

HON. MR. JUSTICE SUTHERLAND:—After a careful consideration of the matter, I am unable to see that the judgment should contain any direction to the effect that the \$100 paid to the real estate agent, by the vendor, should be repaid by the defendant to the plaintiff. I have spoken to the other members of the Court, who agree also in this disposition of the matter, and of the costs as already made.

SUPREME COURT OF ONTARIO.

2ND APPELLATE DIVISION.

JUNE 16TH, 1913.

COLEMAN v. ROBERT McCALLUM AND THE CORPORATION OF THE CITY OF TORONTO.

4 O. W. N.

Municipal Corporations—Apartment House By-law—Definition Contained in Earlier By-law—Definition in Statute—2 Geo. V. c. 40, s. 10—"Private Temperance Hotel"—Mandamus—Terms—Appeal—Allowance of.

LENNOX, J. (24 O. W. R. 470) granted a mandamus compelling the city architect of defendant corporation to issue a building permit for the erection of a structure at the corner of Sherbourne and Rachael Streets, Toronto, holding that by-law 6061 of defendants passed by virtue of statute 2 Geo. V. c. 40 s. 10 prohibiting the erection of apartment houses upon certain streets must be taken to have adopted the definition of "apartment house" set out in an earlier by-law of the defendant corporation as to buildings and not that of the statute under which it was passed and that therefore the proposed structure was not a contravention of the by-law.

SUP. CT. ONT. (2nd App. Div.) *held*, that the definition of apartment house in the statute was the definition governing the by-law and that therefore no mandamus should be granted.

Appeal allowed with costs.

Appeal by defendants from judgment of LENNOX, J., 24 O. W. R. 470, granting plaintiff a mandatory order compelling defendants to stamp and approve of certain plans filed upon certain terms.

The appeal to the Supreme Court of Ontario (2nd Appellate Division) was heard by HON. SIR WM. MULOCK, C.J.Ex., HON. MR. JUSTICE CLUTE, HON. MR. JUSTICE RIDDELL, and HON. MR. JUSTICE SUTHERLAND.

Irving S. Fairty, for defendants, appellants.

J. T. White, for plaintiff, respondent.