

child upon his satisfying a Judge of the High Court Division that he had procured a suitable house with his sister in charge and that the removal of the child would not be fraught with any real peril to her health.

*Appeal allowed; MEREDITH, J.A., dissenting.*

FEBRUARY 10TH, 1913.

\*PEARSON v. ADAMS.

*Deed—Conveyance of Land—Building Restriction—Construction—Covenant or Condition—“Detached Dwelling-house”  
—Apartment House.*

Appeal by the defendant from the judgment of a Divisional Court, 27 O.L.R. 87, 3 O.W.N. 1660, reversing the judgment of MIDDLETON, J., 27 O.L.R. 87, 3 O.W.N. 1205.

The appeal was heard by GARROW, MACLAREN, MEREDITH, MAGEE, and HODGINS, J.J.A.

J. M. Godfrey, for the defendant.

J. H. Cooke, for the plaintiff.

MEREDITH, J.A.:—If we have regard only to the interpretation of the words of the “condition” in question, this case presents no great difficulty; but, if we unconsciously let our minds be carried away by that which we may feel ought to have been provided against in the “condition,” our chances of going astray, too many under any circumstances, are very greatly increased.

The provisions of the deed in question are, that the grant contained in the deed shall be subject to the “further condition that the said land shall be used only as a site for two isolated dwelling-houses . . . .”

So that the single and simple question, on the subject of the interpretation of the deed, is, whether the plaintiff has proved that the building in question is not a dwelling-house, or, if a dwelling-house, is not an isolated one: the restriction must, like an exception out of the grant, be well proved, by those asserting it, to have been violated.

\*To be reported in the Ontario Law Reports.