

said sec. 10 of the Act of 1912, I think that upon the streets named therein the Municipality has the right to prohibit, regulate and control the location of apartment or tenement houses which answered to the description contained in sub-sec. (d) of sec. 10 of said amending Act.

It is plain, in my opinion, from an examination of the plans as altered, that the building proposed to be erected thereunder is an apartment or tenement house providing three or more sets of rooms for separate occupation by one or more persons.

I am of opinion that this by-law, No. 6061, was in force at the time the application was made by the plaintiff to the defendants for their approval of the plans and specifications now in question, and for a permit for the erection of the building, the refusal of which by the defendants led to motion.

I think the defendants were within their rights thereunder in refusing. This is quite apart from any objection to the form of the order or other matters urged in support of the appeal which I do not, in the circumstances, think it necessary to deal with.

I would allow the appeal with costs.

HON. SIR WM. MULOCK, C.J.Ex., HON. MR. JUSTICE CLUTE, and HON. MR. JUSTICE RIDDELL, agreed.

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HON. MR. JUSTICE MIDDLETON.

JUNE 18TH, 1913.

SALTER v. EVERSON.

4 O. W. N.

*Way—Right of Way—Title by Prescription—Evidence as to—Chain of Title—Interim Injunction—Damages.*

MIDDLETON, J., in an action brought claiming a right of way over defendant's lands by prescription *held*, that the evidence did not establish the right plaintiff was claiming.

Action tried at Toronto Non-Jury Sittings, in which the plaintiff claims a right of way over defendant's lands by prescription.

H. H. Dewart, K.C., and D. D. Grierson, for plaintiff.

A. R. Clute, for defendant.