

Action by the Municipal Corporation of the City of Brantford to restrain the defendant from proceeding with the erection of a coal-shed in the city.

The action was tried without a jury at Brantford.

W. T. Henderson, K.C., for the plaintiffs.

W. S. Brewster, K.C., for the defendant.

KELLY, J., in a written judgment, said that on the 9th May, 1919, the defendant submitted to the acting building inspector of the city building specifications for a coal-shed which he proposed to erect on his land on the east side of Albion street in the city, and on the same day the officer issued to the defendant a permit for the building. Work on the building was begun and proceeded with until, on the 10th June, the plaintiff received a letter from the city clerk notifying him that the council had passed a resolution requiring him not to proceed further with the construction of the building, which had been petitioned against by the residents of the locality. Afterwards the mayor instructed the inspector to revoke the permit, and of this the defendant was notified.

A building by-law passed by the council contained a clause enacting that every permit shall be subject to revocation, should the city engineer ascertain that the work being carried on under it is being done in a manner that does not reasonably comply with the plans and specifications, etc.

By what is termed a "permit" the applicant acquires a right to erect a building which, when completed, will substantially comply with the approved specifications, and it is not intended that such permit shall be withdrawn at the caprice of the council or the engineer. It is not suggested that the council is without a remedy on failure of the applicant to live up to the specifications—there are such remedies. But the learned Judge had been unable to find that any authority, express or implied, is conferred by the Municipal Act upon a municipal council to pass a by-law revoking a permit. Although the Act gives, in very specific language, powers in several respects of regulating the construction and alteration of buildings and as to the kind, quality, and strength of materials (see sec. 400 of R.S.O. 1914 ch. 192), nowhere does it authorise the withdrawal of a permit, or, in other words, of the approval of the specifications, when once properly granted.

Reference to *City of Toronto v. Wheeler* (1912), 3 O.W.N. 1424.

Unless "regulation" includes "revocation," the council is not clothed with power to revoke. "Regulation" does not in this instance include "revocation."

Had it not been for the objection of the residents in the vicinity of the defendant's building—not to the manner of its construction,