mrs. Cayley; and she, for herself, her heirs, executors, administrators, and assigns, covenanted with McCarthy, his heirs and assigns, that she, her heirs, executors, administrators, and assigns, or any person or persons claiming or deriving title to the lands conveyed, or any part thereof, through, under, or in trust for her, should not, at any time or times during the period of 33 years from the date of the deed, erect, build, etc., on the southerly portion of the lands conveyed to her, having a frontage on Beverley street of 15 feet by a depth of 120 feet, any edifice or building whatsoever, but should at all times during such period maintain and keep that part of the lands in its then open state and condition; and she further covenanted that she, her heirs and assigns, or such other persons as aforesaid, should not during such period cause or permit to be done and carried on upon the lands, or any part thereof, any act, matter, or thing, or any trade,