

I am satisfied, in the present case, that the object of the restrictive covenants was one of self-protection to the vendor; that there was no scheme whereby all would be benefited in the same way so as to make a common right. . . . I have, therefore, to deal with the question as it affects plaintiff's rights only under the deed.

It is hardly pretended by plaintiff that she has been injured except in respect of the lot adjacent on the north. Plaintiff has sold all her other lots in that vicinity, save the 3 lots on the same street immediately north of the lot in question, and the lot immediately adjacent to the lot in question is the one supposed to be injuriously affected by the construction of the building complained of. I am satisfied from the evidence that the injury to plaintiff is of a very trivial character. It will be noticed that the restrictive covenants contained in the deed are binding for 5 years only. . . . Plaintiff's husband in his evidence stated that it was not a case of time limit. If no house at all had been built on the premises he "would not be complaining." . . . The lands are rapidly rising in value in that vicinity, and the delay in the sale of the adjacent lots, by reason of the nature of the building in question—if such be the case, which is by no means clear to me—has probably resulted in a benefit and not in a loss to plaintiff.

It was strongly pressed upon me by plaintiff's counsel that a breach of a covenant of this kind is not one on which damages may be given in lieu of an injunction, but that the breach, being once established, from the nature of the case carries with it the right to an injunction as the only proper remedy. It was said that damages could not take the place of an injunction, and the following authorities were cited to support that position: *Collins v. Cassels*, 36 Ch. D. 243; *VanKoughnet v. Denison*, 1 O. R. 349; *Gaskin v. Balls*, 13 Ch. D. 324; *Manners v. Johnson*, 1 Ch. D. 673; *Kerr on Injunctions*, 4th ed., pp. 413-4. No doubt, the remedy originally was an injunction to restrain a breach of the covenant, but under Lord Cairns's Act, and now under the Judicature Act, sec. 58, sub-sec. 10, "the Court, if it thinks fit, may award damages to the parties injured either in addition to or in substitution of such injunction or specific performance." . . .

[Reference to *Shelfer v. City of London Electric Lighting Co.*, [1895] 1 Ch. at pp. 319, 322.]

In the present case the injury to plaintiff's legal rights is small, and is one which is capable of being estimated in