Plaintiff charges that defendant has violated the covenant contained in the deed and mortgage by erecting upon the premises a shanty of rough boards, which was and is now occupied as a dwelling-house, and which is not of modern design. Neither was the same approved of by plaintiff's husband, nor did it cost $900. And, in consequence, plaintiff's other vacant lots surrounding the same have largely depreciated in value. . . .

By way of counterclaim defendant claims that the terms and conditions in the said deed and mortgage should be set aside, and the mortgage should be reformed. . . .

At the close of the argument I intimated that the evidence fell very short of satisfying me that there had been any misrepresentation, or such as would justify the reformation of the deed or mortgage. On further consideration of the case I am confirmed in this view, and of the opinion that the case must be dealt with upon the documents as they were signed. I think it is quite clear from the evidence that restrictions in the mortgage, at all events, were intended merely as a matter of security, and that the effect of default or breach of the first covenant is to give the mortgagee "all rights and remedies as are exercisable on default of payment of interest." Advantage was taken of this covenant, and an action was brought upon the mortgage, and $300 paid on account of principal. The interest has been paid.

I think, therefore, that the restrictions contained in the mortgage may be eliminated from this case, and those contained in the deed only further considered. . . . The building erected on the premises, on defendant's own evidence, falls far short of being a compliance with the covenant. . . . I should think that $200 or $250 is probably the full value of the building. . . .

One question to be considered is, whether it was the intention of the parties that this restriction mentioned in the deed should form part of an existing building scheme, so that other purchasers of land from plaintiff would be entitled to avail themselves of the covenant contained in defendant's deed. . . . "A question of intention:" per Wills, J., in Nottingham Brick Co. v. Butler, 15 Q. B. D. at p. 268; a question which can only be determined from the circumstances of each particular case. . . .

[Reference to Collins v. Cassel, 36 Ch. D. 243; Dart on Vendor and Purchaser, 6th ed., p. 867.]