

council has established its jurisdiction, and is not conferred in the case of a street simply shewn on a private plan of subdivision and which the council has not improved or assumed any liability to repair.

2. The approval by the Lieutenant-Governor-in-Council, pursuant to sub-s. (c) of s. 694 of the Municipal Act, has not the effect of making valid a by-law which is unauthorized by the Act.

3. The promulgation of a by-law under the provisions of ss. 425 and 426 of the Act cannot have the effect of validating a by-law which the council has not power to pass. Such promulgation simply cures defects in the substance or form of the by-law and in the steps leading up to the passing of it, and cannot prevent on application to quash a by-law not within the proper competence of the council. By-law quashed with costs.

*Bradshaw*, for applicant. *Bernier*, for the town.

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Richards, J.]

MCKENZIE v. KAYLER.

[April 28.

*Nuisance—Injunction—Injury to landlord's reversion—Damages in lieu of injunction.*

The owner of a terrace of six dwelling houses, occupied by tenants, brought this action to restrain the defendants from carrying on their business of livery and feed stable keepers in an adjoining building in such a manner as to cause a nuisance to the plaintiff's tenants and to injure the terrace itself.

The plaintiff failed at the hearing to prove any injury to his reversion caused by the defendants; but he was then allowed to add two of his tenants as co-plaintiffs, when further evidence was given and the case further argued. The added plaintiffs clearly established that the smell and noises from the stable disturbed the comfort and sleep of the occupants of the houses in which they resided, and caused them special annoyance and prevented their reasonable enjoyment of their residences. The livery stable in question was erected after the plaintiff's terrace had been fully occupied and in spite of strong objections from the plaintiff and distinct notice that an action would be brought for an injunction if they persisted.

The immediate neighbourhood of the stable was mainly a residential district, although it was proved that prices of land there had advanced beyond what it was worth for residential purposes, in anticipation that, with the growth of the city, it would soon be required for business purposes. The tenancies of the added plaintiffs were from month to month only.