MIDDLETON, J. SEPTEMBER 24TH, 1914.

CITY OF TORONTO v. RYAN.

Municipal Corporation—Regulation of Buildings—Apartment House — Structural Alterations Requiring Municipal Approval—Neglect to Submit Plans to City Architect—Municipal Act, R.S.O. 1914 *ch.* 192, *sec.* 400 (4)—*Building Constructed in Accordance with By-law—Refusal to Order Destruction—Declaratory Judgment—Costs.*

Action by the Corporation of the City of Toronto for an injunction restraining the defendant from altering a certain apartment house, at the corner of Palmerston avenue and Harbord street in the city, without submitting a plan of the alterations to the City Architect and Superintendent of Buildings.

The action was tried by MIDDLETON, J., without a jury at Toronto.

Irving S. Fairty, for the plaintiff corporation.

J. R. Roaf, for the defendant.

MIDDLETON, J.:—This particular apartment house has been the subject of much litigation. The house as originally contemplated violated certain building restrictions, and in the action of Holden v. Ryan (1912), 3 O.W.N. 1585, Mr. Justice Teetzel so declared. Subsequently, amended and modified plans were submitted to the City Architect, who refused to sanction the changes proposed. A motion was then made for a mandatory order compelling the architect to approve of the plans. This was refused (see Ryan v. McCallum (1912), 4 O.W.N. 193); the reasons assigned being that what was then sought was in effect a new permit, and in the meantime the municipality had passed a by-law prohibiting the erection of apartment houses in the locality in question, and also because the building did not comply with the requirements of an amendment to the building by-law which had been made in the meantime, with reference to open space and yard area.

How the difficulties occasioned by this decision were got over I am not informed; but the building was proceeded with. A motion was made in the action of Holden v. Ryan for an order for the destruction of the building upon the ground that, even in its altered form, it violated the building restrictions and was