

in it. The material facts of the case were as follows: Clegg & Hands were brewers, carrying on business at Toxteth Park, and were owners of a public house, which they leased to the defendant, subject to a covenant that he should not, during the time, buy, sell, or dispose of, upon the premises any beer other than what should be purchased from the lessors, or either of them, either alone or jointly with any other person or persons who might thereafter enter into partnership with them, provided they should be willing to sell good beer at fair current prices; but the lease defined "lessors" to include their executors, administrators, and assignees. The lessors sold their business and good-will to their co-plaintiff, Cain, who carried on business at Liverpool, and the business at Toxteth Park was closed up. Cain and the lessors sued to enforce the covenant, and several points were raised on behalf of the defendants in answer to the claim. It was argued that the covenant obliged the lessees to buy beer only of the lessors or their partners or assigns, who should carry on business at Toxteth Park; that the covenant was a personal covenant incapable of assignment, and therefore did not run with the land, and that in any case Cain was not entitled to enforce it. But the Court of Appeal (Cotton, Lindley, and Lopes, L.JJ.) decided against all these contentions, and held that where an affirmative covenant of this kind has a negative element in it, or the covenant is partly negative and partly affirmative, the Court in a proper case will enforce the negative covenant, and therefore the injunction granted by Bristowe, V.C., restraining the defendants from purchasing beer elsewhere than from Cain, contrary to the covenant, was properly granted.

MORTGAGE—SOLICITOR—MORTGAGEE—COSTS—PROFIT COSTS.

In *Field v. Hopkins*, 44 Chy.D., 524, a mortgage was made to two persons, one of whom was a solicitor, and the other an auctioneer. It contained a stipulation that the mortgagees should be "entitled to make the same charges and receive the same remuneration respectively for all business done by them respectively, in and about these presents, as they would have been entitled to make if they had not been mortgagees," and there was a covenant by the mortgagors to pay the mortgage debt, and "every other sum which may hereafter be advanced or paid by the mortgagees," or either of them. The mortgage money was advanced by the mortgagees as trustees, and prior to the mortgage, which was prepared by the solicitor-mortgagee, a valuation of the property was made by the auctioneer-mortgagee, on the instructions of the solicitor. Notwithstanding the stipulation and covenant above referred to, however, it was held by Kay, J., that the mortgagees could not in a foreclosure action charge against the mortgaged estate: (1) the costs of an order obtained by the solicitor on behalf of the mortgagors, subsequent to the mortgage, appointing trustees under the Settled Land Act, 1882, for the purpose of leasing part of the mortgaged property, (2) nor to costs incurred by one of the mortgagors to the solicitor-mortgagee, subsequent to the mortgage in matters unconnected with it; and (3) nor to a fee paid by the solicitor-mortgagee to the auctioneer-mortgagee for his valuation. This decision was affirmed by the Court of Appeal (Cotton, Lindley, and Lopes, L.JJ.). Kay, J., lays it down that a mortgagee cannot contract for the payment