

brought to a conclusion sooner than it was. I think interest should be allowed at 5% per annum in No. 1, from the date of issuing the writ.

3 years, 1905, 1906, and 1907	\$3,000 00
Interest on \$3,000 at 5% per annum from 8th December, 1908, 3 years, 6 months, and 6 days..	527 50
Making in all, in action No. 1	\$3,527 50

for which there will be judgment for the plaintiffs.

That part of the statement of defence asking for forfeiture of plaintiffs' rights and franchise will be struck out pursuant to agreement, and the residue of the counterclaim of the defendants as to damages will be dismissed with costs.

Thirty days' stay.

HON. MR. JUSTICE MIDDLETON.

JUNE 4TH, 1912.

TORONTO v. WHEELER.

3 O. W. N.

Municipal Corporations — By-law — Building Restrictions—Motion to Restrain Erection of Garage.

By section 10 of the Municipal Act (1912), 2 Geo. V., c. 40, assented to April 16th, 1912, cities are given 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. On May 13th, 1912, the plaintiff corporation passed a by-law in the terms of the statute. This was a motion for an injunction turned by consent into a motion for judgment to restrain the defendant from erecting a garage on a street named in the by-law. Prior to the passage of the by-law, the defendant had purchased the land intending to erect thereon a garage, had filed his plans with the city, and received from it a building permit, had let his contracts and commenced excavation.

MIDDLETON, J., *held*, that the statute could not be construed as to take away vested rights, and that the defendant, having proceeded in good faith on the strength of the building permit, should not be restrained therefrom.

Seemle, that word "location" in the statute does not embrace "erection and use."

Motion dismissed with costs.

Motion by the city for an injunction restraining the erection by the defendant of a building intended to be erected and used as a garage for hire or gain. By consent of counsel the motion was turned into a motion for judgment in the action.

H. Howitt, for the plaintiff.

W. C. Chisholm, K.C., for the defendant.