

the defendant from erecting an apartment house on lot number 32, plan 454 . . . and thereby violating the conditions and restrictions contained in deed . . . number 4033."

A motion for an interim injunction was by consent turned into a motion for judgment by Mr. Justice Middleton, and he dismissed the action with costs.

The plaintiff now appeals.

My learned brother thought that he was bound on the authority of *Robertson v. Defoe* (1912), 25 O. L. R. 286; 20 O. W. R. 712, to hold that an apartment house such as the defendant intended to build is a "detached dwelling house."

With much respect, I do not think so; but think that the learned Judge was notwithstanding *Robertson v. Defoe*, to follow his own opinion—and hold as he would have held in the absence of authority which he considered binding upon him "that an apartment house such as the defendant contemplated erecting could not be described as a detached dwelling house. In *Robertson v. Defoe*, there was a covenant that every residence erected on the land should be a detached house—the question (or one of the questions) was, was the erection of a "three-suite dwelling house" a breach of this covenant? The learned Chief Justice Common Pleas held that it was not—but that is quite a different thing from saying that all apartment houses are "detached dwelling houses." "In order to ascertain the scope and effect of . . . covenants . . . regard must be had to the object which they were designed to accomplish: *Ex p. Breull, In re Bowie* (1880), 16 Ch. D. 484, and the language to be read in 'an ordinary or popular, and not in a legal and technical sense,' per Collins, L.J., *Rogers v. Hosegood* [1900] 2 Ch. 388, 409." *Robertson v. Defoe*, at p. 288—that is what James L.J., in *Hext v. Hill*, L. R. 7 Ch. 699, at p. 719 calls the "vernacular."

In the particular case the Chief Justice Common Pleas held that a certain apartment house was a detached house, and we are not called upon to consider whether his conclusion was what we should have arrived at. The learned Chief Justice does not, as I read the case lay down any rule of law at all—if it be considered that the decision is such as to cover the present case, with much respect, I should be unable to follow it. Within fairly wide limits the question is not one of law at all, but of fact.

Without at all saying that in some contracts, even in some statutes, under certain circumstances or at certain parts of