

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 the said by-law shews the intention thereof to be to pass a by-law under the express authority of the 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 in 4 O.W.N. 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 sec. 10 of the Act of 1912, I think that upon the streets named therein the municipality had 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 the 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 applicant to the respondents 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 respondents led to this motion.

I think that the respondents 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.

*Appeal allowed with costs.*