

"From the facts found by the judge at special term, it appears . . . that the strips of eight feet in width on both sides of the street should not be built upon, but kept open. It is to be presumed that they [the purchasers] would not have bought and paid their money except upon this assurance. It is to be presumed that, relying upon this assurance, they paid a larger price for the lots than otherwise they would have paid. Selling and conveying the lots under such circumstances and with such assurances, though verbal, bound Davis [the vendor] in equity and good conscience to use and dispose of all the remaining lots, so that the assurances upon which Maxwell [a purchaser and one of the plaintiffs in the suit] and others had bought their lots, would be kept or fulfilled. This equity attached to the remaining lots, so that any one subsequently purchasing from Davis any one or more of the remaining lots, with notice of the equity as between Davis and Maxwell and others, the prior purchasers, would not stand in a different situation from Davis, but would be bound by that equity."

To the same effect, *Parker v. Nightingale* (1863), 6 Allen (Mass.), 341; *Newman v. Nellis* (1884), 97 N.Y., 285; *Lenning v. The Ocean City Ass'n* (1886), 14 Stew. Eq. (N.J.), 606. The mere exhibition, however, of a plan, with proposed streets and buildings marked upon it, or representing the land as laid out in a particular manner, will not create a contract, in the absence of any stipulation affecting the course of improvements: *Squire v. Campbell* (1836), 1 Myl. & Cr. 458. The apparent conflict between these cases is explained by difference in the facts involved. In the New York case, the facts found by the judge at special term, and the facts admitted by the pleadings, showed that the lots were bought upon the assurance or agreement of Davis that all the houses on the plan, as shown in the map, were to be set back eight feet from the street. In the English case, the plan was exhibited upon the treaty for a lease. The lease as executed, contained on the margin another plan which did not extend to include that part of the property on which the injunction, if granted, would operate. In the former case, the evidence established a parol contract collateral to the grant; in the latter, the affidavits presented tended to vary the extent and form of the plan as embodied in the lease, and, in that respect, to alter the terms of the written contract.

The restriction on the use of the property must not amount to a general restraint of trade; for the law will not permit any one to restrain a person from doing what his own interest and the public welfare require that he should do. Any deed, therefore, by which a person binds himself not to employ his talents, his industry or his capital, in any useful undertaking in the kingdom, would be void: *Homer v. Ashford* (1825), 3 Bing., 326; *Brewer v. Marshall* (1868), 4 C. E. Green (N.J.), 537.

The rule as to what will constitute an illegal contract, as laid down in the leading case of *Mitchell v. Reynolds* (1711), 1 P. Wms., 181, is that where the restraint is not general, but partial, and is founded on a valuable consideration, it cannot be said to be an unreasonable restraint; and a restraint preventing a person from carrying on trade within a certain limit of space, though unlimited as to time, may be good, and the limit of space may be according to the nature of the trade: *Catt v. Tourle* (1869), L.R., 4 Chy. App., 654; *Trustees, etc., v. Lynch* (1877), 70 N.Y., 440; *Hodge v. Sloan* (1887), 107 Id., 244; *Wilson v. Hart* (1866), L.R., 1 Chy. App., 463; *Luker v. Dennis* (1877), L.R., 7 Chy. D., 227.