

"3. The word 'roadway' in this by-law shall have the same meaning as it has in the Toronto and Hamilton Highway Commission Act."

The defendants have a brick garage in the town of Burlington which fronts on the roadway of the Commission for a distance of 48 feet 9½ inches. The new addition would front on the highway, in continuation of the brick garage's front wall, for a distance of 17 feet 8 inches.

Additional material had been filed since the argument, under which it was contended that the erection complained of encroached on the highway itself for a distance of 1 foot 11 inches on the west and 1 foot 8½ inches on the east, and that the brick garage encroaches on the highway to the same extent.

The questions to be determined in the action, as matters stand, are: (1) Is an addition made to an already existing building covered by the words of the by-law? (2) Does the addition actually encroach upon the highway?

Apart from the question of actual encroachment, the action appeared to be an oppressive one, as the small building now being put up merely continued the already existing wall fronting on the highway for a short distance.

If the by-law is applied to sections of towns and villages through which the highway passes, where buildings are already erected on the street-line, so as to prevent any further additions, it will extend the purpose of the by-law so as to restrict the rights of property-owners to the further beneficial use of their property in so far as that use necessitates the erection of anything which can be termed a building on the street-line.

The material filed on behalf of the defendants indicates that the enforcement of this by-law will be a considerable hardship to them, while the additions will cause no detriment to the plaintiffs, inasmuch as the by-law is evidently intended to preserve the appearance of the highway by providing clear spaces on each side of it—a condition applicable only to country parts, and not to villages or towns where buildings already abut on the highway.

The kerb of the cement roadway opposite the defendants' garage appears to be 35 feet from the garage; and the town clerk of Burlington swears that the corner nearest to the garage is a business-corner situated at the intersection of the two main streets of the town, both of which are used for business purposes.

It is not, however, the practice of the Court to decide the questions in issue between the parties on the application for an interim injunction or for its continuance. The injunction should be continued until the hearing, on condition that the plaintiffs undertake to bring the action down to trial at the Hamilton non-jury sittings beginning on the 29th November, 1920. If the