

Land law

Law



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With regards to positive covenants, there is no issue when the original covenantee seeks to claim against an original covenantor. However, complications emerge when attempts are made to make a successor in title to the original covenantor liable on the premise that the burden of the covenant has passed to them, or when successor in title to the original covenantee wishes to sue on the premise that the benefit of the covenant has passed to them. The difficulty with this is that although the burden may pass to successors in title in restrictive covenants, this rule does not apply in positive covenants. This problem can be seen in *Rhone v Stephens* [1994]² where a property owner had divided his property into two, selling one (a cottage) and retaining the other. He covenanted to maintain the roof that extended over the cottage, which subsequently leaked and damaged the cottage. The cottage owners then sued the successors in title of the original covenantor. However, the House of Lords held that because the covenant was positive, there could be no liability. Lord Templeman stated that equity could not be used to enforce positive covenants and to do so 'would be to enforce a personal obligation against a person who has not covenanted³.' This was based on the principle in *Keppell v Bailey* [1834]⁴ which establishes the rule that only the benefit and not the burden runs with the land. In *Haywood v Brunswick Permanent Benefit Building Society* [1881]⁵, Cotton LJ held that covenants requiring owners to 'put his hand into his pocket' was not enforceable.