

G. F. Shepley, K.C., and T. Reid, for the applicants.
 Irving S. Fairty, for the city corporation, the respondents.

MIDDLETON, J.:—The only ground alleged for the refusal to issue the permit is that the building is said to be closer to the street line than is permitted by a by-law of the city passed under sec. 406, sub-sec. 10, of the Municipal Act, R.S.O. 1914 ch. 192, authorising the municipality to pass a by-law "prescribing the distance from the line of the street in front of it at which no building on a residential street may be erected or placed."

The building in question, save as to the front steps, is well inside the prescribed line. In front of it, and as a means of access to the front door, it is proposed to construct steps which extend some distance from the front wall of the building and across the defined line. These steps, at their highest point, are 4 feet 6 inches above the ground level.

I have come to the conclusion that the construction of these steps is not the erection or placing of a building, within the by-law and the statute. In each case it is a question of fact whether what is done is within the prohibition of the statute.

Much light is thrown upon the situation by the decision in *Boyce v. Paddington Borough Council*, [1903] 1 Ch. 109, [1903] 2 Ch. 556, and, *sub nom.* *Paddington Corporation v. Attorney-General*, [1906] A.C. 1, 3. . . .

[Reference also to *Child v. Douglas* (1854), Kay 560, 5 DeG. M. & G. 739; *Hull v. London County Council*, [1901] 1 K.B. 580, 588; *Pears v. London County Council* (1911), 105 L.T. 525; 13 Cyc. 716; *Manners v. Johnson* (1875), 1 Ch. D. 673; *United States v. Mueller* (1885), 113 U.S. 153.]

If steps were situated some little distance from the main wall of the building, and there was a walk from these steps to the building, then it would be perfectly clear that the steps did not form part of the building, within the meaning of this by-law; and I think I am quite safe in holding that the steps here contemplated, which are entirely outside of the main wall of the building, do not in any way interfere with the object which the statute aims at securing, and are not within its purview.

The question whether the architect could justify his refusal to grant the permit by reference to the by-law in question was not argued before me.

The mandatory order sought must, therefore, be granted, and costs must follow the event.