

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 defendant.

In 1888 Miss Maynard and Mrs. Atkinson, the executrices and devisees of the previous owner of the land, who had laid out Maynard avenue, sold lot (No. 32) on this avenue to one Williamson through whom the defendant claims the husband of Mrs. Atkinson joining as grantor. The deed (which is numbered 4033 reads "All and singular" (describing the land) "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 have and to hold, etc." After the usual covenants, the following covenant by the purchaser is found:—

"And the said party of the second part hereby for himself his heirs, executors, administrators, and assigns covenants, promises, and agreed to and with the said parties of the first part their heirs and assigns, that he the said party of the second part, his heirs and assigns or any person or persons claiming or deriving title or interest in the lands hereby conveyed or any part thereof through, under or in trust for him, shall not nor will at any time or times hereafter erect or maintain or suffer or allow to be erected or maintained upon said land or any part thereof, any building for manufacturing purposes, nor carry on or permit to be carried on on said lands or any part thereof, any dangerous or noisy or offensive trade or business, which would be a nuisance in the neighbourhood."

Miss Maynard swears that it was always her father's intention that Maynard avenue should be built up with a uniformly fine class of private, detached, dwelling houses, and she had endeavoured to sell and convey the lands still unsold at his death in such a way as to carry out his wishes—and it was with a view that there should be erected on lot 32 a private, detached, dwelling house, which would be in keeping with the houses on the other and adjoining lots that the condition already recited was put in the deed.

The defendant is proposing to erect an apartment house, a six-suite apartment house, upon lot 32. The plaintiff having taken an assignment from Miss Maynard of "all and any right as grantor in the said conveyance (i.e., that to Williamson), to enforce the conditions imposed under the said conveyance," brings his action "for an injunction restraining