

UK PROPERTY LAW

CASE NOTES



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Sample

***Tulk v Moxhay* (1848) EWHC J34 (Ch)**

Source: Hard copy via your law library or electronically via a subscription service

Court details: The High Court of Chancery

Facts:

- In 1808, Charles Augustus Tulk, the owner of several parcels of land in Leicester Square, sold a plot to another party, making a covenant to keep the Garden Square "uncovered with buildings" such that it could remain a pleasure ground.
- Over the following years the land was sold several times over to new parties, eventually to the defendant.
- The defendant, who was aware of the covenant at the time of purchase, refused to abide by the covenant as he claimed he was not in privity of contract and so was not bound by it.

Reasoning / Decision (Commentary):

- This landmark English property law case that decided that in certain cases a restrictive covenant can "run with the land" (i.e. a future owner will be subject to the restriction) in equity.
- Prior to this case, for covenants to run, the original agreement had to be made by a landlord and tenant at the time that they entered into the lease, that is, there had to be privity of estate, also called "vertical privity." After the case, in order for the burden to run, the covenant must satisfy certain requirements:
 - The covenant must be restrictive;
 - At the date of the covenant, the covenantee owned land that was benefited by the covenant;
 - The original parties intended the burden to run with the land to bind successors; and
 - The covenantor must take with notice of the covenant.

Ratio:

- Lord Cottenham LC found in favour of the plaintiff and granted an injunction to restrain the defendant from violating the covenant.
- The Court noted that if the agreement had been a contract instead of a covenant, it would have been enforceable. Therefore the covenant was enforceable at equity, that is, when the plaintiff seeks an injunction as opposed to damages.
- The case stands for the proposition that vertical privity (privity of estate) is not required for the burden of a covenant to run at equity.

“That this Court has jurisdiction to enforce a contract between the owner of land and his neighbour purchasing part of it, that the latter shall either use or

abstain from using land purchased in a particular way, is what I never knew disputed...

It is said that, the covenant being one which does not run with the land, this court cannot enforce it, but the question is not whether the covenant runs with the land, but whether a party shall be permitted to use the land in a manner inconsistent with the contract entered into by his vendor, with notice of which he purchased. Of course, the price would be affected by the covenant, and nothing could be more inequitable than that the original purchaser should be able to sell the property the next day for a greater price, in consideration of the assignee being allowed to escape from the liability which he had himself undertaken...

That the question does not depend on whether the covenant runs with the land is evident from this, that if there was a mere assignment and no covenant, this Court would enforce it against a party purchasing with notice of it; for if an equity is attached to the property by the owner, no one purchasing with notice of that equity can stand in a different situation from the party from whom he purchased."



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