

A [CHANCERY DIVISION.]

* *In re* JEFFKINS' INDENTURES.

1965
Jan. 21.

(PRACTICE NOTE.)

Cross J.

B [1963 J. No. 8188.]

Restrictive Covenant—Declaration—Whether land affected by covenant—Form of declaration—Costs—Extent of plaintiff's liability for costs—Law of Property Act, 1925 (15 Geo. 5, c. 20), s. 84 (2).

ADJOURNED SUMMONS.

C The plaintiff, Clerkenwell Estates Ltd., whose registered office was situate at 12 Chandos Street, London, W.1, owned two freehold properties, "Ardsley" and "Wood End," both at Beechwood Avenue, Walton-on-Thames, Surrey. The plaintiff sought a declaration under section 84 (2) of the Law of Property Act, 1925, that neither of the properties was affected by any of the restrictive covenants contained in three indentures dated respectively July 15, 1873, November 11, 1875, and June 18, 1877, each made by George Jeffkins and another and that such restrictive covenants were not enforceable by any person. The third of such indentures included some land not belonging to the plaintiff.

D *G. H. Newsom Q.C.* and *Spencer G. Maurice* for the plaintiff.

E No cases were cited in argument.

F CROSS J. The declaration which has been asked for, though it follows the wording of the Act would be too wide in this case. It would—or might—operate for the benefit of other people besides the plaintiff. The proper declaration here is simply to say that the two properties which belong to the plaintiff with which I am now concerned are not affected by any of the restrictive covenants, and to stop there.

G I would add, on the question of costs, that a plaintiff seeking a declaration that restrictive covenants do not affect his property is expected to pay his own costs. He is also expected to pay the costs of any defendants who enter an appearance down to the point in the proceedings at which they have had a full opportunity of considering the matter and deciding whether or not to oppose the application. Any defendant who then decides to continue, and appears unsuccessfully before the judge, does so at his own risk as to his own costs at that stage. Such defendant would H not, however, be ordered to pay the plaintiff's costs.

Declaration accordingly.

Solicitors: *J. I. Humphreys & Co. for Copley Clark & Co., Sutton.*

[Reported by Miss A. F. RICKETTS, Barrister-at-Law.]