

Tulk v Moxhay [1848]

Selling land on special conditions of further use and binding the next purchasers to use the land according to the initial agreement.

Evidence

The claimant owned a piece of land with an empty ground and some houses in Leicester Square. The empty ground was sold by the claimant to Elms in 1808. The land was transferred to a new owner on the condition that Elms and his heirs would maintain the piece of land with the square garden and iron railings around it in proper condition at their own expense. Also, Elms was obliged to give keys at his expense and open access to the garden to the inhabitants of Leicester square who also were the claimant's tenants.

Over time, the piece of land was transferred from Elms to the accused. The agreement between the claimant and Elms was not mentioned in the purchase deed. The accused was aware of the agreement. Still, he decided to transform the garden and claimed the right to build on it. The claimant was still the owner of several houses in the square and he applied for injunction. The Master of the Rolls granted the injunction. Then, the accused appealed, suggesting that the agreement did not concern the land.

Problematics

It was unclear whether the agreement of 1808 concerned the land and whether the accused had a right to transform the free land.

Resolution

The appeal was dismissed on the basis of two facts. First, the agreement between the seller and the buyer of the land with the note on a special use of the land is enforceable in equity against all next purchasers notified about the conditions of special use.

Second, it does not matter whether or not the agreement concerned the land. The binding power of the agreement extends to every subsequent purchaser.

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