

HON. MR. JUSTICE BRITTON (*dissenting*):—The action was brought for an injunction restraining the defendant from erecting an apartment house on lot No. 22 on the east side of Maynard avenue, in Toronto. It is contended that such erection there, is in violation of a condition and restriction contained in a deed of this property from the executrices and devisees under the last will and testament of the Reverend Geo. Maynard in his lifetime, of the township of York, deceased, to John Wm. Williamson. The plaintiff claims title under Williamson. The deed to Williamson was made on the 18th day of April, 1888, and after the grant to Williamson his heirs and assigns forever of the land therein described—being the land now owned by the defendant, the words added now invoked by the plaintiff as applicable to the present case, are these—"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 express covenants of the grantee in that conveyance, are against the erection or maintenance on the land of any building for manufacturing, and against carrying on, or permitting to be carried on, on any part of the land, any dangerous or noisy or offensive trade or business which would be a nuisance in the neighbourhood. The defendant proposes to build an apartment house. He calls it a dwelling house, and in a sense it will be, if erected, a dwelling house. He desires to rent it to, or for six families—and the house will be fitted up to accommodate six tenants, and it will be a dwelling house for those tenants. The architectural design of the proposed house—its location, the material in its construction are all unobjectionable. The objection is simply that it is to be an apartment house—and the Court is asked, upon reading the conveyance—and taking into consideration that the street was intended to be what is commonly known as a residential street, to say that this house is not "a detached dwelling house," within the meaning of the conveyance, and the understanding of the parties, when in April, 1888, the conveyance was made. In 1888, there were very few—comparatively—apartment houses in Toronto. Since then the number has increased—and they increased in size and improved in finish and convenience. It is quite true that even with the best architectural design, they are objected to in certain localities—and when objection is because of location out of