

defendant's building was being erected in violation of by-law No. 6061, passed under the authority of sub-sec. (c) of sec. 541a of the Municipal Act, 1903, and its various amendments, authorising the councils of cities "to prohibit . . . the location on certain streets, to be named in the by-law, of . . . garages to be used for hire or gain." The by-law followed the wording of the statute.

Irving S. Fairty, for the plaintiffs.

C. S. MacInnes, K.C., for the defendant.

MIDDLETON, J.:—I have come to the conclusion that the garage in question is not a garage to be used for hire, or gain, within the meaning of the statute. The scheme of the owner is the construction of a garage to be used by the tenants of an apartment house. He has done a good deal to complicate the case by the agreements which he has made. In essence he is doing nothing more than leasing sections of this garage to the tenants of the apartment house. This is not the thing that is prohibited by the statute, which is aimed rather at a livery where an automobile may be kept by any transient or traveller.

A garage which is rented yields, no doubt, to the landlord an income. The renting of a garage is not prohibited. The prohibition applies to the erection of a garage which is to be used for hire or gain; and I think this indicates a use of the garage quite different from the occupation and use of it by a tenant under a lease.

This being my view, the action fails, and I need not consider the other important and difficult matters discussed upon the hearing.

MIDDLETON, J.

OCTOBER 1ST, 1913.

SULLIVAN v. DORÉ.

Landlord and Tenant—Alterations in Demised Premises Made by Tenant—Waste—Breach of Covenant—Forfeiture—Absence of Proper Notice—Action—Failure of—Relief against Forfeiture—Terms—Restoration of Premises—Costs.

Action by the executors of John Sullivan, deceased, for forfeiture of a lease made by the deceased and for damages.

The action was tried before MIDDLETON, J., without a jury, at Hamilton, on the 17th June, 1913.