covenants contained in" certain indentures "and that such restrictive covenants were not enforceable by any person." As some of the indentures comprised other land as well as that of the applicant, the latter part of the proposed declaration would have enured for the benefit of other persons besides the applicant; Cross J. therefore refused to make that part of the declaration. The first part alone was, of course, sufficient for the applicant's purposes.

Costs **6–57**

In *Re Jeffkins' Indentures* Cross J. is reported as saying: "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 should not, however, be ordered to pay the plaintiff's costs."

This statement follows the working rule which was applied by Clauson J. in *Re Ballard,*[8] and mentioned to and adopted by Wynn-Parry J. in *Re Pinewood Estate, Farnborough.*[9] In *Re Forest Hill, Leeds,*[10] Harman J. was invited to order a respondent who had maintained an unsuccessful objection, but who did not appear at the hearing, to pay some of the applicant's costs, but he refused to do so. Counsel engaged in an unreported case of *Re Young* in 1956 informed the author at the time that Roxburgh J. decided after argument that the costs awarded to a respondent should be party and party costs only. In *Re Pinewood* the applicant submitted to pay costs, down to the appropriate point, as between solicitor and client, and it seems that a taxation on a common fund basis (the present scale comparable with costs between solicitor and client) is more in keeping with the reasoning which supports the rule. In *Re Tiltwood,*[11] when there was a notoriously open point of law to be resolved, the successful applicant was ordered to pay the respondents' costs.

In practice it is prudent for an applicant to put full information at the **6–58**

[8] [1937] Ch. 473. But this point is noted only in the *All England Law Reports*, at [1937] 2 All E.R. 691.
[9] [1958] Ch. 280 at p. 289.
[10] (1957) 8 P. & C.R. 179.
[11] [1978] Ch. 269.

disposal of the respondent and those of the addressees of the circular letter who seem disposed to go into the matter; when this information has been digested, the applicant may well be wise to offer to pay the other parties' full costs to date, on the understanding that they will not pursue the matter further. By this means he will, in many cases, be able to ensure an unopposed hearing.

Where the application fails, the applicants are ordered to pay the costs of the respondent on a common fund basis down to the end of the last hearing before the master and as between party and party thereafter.[12]

The decisions as to costs so far discussed all arose in cases where the applicant under section 84(2) took the initiative in seeking to get his title cleared up and where he had not applied to the Lands Tribunal under section 84(1).

6–59 A distinction has emerged between such cases and those in which the applicant starts in the Lands Tribunal, seeking the modification of the restriction, and is there faced with objectors who are in his opinion not entitled to the benefit of the restriction and thus have no right to attend in the Lands Tribunal to oppose the application. Before *Re Purkiss' Application*[13] an applicant would have sought, by the proceedings then deemed appropriate in the Lands Tribunal, to eliminate such objectors. But in consequence of the remarks of the Court of Appeal in that case, an applicant was, until the coming into force of the new subsection (3A), which was introduced into section 84 by the Law of Property Act 1969, unable to eliminate them except by starting further proceedings in the court under section 84(2). This situation arose in *Re Jeffs' Transfer* and in *Re Jeffs' Transfer* (*No.* 2).[14] In the first of those cases certain objectors, having seen the applicant's evidence filed in the proceedings under section 84(2), elected to withdraw and asked for their costs on the usual principle. This application was refused by Buckley J., who said that "plaintiff would never have brought proceedings had it not been for the action of the objectors in the Lands Tribunal." Other objectors fought on, and the second report records their defeat on the merits before Stamp J. They too applied for their costs under the normal rule, submitting that the decision of Buckley J. was wrong. Stamp J. upheld the distinction between this situation and that with which the normal rule is concerned, saying: "Here, before ever the plaintiffs communicated with the defendants, they had inter-

[12] *Re Dolphin's Conveyance* [1970] Ch. 654.
[13] [1962] 1 W.L.R. 902.
[14] [1965] 1 W.L.R. 972 and [1966] 1 W.L.R. 841.

vened on an application that he had made to the Lands Tribunal for modification of the covenant and asserted a title which they claimed." On this basis his Lordship ordered the objectors to pay the plaintiff's costs of the whole proceedings.

In the *Wembley Park Estate Co. Ltd.'s Transfer*[15] the question of costs was elaborately argued and was the subject of a decision by Goff J. This was an ordinary case under section 84(2), no attempt having been made to apply to the Lands Tribunal. The applicants, having won, asked that the respondents be ordered to pay their costs; submitting that this case was really covered by the reasoning of Buckley J. and of Stamp J. in the two *Jeffs* cases. This argument was rejected by the Court, which held that the learned judges who dealt with *Jeffs* cases "did not intend to throw any doubt upon the practice which has subsisted since as long ago as 1937," and that in ordinary cases under section 84(2) the rule is still stated in *Re Jeffkins*.[16] **6–60**

There the matter rests for the moment; *Re Jeffkins* states the normal rule, but if the application stems from proceedings in the Lands Tribunal[17] the two *Jeffs* cases govern the costs. It seems that there will continue to be occasional examples of the latter sort of case, though they will now be much less common since the new subsection (3A) enables the Lands Tribunal to decide questions of title. Nevertheless, the subsection provides that such questions are in certain cases to be referred to the Court either under section 84(2) or by way of case stated under new Rules of Court or Lands Tribunal rules.[18]

No reported case under section 84(2) has been to the Court of Appeal except *Re Tiltwood*,[19] which was compromised there. But it is submitted that the costs in that court would follow the event in the normal way.

Registered land and the Land Charges Register **6–61**

If the land dealt with in the declaration is registered land, the Chief Land Registrar must give effect on the register to the order when made: subs.(8). An order that the Charges Register should be amended was asked for in *Re Sunnyfield*.[20] The report does not state whether it was granted, but it presumably follows as of course.

[15] [1968] Ch. 491.
[16] [1965] 1 W.L.R. 375.
[17] But they must stem from relevant and recent proceedings in the Tribunal. In *Re Dolphin's Conveyance* [1970] Ch. 654, there had been such proceedings several years previously and that was not enough.
[18] See below, para. 7–163. This procedure is in fact little used.
[19] [1932] 1 Ch. 79.
[20] [1978] Ch. 269.