

08 MEREDITH, C.J.C.P.:—Although the practice in such matters as this has for many years been much simplified, it must not be forgotten that the remedy by way of mandamus, such as is here sought, is an extraordinary one, to be applied only to proper subjects, and only when other methods will not afford adequate relief.

In this case the parties desire that the matter in dispute between them be determined upon this motion, and are agreed, substantially, upon all the material facts affecting it. But the desire of the parties would not warrant the Court in so dealing with it if it be not a proper case for a mandamus; I am, however, of opinion that it is. If the applicant have a legal right to the permission he seeks, the respondent Pearce, who is a public officer, is, as such public officer, in duty bound to give it.

Whether the applicant is so entitled depends, as it is agreed on all hands, upon the single question, whether the building he desires to erect would front—within the meaning of the legislation and by-laws in question—on Dufferin street: the one ground upon which the permission sought is withheld being that it would.

But, upon the facts admitted, in the case of *Re Dinnick and McCallum* (1913), 28 O.L.R. 52, there is a decision, of a Court of Appeal of this Province, to the contrary. It may be that the decision in that case is not in accord with the intention of the Legislature: and it unquestionably makes room for obstructions to those long vistas which, it is contended in this case, and was in that, the Legislature intended might be created in residential parts: but, if such were the intention of the Legislature, the Legislature failed to express it; and has not since seen fit to remove the obstruction that case created in the way of carrying into effect that intention: and so *Dinnick's* case rules this case in this lower Court.

100 The contention is, that that is not so, because St. Clair avenue, the highway on which the house was to front in that case, was a long-established one, while that in this case—*Thorburn* avenue—is of more mushroom-like growth, having come into existence under a subdivision-survey and plan made only in the year 1911. But *Thorburn* avenue is none the less a highway upon which buildings may “front” within the meaning of the legislation and by-law in question. The municipality has by its own acts made it a highway which the municipality is bound to keep in repair. Among other things, it has, in writing upon the face of the plan, approved of it. That it need not have done: