**RESTRICTIVE CONDITION**—COVENANT RUNNING WITH LAND—PERSONAL AND COLLATERAL COVENANT—BREACH OF CONDITION AFTER DEATH OF GRANTOR—RIGHT OF ACTION—ASSIGNS OF ESTATE SOLD SUBJECT TO RESTRICTIVE CONDITION.

In *Formby* v. *Barker* (1903) 2 Ch. 539, the plaintiff was executor and sole devisee of a vendor who had sold an estate of which he retained no part. In the conveyance was contained a covenant against erecting any beerhouse or shop or hotel of less annual value than £50. The vendees did not execute the deed. It was consequently held that there was in fact no covenant, but what purported to be a covenant was in fact a condition. The vendees sold the land and the defendants by virtue of certain mesne conveyances became the owners, and were proceeding to erect a building in alleged breach of the condition. Before this alleged breach the vendor had died, and the present action by his real and personal representative was brought to restrain the alleged breach. Hall, V.C., who tried the action, dismissed it on two grounds, first because, as he found, there had been no breach, and second, because if there had been the plaintiff could not maintain an action in respect of a breach committed after the death of the vendor. The Court of Appeal (Williams, Romer, and Stirling, L.JJ.) agreed with him on both grounds. In the point of law involved on the second ground of his decision they held that the doctrine of *Tulk* v. *Moxhay*, 2 Ph. 774, did not apply because the vendor retained no land intended to be benefitted by the covenant or condition, that it was therefore merely personal and collateral. That even if there had been a legal covenant it would not run with the land so as to bind an assign of the vendee, nor would the benefit of it be transmissible to the real or personal representative of the vendor except as to breaches committed in his lifetime; therefore they held that an injunction was properly refused.

**SETTLEMENT**—COVENANT TO SETTLE AFTER ACQUIRED PROPERTY—GENERAL POWER OF APPOINTMENT.

*In re O'Connell, Mawle* v. *Jagoe* (1903) 2 Ch. 574, Kekewich, J., decided that property over which a married woman had during coverture acquired under a will a general power of appointment, and which in default of appointment was bequeathed to her absolutely, was property within the meaning of a covenant in her