The action was tried before TEETZEL, J., without a jury, at Toronto.

W. A. McMaster, for the plaintiff.

W. G. Thurston, K.C., for the defendant.

TEETZEL, J.:—The restrictions in question, with violation of which the defendant is charged, are numbers 3 and 5 of the scheme, covered by the covenants in the conveyances and endorsed thereon:—

"3. Every building erected upon any such lot shall be either detached or semi-detached. Every such detached building (except stables and outbuildings) shall have appurtenant to it land having a frontage on Palmerston avenue of at least thirty-three feet; and every such pair of semi-detached buildings shall have appurtenant thereto lands having a frontage on Palmerston avenue of at least fifty feet."

"5. Any building (except stable and outbuildings) erected upon any such lot, which has a frontage upon some other street as well as upon Palmerston avenue, shall have its front on Palmerston avenue."

The defendant's lot has a frontage of only forty feet on Palmerston avenue, and Harbord street adjoins to the south. The defendant's plans are for the erection of a building to be used as an apartment house or houses; and, having obtained a permit from the city architect, he was proceeding, at the commencement of this action, with the erection thereof.

As to the first alleged violation, the plaintiff charges that the proposed building is in fact a pair of semi-detached buildings, and not a detached building; and that, the total width of land appurtenant thereto being only forty feet, restriction number 3 is thereby violated.

In the proposed building there is a vertical division wall, running north and south, extending the whole height of the building, dividing it into two equal divisions, and in each division there are some seven or eight separate apartments. There is no door or other opening in this division wall, so that there is no means of access to and from the easterly and westerly halves of the building; each half has its independent entrance facing upon Harbord street.

I think, upon this question, the case is governed by Ilford Park Estates Limited v. Jacobs, [1903] 2 Ch. 522, in which it was held that a building structurally divided into two tenements on different floors, with no internal communication, common staircase, or common front door, constituted two houses,