Important Legal Decision

APPEAL from a decision of the Appellate Division of the Supreme Court of Ontario (1), reversing the judgment of a Divisional Court (2), in favor of the plaintiff.

The action was brought for an injunction to restrain the respondent from erecting an apartment house on lot 32 on the east side of Maynard avenue, in the city of Toronto, and which adjoins the lands upon which the appellant has erected a valuable private residence.

The lands now owned by the appellant and respondent respectively were formerly owned by the Reverend George Maynard.

The executors of the Reverend George Maynard conveyed lot 32 above mentioned to one John Williamson, by deed dated the 18th April, 1888, the material portion of which is as follows: "All and singular that certain parcel or tract of land and premises (describing them) to be used only as a site for a detached brick or stone dwelling house, to cost at least two thousand dollars, to be of fair architectural appearance, and to be built at the same distance from the street line as the houses on the adjoining lots."

The respondent's title is derived through this conveyance to Williamson.

When the appellant purchased the land now owned by him it was one of the few remaining vacant lots on Maynard avenue, and he did so with the knowledge that there were restrictions on that street governing the class of buildings to be erected thereon, and also knowing from his personal inspection that the houses on the street were all private dwellings and worth from $7,000 to $10,000. The appellant erected a first-class private dwelling house, costing approximately $14,000, over and above the value of the land, which he would not have done had he not believed that there were building restrictions sufficient to prevent the erection of such a building as is proposed by the respondent.

The respondent proposes to construct what is called an apartment house upon lot 32, and the plans and specifications which he had prepared show that it is intended to include the construction of six separate and distinct suites, or sets of rooms, each cut off from the others by its own front door, and composed of a living room, four bedrooms, a bathroom, a dining-room and a kitchen.

The appellant, believing that his property would be very greatly depreciated and damaged if the respondent were permitted to construct the proposed building, commenced this action.

After the commencement of the action the appellant moved for an interlocutory injunction. The motion was by consent turned into a motion for judgment, and on the 3rd May, 1912, judgment was pronounced by Mr. Justice Middleton dismissing the action with costs.

The learned judge considered that he was bound by the decision in Re Robertson and Defoe (1), and dismissed the action. This judgment was reversed by the Divisional Court (composed of Falconbridge, C.J., K.B., Britton and Riddell, JJ.), Britton, J., dissenting.

The judgment of the Divisional Court was reversed by the Appellate Division (R. M. Meredith, Garrow, Maclaren, Magee and Hodgins, JJ.A.), Maclaren and Magee, JJ.A.), dissenting.

From the judgment of the Court of Appeal for Ontario the appellant appealed to the Supreme Court of Canada.

Glyn Osler and J. H. Cooke for the appellant. The conveyance to Williamson contains a restrictive covenant limiting the use of the land by the grantee and his assigns. Mackay v. Dick (1), at page 263; Rawson v. Inhabitants of School District (2), Brookes v. Drysdale (3), at page 60.

The words used are to be interpreted in their ordinary and popular sense. Rogers v. Hosegood (4), at page 409; Hext v. Gill (5); Ex parte Breull (6).

J. M. Godfrey, for the respondent, referred to Kimber v. Admans (7); Robertson v. Defoe (8); Neill v. Duke of Devonshire (9), at page 149.

The Chief Justice (dissenting):—I am of opinion that this appeal should be dismissed with costs.

Idington, J.:—The respondent claims that he is entitled within the terms of a grant of certain lands conveyed to be used only as a site for a detached brick or stone dwelling house to cost at least two thousand dollars, to be of fair architectural appearance, and to be built at the same distance from the street line as the houses on the adjoining lots, to erect on said site half a dozen dwelling houses so attached together and covered in that they may wear the external appearance of one house.

If this is to be construed as a covenant I conceive and respectfully submit that respondent is simply attempting by a juggling use of the word "apartment" to seem to keep the promise to the ear yet break it to the hope.

It is part of the office of the law to defeat such like attempts and see that what was within the reasonable contemplation of the parties to a contract as expressed in their use of the words thereof, is so adhered to that neither the purpose nor the language is frittered away by over refinement.

It is the use of the site, and not the use or abuse of the detached dwelling when built, that