

the English-speaking world an apartment house such as is contemplated might be called 'a detached dwelling house,' I think it plain it cannot be so called in Toronto, and in this contract. No one using language here in its ordinary and popular vernacular sense would call an apartment house "a detached dwelling house."

It is to my mind of none effect to say that a family if large enough might occupy the whole building—that might be said of the King Edward Hotel—or to say that there is just the one front door, etc., that might be said of the Alexandra or the St. George Mansions. No one would, I think, call this apartment house even a dwelling house, except one who desired to build one where only a dwelling house should be—or his architect or someone making an affidavit for him. And neither defendant, architect nor neighbour ventures to call the proposed building "a detached dwelling house."

The next question is—is the provision in question a covenant? It is either a condition or a covenant—it is not simply a mere nullity.

I do not know of any case in which the law is more clearly, concisely, and accurately laid down than *Rawson v. Inhab. School District* (1863), 89 Mass. (7 Allen) 125. Bigelow, C.J., delivering the judgment of the Court, says p. 127 "a deed will not be construed to create an estate on condition unless language is used which according to the rules of law *ex proprio vigore* imports a condition, or the intent of the grantor to make a conditional sale is otherwise clearly and unequivocally indicated. Conditions subsequent are not favoured in law. It is doubtful whether a clause in a deed be a covenant or a condition, Courts of law will always incline against the latter construction . . . Co. Litt. 205b., 219b.; 4 Kent Coram (6th ed.), 129, 132: *Shep. Touch.* 133; *Merrifield v. Cobleigh*, 4 Cush. 178, 184. . . . The usual and proper technical words by which such an estate is granted by deed are 'provided,' 'so as.' or 'on condition.' Lord Coke says 'words of condition are *sub conditione, ita quod, proviso.*' *Mary Portington's Case*, 10 Co. 42a. Co. Litt. 203, a. b. . . . In grants from the Crown and in devises, a conditional estate may be created by the use of words which declare that it is given or devised for a certain purpose or with a particular intention . . . But this rule is applicable only to those grants or gifts which are purely voluntary and where there is no other consideration moving the