

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH
DECISIONS.

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**COVENANT — TIED PUBLIC HOUSE — MORTGAGOR — MORTGAGEE — ASSIGNS —
UNDERLESSEE WHEN BOUND BY RESTRICTIVE COVENANT — NOTICE - FIRM.
COVENANT FOR BENEFIT OF.**

In *John Brothers v. Holmes* (1900) 1 Ch. 188, the plaintiffs sued to restrain the defendant from selling beer, etc. on certain premises other than such as should have been supplied by the plaintiffs. The premises in question were leasehold, and were subject to two mortgages. The plaintiffs claimed as assignees of the second mortgage which contained a covenant binding the mortgagor to sell only beer, etc. supplied by the mortgagee's firm of "John Brothers." The covenant was made with the members of the firm, their executors, administrators and assigns, and purported to bind the public house on the premises to John Brothers for the entire supply of beer so long as the mortgagor, his executors, administrators or assigns should be in possession of the premises. The plaintiffs besides being assigns of the second mortgage and the covenant, were also assigns of the business of "John Brothers." The defendant claimed under an underlease made by the mortgagor when in possession to which the first mortgagee was also a party, and though he had taken with notice of the restrictive covenant on which the plaintiffs relied, he claimed that he was not bound by it, as he derived title from the first mortgagee, and further that as an underlessee, he was not an "assign" of the covenantor within the meaning of the covenant. Kekewich, J. was of opinion that the plaintiffs were entitled to succeed, holding that the covenant though made with the individual partners was intended for the benefit of the business of the firm, and that the plaintiffs as assignees of the mortgage and business were entitled to enforce it. He also considered that as the Conveyancing Act, 1881, s. 18, expressly empowers a mortgagor in possession to make a valid lease as against every incumbrancer, the defendant must be considered to be in under the title conferred by the mortgagor, and could not escape liability under the covenant as lessee of the first mortgagee, and that the covenant was wide enough to bind all persons claiming under the mortgagor. Sec. 18 of the Convey-