

would almost inevitably result, as an Appellate Court would hesitate long before dealing with questions of fact of this nature, depending upon the weight to be given to the evidence of witnesses which it had no opportunity or seeing or appraising.

The merits of this legal question not having been discussed before me, I do nothing more now than to determine that the preliminary objection taken must be overruled and the motion must be heard upon its merits at some convenient day. Unless the parties agree otherwise, I fix Saturday 30th, at ten o'clock, for the continuation of the argument.

---

HON. MR. JUSTICE HODGINS.

MAY 26TH, 1914.

RE ROOKE AND SMITH.

6 O. W. N. 382.

*Vendor and Purchaser—Title — Building Restrictions—Run with Land—Release of Required.*

Where original deed of land contained certain building restrictions, and deeds to subsequent purchasers of parts thereof contained covenants differing somewhat therefrom,

HODGINS, J.A., *held*, that the original covenants, as relating to user and occupation, ran with the land and might be enforced against a subsequent purchaser by original owner and those claiming under him, and that such purchaser was entitled to a proper release therefrom, a letter from original owner promising to take no action not being sufficient.

That if purchaser so desired, a reference might be had to the M.-in-O. to take evidence: otherwise order to go declaring that vendor, on obtaining release, could convey free from original covenants.

Motion by the vendor for an order, under the Vendors and Purchasers Act, declaring that vendor could make good title upon an agreement for the sale and purchase of land in question.

A. J. Russell Snow, K.C., for vendor.

W. A. McMaster, for purchaser.

HON. MR. JUSTICE HODGINS:—The only objection argued before me was that requiring a release of the building restrictions contained in the deed of a block of land on the south side of Bloor street in Toronto, from Moses H. Aikens, to