

within the meaning of a covenant not to erect more than one house on the site. I, therefore, hold that the proposed building is in fact a pair of semi-detached buildings, and to permit the same to be erected would be in violation of the restriction which provides that every "pair of semi-detached buildings shall have appurtenant thereto lands having a frontage on Palmerston avenue of at least fifty feet."

Although the word "appurtenant," if strictly construed, as urged by Mr. Thurston, would not be the strict legal expression to use, I think that what the parties meant is plain, and that, instead of giving the word "appurtenant" as used a strict legal meaning, its ordinary popular meaning must be given to it; and, so doing, I find that the defendant, if permitted to erect the building in question, would be violating restriction number 3.

Then as to the other condition, I have no hesitation in finding, upon a consideration of the plan and the weight of evidence at the trial, that the proposed building will not have its front on Palmerston avenue, as required by restriction number 5, but will have its front upon Harbord street.

While it is true that there is an entrance to one of the apartments from Palmerston avenue, there is no connection between that apartment and any of the others in the building. The main entrance for all the other apartments in the easterly half of the building is on Harbord street, as is also the main entrance for all the apartments in the westerly half of the building.

While it is true that the portion of the building facing Palmerston avenue may be described as the front end, it is not the substantial or predominating front of the building, which, as already stated, having regard to the plan and to the weight of evidence at the trial, is on Harbord street, and is, therefore, in violation of building restriction number 5.

Among other ingenious and ably maintained defences urged by Mr. Thurston, much attention was paid to a defence alleging that the plaintiff himself had violated one of the restrictions of the scheme, and, therefore, cannot be heard to complain of violations by the defendant. I do not stop to discuss the law which would be applicable if there had been a violation by the plaintiff; but find as a fact that the violation charged by the defendant against the plaintiff was not established.

The claim is, that the main wall of the plaintiff's building has been erected nearer than fifty-five feet to the centre line of Palmerston avenue, in violation of restriction number 1.

In my opinion, it was well established by the plaintiff that the main wall of his building is not built in violation of that