

Motion by J. Cridland and A. Jeffery, the plaintiffs in an action, for a mandatory order directing the defendants, the Municipal Corporation of the City of Toronto and G. F. W. Price (Inspector of Buildings), to issue to the plaintiffs a building permit with respect to the premises, 308 Coxwell avenue, in the city of Toronto, upon the ground that by-law 8284 of the city corporation is ultra vires.

The motion was heard in the Weekly Court, Toronto.

T. N. Phelan, for the plaintiffs.

C. M. Colquhoun, for the defendants.

MIDDLETON, J., in a written judgment, said that the plaintiffs desired to erect a factory in a district not declared to be "residential," and had filed plans in accordance with the general building by-law of the city corporation. On the 15th December, 1919, the building by-law was amended by adding to sec. 2 a new subsection (12), as follows:—

"12. When an application or the drawings or specifications accompanying the same relate to property on a street residential in character but not so declared by by-law, the Inspector of Buildings shall forthwith report the particulars thereof to the Committee on Property, which shall consider the advisability of declaring the whole or some part of the property on said street residential, and report the matter to the council, and pending the decision of the council thereon the Inspector shall withhold the issue of a permit and shall act in accordance with the decision of the council."

The Inspector of Buildings, deeming the street to be residential, refused to issue a permit pending the decision of the council on the question of declaring the street or some part to be residential.

For some reason, the matter was not reported to the Property Committee, but the Board of Control had directed that a permit should not be issued.

It was said that the Inspector should not have found the street to be "residential in character," as at the part where the factory was to be placed there were large city stables and other buildings of a commercial character. The learned Judge thought that he should not enter upon the discussion of this matter.

He was of opinion that the amending by-law was beyond the power of the municipality. The council may declare a district residential, and so prevent the erection of a factory; but it has no power to compel a land-owner to refrain from the exercise of his rights under the law as it is to-day so as to enable the city council to consider the enactment of a law which will make that unlawful which is to-day lawful. The citizen desiring to build is