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Recordation as Notice of Building Restrictions

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RECORDATION AS NOTICE OF BUILDING RESTRICTIONS

The case of *Finley v. Glenn*,[1] recently decided by the Pennsylvania Supreme Court, clarifies the law as to the effect of recordation as notice of building restrictions. In this case an owner of certain lots conveyed several of them by a deed containing building restrictions, covenanting that he would impose the same restrictions in deeds for the remaining lots, and this deed was recorded. Subsequently he conveyed the remaining lots without such building restrictions being contained in the deed. The defendants started to erect a building on their land which clearly violated the covenant contained in the plaintiff's deed, but not contained in that of the defendants. The plaintiff filed a bill for an injunction in equity to restrain violation of the building restriction. The court, per Schaffer, J., held that the later grantee (defendant) was bound by the terms of the deed to the former grantee (plaintiff) although he had no actual notice of such terms. In reaching this conclusion the learned Justice stated:

> "The controlling factor in the decision of the case is that the immediate grantors of both plaintiff and defendants were the same. When the latter came to examine the title which was tendered to them, it was of primary consequence that they should know whether their grantors held title to the land which they were to convey. They could determine that question only by searching for grants from them. 'The rule has always been that the grantee . . . must search for conveyances . . . made by anyone who has held the title': *Pyles v. Brown, 189 Pa. 164, 168.* 'The weight of authority is to the effect that if a deed or a contract for the conveyance of one parcel of land with a covenant or easement affecting another parcel of land owned by the same grantor, is duly recorded, the record is constructive notice to a subsequent purchaser of the latter parcel. The rule is based generally upon the principle that a grantee is chargeable with notice of everything affecting his title which could be discovered by an examination of the records of the deeds

[1] 303 Pa. 131, 154 Atl. 299 (1931).

> or other muniments of title of his grantor:' 16 Amer. Law Rep. 1013, and cases cited; 2 Tiffany's Real Property, 1920 edition, p. 2188. So doing defendants would find the deed from Rosekrans and his wife (the common grantors) to plaintiff which had been recorded. Coming upon this conveyance, it was their duty to read it, not, as argued appellant and decided by the chancellor who heard the case, to read only the description of the property to see what was conveyed, but to read the deed in its entirety, to note anything else which might be set forth in it. The deed was notice to them of all it contained; otherwise the purpose of the recording acts would be frustrated. If they had read all of it, they would have discovered that the lots which their vendors were about to convey to them had been subjected to the building restriction which the deed disclosed. It boots nothing, so far as notice is concerned, that they did not acquaint themselves with the entire contents of the deed. It affected them to the same extent as if they had read it all. This is the rule of all our cases and the expressed declaration of the Recording Act."[2]

The appellant relied upon the case of *O'Neil v. Lex*,[3] decided in the Court of Common Pleas of Philadelphia County per Gordon, Jr., J., wherein the learned Judge reached a contrary conclusion. The facts in this case were the following: a man owned a piece of land in the City of Philadelphia, a part of which he sold and covenanted in the deed which was duly recorded that the remainder of the land should be restricted for residences only which were to be similar to those built by the prior grantee. The common grantor did not insert the building restriction in the deed to the second grantee. The second grantee contracted to sell the land to the plaintiff, whereupon the prior grantee notified the plaintiff of the building restriction. This proceeding was then brought by the plaintiff to have his rights and duties declared in the event he settled with the defendant (second grantee).

The court raised the question whether the recording of the deed by the first grantee charged subsequent

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[2]Ibid. pp. 135, 136.

[3]9 Pa. D. & C. 149.

grantees and those claiming under or through them with notice of the building restriction placed in the first grantee's deed by the common grantor. The court answered this question in the negative basing its conclusion largely on the fact that the deed containing the building restriction was not in the direct line of the plaintiff's title. All that was necessary said the court, was that the second grantee search the deed from the common grantor to the first grantee in order to establish what piece of land had been conveyed, and upon discovering that it was not that portion of land which he contemplated buying, he was under no duty to read further. The reason given by the court for the rule was the following:

> "It would place an intolerable burden upon a purchaser to require him to search every deed of all his predecessors in title, whether or not it related to the land being bought, in order to be sure that no incidental and collateral agreement was contained in them. It would lead to dangerous consequences and would defeat the principal purpose of the recording acts—the promotion of certainty and ease in the conveying of property."[4]

Virginia, Texas and Georgia have enunciated the doctrine set forth by the above lower court.[5] However, since the *Finley Case* has been decided, the decision of that lower court can no longer be said to be the law in Pennsylvania.

It is submitted that, although the conclusion reached by the Supreme Court in the *Finley Case* is in accord with the spirit of the recording acts, yet it undoubtedly increases the burden upon all of those who are engaged in the searching of titles. Instead of merely reading the description in all deeds of a common grantor, one must now read these deeds in their entirety.

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[4]Ibid. p. 150.

[5]Providence Forge Fishing Club v. Gill, 117 Va. 557, 85 S. E. 464 (1915); Thompson v. Cole, 126 S. W. 923 (Texas—1910); Hancock v. Gumm, 107 S. E. 872 (Ga.—1921).