

hibited. I prefer, however, not to rest my decision wholly or mainly upon this view of the question."

He also holds that the building proposed to be erected in conformity with the amended plans and specifications, is a lodging house, within the meaning of the definition of that term contained in By-law No. 4861 of the defendant corporation, which he states to have been in force at the time the notice of motion was served.

The appellant is relying upon an amendment to the Municipal Act, contained in 2 Geo. V. ch. 40, sec. 10, and a by-law passed in pursuance thereof. Said section 10 is as follows:

"Section 541a of The Consolidated Municipal Act, 1903, as enacted by sec. 19 of The Municipal Amendment Act, 1904, is amended by adding after clause (b) the following clauses:

(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 and of garages to be used for hire or gain.

(d) For the purposes of this section an apartment or tenement house shall mean a building proposed to be erected or altered for the purpose of providing three or more separate suites or sets of rooms for separate occupation by one or more persons."

The said Act came in force on the 16th April, 1912, and on the 13th May of the same year, the defendant corporation passed its By-law No. 6061, "to prohibit the erection of apartment or tenement houses or garages to be used for hire or gain on certain streets." The first recital in said by-law shews the intention thereof to be to pass a by-law under the express authority of said amending Act.

A second recital is as follows: "And whereas it is expedient that the location of apartment and tenement houses, and of garages to be used for hire or gain, should be prohibited on the streets hereinafter named."

Clause 1 of the by-law is: "No apartment or tenement house, and no garage to be used for hire or gain, shall be located upon the property fronting or abutting upon any of the following streets," viz.; and included in the list of streets are Rachael street and Sherbourne street.

The judgment of Lennox, J., is reported in 4 O. W. N., at 1127, and the facts are fully set out therein. With respect, I am unable to agree with him. The moment a by-law was passed by the Municipal Corporation under the authority of