

in breach of the injunction granted in that action. Mr. Justice Britton thought that the building did not contravene the restriction (see *Holden v. Ryan* (1913), 4 O.W.N. 668); but upon appeal being had the Appellate Division took the contrary view, and finally called in an architect to ascertain whether the structure of the building could be so altered as to make it unobjectionable. The architect consulted recommended certain changes and modifications, which the owner undertook to make; and upon this undertaking no order was made for the destruction of the building (see *Holden v. Ryan* (1914), 5 O.W.N. 890). The defendant, in proceeding to make these alterations, is not confronted with this litigation, for the plans of the altered work have not been submitted to or approved by the City Architect.

When the matter came before me upon the motion for a mandamus (*Re Ryan and McCallum*, 4 O.W.N. 193), the case was argued upon the footing of the validity of the then building by-law requiring the architect's approval. In delivering judgment I pointed out that possibly the Municipal Act as it then stood, which authorised the passing of a by-law "for regulating the erection of buildings," might not authorise the requirement of a building permit. This question was, however, not argued, and the case was dealt with upon the matters presented by counsel. Since then, the Municipal Act has been amended, and a new by-law has been passed. It is now argued that the corresponding requirement of the present by-law is *ultra vires* and beyond what is authorised by the Municipal Act.

What the by-law requires is, that the plans shall be submitted to the City Architect before the erection or alteration of the building is undertaken, and "if during the progress of the work it is desired to deviate in any essential manner from the terms of the application, drawings or specifications, notice of intention to alter or deviate shall be given in writing to the Inspector of Buildings, and his written assent must be first obtained." Alterations which do not involve any change in the structural parts, or conflict with the requirements of the by-law, may be made without this permission.

The alterations here proposed are, I think, structural alterations which under the by-law required municipal approval. They consist in the changing of the position of walls upon the ground floor so as to widen a long corridor, and the closing up of the two entrances on Harbord street originally contemplated, and the substitution of an entrance from Palmerston avenue.