

The motion was turned into a motion for judgment, and was heard by MIDDLETON, J., in the Weekly Court.

C. A. Masten, K.C., for the plaintiff.

C. M. Colquhoun, for the defendant city corporation.

G. F. Shepley, K.C., for the defendant the Masonic Temple Corporation.

MIDDLETON, J.:—The building is in conformity with the building by-law, and the only suggestion is that it may be used as a music hall or other place of amusement, contrary to a by-law passed by the Board of Police Commissioners under sec. 420 of the Municipal Act, or that it may be used in such a manner as to become a nuisance.

The building when erected may be used for many purposes clearly not within the by-law, and it is open to doubt whether the powers of the Police Commissioners cover any use to which the plaintiff suggests the buildings may be put.

The time for the consideration of these questions has not yet arrived. The sole question now to be determined is, whether a building permit should be issued.

When the plans and specifications of the proposed building conform to the building by-law, the duty of the civic official is to issue the permit. He is not in any way concerned with the question as to the enforcement of validity of the Commissioners' regulation, nor is it his duty to determine whether the regulation applies to this building or its contemplated user. The company proceeds entirely at its own risk, and must at its peril avoid committing any nuisance or the violation of any valid regulation applicable to its undertaking.

The plaintiff probably has no *locus standi* to maintain this action or any action to restrain breach of the Commissioners' by-law.

The case of *Tompkins v. Brockville Rink Co.* (1899), 31 O.R. 124, seems entirely applicable. There buildings were about to be erected in violation of the terms of a by-law passed under the fire limit section, prohibiting the erection of buildings of that type. It was held that an adjoining owner and ratepayer could not maintain an action to restrain the erection of the buildings.

This is in entire accord with the later decision of *Mullis v. Hubbard*, [1903] 2 Ch. 431, where it was held that a private person could not maintain an action to restrain the erection of a building which violated the provisions of the Public Health Act.