grantee of part of the tract had been permitted to build in disregard of the restriction. Lord Chancellor Eldon said—

"Every relaxation which the plaintiff has permitted, in allowing houses to be built in violation of the covenant, amounts *pro tanto* to a dispensation of the obligation intended to be contracted by it. Very little, in cases of this nature, is sufficient to show acquiescence; and courts of equity will not interfere unless the most active diligence has been exerted throughout the whole proceeding. . . . . In every case of this sort, the party injured is bound to make immediate application to the court in the first instance; and cannot permit money to be expended by a person, even though he has notice of the covenant, and then apply for an injunction. Taking all the circumstances together, the permission to build contrary to the covenant, and the laying by, four or five months, before filing the bill, this is not a case in which a court of equity ought to interfere by injunction, but the plaintiff must be left to his remedy at law."

So, also, *Peek* v. *Matthews* (1867), L.R., 3 Eq., 515; *Gaskin* v. *Balls* (1879), L.R., 13 Chy. D., 324; *Eastwood* v. *Lever* (1863), 4 DeG., J. & S., 114; *Child* v. *Douglass* (1854), 5 DeG., M. & G., 739.

The waiver relied upon, must be in respect of a material violation of the covenant. In *German* v. *Chapman* (1877), L.R., 7 Chy. D., 271, the law is recognized to be, as stated in *Roper* v. *Williams*, that—

"If there is a general scheme for the benefit of a great number of persons, and then, either by permission or acquiescence, or by a long chain of things, the property has been either entirely, or so substantially changed, as that the whole character of the place or neighbourhood has been altered, so that the whole object for which the covenant was originally entered into, must be considered to be at an end, then the covenantee is not allowed to come into the court for the purpose merely of harassing and annoying some particular man, where the court could see he was not doing it *bona fide*, for the purpose of effecting the object for which the covenant was originally entered into."

The Court (in *German* v. *Chapman*) then proceeded—

"That is very different from the case we have before us, where the plaintiff says that in one particular spot, far away from this place, and not interfering at all with the general scheme, he has, under particular circumstances, allowed a waiver of the covenant. I think it would be a monstrous thing to say that nobody could do an act of kindness, or that any vendor of an estate who had taken covenants of this kind from several persons, could not do an act of kindness, or from any motive whatever, relax in any single instance any of these covenants, without destroying the whole effect of the stipulations which other people had entered into with him. For instance, in this very case, application was made to the plaintiff for a waiver. It would be monstrous to suppose, if he had acceded to that application, that therefore he was, by the mere act of kindness to the defendants themselves, destroying the whole benefit of the covenants as to all the rest of the estate."

The same ruling in *Western* v. *Macdermott* (1866), L.R., 1 Eq., 499, *s.c.* affirmed on appeal (1866), L.R., 2 Chy. App., 72; *Kent* v. *Sober* (1851), 1 Sim., N.S., 517.

Where a contingency has happened, not within the contemplation of the parties, which imposes upon the property a condition frustrating the scheme devised by them, and defeating the object of the covenant, thus rendering its enforcement oppressive and inequitable, a court of equity will not decree such enforcement. In *Trustees of Columbia College* v. *Thatcher* (1881), 87 N.Y., 311, the covenant was not to erect, establish or carry on in any manner, on any part of the said lands, any stable, school-house, engine-house, tenement or com-