Change in Character of Property.—A court of equity will not enforce a covenant of the character under consideration, where the complainant has caused or permitted a material change in the property, for the benefit of which the scheme of restriction was adopted, nor where, by reason of the altered condition of the property, it would be oppressive to give effect to the covenant or agreement. This question arises in three classes of cases: *first*, where the complainant has himself altered the condition of the property with respect to which the scheme of improvement was devised; *second*, where he has permitted breaches by other covenantors; and, *third*, where the condition of things has been altered by changes referable to the acts of others. Thus in *Duke of Bedford* v. *Trustees of the British Museum*, often cited as the British Museum case, (1822), 2 M. & K., 552, the Duke of Bedford, being the owner of all the property in the neighbourhood of the British Museum, for the protection of a large part of that property, took a covenant from the person to whom he sold or let other parts of the property, restricting them from building otherwise than in a particular way. He afterwards himself built upon a large part of the property which was originally intended not to be built upon. In refusing his application for an injunction to restrain the defendant, being the grantee of the original covenantor, from building in violation of the covenant, the Court said—

"If this deed is permitted to be urged against what I must call, not the legal, but the actual intention of the parties, and if you have the means of obtaining any remedy, you may have recourse to your deed; but you cannot, under such circumstances, come into a court of equity for a remedy which the court never grants, except in cases where it would be strictly equitable to grant it. It is impossible to state as the doctrine of a court of equity, that the court will carry into execution a specific covenant, in all cases where the legal intention of the deed is found. . . . . The question is whether, from the altered state of the property, altered by the acts of the party himself, he has not thereby voluntarily waived and abandoned all that control which was applicable to the property in its former state."

To the same effect are *Sayres* v. *Collyer* (1883), L.R., 24 Chy. D., 180; *Lattimer* v. *Livermore* (1878), 72 N.Y., 174.

Where the covenant is framed to provide uniformity in the mode of building, so that the enjoyment which springs from regularity in a series of dwellings may be preserved, he who seeks to enforce the covenant must suffer no such breach of the stipulation by other grantees as will frustrate all the benefit that would otherwise accrue to the other parties to the agreement. Thus, in *Roper* v. *Williams* (1822), 1 T. & R., 17, the defendant Williams had conveyed to the plaintiff a piece of ground, being part of a larger tract, convenanting for himself, his heirs, appointees and assigns, that all buildings to be erected on the adjoining land of the grantee should be built in a certain manner. The bill stated that Williams had contracted to sell, and was about to convey to the defendant, Burnand, part of the land belonging to him to the west of the plot conveyed to the plaintiff, without requiring any stipulation that Burnand should refrain from building houses in a manner not comformable to his covenant, and that Burnand had agreed to let the land for the erection of houses not in conformity with the covenant. It appeared by affidavits, that four years previously another