

held that if a grantor intends to reserve any right possessed by him over the property granted, it is his duty to reserve it expressly in the grant, rather than to limit and cut down the operation of a plain grant by the fiction of an implied reservation. Where the existence of the right is so obvious that it is inconceivable that its existence should be disputed, the omission to reserve it will sometimes occur, and when this is so it must surely be unreasonable that the vendor should lose a right which he would doubtless have reserved had its existence been less obvious. The doctrine of the American Courts on this subject will be found in Mr. Kerr's recent work on injunctions, p. 365, from which we make the following extract:—"The doctrine of *Pyer v. Carter* was also disapproved of by the Supreme Court of Massachusetts in *Carbrey v. Willis*, 7 Allen (Amer.), 354, and the true rule was there laid down to be in accordance with an earlier decision of the same Court in *Johnson v. Jordan*, 2 Mete. (Amer.), 234—that if the owner of two adjoining messuages or lots of land sells one of them, retaining the other, no reservation of the right of drain will be taken as reserved by implication of law over the part granted in favour of the part retained, unless it is *de facto* annexed, and is in use at the time of the grant, and is necessary to the enjoyment of the part retained. The principle laid down in *Pyer v. Carter* may be stated thus:—that if an easement be apparent and continuous, no express reservation is necessary in a grant of the servient by the owner of the dominant tenement. That the easement should be apparent and continuous is treated by Lord Chelmsford, C., in *Crossley & Sons v. Lightowler*, L. R. 2 Ch. 478, as an immaterial circumstance: for *non constat* that the vendor does not intend to relinquish it unless he shows the contrary by reserving it. His Lordship grounded his decision on the rule that the law will not reserve anything out of a grant in favour of the grantor except in cases of necessity, which we take to be the case here. It seems that *Crossley & Sons v. Lightowler* was not referred to in argument. Had it been so we think that Lord Romilly would have considered it to express his own views of the law.

The case was in part argued upon the theory that the covenant of 1792 bound the land in the hands of the purchaser, being a covenant running with the land according to the first resolution in *Spencer's case*. And the Court was of opinion that the covenant which we have stated above was a covenant which extended to a thing in *case*, the thing to be done being annexed and appurtenant to the land conveyed, which goes with the land and binds the assignee, although he be not mentioned in express terms; and even if this were not so, the Court was of opinion that it being manifest to the defendant when he bought his land that it was protected by the sea-wall in question, he was bound to enquire by whom that sea wall was maintained, and must, therefore, be held bound to have had notice of all that

he would have learned had he made such inquiry; and that, as by so inquiring he would have ascertained the existence of the covenant, he could not then repudiate that covenant, or refuse to perform the condition subject to which, virtually, he took the land. Whether or not the other parties to the covenant could enforce it at law, there is a class of cases of which *Tulk v. Moxhay*, 2 Ph. 774, is one, which establishes the principle that the right in equity to enforce performance of such a covenant does not depend upon whether the right can be enforced at law. The Court, in *Tulk v. Moxhay*, held that a covenant between vendor and purchaser on the sale of land that the purchaser and his assigns shall use, or abstain from using, the land in a particular way, will be enforced in equity against all subsequent purchasers with notice, independently of the question whether it be one which runs with the land. The recent case of *Wilson v. Hart*, 14 W. R. 748, L. R. 1 Ch. 463, where the covenant was that the building was not to be used as a beer-shop, may be referred to on this point.—*Solicitors' Journal*.

THE ACTION FOR BREACH OF PROMISE OF MARRIAGE.

Baron Bramwell has ventured to talk common sense to a jury on this subject, and we rather hope than expect that other Judges will follow his example. He has told a jury that when a man and a woman have found out that they could not agree, it was better for them to break the engagement than to keep it. This seems sufficiently obvious when put into print; nevertheless, it has rarely found expression in a Nisi Prius Court, Judge and jury and counsel usually, as by one consent, laying aside their good sense, and talking and acting upon sentimentalities which they would be as unanimously ashamed to acknowledge upon any other occasion. From the opening of the counsel for the plaintiff to the final verdict, it is always assumed that the woman is an injured innocent, the man a sneaking coward, and heavy damages are awarded to the plaintiff, for what?—for having escaped from a bad husband and a life of misery.

We were surprised to see our usually sensible and sober-minded contemporary, the *Daily News*, yielding to the sentimental mood, and commending this action as an alternative for the personal chastisement which irate fathers and brothers would otherwise inflict upon the offender. In putting forward this argument, the *News* falls into the fallacy that lurks at the bottom of all the arguments that are urged by the supporters of this action—that it is a protection to good and modest women. Now that is precisely what it is *not*. The really injured woman never seeks pecuniary damages for wounded affections. The very fact that a woman will go into a court and permit her heart's secrets to be exposed to public gaze, and her love passages made the fest of counsel and the provocation to "shouts