

2 My. & K. 552; and cases collected at pp. 771-5 of Dart on Vendors, 7th ed.

Judged from the language of the conveyance and the condition of the property and the other facts stated in the case, I am unable to find any indication of any intention at the time when the vendor, McCarthy, divided the land and sold to Cayley, that the restrictions provided for in the conveyance should extend for the benefit of any person whomsoever other than himself and those claiming under him in respect of the land reserved. A portion of the land only conveyed to Cayley was burdened with the covenants, and, while the observance of the covenants might be of advantage to the present holders of the portion of the land originally conveyed to Cayley which was not burdened with the covenants, there is no privity of contract between any such owner and the plaintiffs, who have succeeded to the ownership of the property intended to be benefited by the covenant, and, by reason of there being no circumstances to bring the property within a general building scheme, there is no equitable right by the owners of any portion of the rear 40 feet of the land sold to Cayley to compel an observance of the restrictive covenant.

There being therefore, in my opinion, no legal or equitable right vested in any such owner, with respect to the restrictive covenant in question, there is nothing to prevent the plaintiffs from completely releasing the owner of the land burdened with the covenant from its effect.

Judgment accordingly.

If costs are asked for, the matter may be spoken to again.

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