

I think that the plaintiffs must pay all the costs so reserved as well as the costs of this motion forthwith after taxation—all the costs over which I have any control.

HON. MR. JUSTICE MIDDLETON.

OCTOBER 31ST, 1912.

RE RYAN & McCALLUM.

4 O. W. N. 193.

*Municipal Corporations — Building Restrictions — By-law Requiring Issue of Permit Ultra Vires — Apartment House — Building By-law — Refusal of Permit — Alterations in Plans.*

Motion for a mandamus compelling the architect of the city of Toronto to approve of certain plans submitted by the applicant. Applicant was defendant in *Holden v. Ryan*, 22 O. W. R. 767, and after that decision amended his plans and submitted them to city architect for approval in conformity with the building by-law of said city. Said architect had formerly granted applicant a permit to build according to his original plans, but since date of permit and date of new application certain city by-laws had been passed to which the plans as altered did not conform and the architect accordingly refused to assent thereto.

MIDDLETON, J., *held*, that this application was substantially an application for a new permit and the architect was justified in refusing to issue a permit, the issuing or refusing to issue a permit, being entirely discretionary with him.

That there is nothing in the Municipal Act which authorises the passing of a municipal by-law requiring any person to obtain a building permit. Sec. 542 of the Municipal Act authorises the passing of a by-law "for regulating the erection of buildings," which enables municipal councils to lay down certain requirements to which buildings to be erected must conform but that does not authorise the granting of a permit.

Motion dismissed with costs.

Motion by Bridget Ryan for a mandatory order directing the city architect to issue a certificate approving of the alterations of certain plans for an apartment house now in course of erection at the intersection of Palmerston boulevard and Harbord street.

W. G. Thurston, K.C., for the applicant.

C. M. Colquhoun, for the respondent.

HON. MR. JUSTICE MIDDLETON:—Prior to the passing of the by-law prohibiting the erection of apartment houses in residential districts, and prior to the passing of by-law 6023 hereinafter mentioned, the applicant had applied for a permit for the erection of an apartment house. The