

*Judgment of the Lords of the Judicial Committee
of the Privy Council, on the Appeal of Sir
Malcolm Donald McEacharn v. The Honour-
able Sir John Colton, K.C.M.G., and others,
from the Supreme Court of South Australia,
delivered the 19th November 1901.*

Present at the hearing :

LORD MACNAGHTEN.

LORD SHAND.

LORD DAVEY.

LORD ROBERTSON.

LORD LINDLEY.

[*Delivered by the Lord Macnaghten.*]

THEIR Lordships are of opinion that this is a clear case. They have listened to a very able and learned argument on behalf of the Appellant. It was contended in the first place that there has been no breach at all, and that the covenant in question cannot apply to a re-assignment to the original Lessees. Why not? It is admitted that the covenant runs with the land. It cannot be disputed that the present tenant is bound by the covenant. He now proposes to assign the lease to persons who have admitted, in writing, that if the lease falls into their hands they will not be able to pay the rent. Why should the circumstance that those persons were accepted as tenants some time ago when they were, or were supposed to be, in a good financial position, make any difference? The covenant is quite plain. It is that the Lessee, the person who for the time being stands in that relation to the Lessor, shall not assign to any person without the Lessor's consent. The attention of their Lordships has been called to an American decision, for the purpose of showing that the original Lessee was not within the scope of such a covenant. With the utmost respect for the Court that pronounced the decision, their

Lordships are unable to accept it as an authority for that proposition.

Then it was said that this was not a case for an Injunction. Again, why not? The Appellant threatens to commit a clear breach of a plain contract expressed in a negative form.

According to the doctrine expounded by Lord Cairns in *Doherty v. Allman*, 3 App. Cases, at pp. 719-20, that is a case in which the Court of Chancery in this country would not hesitate to grant an Injunction. The remedy by Injunction seems to be all the more necessary in Australia, because, if the assignee gets on the register, very serious mischief may be done, as the learned Judges of the Supreme Court have pointed out.

Lastly, it was urged that the Injunction was not in proper form. The exact form in which it was contended it ought to be granted, if granted at all, was not very clearly explained. It appears to their Lordships that the Injunction is perfectly right, if confined to the past it would be futile. It is in the very words of the covenant, and there is reserved liberty to apply so that there will be an opportunity of taking the opinion of the Court cheaply and expeditiously, if any question hereafter arises as to the propriety of the Lessor withholding his consent in any particular case.

Their Lordships do not think it necessary to go further into the case, because they adopt without reserve or qualification the reasons of the learned Chief Justice and his colleagues, and for those reasons they think the appeal ought to be dismissed. It would serve no useful purpose to repeat those reasons, or to re-state them in a different form.

Their Lordships will, therefore, humbly advise His Majesty that this appeal ought to be dismissed; and the Appellant must pay the costs
