

as to Brunswick avenue was not gone on with, and the defendant then proposed to proceed with her apartment house. In the latter part of 1911 the defendant applied to the City Architect and Superintendent of Building for permission to build and submitted plans and specifications. The City Architect and Superintendent of Building knew that these plans and specifications were those of an apartment house—and on the 31st January, 1912, permission was granted to the defendant, in terms, “to erect a two-storey brick apartment, near Wells street, on Brunswick avenue, in Limit B., in accordance with plans and specifications approved by this department.”

Water service was applied for—and granted by plaintiffs and paid for by defendant.

The work has not been rapidly proceeded with, but some work has been done—and there is not before me anything to indicate bad faith on the part of the defendant.

On the 16th day of April, 1912, an amendment of the Municipal Act was made (2 Geo. V. ch. 40, sec. 10) by which the following section was added as sub-sec. (c) to the sec. 19 of the Municipal Amendment Act of 1904:

“(c) In the case of cities having a population of not less than 100,000 to prohibit, regulate, and control the location on certain streets to be named in the by-law, of apartment or tenement houses or garages to be used for hire or gain.”

The plaintiffs contend that there has been no location of this contemplated apartment house—and so it can, under the recent amendment, be prohibited.

I am of opinion that what was done amounts to a “locating” of the house, and a consent by the plaintiffs to its location. The plaintiffs have assumed to revoke the permission given and they say power is given to do so by sec. 6 of the city’s building by-law No. 4861. The alleged attempt at revocation was not for any of the causes mentioned in sec. 6.

The case as presented to me seems quite like *Toronto v. Wheeler*, 22 O. W. R. 326. I agree with the decision and reasons for decision given by Mr. Justice Middleton. It would be manifestly unfair to the defendant—it would be rank injustice to her after granting the permit which in my opinion amounts to location within the meaning of the statute—to now step in and stop the work—leaving upon her hands the lot she bought, the plans and estimates prepared, and the work much or little already done—of no value to her other than for the house she desires to erect.

The action will be dismissed with costs.