

Eng. Rep.]

FEILDEN V. SLATER AND SEFTON.

[Eng. Rep.]

but had it only referred to his reputation, I am of opinion that this court would also have jurisdiction. It was contended, to my surprise, that in *Fleming v. Newton*, Lord Cottenham had decided that in such a case this court had no jurisdiction, but on referring to that case, I find that Lord Cottenham only expressed an opinion that such jurisdiction should be exercised cautiously. In the case of *Springhead Company v. Riley*, which has never been appealed, I had to consider all the authorities bearing on this question. I apprehend that the case of *Routh v. Webster*, goes the whole length of what is asked here. The next case is *Clark v. Freeman*. I refer to the observation of Lord Cairns upon that case in *Maxwell v. Hogg*, 16 W. R. 84, L. R. 2 Ch. 310, where he says,—"It always appeared to me that *Clark v. Freeman* might have been decided in favour of the plaintiff, on the ground that he had a property in his own name." With this observation I entirely agree. I am of opinion that the original injunction in this case was rightly granted. Has then the subsequent conduct of the defendants mitigated the offence? In their answer and evidence they appear rather to attempt to justify themselves than to apologise. The injunction must, therefore, be made perpetual, and they must pay the costs of the suit. Wherever the publication of advertisements or other documents tend to destroy or deteriorate property, whether tangible or intangible, this court has, in my opinion jurisdiction to interfere, and a man's reputation and mercantile credit is assuredly a most valuable part of his property.

FEILDEN V. SLATER AND SEFTON.

Covenant—Practice—Affidavit—Lease—Notice—Construction of covenant—Damage—Parties.

An affidavit filed on the part of a defendant cannot, in a "cause, be read as evidence against a co-defendant.

Lord v. Colvin, 3 Drew. 222, distinguished.

The rule that a purchaser is bound to inquire into the title of his vendor, and is affected with notice with what appears upon the title if he does not so inquire, applies in the case of a lessee who neglects to inquire into his lessor's title.

Wilson v. Hart, 14 W. R. 748, L. R. 1 Ch. App. 463, followed.

A covenant not to use a house "as an inn, public-house, or tap-room, or for the sale of spirituous liquors, ale or beer," is broken by the sale therein of spirits or beer in bottles, though the house is not used as a public-house, and the liquors are not sold by retail, or to be drunk on the premises.

A plaintiff suing for an injunction to restrain a breach of a covenant, is not bound to show any special damage sustained thereby.

A. conveys land to B., which B., by the same instrument, covenants that he will not use or suffer to be used for certain purposes. B. leases the land to C., who uses it for the purposes forbidden by the covenant. B. is not a proper party to a bill filed by A. for an injunction to restrain any further breach of the covenant.

[V. C. J. 17 W. R. 485.]

By indenture of the 25th of April, 1854, John Feilden and Joseph Feilden (the plaintiff) conveyed certain dwelling-houses and shops in the borough of Blackburn to the defendant Slater and three other persons, in equal shares, as tenants in common, reserving a perpetual rent charge of £40 a-year. By the same indenture the purchasers (including the defendant Slater) jointly and severally covenanted with John Feilden and the plaintiff, their heirs and assigns, among other things, that they would not use or

occupy, or permit to be used or occupied, any of such buildings as an inn, public-house, or tap-room, or for the sale of spirituous liquors, or ale, or beer, nor set up or exercise, or cause or suffer to be set up or exercised thereon any business or manufactory which might be detrimental to the neighbourhood.

In the year 1859 the interest of John Feilden in the premises became absolutely vested in the plaintiff.

By a deed of partition, dated 25th February, 1858, the defendant Slater became solely entitled to one of the dwelling-houses and shops in question; and by an indenture, dated 1st November, 1862, the defendant Slater demised the same to the defendant Sefton for a term of twenty-one years; and the same indenture contained a covenant on the part of Sefton to the effect that no offensive business or occupation or nuisance should be carried on or committed on the same premises, and that the same should be used as a dwelling-house or shop only.

About the end of the year 1865, the defendant Sefton, having for several years previously, in the shop in question, carried on the business of a grocer only, was appointed agent in Blackburn of Messrs. W. & A. Gilbey, the wine-importers and distillers of Oxford-street, and in the month of March, 1866, and from that time, he proceeded to sell and expose for sale, in the shop in question, the wines and spirituous liquors of Messrs. Gilbey.

The defendant Sefton continuing to sell wines and spirituous liquors in spite of the remonstrances of the plaintiff and his agents, and of the defendant Slater, the plaintiff, in March, 1868, filed his bill against the defendants Slater and Sefton, praying that they might be restrained from using, or permitting to be used, the dwelling-house and shop in question as an inn, public-house, or tap-room, or for the sale of spirituous liquors, or ale or beer.

The defendant Slater, by his answer, insisted that, whatever might be the nature of the acts charged against Sefton, no case had been made out by the bill against himself.

The defendant Sefton, by his answer, stated that he never sold any wines or spirituous liquors except those of Messrs. Gilbey; that he never sold any for consumption on the premises, nor ever sold a less quantity than a single reputed quart bottle. He also denied that, when he took the lease of the 1st November, 1862, he had any notice of the covenants contained in the indenture of the 25th April, 1854.

The plaintiff filed a replication.

Renshaw (Kay, Q.C., with him) for the plaintiff, argued that the defendant Sefton was, upon the facts of the case, affected with notice of the covenants in the indenture of the 25th April, 1854, and, in order to prove this, proceeded to read a portion of an affidavit filed on behalf of the defendant Slater.

JAMES, V.C.—An affidavit filed on behalf of a defendant in a cause cannot be read against a co-defendant.

Renshaw, in reply to his Honor, referred to *Lord v. Colvin*, W. R. 342, 3 Drew. 222.