NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
WILLIAM B. LOUDENSLAGER,
Complainant-Appellee,
and
JOHN STAFFORD and AMBASSADOR HOTEL CORPORATION,
Defendant-Appellant.

ON APPEAL.

BRIEF FOR COMPLAINANT-APPELLEE.

The facts have been recited in detail in the brief of counsel for defendant-appellant and it seems unnecessary to recite additional facts in order that this Court might grasp the situation. The material facts seem to be undisputed and this brief does not attempt to answer in detail that of opposing counsel, which appears primarily to be one of confession and avoidance.

The Chancellor, upon the hearing on the original bill, and Vice-Chancellor Leaming, upon the hearing on the petition to enforce the final decree found against the defendants respectively in the litigation before them.

Counsel has argued quite at length in an effort to belittle the standing of complainant-appellee and his ability to successfully invoke the desired action of this Court, but says nothing about the Ambassador Hotel Corporation who took title not only with knowledge of the existence of the restrictions, but also at a time after the decree of the Court of Chancery, which is now being appealed from, was entered upon the original bill of complaint, and with certain foundations on the Stenton Place side of the property built only a short distance above grade, while the construction of the main building itself was progressing to the westward and on that part of the property which was upon what is known as the Chelsea Beach Tract. Prior to the time the property was taken over by it, the Ambassador Hotel Corporation was in no way interested in the enforcement or non-enforcement of these restrictions. It came in as a stranger to the proceedings and is, of course, chargeable with the condition of the buildings and the title to the property as they existed at that time.

A Court of Equity will enforce restrictive covenants when the complainant has done everything that the law imposes upon him in order to preserve his right to such relief, and the two decrees appealed from are conclusive that the complainant-appellee in this case had done just the thing. If courts are not to answer such appeals for relief, or if one court grants it and a court of appellate jurisdiction denies it, in a proper case, then our system of jurisprudence is a failure and courts might as well cease their labors.

But the Court is not going to be overawed by the magnitude of defendant's-appellant's undertaking. Courts have never and will never permit large monetary interests to interfere with the enforcement of a

legal right. Counsel seems to overlook several legal principles of an elementary nature and seems to presume that this Court will relieve defendant-appellant from the consequences of the mistakes, if they can be called such, of its agents or employees, when they were theretofore put upon notice by the decree of this Court.

It is inconceivable that architects or anyone else employed in an undertaking of the character of this hotel could be mistaken in the measurement of distance to the extent of three or four feet, and we are drawn to the irresistible conclusion that the act bears more the ear-mark of carelessness or gross indifference to the Court's decree in order to secure the use of an additional three or four feet for the length of the restricted area on Stenton Place. This could not be accomplished by a strict compliance with the decree unless the wall on that side of the hotel were flat, and unornamental, which is just what defendant-appellant did not desire. (Case p. 76.)

Rather than do this, complainant-appellee believes and alleges that the bay-windows have been erected in their present condition with the faint hope that this Court would sympathize with and acquiesce in such action. But this Court'sdetermination can no more be affected by any such feeling of sympathy than it can by the other arguments of counsel for defendant-appellant, and there can be only one result and that leads to the removal of the bay windows. This may be expensive, but can this be any reason for not compelling it to be done, having in mind that it was placed there in the face of a decree prohibiting it? There is no doubt but what the defendant-appellant had spent a great deal of money in its undertaking, but it will have cost no more to erect the hotel in conformity to the decree that has cost to erect it

in its present offensive condition. It may be true that $2,000,000 or more has been expended, but it is equally true that this Court can and should compel the expenditure of such additional sum as is necessary to protect and enforce complainant-appellee's legal rights.

The argument that the bay windows are well above the grade seems to lose sight of that very elementary principle which tells us that title to real estate extends from the Heavens to the Earth's centre. If it can be given any weight, why not let us dream on and go further? If two bay windows of a width of about ten feet and one of a width of about five feet overhanging the restrictive area for a distance of three or four feet are not offensive, why could not the overhang cover all the restricted area, or why could not complainant's very neighbor remove the present structure on his lot, erect a building similar to defendant-appellant and then set up against the complainant-appellee laches, acquiesce in an abandonment of the general building scheme, etc., by reason of these violations under discussion? The question is not whether this complainant is harmed or in any way inconvenienced by the violations or whether he can be pacified to an extent where he will be willing to withdraw his opposition, but every owner of property on the Hemsley tract has an interest in the enforcement of the decree and the maintenance of the covenants which have formed part of the consideration for their respective holdings.

The contention that the complainant may have been or may be interested in the two alleged violations is almost absurd and if any such interest did exist the burden was upon the defendant-appellant to show it.

"That a fourteen-story high apartment house

> or hotel is not a private dwelling goes without saying, and a Judge will take it upon the testimony of his own senses that such a building violates a covenant providing that private dwellings only shall be built upon the given premises."

This is the statement of the Chancellor (Case p. 33) and nothing could be or need be said in aid of this conclusion, particularly in view of the fact that counsel for defendant-appellant cites on this point, as his only authority for a contrary view, the case of *Hemsley vs. Marlborough Hotel Co.*, in which the question is left open.

If this is so, then it is too obvious for argument that bay windows which have an overhang of three or four feet and extend ten or more stories in the air constitute a structure other than a private dwelling.

As to the original decree, nothing need be said in respect to the decree in *Pearson vs. Stafford*. As my opponent has already stated the opinion in this case is merely attached for the sake of convenience.

With respect to the decree under appeal, can any weight be given to so weak a defense as the defendant-appellant sets up? Although the argument before the Chancellor included the same defense and referred to the Eden Apartments and the row of stores as violations which would estop the complainant-appellee, the Chancellor seems not to have regarded them very seriously as we find in his conclusions no reference to them. Every other alleged violation urged before the Chancellor as a defense seems now to have been abandoned.

As to the row of stores, the answer to defendant-appellant's contention can be found in the affidavit of Loudenslager (Case p. 13), and by reference to the case of *Lapres vs. Doughty*, in 102 Atlantic, 851,

where it is reported as affirmed by the Court of Errors and Appeals upon the opinion of Vice-Chancellor Leaming. It is nowhere in the case contended with any seriousness that the row of stores and the Eden Apartments are sufficient to warrant this Court in refusing relief and what did the Chancellor think about them? His conclusions show that he personally inspected the premises, and yet he makes no mention of them.

Assume that defendant-appellant's contentions are correct, and certainly they cannot be so considered, they are too insignificant to avail the defendant. I have already stated that the question of whether or not the row of stores constituted a violation was determined in *Lapres vs. Doughty,* and in order to hold that they did, this Court would impliedly reverse one of its own prior decisions.

The Eden Apartments are situated on Iowa Avenue, a full square east and nearly a square south of complainant's property, while the defendant-appellant's hotel is less than a full square away and on a direct line to the ocean.

In *Bingham vs. Mulock,* 74 E., 287, at p. 288, Vice-Chancellor Leaming held that any claim of bar asserted against the rights of the owner of a single lot by reason of the acquiescence in the violation of restrictive covenants, must be measured by the relation of the asserted violation to the individual lot.

And we assume that upon this reasoning the Chancellor found the violations asserted by the defendant below to be inconsequential as affecting the complainant's rights. Any attempt to excuse Stafford must certainly be futile. It is not conceivable that anyone would undertake such a project without being advised about his legal title to the land and the record shows that immediately upon the institution of

suit he had at his service three of the most able lawyers in Atlantic City.

These arguments apply with the greatest force to the original decree and as the Court may notice, practically nothing has been said about the concrete foundations decreed to be removed. The particular reasons for this are that upon the petition to restrain work in progress in violation of the final decree, a decree was entered requiring their removal, but suspending their actual removal pending the determination of the appeal and, secondly, because the complainant's counsel is now informed and advised that the work of removal is now actually in progress.

The particular controversy relates to the bay windows and defendant-appellant's argument on this point is very much like a prayer for relief. What character of a defendant is it who will voluntarily proceed with work of the magnitude of this undertaking in the face of a decree prohibiting it? Does it take more than one glance at page 9 of the brief of defendant-appellant and page 76 of the case to convince the Court just what the difficulty is? To comply with the order of Chancery, the defendant-appellant alleges, means disaster, but the only disaster lies in the alteration of a building, which may bring a smaller monetary return after such alteration than it would before.

Then, again, complainant asks:

> "How was it possible to point out in the original bill the fact that the bay windows were offensive, when, as counsel well know, the bay windows in that location were never thought of and would never have been placed there were it not for the filing of the original bill and the making of the decree thereon."

Complainant could not possibly have done this.

It is not denied that the interests of Simon W. Straus & Co., and Ambassador Hotel Corporation are identical. Their counsel was Judge Cole, who represented them in matters which were not antagonistic to Stafford (and this was certainly not such a matter), (Case p. 65), and who were perhaps more interested in the project than Stafford himself because of their heavy investment.

Since they have taken over the project and hold title in the name of the Hotel Corporation, they have continued to retain the same counsel and he appears for them in this appeal. How can there be any *bona fide* attempt at a confession of ignorance? They admit that the survey now shows that they were in error in supposing that the bay windows were not over the lines. I cannot and do not concede that if any such mistake was made that it was made honestly and ignorantly.

Stafford undertook to and did take advantage of the decree to the fullest extent and in doing so seems to have erected a structure a few feet landward of the line of the lot on the Stenton Avenue side which is free from restrictions, which counsel now undertakes to excuse by saying that it evidently happened because of a misapprehension of the exact location of the line.

The same argument which I have used with respect to the bay windows applies with equal force to this. I have never yet been referred to an authority that adjudged ignorance to be an excuse, particularly with reference to a matter of this character, where the real fact was of so much importance and could have been so readily obtained.

There is not even an attempt to set up laches as against the complainant because there has been no

time at which he has not asserted his rights. He had a decree of court, which he could rely upon, but irrespective of this his affidavit (Case pp. 51, *et seq*) shows how alert he was in his efforts not to mislead the defendant-appellant or its counsel. As far back as July, 1918, he consulted with Judge Cole's relation to the matter and the complainant-appellee and his counsel were continuously in touch with the situation. This may cause the Court to inquire as to why so many stories were allowed to be built before the petition was filed. The answer is that so much delay was caused by the bankruptcy of Stafford, the scarcity of labor and increase in materials, etc., caused by the war, as shown by the affidavit of Howard (Case, p. 70, *et seq*), that when the way was finally made clear the building went forth with such a rush as is rarely witnessed in such an undertaking, with the result that before the restraining proceedings could be put in proper shape (a matter of about ten days or two weeks) the bricks had been placed one upon another to a dizzy height, in fact many stories. Such a situation can readily be imagined when we have in mind the large amount of money invested in the portion of the structure which had at that time been erected and was bringing no return of either interest or profits.

The affidavits of Loudenslager, page 51 of the case, and Exhibits C6, C7, C8, C9, C10, C11, C12, and C13, pages 64, *et seq.*, speak for themselves and the concluding portions of the affidavit of Howard (Case 75-76) is nothing more than an effort to create an impression that the complainant has been playing fast and loose so far as the enforcement of this decree is concerned.

The case of *Hemsley vs. Marlborough Hotel Co.*, 65 N. J. E., 167, reversed 68 N. J. E., 596, is not exactly in point.

The report of the case will show, at p. 168 of 65 N. J. E., that the hotel was completed or practically completed before the bill was filed and the violations had all occurred prior to that time, and according to the Court's finding, without any dissent on the part of Hemsley. The Chancery Court dismissed his bill for injunctive relief but upon appeal the Court of Errors and Appeals reversed that decision, and held he was entitled to relief, and it was at this point that a mandatory injunction was refused. In that case the bay windows were allowed to stand pending an appeal which did not compel any alteration in them, and it is only natural to anticipate that this court or no court would compel their removal after having been constructed before any objection was made to them and permitted to remain unchallenged until the filing of the bill and until the decision of this Court.

How very different from the present case. Defendant-appellant and its counsel, who was also counsel for its predecessor in title, all knew of the restrictive covenants and the preliminary injunction.

It is submitted that defendant-appellant have urged no legal or equitable reason for relief from the determination of the lower court. The magnitude of defendant-appellant's undertaking cannot affect the situation, for, if this were so, litigants would become of the opinion that by increasing their interest in the subject matter of a case in which the lower Court's decision had been adverse, they could upon such a showing obtain relief from the Appellate Court. Such a position is untenable. It sounds very much like the so-called diplomacy of a class of European

politicians, whom we have all learned to despise.

Complainant urges that his legal rights be protected and that an order may be made affirming the final decree of the Court of Chancery upon the original bill, and the final decree upon the application to restrain work in progress in violation of such final decree, to the end that the present appeals may be dismissed with costs.

Respectfully submitted,

NORMAN GREY,
Solicitor for and of Counsel with Complainant-Appellee.

I. F. Huntzinger Co., Appellate Printers, Camden, N. J.

Exhibit C-1

on petition

J. F. Huntzinger Co., Appellate Printers, Camden, N. J.

Exhibit C-1 on petition

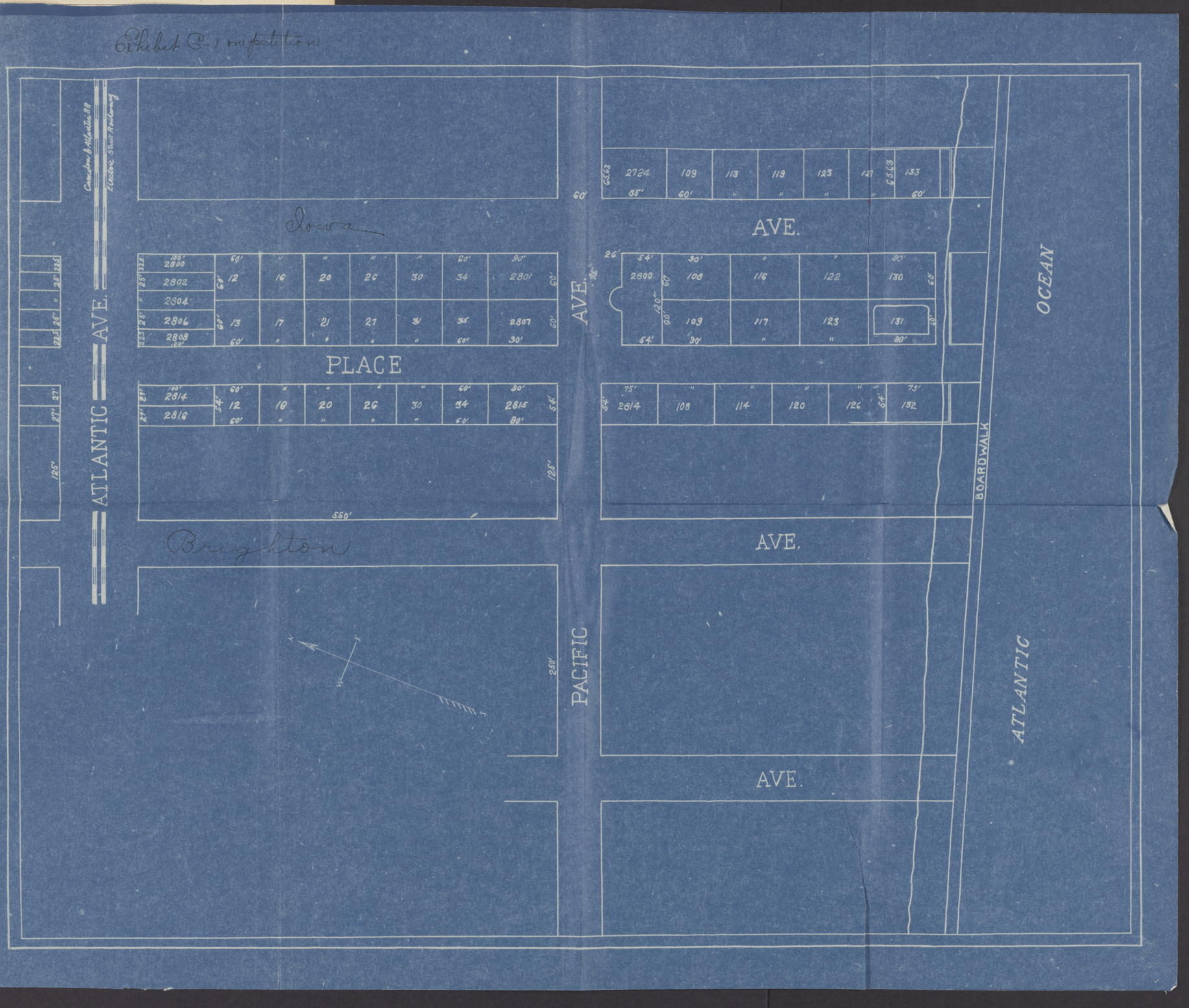

Exhibit C-1
on petition

I. F. Huntzinger Co., Appellate Printers, Camden, N. J.

New Jersey Court of Errors and Appeals

Between

William B. Loudenslager,
Complainant-Respondent,

and

John Stafford and Ambassador Hotel Corporation,
Defendant-Appellant.

} On Appeal, &c.

BRIEF FOR AMBASSADOR HOTEL CORPORATION.

STATEMENT.

John Stafford was the owner of a tract of land on the ocean front in Atlantic City running from the Westerly line of Stenton Place to the Easterly line of Brighton Avenue and landward a distance of approximately 200 feet. The land facing Brighton Avenue was at one time owned by Chelsea Beach Company, which Company imposed certain restrictions in its deeds, and the land facing Stenton Place was at one time owned by Frederick Hemsley who imposed certain restrictions. Hemsley's title ran from a point 54 feet Westwardly of Stenton Place to

a point about 65 feet Eastwardly of Iowa Avenue and from the ocean to the thoroughfare. At the time he acquired his title, Stenton Place did not exist, he having opened and created it. Sometime in 1917, Stafford began the erection of a hotel-apartment to be known as the St. James, which was to face Brighton Avenue and the Boardwalk, the major portion of the building to be on the Brighton Avenue lot. While the work was under way two bills were filed in the Court of Chancery at or about the same time, one by Albert Pearson to restrain alleged violations of the Chelsea Beach restrictions, and the other by William B. Loudenslager to restrain alleged violations of the Hemsley restrictions. Both cases proceeded to final hearing on bill, answer, replication and affidavits, and resulted in a decree in favor of both complainants; the decree in favor of Pearson not being material as affecting Stafford's project, but the one in favor of Loudenslager being very material. With slight alterations Stafford was able to comply with the Pearson decree and no appeal was taken therefrom. The decree in favor of Loudenslager is serious and from that an appeal is taken. Stafford failed and his enterprise had to be taken over by Straus & Company, mortgagees, and the title passed to Ambassador Hotel Corporation which is completing the building and will conduct a hotel rather than an apartment-hotel as was designed by Stafford. While it was progressing with the work of completion, a petition was filed by Loudenslager alleging a continued violation of the decree and praying an order compelling the Company to remove certain structures on the Stenton Place lot and to remove the bay windows which it is claimed overhang on the Stenton Place lot about four feet. On the hearing an order was granted in accordance with the

prayer of the petition. Ambassador Hotel Corporation was made a party to the suit and it is the appellant both as to the final decree and the order under the petition. The claim is that there is a violation of the restrictive covenants in that the building is not a private dwelling within the meaning of that language in the Hemsley deeds, and that it is over certain restricted lines.

Paragraph 7 of the bill (page 7), says:

> "Nevertheless, in the actual construction of such building, the said defendant, John Stafford, is constructing said northerly wall across lot 126 in disregard not only of that restriction above quoted, being numbered 4, which provides that private dwellings only shall be built on said premises, except those reserved (of which reservation the said lots 126 and 132 do not constitute a part), but is also constructing the northerly boundary walls directly along the boundary line between lots 120 and 126 in disregard of the covenant numbered 1, above quoted, to the effect that no portion of any building on any lot between Pacific Avenue and the Ocean Bulkhead, shall at any time be erected within eight feet of the side dividing line of said lots. The construction of this foundation wall along the northerly line of lot 126 is also in violation of the same covenant last quoted, which provides that no portion of a building so located shall be constructed within three feet of the rear dividing line, the foundation wall in process of construction being an extensive one, continuing in a straight line across the northerly and of lot 126 and through a portion of the adjoining land owned by the defendant lying between said lots and Brighton Avenue."

Complainant's property is at the northeasterly corner of Stenton Place and Pacific Avenue and is lot 2807 on the map, (page 6). He acquired his title in March, 1902, at which time there was a dwelling house thereon erected by Hemsley, (page 6). Long before Stafford acquired title or began the construction of his building, there existed on the Hemsley tract two structures that were and are plainly violative of the same restrictions that complainant is now seeking to enforce—one structure being known as Eden Apartments, and the other as a row of stores. See affidavit of Hess (page 22) and photographs referred to in his affidavit. Also see affidavit of Ashmead, pages 19, 20, 21 and 23.

These buildings were constructed in the plain view of the complainant and he made no objection thereto. The location of the stores which run from Stenton Place to Iowa Avenue are within the same lines as complainant's property and in full view thereof, and the Eden Apartments are substantially as near complainant's property as is the hotel. The Eden Apartments being much more of an interference with light and air than the existing structures of defendant.

As the Chancellor's opinion in the case under consideration has tied to it the opinion in the Pearson case, both have been printed in order to have an intelligible understanding of the case.

ARGUMENT.

Complainant is seeking the aid of a court of equity to enforce restrictive covenants which are not in favor with the courts. Without any reason apparent or disclosed except the assertion of a technical right,

he now seeks to enjoin a very great and much needed improvement at a cost of over two million dollars, notwithstanding he stood quietly by and allowed the Eden Apartments and the row of stores to be built without offering an objection. That these structures are substantial and affect complainant's rights as injuriously as does the defendant's structure, and that they are in violation of the covenants is obvious.

If apartments are not private dwellings, then the Eden Apartments are a conspicuous and flagrant violation. They are apartments plain and simple, being a brick structure three stories in height and built directly on the line of Iowa Avenue. It violates the covenants respecting building lines. At this point we may anticipate a suggestion from complainant that the apartment is built upon land excepted out of the restrictive covenants as being oceanward of the bulkhead on the Hemsley tract. But this is not true. The map shows the old bulkhead line—it shows lots 126 and 132 of defendant on Stenton Place; lots 127 and 133 on which is the Eden Apartments and lots 130 and 131 on which are the stores. It will be observed that as to the land on which the Eden Apartments are built the old bulkhead line is oceanward of the small street or alley delineated on the map, and Mr. Ashmead's affidavit (page 23) says:

> "The rear or northern portion of the building situate on the easterly side of Iowa Avenue and fronting on the Boardwalk, and known as 'Eden Apartments,' extends 49.9 feet north of the south line of the alley as shown upon the original map of the 'Hemsley Tract;' and 49.9 feet of the northerly portion of said building extends 18 feet over the restricted line for buildings on Iowa Avenue and to the front property line of said avenue."

The alley is ten feet wide, so that all doubt is removed as to a portion of the building being well into the restricted area. The amended decree in this cause (page 37) also verifies our contention as to distances. The same contention touching the violation of the restrictions would be successfully sustained by paragraph 2 of Ashmead's affidavit (page 24). It reads:

> "The rear or north end of the group of buildings under one roof erected for stores extending from Stenton Place to Iowa Avenue extends 24 feet north of the south line of the alley as shown on the original map of the Hemsley Tract, and 24 feet of the northerly end of the structure extends one foot over the restricted lines fronting on both Iowa Avenue and Stenton Place."

There should be no misapprehension as to these facts being binding upon complainant because Ashmead's affidavit is unmet. In the light of these facts, is it not highly inequitable to permit the complainant to restrain defendant? It should be presumed that Stafford saw the offending structures before he acquired title and before he began the erection of his building, and that he was led to believe that he would be privileged to do what others similarly situated had done. If complainant intended to preserve the restricted area from violations he should have asserted himself at the threshold. Had he spoken when he should have spoken, when he saw the work begun on the offending structure, they would likely not have been constructed and Stafford would not have been misled. With defendant's affidavits confronting him he offered no explanation as to this silence. We are not unmindful of the cases cited by the Chancellor which hold that immaterial violations, particularly

when they do not materially concern the complainant, cannot be urged to deprive one of the right to insist upon the restrictive covenants being enforced. But they cannot be appealed to in aid of the complainant here. We pointed out, and it will be seen by the map, that the stores are on a line with complainant's property and have been erected long enough to make it impossible for the complainant to ever enforce the restrictions against them. The Eden Apartments is slightly farther from complainant's property than defendant's—neither being in a direct line. The injury to complainant's property or in interference or discomfort to the complainant by reason of the existence of defendant's structure will be negligible. Our insistence is that there are two equitable barriers against the complainant, first, abandonment, and second, estoppel. For aught that appears, complainant may be interested in the other offending structures. If this affirmatively appeared he would of course be barred. If he was friendly to those who built and own the structure and was willing to permit the violation, he is equally barred. Equity required him to explain his silence. He failed to do so.

It will be noticed that the Hemsley tract runs only from a point 54 feet Eastwardly of Stenton Place to a point 65 feet West of Iowa Avenue—the entire width of the tract excluding the two avenues being only 239 feet. Of that number of feet there are 180 on the ocean front on a line with defendant's building which are covered by structures violating the restrictions now sought to be enforced. It seems almost impossible to believe that these unmet facts do not lead irresistibly to the conclusion that complainant abandoned his right to enforce the restrictions so far as the ocean front is concerned.

Then we insist he is estopped. It is unbelievable that Stafford with knowledge of the restrictions which we assume he must have had, would have conceived and projected such an enterprise that he did unless he had believed or been advised that in view of the other structures he would be at liberty to proceed. From a layman's standpoint such a conclusion was justified.

It must be charged against the complainant that he saw the possibility of misleading others who might want to improve the Hemsley tract into believing that he was content that the restrictions so far as the ocean front was concerned might be violated. Having done so, he is now estopped from asserting the enforcement of the restrictions against Stafford when such an assertion will work very great injury. The equitable principles of abandonment and estoppel as applied to cases of this character are so clear and well settled as not to call for citation of authorities. It is enough to cite *Fortesque against Carroll,* 46 Equity page 553, where this Court said, "to doubt is to deny." In this case this Court approved of the statement of Vice-Chancellor Howell in *Newbery v. Barkalow,* 75 Equity 128. The statement is:

> "It must be conceded that restrictive covenants must not be vague or uncertain; that the complainant's right to insist upon the covenant and to invoke the injunctive powers of the court must be clear and satisfactory."

Can it be said that no doubt is created in this case or that the complainant's right to the injunctive power of the court is clear and satisfactory? We respectfully submit that his conduct has brought him

clearly within the cited cases and the quoted language, and must defeat his present claim.

As stated the building of defendant is to be used as a hotel. We doubt that it can be successfully urged that this does not violate the restriction against private dwelling, but we call attention to the suggestion of Vice-Chancellor Reed in *Hemsley v. Marlborough Hotel Company,* 62 Equity 164, where he seems to leave open the question of whether a hotel could not properly be styled a dwelling.

Now as to the order based upon the final decree, which order requires among other things a removal of the bay windows. The photograph, Exhibit C5, on petition shows that the bay windows are well above the grade of the street, being between 30 and 40 feet. The affidavit of Howard (page 17), shows that the work was well advanced when the present defendant took over its completion and that it was supposed that the bay windows did not overhang the Stenton Place lot. An actual survey seems to show that this was error. To comply with the order of Chancery means disaster. It was not pointed out in the original bill or otherwise until the filing of the petition that the bay windows would offend. Technically perhaps complainant was under no obligation to call attention to the violation, but when it is remembered that the title shifted and the work passed into the hands of those who were ignorant of the violation, it would seem that equity ought to cast a heavy burden upon the complainant showing perfect good faith and for explanation of his failure to warn the defendant, especially when as in this case the windows are so far above the grade of the street and are not likely to materially interfere with complainant's enjoyment of his property or affect its value. In a practical sense the violation is no more material

or substantial than was the violation in *Hemsley against Marlborough Hotel Company*, 68 Equity 596, where the Court refused to allow a mandatory injunction. The language used at page 601, seems applicable and appropriate to the defendant's case. It will be noticed that after the filing of the bill, Stafford undertook to obey the restrictions. He had a clear right to build anything he pleased on so much of the Stenton Place lot as might be oceanward of the old bulkhead line. The substantial structure on the Stenton Place lot now complained of appears to extend a few feet landward of that line but this evidently grew out of some misapprehension of the precise location of that line, and as to the bay windows it would seem that either there was a misapprenhension as to whether they did extend over the Stenton Place lot, or else it was thought as they formed no part of the foundation or main building in a sense, that would not be violative of the restrictions. In the cited case this Court said:

> "Apparently the violations of the restrictive covenants in this respect were accidental; no objection to this feature of its construction seems to have been made by the complainant during the process of its erection; the injury inflicted upon the complainant's property by these infractions of the covenants is almost infinitesimal, and the loss which would be entailed upon the defendant by tearing away these portions of its building would be very considerable."

We respectfully urge that the final decree should be reversed and the order based thereon set aside and that if the Court should find that complainant is not estopped or has not abandoned the covenants that in no event can he be heard to insist that the bay windows should be removed.

C. L. COLE,
Solicitor and of Counsel with
Ambassador Hotel Corporation.