is in question. The illustrations pressed in argument of what might be done in way of overcrowding even a detached dwelling, against which this stipulation is not aimed, are therefore of no avail.

We must look at the whole instrument, and doing so here I have no doubt the grantor and grantee intended the latter should be bound to use the land in the manner stipulated, and for this purpose I presume the grantee executed the deed.

I think the appeal should be allowed with costs throughout.

Duff, J. (dissenting):—The covenant in this case, in my judgment, has no application to the building in question. The building is, undoubtedly, a house. It is a dwelling house, because it is constructed solely for housing people as dwellers. The contention that because the house contains a certain number of apartments in which separate families might conveniently live, it is therefore not a "detached" dwelling house is a contention which, if not wholly irrelevant, must involve the proposition that the building is not a dwelling house, but an assemblage of dwelling houses. I think it is rather extravagant to affirm that a given house is not a "detached" house solely because it contains a number of apartments capable of separate occupation.

I think the considerations which ought to govern the determination of the case are set forth very satisfactorily in the judgment of Mr. Justice Meredith in the court below.

Anglin, J.:—It is common ground that the terms of the "covenant" in question should be given the meaning ordinarily attached to them when used in common parlance. Rogers v. Hosegood (1); Hext v. Gill (2), at page 719. It is urged by the appellant that the construction put by the respondent upon these terms is technical and refined; the respondent makes a similar complaint of the construction insisted upon by the appellant.

It would be a most extraordinary description of a modern apartment house, such as the defendant proposes to erect, to call it "a detached dwelling house"—a description that nobody would ever dream of using colloquially. No purchaser of a property, which he had not seen but had bought relying on the vendor's description of it as "a detached dwelling house," would expect to have foisted upon him, or be compelled to take, as answering that description, an apartment house such as the defendant's plans provide for. If further evidence were required of the purview of the restriction intended to be imposed upon the user of the property in question as a building site, it is furnished by the fact that, his purpose being to ensure that Maynard avenue should maintain its character as a first-class residential street, the vendor stipulated that on the site now owned by the respondent there should be erected nothing other than a dwelling house of brick or stone costing at least $2,000. What sort of modern apartment house built of brick or stone could be constructed for $2,000? The amount of this minimum price seems to show conclusively that the purpose was that nothing other than a single dwelling house in the ordinary acceptation of that term should be erected on the land.

I am, with respect, of the opinion that the decision in Robertson v. Defoe (1), relied on by the respondent, cannot be sustained. Each apartment in the modern residential apartment how such a building can be deemed in compliance with a covenant that "every residence erected on the land shall be a detached house." "House" was the word considered in Kimber v. Admans (2). "Dwelling-house" was the term dealt with in Rogers v. Hosegood (3). See, too, Ilford Park Estates v. Jacobs (4).

For the reasons stated by Mr. Justice Riddell in the Divisional Court I agree with his conclusion that the provision in question should be deemed a covenant, and not a condition. The fact that, no right of re-entry for breach being reserved, the stipulation, treated as a condition, would be ineffectual, affords another reason for treating it as a covenant; *ut res magis valeat.* To the authorities cited by Riddell, J., I would merely add a reference to Hodson v. Coppard (4), and Stevinson's Case (5).

I would, for the foregoing reasons, with respect, allow this appeal with costs in this court and the Court of Appeal, and would restore the judgment of the Divisional Court.

Brodeur, J.:—The appellant is the owner of a lot on Maynard street, in the city of Toronto, and the respondent is the owner of an adjoining lot on the same street. These lots were sold with the covenant that each of them "would be used only as a site for a detached brick or stone dwelling house to cost at least $2,000, to be of fair architectural appearance, and to be built at the same distance from the street as the houses on the adjoining lots."

The respondent proposes to erect an apartment house, and the appellant, as transferee of the rights of the original vendor, claims an injunction to restrain the respondent from building that apartment house. He claims that the apartment proposed to be erected is not a detached house, and is, in that respect, an infringement of the covenant above referred to.

I consider that apartment houses were not within the covenant, and that its construction is an infringement of that covenant. Rogers v. Hosegood (1).

I consider that the words in the covenant should be given their ordinary popular meaning. Rogers v. Hosegood, at page 409; Ex parte Breull; In re Bowie (2).

For these reasons I think that the injunction prayed for should be granted.