

HON. MR. JUSTICE MIDDLETON:—By sec. 10 of the Municipal Act (1912), 2 Geo. V., ch. 40, sec. 541a of the Municipal Act as amended by 4 Edw. VII., ch. 22, sec. 19, was further amended by conferring upon cities the power “to prohibit, regulate, and control the location on certain streets, to be named in the by-law of . . . garages to be used for hire or gain.” This statute was assented to on the 16th of April.

A by-law in the terms of the statute was passed on the 13th of May. Prior to the coming in force of the statute the defendant, desiring to erect a garage upon one of the streets subsequently included in the by-law, entered into treaty with the owner of the lands in question, and, contemporaneously, plans of his proposed building were prepared and submitted to the City Architect for his approval, under the requirements of the building by-law. On the 17th April the defendant received a building-permit, authorising the construction of the building in accordance with the plans and specifications submitted. He thereupon completed his purchase of the land and proceeded to make contracts for the erection of the buildings, and at the present time has the excavation well under way.

The sole question is whether the municipality can at this stage interfere with what was sanctioned by the permit issued on the 17th of April.

With reference to legislation of this kind, it is, I think, a sound principle that the Legislature could not have contemplated an interference with vested rights, unless the language used clearly required some other construction to be given to the enactment.

The language here used is by no means free from difficulty and ambiguity. What is prohibited is not, as in sec. (b), the “location, erection, and use of buildings,” for the objectionable purpose, but the “location” only; and I think it may fairly be said that what had been done previous to the enactment of the by-law in question constituted a complete location of the garage. The context indicates that “location” is used in some sense differing from “erection and use.”

It would be manifestly most unfair to so construe the statute as to leave the defendant in the position in which he would find himself, if on the faith of the municipal assent indicated by the building permit, he had purchased the lands and entered into contracts for the erection of his building,