

HON. SIR. G. FALCONBRIDGE, C.J.K.B. FEB. 11TH, 1913.

HOODLESS v. SMITH,

4 O. W. N. 816.

Vendor and Purchaser—Covenant—Running with Land—Purchaser from Covenantor—No Right to Enforce Covenant.

FALCONBRIDGE, C.J.K.B., *held*, that where plaintiff and defendants were common purchasers from a covenantor who covenanted against building a shop on the lands in question, the covenant did not run with the land and plaintiffs could not enforce same.

Action for breach of an alleged covenant as to building running with the land, tried at Hamilton.

M. Malone, for the plaintiffs.

O'Reilly, K.C., and Hope Gibson, for the defendants.

HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B.:—
At the hearing I dismissed that part of the plaintiffs' claim, which alleged that their building or property had been injured by reason of the defendants' excavation for their cellar.

As to the claim for breach of an alleged covenant running with the land in erecting a shop and flats, I fail to see how defendants' position is at all improved by Mrs. Markle procuring the conveyance to her of the 25th April, 1912, from the Cumberland Land Company, which had no longer any interest in the lands in question.

But I also am unable to find that there is here any covenant running with the land in favour of plaintiffs. They are not purchasers from the Cumberland Land Company, to whom the covenant was given, but they and defendants are purchasers from Mrs. Markle, who gave the covenant.

No case cited seems to me to have any application to the point. *Pearson v. Adams*, 27 O. L. R. 87, cited by plaintiffs, has just been reversed by the Appellate Division.

The merits are with the defendants. The district is not residential, and they bought without knowledge of the alleged covenant.

Action dismissed with costs. Thirty days' stay.