

line with other buildings on the street—or because of finish such objection may be well founded. That is not this case. This is the simple objection that an apartment house is not a detached dwelling-house. I am of opinion that an apartment house may be fairly called a dwelling house—and in this case a detached dwelling house. It appears to me that an apartment house as an objectionable house was not within the contemplation of either of the parties to the deed in question. No definition of dwelling house was given by either of the parties—as to location it was to be detached, and same distance from street; as houses on adjacent lots. It was to cost not less than \$2,000. Nothing said as to maximum of size or cost. It was to be of fair architectural appearance. We are now asked to limit its size and its capacity to accommodate dwellers therein. That would be making a new conveyance—with more restriction than the grantee agreed to and more than grantors asked. “The presumption is in favour of freedom.”

The case of *Campbell et al. v. Bainbridge*, 2 Scots L. T. R. (1911), 373, seems to me expressly in point. In that case the prohibition was of “houses or buildings of any kind other than villas or dwelling houses with offices and such enclosing walls as my said disponent may think proper to build,” and it was held that the building of tenements was not prohibited. The Lord President (p. 375 said: “A tenement of dwelling houses is just a dwelling house. It is a dwelling house with more or less accommodation in it—I cannot think that, in ordinary parlance a set of flats could not be called a dwelling house—they are dwelling houses.”

Having come to the conclusion as above—it is not necessary that I should discuss the other branch of the case—namely, that there was no covenant on the part of the grantee affecting the matter in question.

In my opinion the appeal should be dismissed with costs.