

CLUTE, J.

MARCH 2ND, 1905.

TRIAL.

SNOW v. WILLMOTT.

Vendor and Purchaser—Building Restrictions—Covenant—Intention of Parties—Security—Building Scheme—Breach of Covenant—Damages in Lieu of Injunction—Assessment of Damages.

Action to compel defendant to pull down a building erected on certain land sold by plaintiff to defendant, which building was alleged to have been erected contrary to a building restriction which defendant covenanted to observe, and to restrain defendant from erecting any building thereon until the design should be approved by plaintiff, and for damages.

F. E. Hodgins, K.C., and C. B. Nasmith, for plaintiff.

J. R. L. Starr and J. H. Spence, for defendant.

CLUTE, J.—On 6th June, 1902, plaintiff granted to defendant the land in question, subject to the restrictions there-in mentioned, among which is the following: "That no building other than a dwelling-house shall be erected upon the said lot, and that no more than one dwelling-house shall be placed thereon, which dwelling-house shall cost not less than \$900."

The consideration mentioned in the deed is \$400. A mortgage was executed by defendant to . . . the husband of plaintiff for \$400, being the full amount of the purchase money; the principal payable on 1st June, 1907, and the interest on the 1st days of June and December in each year. The mortgage provides that the mortgagor may pay on account of principal \$25 or more at any time without bonus or notice, provided all arrears of interest, costs, charges, and expenses had first been fully paid. Defendant covenanted "that she will erect . . . on the said lots within 12 months . . . a dwelling-house of modern design, to be approved of by the mortgagee, which shall cost not less than \$900. In default thereof, all the rights and remedies of the mortgagee shall be exercisable as are exercisable on the default of payment of interest." . . .

On 16th June, 1904, this mortgage was assigned to plaintiff. The assignment recites that there was then due \$100 for principal money, with interest. . . .