

erection of a structure at the south-west corner of Sherbourne and Rachael streets, Toronto, according to plans filed.

W. N. Ferguson, K.C., for the applicant.

Irving S. Fairty, for the respondents.

HON. MR. JUSTICE LENNOX:—I think the applicant is entitled to a mandatory order, but not unconditionally.

On the 11th of March, 1907, the respondents, the City of Toronto, passed "No. 4861, A By-law for Regulating the Erection and to provide for the safety of Buildings;" and, subject to certain amendments not material to this application, this by-law continued in full force until the 1st of April instant. Under the head of "Definition of Terms," it was enacted by sec. 14. "The following terms of this by-law shall have the meaning assigned to them respectively. . . .

"Apartment or Tenement House. (32) A building which, or any portion of which, is or is intended to be occupied as a dwelling by three or more families living independent of one another and doing their cooking upon the premises."

"Lodging House. (34) A building in which persons are accommodated with sleeping apartments, including hotels and apartment houses, where cooking is not done in the several apartments." The punctuation perhaps obscures the meaning a little but at all events it is plain that, for the purpose of "regulating the erection . . . of buildings" in the city of Toronto, suites or groups of apartments are divided into two classes, namely; (a) Suites in which the occupants do their own cooking—the building containing these is an apartment or tenement house; and (b) Suites in which the occupants do not do their own cooking—the building containing these is a lodging house.

Having thus eliminated from "Apartment House" a class of building which might otherwise have been called; which I think, would otherwise have been called, an apartment house, sec. 42 proceeds to provide for a special method of construction to prevent the spread of fire, in all apartment houses which are not fire proof, and to off-set the additional risk incident to the multitude of kitchens permitted in this class of building—precautions which are not enacted and which are obviously not so necessary in the case of a lodging house. This was the building law in Tor-